PENSION PLAN TERMINATION INSURANCE FOR MULTIEMPLOYER PENSION PLANS

HEARING

BEFORE THE

SUBCOMMITTEE ON PRIVATE PENSION PLANS AND EMPLOYEE FRINGE BENEFITS

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 1076

A BILL TO AMEND THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 AND THE INTERNAL REVENUE CODE OF 1954, AS AMENDED, FOR THE PURPOSE OF IMPROVING RETIREMENT INCOME SECURITY UNDER PRIVATE MULTIEMPLOYER PENSION PLANS BY STRENGTHENING THE FUNDING REQUIREMENTS FOR THOSE PLANS, AUTHORIZING PLAN PRESERVATION MEASURES FOR FINANCIALLY TROUBLED MULTIEMPLOYER PENSION PLANS, AND REVISING THE MANNER IN WHICH THE PENSION PLAN TERMINATION INSURANCE PROVISIONS APPLY TO MULTIEMPLOYER PLANS

MARCH 18, 1980

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PENSION PLAN TERMINATION INSURANCE FOR MULTIEMPLOYER PENSION PLANS

TUESDAY, MARCH 18, 1980

U.S. SENATE,
COMMITTEE ON FINANCE,
SUBCOMMITTEE ON PRIVATE PENSION PLANS AND
EMPLOYEE FRINGE BENEFITS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 2221, Dirksen Senate Office Building, Hon. Lloyd Bentsen (chairman of the subcommittee) presiding.

Present: Senators Bentsen and Packwood.

[The press release announcing this hearing and the bill S. 1076 follow:]

FINANCE SUBCOMMITTEE ON PRIVATE PENSION PLANS AND EMPLOYEE FRINGE BENEFITS SETS HEARINGS ON PENSION BENEFIT GUARANTY CORPORATION PLAN TERMINATION INSURANCE FOR MULTIEMPLOYER PENSION PLANS

Senator Lloyd Bentsen (D.-Tex.), Chairman of the Subcommittee on Private Pension Plans and Employee Fringe Benefits of the Senate Committee on Finance, announced today that the Subcommittee will hold hearings on March 18, 1980 on S. 1076, a bill to provide persion plan termination insurance for multiemployer pension plans.

The hearing will be held in Room 2221 Dirksen Senator Office Building and will begin at 10 a.m.

"The Pension Benefits Guarantee Corporation has had trouble providing us with precise estimates on the extent of the problem. Their estimates vary widely, projecting average liabilities between $56 million and $400 million a year over the next ten years," Bentsen said in announcing the hearings.

"There seems little doubt, however, that some financial problems do exist with regard to termination insurance for multiemployer pension plans and we'll want to take a look at the situation during our hearings."

"We will also explore legislation proposed by the Administration (S. 1076) to cope with the problem," Bentsen said.

The Administration bill calls for an increase in multiemployer termination insurance premiums from 50 cents per participant per year to $2.60. The increase would be phased in over a five year period.

In announcing the hearing, Senator Bentsen noted that similar bill, H.R. 3904, is presently under consideration in the House. He stated that the hearing will undoubtedly look at that bill, as well.

Witnesses who desire to testify at the hearings should submit a written request to Michael Stern, Staff Director, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D.C. 20510 by no later than the close of business on March 14, 1980.

Legislative Reorganization Act.—Senator Bentsen stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress, "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their arguments."

Witnesses scheduled to testify should comply with the following rules:

(1) A copy of the statement must be filed by noon the day before the day the witness is scheduled to testify.

(2) All witnesses must include with their written statement a summary of the principal points included in the statement.

(3) The written statements must be typed on letter-size paper (not legal size) and at least 100 copies must be submitted by the close of business the day before the witness is scheduled to testify.

(4) Witnesses are not to read their written statements to the Committee, but are to confine their fifteen-minute oral presentations to a summary of the points included in the statements.

(5) Not more than fifteen minutes will be allowed for oral presentation.

Written testimony.—Senator Bentsen stated that the Subcommittee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the record. Statements submitted for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length and mailed with five (5) copies by April 21, 1980, to Michael Stern, Staff Director, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D.C. 20510.

II

96TH CONGRESS
1ST SESSION

S. 1076

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended, for the purpose of improving retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, authorizing plan preservation measures for financially troubled multiemployer pension plans, and revising the manner in which the pension plan termination insurance provisions apply to multiemployer plans.

IN THE SENATE OF THE UNITED STATES

MAY 3 (legislative day, APRIL 9), 1979

Mr. WILLIAMS (by request) (for himself, Mr. LONG, and Mr. JAVITS) introduced the following bill; which was read twice and referred to the Committees on Finance and Labor and Human Resources jointly, by unanimous consent

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A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended, for the purpose of improving retirement income security under private multiemployer pension plans by strengthening the funding requirements for those plans, authorizing plan preservation measures for financially troubled multiemployer pension plans, and revising the manner in which the pension plan termination insurance provisions apply to multiemployer plans.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. SHORT TITLE.**
4 This Act may be cited as the "Multiemployer Pension
5 Plan Amendments Act of 1979".
6 **SEC. 2. TABLE OF CONTENTS.**
7 The table of contents is as follows:

TABLE OF CONTENTS

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Findings and declaration of policy.

TITLE I—AMENDMENTS TO TITLE IV OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Sec. 101. Amendments to title IV of the Employee Retirement Income Security Act of 1974.
Sec. 102. Multiemployer guarantees; aggregate limit on guarantees.
Sec. 103. Termination—multiemployer plans.
Sec. 104. Withdrawal liability; mergers and transfers of assets or liabilities; plan reorganization; financial assistance; benefits after termination; enforcement.
Sec. 105. Premiums.
Sec. 106. Annual report of plan administrator.
Sec. 107. Contingent employer liability insurance.
Sec. 108. Transition rules and effective dates.

TITLE II—AMENDMENTS TO TITLE II OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

Sec. 201. Amendments to title II of the Employee Retirement Income Security Act of 1974.
Sec. 202. Minimum funding requirements.
Sec. 203. Excise taxes.
Sec. 204. Deductibility of employer liability payments.
Sec. 205. Minimum vesting requirement.
Sec. 206. Definition of multiemployer plans.
Sec. 207. Related technical amendments.

TITLE III—AMENDMENTS TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Sec. 301. Amendments to title I of the Employee Retirement Income Security Act of 1974.

Sec. 302. Definitions.
Sec. 303. Minimum vesting requirements.
Sec. 304. Minimum funding requirements.

TITLE IV—RELATED TECHNICAL, CONFORMING, AND CLERICAL AMENDMENTS

Sec. 401. Technical amendments.
Sec. 402. Conforming amendments.
Sec. 403. Clerical amendments.

1 SEC. 3. FINDINGS AND DECLARATION OF POLICY.

2 (a) The Congress finds that multiemployer pension plans
3 have accounted for a substantial portion of the increase in
4 private pension plan coverage over the past three decades;
5 that the continued well-being and security of millions of em-
6 ployees and their dependents are directly affected by these
7 plans; that multiemployer plans have a substantial impact on
8 interstate commerce and are affected with a national public
9 interest; that the special features of multiemployer plans
10 make them particularly susceptible to industry declines or
11 employer withdrawals, which may result in a substantially
12 increased funding burden for the remaining employers that
13 can adversely affect labor-management relations; that eco-
14 nomic problems in some industries supporting multiemployer
15 plans make plan continuation highly uncertain; that the de-
16 termination of the extent to which an industry can afford to
17 continue full support for all obligations of a multiemployer
18 plan is, in the first instance, best made through the process of
19 collective bargaining; and that even the termination of a few
20 multiemployer plans could have a serious financial impact on

1 the plan termination insurance program, causing increases in
2 multiemployer plan premiums that could be so high as to
3 precipitate additional multiemployer plan terminations.
4 (b) The Congress further finds that the current multiem-
5 ployer plan termination insurance provisions are unlikely to
6 achieve their objectives of protecting plan participants
7 against benefit losses and encouraging the growth and main-
8 tenance of multiemployer pension plans, and that it is desir-
9 able, to avoid encouraging employer withdrawals and termi-
10 nation of multiemployer plans and to contain the potential
11 costs of the termination insurance program within reasonable
12 bounds, to revise the current program to enhance the finan-
13 cial soundness of such plans and to place primary emphasis
14 on plan continuation.
15 (c) It is hereby declared to be the policy of this Act to
16 protect the interests of participants and beneficiaries in finan-
17 cially distressed multiemployer plans and to encourage the
18 growth and maintenance of multiemployer plans by: authoriz-
19 ing the opportunity for plan reorganization for plans in a fi-
20 nancially precarious position; restructuring the guarantee of
21 pension benefits under multiemployer plans to provide equita-
22 ble protection for plan participants within acceptable cost
23 levels; revising the multiemployer plan termination insurance
24 program to make plan insolvency the only insurable event;
25 revising the termination rules to require that contributions to

1 a plan continue although vesting and benefit accruals cease,
2 revising the minimum funding standards applicable to mul-
3 tiemployer plans to assure that contributions are generally
4 sufficient to pay vested benefits; requiring an employer that
5 withdraws from a multiemployer plan to fund a reasonable
6 share of the plan's unfunded vested obligations; revising the
7 definition of a multiemployer plan to avoid administrative un-
8 certainties; revising the rules governing multiemployer plan
9 mergers and transfers of assets or liabilities to facilitate ap-
10 propriate mergers and transfers, and revising the multiem-
11 ployer plan premium structure to assure adequate financing
12 for the multiemployer plan termination program.

13 TITLE I—AMENDMENTS TO TITLE IV OF THE
14 EMPLOYEE RETIREMENT INCOME SECURITY
15 ACT OF 1974

16 **SEC. 101. AMENDMENTS TO TITLE IV OF THE EMPLOYEE RE-**
17 **TIREMENT INCOME SECURITY ACT OF 1974.**

18 Whenever, in this title, an amendment is expressed in
19 terms of an amendment to a section or other provision, the
20 reference is to a section or other provision of title IV of the
21 Employee Retirement Income Security Act of 1974.

22 **SEC. 102. MULTIEMPLOYER GUARANTEES; AGGREGATE LIMIT**
23 **ON GUARANTEES.**

24 The following new sections are inserted after section
25 4022:

1 "BENEFITS GUARANTEED—MULTIEMPLOYER PLANS

2 "SEC. 4022A. (a) The corporation shall guarantee the
3 payment of all nonforfeitable pension benefits (other than
4 benefits becoming nonforfeitable solely on account of the ter-
5 mination of a plan) under the terms of an insolvent multiem-
6 ployer plan to which section 4021 applies, in accordance with
7 this section.

8 "(b)(1)(A) Under this section, a benefit that has been in
9 effect under a plan for less than 60 months before the plan
10 termination date is not guaranteeable by the corporation, and
11 a benefit that has been in effect under a plan for less than 60
12 months before the first day of the plan year for which an
13 amendment reducing the benefit was taken into account for
14 purposes of section 4243 is not guaranteeable by the
15 corporation.

16 "(B) Each portion of a benefit is treated as a separate
17 benefit under this paragraph.

18 "(2) For purposes of this section—

19 "(A) the date a benefit under a plan is first in
20 effect is the later of the date on which the documents
21 establishing or increasing the benefit were executed, or
22 the effective date of the benefit or benefit increase;

23 "(B) if a benefit under a plan is based on a par-
24 ticipant's compensation, the benefit in effect for at least
25 60 months is determined without regard to increases in

1 compensation that have been in effect for less than 60
2 months;
3 "(C) the time benefits or benefit increases have
4 been in effect under a successor plan includes the time
5 they were in effect under a previously established plan;
6 and
7 "(D) in the case of a plan to which section 4021
8 does not apply on September 3, 1974, the time periods
9 referred to in this section are computed beginning on
10 the first date on which section 4021 does apply to the
11 plan.
12 "(c)(1) Except as provided in subsection (g), a partici-
13 pant's or beneficiary's benefit guaranteed by the corporation
14 with respect to a plan is the product of—
15 "(A) 100 percent of the accrual rate up to $5 plus
16 60 percent of the lesser of—
17 "(i) $15 or
18 "(ii) the accrual rate, if any, in excess of $5,
19 times
20 "(B) years of credited service.
21 "(2) For purposes of this section—
22 "(A) the accrual rate is the amount determined by
23 dividing the participant's or beneficiary's base benefit
24 by the participant's years of credited service;

1 "(B) 'base benefit' means a participant's or benefi-
2 ciary's monthly benefit described in subsections (a) and
3 (b) that is—
4 "(i) no greater than the monthly benefit that
5 would be payable under the plan at normal retire-
6 ment age in the form of a life annuity, determined
7 under regulations of the corporation; and
8 "(ii) determined without regard to any reduc-
9 tion under Code section 411(a)(3)(E); and
10 "(C) years of credited service include all of the
11 participant's years of service (as defined in regulations
12 of the corporation) that are taken into account to de-
13 termine accrued benefits under the plan, without
14 regard to Code section 411(a)(3)(E).
15 "(d) In the case of a benefit that has been reduced under
16 Code section 411(a)(3)(E), the corporation guarantees the
17 lesser of that reduced benefit or the amount determined under
18 subsection (c).
19 "(e) The corporation does not guarantee benefits under
20 a multiemployer plan that, under subsection 4022(b)(6),
21 would not be guaranteed under a single-employer plan.
22 "(f)(1) No later than 5 years from the date of enactment
23 of this section, and at least every fifth year thereafter, the
24 corporation shall determine and report to Congress on the

1 multiemployer premiums needed to maintain the basic-bene-
2 fits guarantee levels described in subsection (c).
3 "(2)(A) If the report described in paragraph (1) indicates
4 that a multiemployer premium increase would be necessary
5 to support the existing basic-benefits guarantee levels, the
6 corporation shall submit to Congress the revised schedule of
7 multiemployer benefit guarantees that would be necessary in
8 the absence of a premium increase approved in accordance
9 with section 4006(b).
10 "(B) Any report and proposed revised guarantee sched-
11 ule under this paragraph shall be submitted to the Committee
12 on Ways and Means and the Committee on Education and
13 Labor of the House of Representatives, and to the Commit-
14 tee on Finance and the Committee on Labor and Human
15 Resources of the Senate, by March 31 of any calendar year
16 in which congressional action under this paragraph is re-
17 quested. If a premium increase is not approved, the revised
18 guarantee schedule shall go into effect on the first day of the
19 second calendar year following the year in which the revised
20 guarantee schedule was submitted to Congress.
21 "(3)(A) If the report described in paragraph (1) indicates
22 that basic-benefits guarantees can be increased without in-
23 creasing the basic-benefit premium rate for multiemployer
24 plans under this title, the corporation may recommend an
25 increase in those guarantees.

1 "(B) The corporation shall transmit a description of any
2 proposed schedule of increases in multiemployer basic-bene-
3 fits guarantees under this paragraph to the Committee on
4 Ways and Means and the Committee on Education and
5 Labor of the House of Representatives and to the Committee
6 on Finance and the Committtee on Labor and Human Re-
7 sources of the Senate. The proposed increase shall go into
8 effect as approved by Congress by a concurrent resolution.

9 "(C) The succeeding subparagraphs of this paragraph
10 are enacted by Congress as an exercise of the rulemaking
11 power of the Senate and the House of Representatives, re-
12 spectively, and as such they shall be deemed a part of the
13 rules of each House, respectively, but applicable only with
14 respect to the procedure to be followed in that House in the
15 case of resolutions described in subparagraph (D). They shall
16 supersede other rules only to the extent that they are incon-
17 sistent therewith. They are enacted with full recognition of
18 the constitutional right of either House to change the rules
19 (so far as relating to the procedure of that House) at any
20 time, in the same manner and to the same extent as in the
21 case of any rule of that House.

22 "(D) For the purpose of subparagraph (E) of this para-
23 graph, 'resolution' means only a concurrent resolution, the
24 matter after the resolving clause of which is as follows: 'That
25 the Congress favors the proposed increased multiemployer

1 basic-benefits guarantee limits transmitted to Congress by
2 the Pension Benefit Guaranty Corporation
3 on .", the blank space therein being filled with
4 the date on which the corporation's message proposing the
5 increase was delivered.'

6 "(E) The procedure for disposition of a resolution shall
7 be the procedure described in section 4006(b) (4) through (7).

8 "(g)(1) The corporation is authorized to guarantee the
9 payment of such other classes of benefits under mulitem-
10 ployer plans, and to establish the terms and conditions under
11 which those other classes of benefits are guaranteed, as it
12 determines to be appropriate.

13 "(2) Notwithstanding paragraph (1), no later than 18
14 months after the effective date of this provision, the corpora-
15 tion shall propose regulations to establish a supplemental
16 program to guarantee benefits under multiemployer plans
17 that would be basic benefits except for the limitations in sub-
18 section (c). Supplemental guarantees under this paragraph
19 may be offered on any terms and conditions, and may include
20 any limitations with respect to plans or benefits covered, or
21 means of program financing, that the corporation determines
22 are necessary and appropriate for a feasible supplemental
23 guarantee program that is consistent with the purposes of
24 this title. To the extent specified in the regulations of the
25 corporation under this paragraph, those regulations super-

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1 sede the requirements of sections 4245, 4261, and 4281, and
2 the requirements of Code section 411(f).
3 "(3) Any benefits guaranteed under this subsection shall
4 be treated as nonbasic benefits for purposes of this title.
5 "AGGREGATE LIMIT ON BENEFITS GUARANTEED
6 "SEC. 4022B. Notwithstanding sections 4022 and
7 4022A, no person shall receive from the corporation for basic
8 benefits with respect to a participant an amount, or amounts,
9 with an actuarial value that exceeds a monthly benefit in the
10 form of a life annuity commencing at age 65 equal to the
11 amount determined under section 4022(b)(3)(B) at the date of
12 the last plan termination. For purposes of this section, the
13 receipt of benefits under a multiemployer plan receiving fi-
14 nancial assistance from the corporation is considered the re-
15 ceipt of amounts from the corporation to the extent pre-
16 scribed in regulations of the corporation, and the date a mul-
17 tiemployer plan, whether or not terminated, begins receiving
18 financial assistance from the corporation is considered a date
19 of plan termination.".
20 **SEC. 103. TERMINATION—MULTIEMPLOYER PLANS.**
21 The following new section is inserted after section
22 4041:
23 "TERMINATION—MULTIEMPLOYER PLAN
24 "SEC. 4041A. (a) Termination of a multiemployer plan
25 under this section occurs as a result of—

1 "(1) the adoption of a plan amendment that pro-
2 vides that participants will receive no credit for any
3 purpose under the plan for service with any employer
4 after the date the amendment is adopted;
5 "(2) the withdrawal of every employer from the
6 plan, within the meaning of section 4201(b); or
7 "(3) the adoption of an amendment to the plan
8 that causes the plan to become a plan described in sec-
9 tion 4021(b)(1).
10 "(b)(1) The date on which a plan terminates under para-
11 graph (1) or (3) of subsection (a) is the later of date the
12 amendment is adopted or effective.
13 "(2) The date on which a plan terminates under para-
14 graph (2) of subsection (a) is the earlier of—
15 "(A) the date on which the last employer with-
16 draws, or
17 "(B) the first day of the first plan year for which
18 no employer contributions were made under the plan.
19 "(c) The plan administrator of a terminated multiem-
20 ployer plan shall, except as provided in subsection (e)—
21 "(1) limit the payment of benefits to vested bene-
22 fits under the plan as of the date of termination, and
23 "(2) cause benefits attributable to employer con-
24 tributions, other than death benefits, to be paid only in
25 the form of an annuity, unless the plan distributes its

1 assets in satisfaction of all vested benefits under the
2 plan.
3 "(d) The plan administrator of a terminated plan from
4 which every employer has withdrawn shall reduce benefits
5 and suspend benefit payments in accordance with section
6 4281.
7 "(e) In the case of a plan that terminates under para-
8 graph (1) or (3) of subsection (a), the rate of employer contri-
9 butions under the plan for each plan year beginning on or
10 after the plan termination date shall equal or exceed the rate
11 of employer contibutions under the plan in effect on the day
12 before the plan termination date, unless the corporation ap-
13 proves a reduction in the rate based on a finding that the plan
14 is or soon will be fully funded.
15 "(f)(1) The plan administrator of a terminated plan may
16 authorize distribution of the present value of a participant's
17 entire nonforfeitable benefit attributable to employer contri-
18 butions, other than a death benefit, if the distribution does
19 not exceed $1,750. The corporation may authorize the pay-
20 ment of benefits under the terms of a terminated plan other
21 than vested benefits, or in lump-sum amounts greater than
22 $1,750, if it determines that the payment is in the interest of
23 the plan's participants and beneficiaries generally and does
24 not unreasonably increase the corporation's risk of loss with
25 reepect to the plan.

1 "(2) The corporation may prescribe reporting require-
2 ments for terminated plans, and rules and standards for the
3 administration of terminated plans that the corporation deems
4 appropriate to protect the interests of the plan's participants
5 or to prevent unreasonable losses to the corporation.".

6 **SEC. 104. WITHDRAWAL LIABILITY; MERGERS AND TRANS-**
7 **FERS OF ASSETS OR LIABILITIES; PLAN REOR-**
8 **GANIZATION; FINANCIAL ASSISTANCE; BENE-**
9 **FITS AFTER TERMINATION; ENFORCEMENT.**

10 Title IV is amended by redesignating subtitle E as sub-
11 title F and adding after subtitle D the following new subtitle:

12 "Subtitle E—Special Provisions for
13 Multiemployer Plans

14 "PART 1—EMPLOYER WITHDRAWALS

15 "EMPLOYER WITHDRAWALS

16 "SEC. 4201. (a)(1) Except as provided in subsection (c),
17 an employer that withdraws from a multiemployer plan is
18 liable to the plan for the amount determined under subsection
19 (d), and shall pay the liability, plus interest, in accordance
20 with subsection (e).

21 "(2) The plan administrator shall determine the liability
22 of a withdrawn employer in accordance with subsections (c)
23 and (d), and shall notify the employer and collect the liability
24 in accordance with subsections (e) and (f).

1 "(b)(1) For purposes of this section, except as provided
2 in paragraphs (2), (3), (4), and (6), an employer withdraws
3 from a multiemployer plan when the employer—
4 "(A) permanently ceases to have an obligation to
5 contribute under the plan, or
6 "(B) permanently ceases all covered options under
7 the plan.
8 "(2)(A) For purposes of this section, in the case of an
9 employer required to contribute under a plan only for work
10 performed in the building and construction industry, with-
11 drawal occurs only as described in this paragraph.
12 "(B) A withdrawal occurs under this paragraph when an
13 employer ceases to have an obligation to contribute under the
14 plan but continues to perform work in the plan's jurisdiction
15 of the type for which contributions were previously required.
16 For this purpose, an employer that resumes such work within
17 5 years from the date the obligation to contribute under the
18 plan ceases, and does not renew the obligation, is treated as
19 continuing such work if, at the time of the resumption, other
20 employers have an obligation to contribute under the plan.
21 "(C) A plan may be amended to provide that a with-
22 drawal occurs under this paragraph when a long-term con-
23 tributor ceases to have an obligation to contribute under the
24 plan. For this purpose, a 'long-term contributor' is an em-
25 ployer that has contributed under the plan for a number of

1 plan years as specified by the plan equal to, or greater than,
2 the minimum number of years of service required for any
3 participant to earn a vested pension benefit under the plan.
4 "(3) A withdrawal of an employer under this section
5 does not occur solely because an employer ceases to exist by
6 reason of a change in corporate structure described in section
7 4062(d), if the change causes no interruption, in fact, in em-
8 ployer contributions to or obligations under the plan.
9 "(4) A withdrawal of an employer under this section
10 does not occur solely because an employer suspends contribu-
11 tions under the plan during a labor dispute involving its em-
12 ployees.
13 "(5) For purposes of this section—
14 "(A) an obligation to contribute is an obligation
15 arising under one or more collective bargaining (or re-
16 lated) agreements, or an obligation to contribute arising
17 as a result of a duty under applicable labor manage-
18 ment relations law; and
19 "(B) an obligation to pay liability under this sec-
20 tion or to pay delinquent contributions is not consid-
21 ered an obligation to contribute.
22 "(6) The corporation may prescribe in regulations the
23 circumstances under which an employer has withdrawal lia-
24 bility when there is a substantial reduction in the employer's
25 contributions under the plan. Any regulations of the corpora-

1 tion under this paragraph may prescribe appropriate notice
2 requirements and the way in which liability is determined
3 under subsection (d) for such partial withdrawals.
4 "(7) For purposes of this section, in the case of a with-
5 drawal—
6 "(A) under paragraph (1), if the cessation occurs
7 during a plan year for which the employer makes no
8 contributions under the plan, the date of the withdraw-
9 al is the last day of the plan year for which the em-
10 ployer made a contribution under the plan; and
11 "(B) under paragraph (2)(B), the date of the with-
12 drawal is the date the employer's obligation to contrib-
13 ute under the plan ceased.
14 "(c)(1) An employer that withdraws is not liable to the
15 plan if the amount determined under subsection (d) is less
16 than the greater of—
17 "(A) $25,000, or
18 "(B) 0.75 percent of the plan's unfunded vested
19 liabilities, determined as of the last day of the plan
20 year ending prior to the date of withdrawal, but not
21 exceeding $100,000.
22 A plan may be amended to provide for a dollar amount lower
23 than $25,000 or a percentage lower than 0.75 percent, or to
24 provide that this paragraph does not apply.

1 "(2) A plan may be amended to prescribe rules consist-
2 ent with the interests of plan participants, beneficiaries, and
3 contributing employers for reducing or waiving an employer's
4 withdrawal liability to the extent the employer's obligations
5 with respect to the plan, other than outstanding obligations
6 under subsection (e), are assumed by another employer.
7 "(d)(1) Except as otherwise provided in this subsection,
8 the amount of an employer's liability under this section
9 equals the product of—
10 "(A) the plan's unfunded vested obligations as of
11 the end of the plan year ending prior to the date of the
12 withdrawal, multiplied by
13 "(B) a fraction—
14 "(i) the numerator of which is the total
15 amount required to be contributed by the employ-
16 er under the plan for the last 5 plan years ending
17 prior to the date it withdraws, and
18 "(ii) the denominator of which is the total
19 amount contributed under the plan by all employ-
20 ers for those plan years plus any employer contri-
21 butions owed with respect to earlier periods that
22 were collected in those plan years, less any
23 amount contributed by an employer that withdrew
24 from the plan under this section during those plan

1 years unless the employer was exempt from liabil-
2 ity under subsection (c)(2).

3 "(2) For purposes of this part, 'unfunded vested obliga-
4 tions' means the present value of all vested benefits under the
5 plan, determined under regulations of the corporation based
6 on the requirements of Code section 412, less the sum of—

7 "(A) the value of plan assets as of the end of the
8 plan year, determined under regulations of the corpora-
9 tion based on the requirements of Code section 412,
10 plus

11 "(B) the value, determined under regulations of
12 the corporation, of any outstanding withdrawal liability
13 claim for which demand has been made under subsec-
14 tion (e) by the end of the plan year.

15 "(3) The corporation may prescribe in regulations—

16 "(A) a procedure by which a plan may, by amend-
17 ment, adopt an alternative method for determining an
18 employer's liability under this subsection, subject to the
19 approval of the corporation based on its determination
20 that adoption of the method by the plan would not sig-
21 nificantly increase the risk of loss to the corporation;
22 and

23 "(B) standard approaches for alternative methods
24 that a plan may adopt under subparagraph (A), for

1 which the corporation may waive or modify the ap-
2 proval requirements of this paragraph.
3 Any alternative method shall provide for the allocation of all
4 of a plan's unfunded vested obligations among employers
5 contributing under the plan.
6 "(4) In the case of a transfer of liabilities to another
7 plan incident to an employer's withdrawal, the amount deter-
8 mined under this subsection shall be reduced in an amount
9 equal to the present value, as of the effective date of the
10 transfer, of the unfunded vested obligations transferred.
11 "(5) For purposes of subsection (d)(1)(B)(i), the total
12 amount required to be contributed by an employer for the last
13 5 plan years ending prior to a withdrawal includes amounts
14 required to be contributed for those plan years by a predeces-
15 sor employer to the extent that employer's liability to the
16 plan under this section was reduced because of subsection
17 (b)(3) or (c)(2).
18 "(6) In the case of a withdrawal following a merger of
19 multiemployer plans, paragraph (1) shall be applied in ac-
20 cordance with regulations of the corporation except that, if a
21 withdrawal occurs in the first plan year following a merger of
22 multiemployer plans, liability under this section shall be de-
23 termined as if each of the multiemployer plans had remained
24 separate plans.

1 "(e)(1) As soon as practicable after an employer with-
2 drawal, the plan administrator shall notify the employer of
3 the amount of the liability and the schedule of liability pay-
4 ments, determined under this subsection, and shall, consistent
5 with subsection (f), demand payment in accordance with the
6 schedule.

7 "(2) Except as provided in paragraphs (6) and (7), an
8 employer shall pay the liability determined under subsection
9 (d) over a period of years in annual amounts, including ac-
10 crued interest on the outstanding principal, equal to the
11 greater of—

12 "(A) the average of the employer's required
13 annual contributions under the plan for the 3 plan
14 years preceding the date of the withdrawal, or

15 "(B) the amount necessary to amortize the em-
16 ployer's liability (plus accrued interest) in equal annual
17 installments over a period of 15 years, until fully am-
18 ortized.

19 "(3) Each amount determined under paragraph (2) shall
20 be payable in four equal installments due quarterly, or at
21 other intervals specified by plan rules.

22 "(4) Withdrawal liability (plus accrued interest) shall be
23 payable in accordance with the schedule set forth by the plan
24 administrator under paragraph (1), beginning no later than
25 60 days after the date of demand.

1 "(5) Interest shall be charged from the date of the with-
2 drawal at rates based on prevailing market rates for
3 comparable obligations, in accordance with regulations of the
4 corporation.
5 "(6) The employer shall be entitled to prepay the out-
6 standing amount of its withdrawal liability, plus accrued in-
7 terest, in whole or in part, without penalty.
8 "(7) A plan administrator may require immediate pay-
9 ment of the outstanding amount of an employer's withdrawal
10 liability, plus accrued interest, in the event of a default. For
11 purposes of this section, 'default' means—
12 "(A) the failure of an employer to make, when
13 due, any payment under this subsection, if the failure is
14 not cured within 60 days after the employer receives
15 written notification from the plan administrator of the
16 failure, and
17 "(B) any other event defined in rules adopted by a
18 plan that indicates a reasonable likelihood that an em-
19 ployer will be unable to pay its withdrawal liability.
20 "(8) A multiemployer plan may adopt rules consistent
21 with this Act for other terms and conditions for satisfaction of
22 an employer's withdrawal liability.
23 "(f)(1) An employer that has withdrawn from a multiem-
24 ployer plan shall, within 30 days after a written request from
25 the plan administrator of the plan, furnish such information

1 as the plan administrator reasonably determines to be neces-
2 sary to enable him or her to comply with the requirements of
3 this section.
4 "(2) Before the plan administrator demands payment
5 under subsection (e), he or she shall give the employer a
6 reasonable opportunity to identify any inaccuracy in the de-
7 termination of its withdrawal liability or the schedule of pay-
8 ments, and to furnish any additional relevant information.
9 The plan administrator shall, upon request, make relevant
10 plan records reasonably available to the employer for inspec-
11 tion and copying.
12 "(3) After a reasonable review of any specific matter
13 raised by the employer, the plan administrator shall notify
14 the employer of his or her decision, the basis for the decision,
15 and the reason for any change in the determination of the
16 employer's liability or schedule of liability payments.
17 "(g)(1) No plan rule or amendment authorized under this
18 section may be applied with respect to liability for a with-
19 drawal that occurred before the date that the rule or amend-
20 ment was adopted, without the employer's consent.
21 "(2) All plan rules and amendments authorized under
22 this subsection shall operate and be applied uniformly with
23 respect to each employer, except that special provisions may
24 be made to take into account the creditworthiness of an em-
25 ployer.

1 "(h) The corporation may, by regulation, require the
2 plan administrator of a multiemployer plan to provide notice
3 to the corporation when the withdrawal from the plan by any
4 employers has resulted, or will result, in a significant reduc-
5 tion in the amount of aggregate contributions under the plan
6 by employers.

7 "(i)(1) The prohibitions provided in section 406 do not
8 apply to any action taken under this section.

9 "(2) Payments of liability under this section are not con-
10 sidered contributions for purposes of this section.

11 "APPROVAL OF AMENDMENTS

12 "SEC. 4202. If a plan amendment authorized by section
13 4201, other than an amendment authorized by section
14 4201(d)(3), is adopted more than 18 months after the effec-
15 tive date of this section, the amendment shall be effective
16 only if the corporation approves the amendment, or, within
17 90 days after the corporation receives notice of the amend-
18 ment from the plan administrator, fails to disapprove. The
19 corporation shall disapprove an amendment only if it deter-
20 mines that the amendment creates an unreasonable risk of
21 loss to plan participants or the corporation.

22 "DETERMINATION OF UNFUNDED VESTED OBLIGATIONS

23 "SEC. 4203. (a) For purposes of this part, a plan's de-
24 termination of its unfunded vested obligations for a plan year

1 is presumed correct unless a party contesting the determina-
2 tion shows by a preponderance of evidence that—
3 "(1) the actuarial assumptions and methods used
4 in the determination were, in the aggregate, unreason-
5 able (taking into account the experience of the plan
6 and reasonable expectations),
7 "(2) the plan's actuary made a significant error in
8 applying the actuarial assumptions or methods, or
9 "(3) the plan administrator's determination with
10 respect to the value of an outstanding withdrawal
11 liability claim was unreasonable.
12 "(b) In the case of a determination under section 4201
13 made on behalf of a plan prior to the effective date of final
14 regulations relating to an element of the determination, if the
15 corporation finds that the determination was reasonable, the
16 fact that an element of the determination was not consistent
17 with subsequent final regulations is not evidence that the de-
18 termination was unreasonable.

19 "PART 2—MERGER OR TRANSFER OF PLAN ASSETS
20 OR LIABILITIES

21 "MERGER OR TRANSFER OF PLAN ASSETS OR LIABILITIES

22 "SEC. 4221. (a) The plan administrator of a multiem-
23 ployer plan shall notify the corporation of a proposed merger
24 with, or a transfer of plan assets or liabilities to, another plan
25 at least 90 days before the effective date of such a merger or

1 transfer. The corporation may exempt de minimis mergers or
2 transfers from the requirements of subsection (a), (c), (d), or
3 (e).

4 "(b) A participant's or beneficiary's accrued benefit
5 under a multiemployer plan may not be decreased as a result
6 of a merger with, or a transfer of assets or liabilities to, an-
7 other plan.

8 "(c) A multiemployer plan may not merge with another
9 multiemployer plan if the reorganization index for the merged
10 plan would reasonably be expected to exceed the reorganiza-
11 tion index for any of the separate plans for the first plan year
12 following the effective date of the merger.

13 "(d) A multiemployer plan may not transfer assets or
14 liabilities to another multiemployer plan if the reorganization
15 index of either plan for the first plan year following the effec-
16 tive date of transfer would reasonably be expected to increase
17 as a result of the transfer.

18 "(e)(1) A multiemployer plan may transfer assets or li-
19 abilities to a single-employer plan in accordance with this
20 subsection.

21 "(2) Except as provided in paragraphs (3) and (4), a
22 multiemployer plan that transfers assets or liabilities to a
23 single-employer plan shall be liable to the corporation if the
24 single-employeer plan terminates within 60 months after the

1 effective date of the transfer. The amount of liability shall be
2 the lesser of—

3 "(A) the excess of the plan asset insufficiency of
4 the terminated single-employer plan over 30 percent of
5 the net worth of the employer that maintained the
6 single-employer plan, determined in accordance with
7 section 4062 or 4064, or

8 "(B) the present value on the effective date of the
9 transfer of the unfunded benefits transferred to the
10 single-employer plan that were guaranteed under sec-
11 tion 4022.

12 "(3) A multiemployer plan shall not be liable to the cor-
13 poration as provided in paragraph (2) if, within 90 days after
14 the date of the notice required under subsection (a) (or any
15 extended period to which the corporation and the plan admin-
16 istrator agree, the corporation determines that the interests
17 of the participants and the corporation are adequately
18 protected.

19 "(4) A multiemployer plan shall not be liable to the cor-
20 poration as provided in paragraph (2) if, in the case of a
21 transfer of liabilities that accrued under a single-employer
22 plan that merged with the multiemployer plan, the present
23 value of liabilities transferred does not exceed the present
24 value of the liabilities that accrued before the merger, and the
25 value of the assets transferred is substantially equal to the

1 value of the assets that would have been in the single-em-
2 ployer plan if the employer had maintained and funded it as a
3 separate plan under which no benefits accrued after the date
4 of the merger.

5 "(5) The corporation may make equitable arrangements
6 with multiemployer plans that are liable under this subsection
7 for satisfaction of their liability.

8 "(f)(1) A plan to which liabilities are transferred in ac-
9 cordance with this section is a successor plan for purposes of
10 sections 4022 and 4022A.

11 "(2) Benefits under a single-employer plan to which
12 liabilities are transferred in accordance with this section are
13 guaranteed under section 4022.

14 "(g)(1) A multiemployer plan may not transfer assets or
15 liabilities unless the plan sponsor of the plan to which assets
16 or liabilities would be transferred agrees to the transfer.

17 "(2) In the case of a transfer described in subsection
18 (e)(4), paragraph (1) is satisfied by the advance agreement of
19 the employer that will be obligated to contribute to the
20 single-employer plan.

21 "ASSETS TRANSFERABLE

22 "SEC. 4222. (a) A transfer of assets from a multiem-
23 ployer plan to another plan shall comply with asset-transfer
24 rules adopted by the multiemployer plan that—

1 "(1) include prudent protections for the interests
2 of the multiemployer plan's participants and bene-
3 ficiaries,
4 "(2) do not unreasonably restrict the transfer of
5 plan assets in connection with the transfer of plan
6 liabilities, and
7 "(3) operate and are applied uniformly with re-
8 spect to each proposed transfer, except that the rules
9 may provide for reasonable variations in light of the
10 potential financial impact of a proposed transfer on the
11 multiemployer plan.
12 "(b)(1) The corporation may, by regulation, prescribe
13 specific standards consistent with this Act for the content and
14 application of asset-transfer rules adopted under this section.
15 "(2) Regulations of the corporation under this subsec-
16 tion may—
17 "(A) require the approval of the corporation for
18 multiemployer plan asset transfers, and
19 "(B) exempt de minimis transfers of assets, and
20 transfers pursuant to written reciprocity agreements,
21 from the requirements of this section.
22 "(3) Plan rules authorizing asset transfers consistent
23 with the requirements of section 4221(e)(4) satisfy this sec-
24 tion.

1 "PART 3—REORGANIZATION

2 "REORGANIZATION STATUS

3 "SEC. 4241. (a) A multiemployer plan is in reorganiza-
4 tion for a plan year if the plan's reorganization index is great-
5 er than zero.

6 "(b)(1) For each plan year, a multiemployer plan's reor-
7 ganization index equals the excess of—

8 "(A) the vested liabilities charge (determined
9 without regard to accrued benefit reductions under
10 4244 that are first effective in the plan year) over

11 "(B) the charges determined under Code section
12 412(b)(2) minus the credits determined under Code sec-
13 tion 412(b)(3)(B).

14 "(2) For each plan year, the vested liabilities charge
15 equals the amount that would be necessary to amortize a
16 multiemployer plan's unfunded vested liabilities in equal
17 annual installments—

18 "(A) over 10 years to the extent attributable to
19 persons in pay status, and

20 "(B) over 25 years, to the extent attributable to
21 all other participants.

22 In determining unfunded vested liabilities, plan assets shall
23 first be allocated to vested liabilities attributable to persons in
24 pay status.

1 "(3) At the election of the plan adminstrator, the deter-
2 mination of unfunded vested liabilities for purposes of para-
3 graph (2) may be based either on a valuation performed for
4 the plan year or a valuation performed for any of the 4 pre-
5 ceding plan years, adjusted to reflect—
6 "(A) subsequent changes in benefits under the
7 plan, and
8 "(B) events that substantially increase the plan's
9 unfunded vested liabilities, if the plan administrator
10 knew or should have known of those events by the
11 earliest of the effective dates of any collective-bargain-
12 ing agreement providing for employer contributions
13 under the plan that is in effect in the plan year for
14 which the determination is made.
15 "(4) For purposes of this part, 'unfunded vested liabil-
16 ities' means the excess of the present value of vested benefits
17 under the plan over the value of the assets of the plan, with-
18 out regard to outstanding claims for withdrawal liability.
19 "(5) For purposes of this part, 'person in pay status'
20 means a participant or beneficiary who, at any time during
21 the plan year, received an early, normal or disability retire-
22 ment benefit or a death benefit related to a retirement bene-
23 fit, and, to the extent provided in regulations prescribed by
24 the Secretary of the Treasury, a person entitled to those or
25 similar benefits under the plan.

1 "(c) Under a plan in reorganization, the present value of
2 a participant's nonforfeitable benefit attributable to employer
3 contributions (other than a death benefit) may not be distrib-
4 uted if the value exceeds $1,750, unless the corporation ap-
5 proves the payment of benefits under the terms of the plan in
6 greater lump sum amounts, based on the corporation's deter-
7 mination that the payment is in the interest of the plan's
8 participants and beneficiaries generally and does not unrea-
9 sonably increase the corporation's risk of loss with respect to
10 the plan.
11 "(d) No terminated multiemployer plan is in reorganiza-
12 tion after the date on which the last employer withdraws
13 from the plan within the meaning of section 4201(b).
14 "NOTICE OF REORGANIZATION
15 "SEC. 4242. (a) The plan administrator of a multiem-
16 ployer plan that is in reorganization shall, in accordance with
17 regulations of the Secretary of the Treasury, notify—
18 "(1) plan participants and beneficiaries,
19 "(2) each employer that has an obligation to con-
20 tribute under the plan (within the meaning of section
21 4201), and
22 "(3) each employee organization that, for pur-
23 poses of collective bargaining, represents plan partici-
24 pants employed by such an employer,

1 that the plan is in reorganization and that accrued benefits
2 under the plan may be reduced, or an excise tax may be
3 imposed on employers, if contributions to the plan are not
4 increased.

5 "(b) The Secretary of the Treasury may prescribe addi-
6 tional or alternative requirements for assuring that the inter-
7 ested parties receive appropriate notice that a multiemployer
8 plan is or may be in reorganization, are adequately informed
9 of the implications of reorganization status, and have reason-
10 able access to information relevant to a plan's reorganization
11 status.

12 "FUNDING REQUIREMENTS FOR PLANS IN
13 REORGANIZATION

14 "SEC. 4243. (a)(1) Each multiemployer plan shall sat-
15 isfy the minimum contribution requirement for each plan year
16 that it is in reorganization. A plan satisfies the minimum con-
17 tribution requirement for a plan year if it does not have a
18 reorganization deficiency for the plan year.

19 "(2) For any plan year in which plan is in reorganiza-
20 tion, the plan's accumulated funding deficiency under section
21 302(a) equals the plan's reorganization deficiency.

22 "(3) A reorganization deficiency for a plan year is the
23 excess of—

24 "(A) the minimum contribution requirement over

1 "(B) contributions and withdrawal liability pay-
2 ments made under the plan.
3 "(b)(1) For purposes of this part, a plan's minimum con-
4 tribution requirement for a plan year is an amount equal to
5 the lesser of—
6 "(A) the plan's vested liabilities charge or
7 "(B) the plan's vested liabilities charge multiplied
8 by a fraction—
9 "(i) the numerator of which is the plan's cur-
10 rent contribution base for the plan year and
11 "(ii) the denominator of which is the plan's
12 valuation contribution base.
13 "(2) Notwithstanding paragraph (1), if the vested liabil-
14 ities charge is less than the plan's cash-flow amount for a
15 plan year, the plan's minimum contribution requirement for
16 the plan year is the amount determined under paragraph (1)
17 if 'cash-flow' amount, is substituted for 'vested liabilities
18 charge' wherever that term appears in paragraph (1). For
19 purposes of this paragraph, a plan's cash-flow amount is the
20 total amount of benefits payable under the plan, plus the
21 plan's administrative expenses, for the plan year, less the
22 value of available plan assets determined under regulations
23 prescribed by the Secretary of the Tresaury.
24 "(c) For purposes of this part, for a plan year—

1 "(1) Except as provided in subsection (d), a plan's
2 valuation contribution base is its current contribution
3 base for the plan year for which the valuation used to
4 determine unfunded vested liabilities under section
5 4241(b) was performed, adjusted, in accordance with
6 regulations of the Secretary of the Treasury, for a con-
7 tribution base reduction caused by a strike or lockout,
8 or by unusual, peculiar and nonrecurring events, such
9 as fire, earthquake, or severe weather conditions; and
10 "(2) a plan's current contribution base is the
11 number of contribution base units with respect to
12 which contributions were received by the plan for that
13 plan year, determined in accordance with regulations of
14 the Secretary of the Treasury.
15 "(d)(1) For purposes of subsection (a), the plan adminis-
16 trator of an overburdened plan shall apply an overburden
17 credit against the plan's reorganization deficiency for a plan
18 year (determined without regard to this subsection).
19 "(2) A plan is overburdened, for a plan year, if—
20 "(A) pay status participants under the plan consti-
21 tute at least 50 percent of the plan's extended partici-
22 pant group; and
23 "(B) the rate of employer contributions under the
24 plan equals o: exceeds the greater of the rate for the

1 preceding plan year or the rate for the plan year prior
2 to the first year that the plan was in reorganization.
3 "(3) The amount of the overburden credit for a plan
4 year is the product of—
5 "(A) one-half of the average benefit paid, multi-
6 plied by
7 "(B) the overburden factor for the plan year.
8 "(4) For purposes of this subsection—
9 "(A) 'pay status participants' means persons in
10 pay status under the plan (within the meaning of sec-
11 tion 4241(b)(4)) and, to the extent prescribed in regula-
12 tions of the Secretary of the Treasury under this sub-
13 section, inactive participants (within the meaning of
14 section 4244(e));
15 "(B) 'extended participant group' means all plan
16 participants plus all other persons with respect to
17 whom an employer has an obligation to contribute
18 under the plan, within the meaning of section
19 4201(b)(5);
20 "(C) the average benefit paid is the amount deter-
21 mined by dividing the total covered benefit payments
22 made under the plan by the number of persons in pay
23 status under the plan for the plan year;
24 "(D) a covered benefit payment is a benefit pay-
25 ment at the level that would have been payable under

1 the plan if the plan had been amended, effective the
2 first year the plan was in reorganization, to reduce ac-
3 crued benefits to the extent permitted by section 4244;
4 "(E) the first year that a plan is in reorganization
5 is the first plan year that the plan was in reorganiza-
6 tion that was not followed by 3 or more consecutive
7 plan years that the plan was not in reorganization; and
8 "(F) the overburden factor for a plan year is the
9 excess of pay status participants over all other persons
10 in the extended participant group.
11 "(5) Notwithstanding any other provision of this subsec-
12 tion, a plan is not eligible for an overburden credit for a plan
13 year if the Secretary of the Treasury finds that the plan's
14 current contribution base for the plan year was reduced,
15 without a corresponding reduction in the plan's unfunded
16 vested liabilities attributable pay status participants, as a
17 result of a change in an agreement providing for employer
18 contributions under the plan. For purposes of this paragraph,
19 an employer withdrawal within the meaning of section
20 4201(b) does not impair a plan's eligibility for an overburden
21 credit, unless the Secretary of the Treasury finds that a con-
22 tribution base reduction described in this paragraph resulted
23 from a transfer of liabilities to another plan in connection
24 with the withdrawal.

1 "(e) Notwithstanding any other provision of this section,
2 for any plan year in which a multiemployer plan is insolvent,
3 within the meaning of section 4245, 'valuation contribution
4 base' means the valuation contribution base for the plan year
5 preceding the first plan year in which the plan is insolvent.
6 "(f) In the case of a multiemployer plan in reorganiza-
7 tion, 'minimum contribution requirement' shall be substituted
8 for 'minimum funding standard' and 'standard' wherever they
9 appear in section 303(a).
10 "(g) A multiemployer plan shall have no reorganization
11 deficiency in the plan year beginning on the effective date of
12 this section, or in the 2 subsequent plan years, provided that
13 the plan is not amended after the date of enactment of this
14 section to increase benefits with respect to service prior to
15 the date the amendment is adopted, if the rate of employer
16 contributions under the plan is increased above the contribu-
17 tion rate for the last plan year before the effective date of this
18 section—
19 "(1) by at least 7 percent for the plan year begin-
20 ning on the effective date of this section;
21 "(2) by at least 14 percent for the first plan year
22 beginning after the effective date of this section; and
23 "(3) by at least 21 percent for the second plan
24 year beginning after the effective date of this section.

1 "ADJUSTMENTS IN ACCRUED BENEFITS

2 "SEC. 4244. (a)(1) Notwithstanding sections 203 and
3 204, a multiemployer plan in reorganization may be amend-
4 ed, in accordance with this section, to reduce or eliminate
5 accrued benefits attributable to employer contributions that,
6 under section 4022A(b), are not guaranteeable by the corpo-
7 ration.

8 "(2) An amendment reducing benefits under this section
9 or under Code section 412(c)(8) may be taken into account
10 under section 4243 for a plan year if the amendment is
11 adopted and effective no later than 2½ months after the end
12 of the plan year, or within such extended period as the Secre-
13 tary of the Treasury may prescribe in regulations under Code
14 section 412(c)(10).

15 "(b) Accrued benefits may not be reduced under this
16 section unless—

17 "(1) notice has been given in accordance with sec-
18 tion 4242, except that notice satisfies this subsection if
19 given as least 6 months before the first day of the plan
20 year in which the amendment reducing benefits is
21 adopted;

22 "(2) in accordance with regulations of the Secre-
23 tary of the Treasury—

24 "(A) reductions in accrued benefits of inac-
25 tive participants are substantially proportionate to

1 the reductions in other accrued benefits subject to
2 reduction under subsection (a),
3 "(B) other benefits attributable to employer
4 contributions and the rate of future benefit accru-
5 als are reduced at least to an extent equal to the
6 reduction in accrued benefits, and
7 "(C) the accrued benefit of a participant or
8 beneficiary is reduced only by reducing the benefit
9 level, not by changing the benefit form or the re-
10 quirements that the participant or beneficiary
11 must satisfy to be entitled to the benefit; and
12 "(3) the rate of employer contributions for the
13 plan year in which the amendment becomes effective
14 and for all succeeding plan years in which the plan is
15 in reorganization equals or exceeds the greater of—
16 "(A) the rate of employer contributions for
17 the plan year in which the amendment becomes
18 effective, or
19 "(B) the rate of employer contributions for
20 the plan year preceding the year in which the
21 amendment becomes effective.
22 "(c) A plan may not recoup a benefit payment that is in
23 excess of the amount payable under the plan because of an
24 amendment retroactively reducing accrued benefits under this
25 section.

1 "(d)(1) No benefit of a participant or beneficiary may be
2 increased with respect to prior service under a plan that has
3 been amended to reduce accrued benefits under this section
4 unless the plan is amended to restore the accrued benefit
5 levels that were in effect before the benefit reduction. For
6 purposes of this subsection, 'prior service' means service
7 before the later of the date a plan amendment increasing
8 benefits is adopted or first becomes effective.
9 "(2) If a plan is amended partially to restore previously
10 reduced accrued benefit levels, the benefits of inactive partici-
11 pants must be restored in at least the same proportions as
12 other accrued benefits that are restored.
13 "(3) No benefit increase under a plan may take effect in
14 a plan year in which an amendment reducing accrued benefits
15 under the plan, in accordance with this section, is adopted or
16 first becomes effective.
17 "(4) A plan is not required to make retroactive benefit
18 payments with respect to that portion of an accrued benefit
19 that was reduced and subsequently restored under this
20 section.
21 "(e) For purposes of this part, 'inactive participant'
22 means a person in pay status under the plan or a person
23 entitled to deferred vested benefits under the plan who is not
24 in covered service under the plan.

1 "(f) The Secretary of the Treasury may prescribe rules
2 under which, notwithstanding any other provision of this sec-
3 tion, accrued benefit reductions or benefit increases for differ-
4 ent participant groups may be varied equitably, to reflect
5 variations in contribution rates and other relevant factors re-
6 flecting differences in negotiated levels of financial support
7 for plan benefit obligations.

8 "INSOLVENT PLANS

9 "SEC. 4245. (a) Notwithstanding sections 203 and 204,
10 benefit payments (other than basic benefits) under an insol-
11 vent multiemployer plan that exceed the resource benefit
12 level shall be suspended in accordance with this section,
13 unless an alternative procedure is prescribed by the corpora-
14 tion in connection with a supplemental guarantee program
15 established under section 4022A(g)(2).

16 "(b) For purposes of this section, for a plan year—
17 "(1) a multiemployer plan is insolvent if—
18 "(A) the plan is in reorganization, and has
19 been amended to reduce accrued benefits to the
20 level at which they are guaranteeable under sec-
21 tion 4022A(b), and
22 "(B) the plan's available resources are not
23 sufficient to pay benefits under the plan when due
24 for the plan year, as determined under subsection
25 (d);

1 "(2) 'resource benefit level' means the level of
2 monthly benefits determined under subsections (c) and
3 (d) to be the highest level that can be paid out of the
4 plan's available resources;
5 "(3) 'available resources' means the plan's cash,
6 marketable assets, contributions, withdrawal liability
7 payments and other earnings, less reasonable adminis-
8 trative expenses and amounts owed the corporation
9 under section 4261(d); and
10 "(4) 'insolvency year' means a plan year in which
11 a plan is insolvent.
12 "(c)(1) The plan sponsor of a plan in reorganization shall
13 determine and certify the plan's resource benefit level for
14 each insolvency year, based on the plan sponsor's reasonable
15 projection of the plan's available resources and benefit pay-
16 ment obligations.
17 "(2) The suspension of benefit payments above the re-
18 source benefit level for a plan year shall, consistent with reg-
19 ulations of the Secretary of the Treasury, apply in substan-
20 tially uniform proportions to the benefits of all persons in pay
21 status under the plan (within the meaning of section
22 4241(b)(4)), except that the Secretary of the Treasury may
23 prescribe rules under which benefit suspensions for different
24 participant groups may be varied equitably, to reflect vari-
25 ations in contribution rates and other relevant factors reflect-

1 ing differences in negotiated levels of financial support for
2 plan benefit obligations.
3 "(3) Notwithstanding paragraph (2), a plan sponsor may
4 not determine and certify a resource benefit level for a plan
5 year that is below the level of basic benefits, unless the pay-
6 ment of all benefits other than basic benefits is suspended for
7 that plan year.
8 "(4) If, by the end of an insolvency year, the plan spon-
9 sor determines that the plan's available resources in that year
10 could have supported benefit payments above the resource
11 benefit level for that year, the plan sponsor shall cause the
12 excess resources to be distributed to the participants and
13 beneficiaries who received benefit payments from the plan in
14 that insolvency year, in accordance with regulations of the
15 Secretary of the Treasury. For purposes of this paragraph,
16 'excess resources' means available resources above the
17 amount necessary to support the resource benefit level, but
18 no greater than the amount necessary to pay benefits for the
19 plan year at the benefit levels under the plan.
20 "(5) If, by the end of an insolvency year, any benefit has
21 not been paid at the resource benefit level, amounts up to the
22 resource benefit level that were unpaid shall be distributed to
23 the participants and beneficiaries, in accordance with regula-
24 tions of the Secretary of the Treasury, to the extent possible

1 in light of the plan's total available resources in that insol-
2 vency year.
3 "(6) Except as provided in this subsection, a plan is not
4 required to make retroactive benefit payments with respect to
5 that portion of a benefit that was suspended under this
6 section.
7 "(d)(1) As of the end of the first plan year that a plan is
8 in reorganization, and at least every 3 years thereafter
9 (unless the plan is no longer in reorganization), the plan
10 sponsor shall compare the value of plan assets (determined in
11 accordance with section 4241(b)) with the total amount of
12 benefit payments made under the plau for that plan year.
13 Unless the plan sponsor determines that the value of plan
14 assets exceeds 3 times the total amount of benefit payments,
15 the plan sponsor shall determine whether the plan will be
16 insolvent in any of the next 3 plan years.
17 "(2) If, at any time, the plan sponsor of a plan in reor-
18 ganization reasonably determines, in light of the plan's recent
19 and anticipated financial experience, that the plan's available
20 resources are not sufficient to pay benefits under the plan
21 when due for the next plan year, it shall certify that the plan
22 will be insolvent, no later than 3 months before the insol-
23 vency year.
24 "(3) The plan sponsor of a plan in reorganization shall
25 determine and certify the resource benefit level for each in-

1 solvency year no later than three months before the insol-
2 vency year.
3 "(e)(1) If the plan sponsor of a plan in reorganization
4 determines, under subsection (d)(1), that the plan may be in-
5 solvent in the next 3 plan years, the plan sponsor shall notify
6 the Secretary of the Treasury, the corporation and the par-
7 ties described in section 4242(a) of that determination, and
8 inform the parties described in section 4242(a) that if insol-
9 vency occurs certain benefit payments will be suspended, but
10 that basic benefits will continue to be paid.
11 "(2) The plan sponsor of a plan in reorganization shall
12 notify the Secretary of the Treasury, the corporation and the
13 parties described in section 4242(a) of the resource benefit
14 level determined and certified for each insolvency year, no
15 later than 2 months before the first day of that insolvency
16 year.
17 "(3) In any case where the plan sponsor anticipates that
18 the resource benefit level for an insolvency year may not
19 exceed the level of basic benefits, the plan sponsor shall
20 notify the corporation at least 6 months before the first day of
21 that insolvency year.
22 "(4) Notice required by this subsection shall be given in
23 accordance with regulations prescribed by the Secretary of
24 the Treasury, except that notice to the corporation shall be

1 given in accordance with regulations prescribed by the corpo-
2 ration.
3 "(f)(1) If the plan sponsor of an insolvent plan for which
4 the resource benefit level is above the level of basic benefits
5 anticipates that, for any month in an insolvency year, the
6 plan will not have funds sufficient to pay basic benefits, it
7 may apply for financial assistance from the corporation under
8 section 4261.
9 "(2) A plan sponsor that has determined and certified a
10 resource benefit level for an insolvency year that is below the
11 level of basic benefits shall apply for financial assistance from
12 the corporation under section 4261.

13 "PART 4—FINANCIAL ASSISTANCE

14 "FINANCIAL ASSISTANCE

15 "SEC. 4261. (a) If, upon receipt of an application for
16 financial assistance under section 4245(f) or section 4281(d),
17 the corporation verifies that the plan is or will be insolvent
18 and unable to pay basic benefits when due, it shall provide
19 the plan financial assistance in an amount sufficient to enable
20 the plan to pay basic benefits under the plan.
21 "(b)(1) Financial assistance shall be provided on such
22 conditions as the corporation determines are equitable and
23 appropriate to prevent unreasonable loss to the corporation
24 with respect to the plan.

1 "(2) A plan that has received financial assistance shall
2 repay the corporation on reasonable terms consistent with
3 regulations of the corporation.
4 "(c) Pending determination of the amount described in
5 subsection (a), the corporation may provide financial assist-
6 ance in such amounts as it deems appropriate in order to
7 avoid undue hardship to plan participants and beneficiaries.
8 "(d) When assistance to a plan is provided under this
9 section in response to an application under section 4245(f)(1)
10 or a comparable application under section 4281(d), if the
11 plan's resource benefit level for the following plan year ex-
12 ceeds the level of basic benefits, the assistance shall be repaid
13 no later that 180 days after the last day of the plan year for
14 which the assistance was provided.

15 "PART 5—BENEFITS AFTER TERMINATION

16 "BENEFITS UNDER CERTAIN TERMINATED PLANS

17 "SEC. 4281. (a) Notwithstanding sections 203 and 204,
18 the plan administrator of a terminated multiemployer plan to
19 which section 4041A(d) applies is authorized to and shall
20 amend the plan to reduce benefits, and is authorized to and
21 shall suspend benefit payments, as required by this section.
22 "(b)(1) The present value of vested benefits under the
23 plan, and the value of the plan's assets, shall be determined
24 and certified in accordance with regulations of the corpora-
25 tion as of the end of the plan year during which section

1 4041A(d) became applicable to the plan, and every year
2 thereafter.

3 "(2) For purposes of this section, plan assets include
4 outstanding withdrawal liability claims, within the meaning
5 of section 4201(d).

6 "(c)(1) If, according to the determination under subsec-
7 tion (b), the present value of vested benefits exceeds the
8 value of the plan's assets, the plan administrator shall amend
9 the plan to reduce benefits under the plan such that the
10 plan's assets are sufficient, as determined and certified in ac-
11 cordance with regulations of the corporation, to discharge
12 when due all of the plan's obligations with respect to vested
13 benefits.

14 "(2) Any plan amendment required by this subsection
15 shall—

16 "(A) reduce benefits only to the extent necessary
17 to comply with paragraph (1);

18 "(B) reduce or eliminate accrued benefits only to
19 the extent those benefits are not guaranteeable by the
20 corporation under section 4022(b);

21 "(C) comply with the rules for and limitations on
22 benefit reductions under a plan in reorganization, pre-
23 scribed in section 4244, except to the extent the corpo-
24 ration prescribes other rules and limitations in regula-
25 tions under this section; and

1 "(D) take effect no later than 6 months after the
2 plan year for which it was determined that the present
3 value of vested benefits exceeded the value of the
4 plan's assets.
5 "(d)(1) Benefit payments (other than basic benefits)
6 under an insolvent plan to which this section applies that
7 exceed the resource benefit level shall be suspended, in ac-
8 cordance with this subsection, unless an alternative proce-
9 dure is prescribed by the corporation in connection with a
10 supplemental guarantee program established under section
11 4022A(g)(2).
12 "(2) For purposes of this subsection, for a plan year—
13 "(A) a plan is insolvent if it has been amended to
14 reduce benefits to the extent permitted by subsection
15 (c) and the plan administrator certifies that the plan's
16 available resources are not sufficient to pay benefits
17 under the plan when due for the plan year; and
18 "(B) a plan's resource benefit level and available
19 resources are determined in accordance with section
20 4245.
21 "(3) The plan administrator of an insolvent plan to
22 which this section applies shall have the powers and duties of
23 the plan sponsor of an insolvent plan in reorganization, under
24 section 4245, except that regulations governing the plan ad-
25 ministrator's exercise of those powers and duties under this

1 section shall be prescribed by the corporation, and the corpo-
2 ration may, by regulation, prescribe alternative notice re-
3 quirements that assure that plan participants and beneficia-
4 ries receive adequate notice of benefit suspensions.

5 "(4) Except as provided in section 4245(c), a plan is not
6 required to make retroactive benefit payments with respect to
7 that portion of a benefit that was suspended under this sub-
8 section.

9 "PART 6—ENFORCEMENT

10 "CIVIL ACTIONS

11 "SEC. 4301. (a)(1) A plan fiduciary, employer, plan par-
12 ticipant or beneficiary, adversely affected by the act or omis-
13 sion of any party under this subtitle with respect to a mul-
14 tiemployer plan, or an employee organization that represents
15 such a plan participant for purposes of collective bargaining,
16 may bring an action for appropriate relief, legal, equitable or
17 both.

18 "(2) Notwithstanding paragraph (1), this section does
19 not authorize an action against the Secretary of the Treas-
20 ury.

21 "(b) In any action under this section to compel an em-
22 ployer to pay withdrawal liability, in addition to the unpaid
23 liability plus interest the court may award an equal amount
24 as liquidated damages, payable to the plan.

1 "(c) The district courts of the United States have exclu-
2 sive jurisdiction of an action under this section without
3 regard to the amount in controversy, except that state courts
4 of competent jurisdiction have concurrent jurisdiction over an
5 action brought by a plan fiduciary to collect withdrawal lia-
6 bility.

7 "(d) An action under this section may be brought in the
8 district where the plan is administered or where a defendant
9 resides or does business, and process may be served in any
10 district where a defendant resides, does business or may be
11 found.

12 "(e) In any action under this section the court may
13 award all or a portion of the costs and expenses incurred in
14 connection with such action, including reasonable attorney's
15 fees, to the prevailing party.

16 "(f) An action under this section must be brought within
17 6 years after the date on which the cause of action arose.

18 "(g) A copy of the complaint in any action under this
19 section shall be served upon the corporation by certified mail.
20 The corporation may intervene in any such action.

21 "PENALTY FOR FAILURE TO PROVIDE NOTICE

22 "SEC. 4302. Any person who fails, without reasonable
23 cause, to provide a notice required under this subtitle or any
24 implementing regulations shall be liable to the corporation in
25 an amount up to $100 for each day that such failure contin-

1 ues. The corporation is authorized to bring a civil action
2 against any such person in the United States District Court
3 for the District of Columbia or in any district court of the
4 United States within the jurisdiction of which the plan assets
5 are located, the plan is administered or a defendant resides or
6 does business, and process may be served in any district
7 where a defendant resides, does business or may be found.".

8 **SEC. 105. PREMIUMS.**

9 Section 4006 is amended by—
10 (1) striking out subsection (a) and inserting in lieu
11 thereof the following:
12 "(a)(1) The corporation shall prescribe such schedules of
13 insurance premium rates and bases for the application of
14 those rates as may be necessary to provide sufficient revenue
15 to the fund for the corporation to carry out its functions
16 under this title.
17 "(2) The corporation shall maintain separate schedules
18 of rates and bases for—
19 "(A) basic benefits guaranteed by it under section
20 4022 for single-employer plans,
21 "(B) basic benefits guaranteed by it under section
22 4022A for multiemployer plans,
23 "(C) nonbasic benefits guaranteed by it under sec-
24 tion 4022 for single-employer plans, and

1 "(D) nonbasic benefits guaranteed by it under sec-
2 tion 4022A for multiemployer plans.
3 The corporation may revise such schedules whenever it de-
4 termines that revised schedules are necessary. In order to
5 place a revised schedule described in subparagraph (A) or (B)
6 in effect, the corporation shall proceed in accordance with
7 subsection (B)(1) and such schedule shall apply only to plan
8 years beginning more than 30 days after the date on which
9 Congress approves such revised schedule by a concurrent
10 resolution.

11 "(3) The annual premium rate payable to the corpora-
12 tion by all plans for basic benefits guaranteed under this title
13 is—

14 "(A) in the case of each single-employer plan, for
15 plan years beginning on or after January 1, 1978, an
16 amount equal to $2.60 for each individual who is a
17 participant in such plan during the plan year; and

18 "(B) in the case of each multiemployer plan, for
19 plan years beginning on or after the effective date of
20 this paragraph, an amount equal to—

21 "(i) $1.00 for each participant, for the first
22 plan year;

23 "(ii) $1.40 for each participant, for the
24 second plan year;

1 "(iii) $1.80 for each participant, for the third
2 plan year;
3 "(iv) $2.20 for each participant, for the
4 fourth plan year; and
5 "(v) $2.60 for each participant, for the fifth
6 plan year, and for the succeeding plan years.
7 The corporation may prescribe in regulations the extent to
8 which the rate described in subparagraph (A) applies more
9 than once for any plan year, to an individual participating in
10 more than one plan maintained by the same employer, and it
11 may prescribe regulations under which the rate described in
12 subparagraph (B) will not apply to the same participant in
13 any multiemployer plan more than once for any plan year.
14 "(4) The corporation may prescribe alternative sched-
15 ules of rates and bases for basic benefits guaranteed by it
16 under sections 4022 and 4022A based on the risks insured by
17 the corporation in each plan.
18 "(5)(A) In carrying out its authority under paragraph (1)
19 to establish schedules of rates and bases for nonbasic benefits
20 guaranteed under sections 4022 and 4022A, the premium
21 rates charged by the corporation for any period for nonbasic
22 benefits guaranteed shall—
23 "(i) be uniform by category of nonbasic benefits
24 guaranteed,

1 "(ii) be based on the risks insured in each catego-
2 ry, and
3 "(iii) reflect the experience of the corporation (in-
4 cluding reasonably anticipated experience) in guaran-
5 teeing such benefits.
6 "(B) Notwithstanding subparagraph (A), premium rates
7 charged to any multiemployer plan by the corporation for any
8 period for supplemental guarantees under section
9 4022A(g)(2) may reflect any reasonable considerations that
10 the corporation determines to be relevant.";
11 (2) striking out "coverage" in paragraph (1) of
12 subsection (b) and "(B) or (C)" in that paragraph and
13 inserting in lieu thereof "(C) or (D)";
14 (3) striking out "Committee on Labor and Public
15 Welfare" each place that it appears in subsection (b),
16 and inserting in lieu thereof "Committee on Labor and
17 Human Resources"; and
18 (4) adding at the end thereof the following new
19 subsection:
20 "(c) Except as provided in subsection (a)(3), the rate for
21 all plans for basic benefits guaranteed under this title with
22 respect to plan years ending after September 2, 1974, is—
23 "(1) in the case of each plan that was not a mul-
24 tiemployer plan in a plan year, an amount equal to $1

1 for each individual ˎ .ᴉᵢ· ᶦvas a participant in such plan
2 during the plan year; and
3 "(2) in the case of each plan that was a multiem-
4 ployer plan in a plan year, an amount equal to 50
5 cents for each individual who was a participant in such
6 plan during the plan year.
7 The rate applicable under this paragraph for the plan year
8 ending before September 1, 1975, is a fraction of the rate
9 described in the preceding sentence, the numerator of which
10 is the number of calendar months in the plan year, which end
11 after September 2, 1974, and before the date on which the
12 new plan year commences and the denominator of which is
13 12.".

14 **SEC. 106. ANNUAL REPORT OF PLAN ADMINISTRATOR.**

15 Section 4065 is amended by—
16 (1) striking the "and" in paragraph (1); and
17 (2) striking the period in paragraph (2), inserting
18 in lieu thereof "; and", and inserting after paragraph
19 (2) the following:
20 "(3) information with respect to a multiemployer
21 plan that the corporation determines is necessary for
22 the enforcement of subtitle E, and requires by regula-
23 tion, which may include—
24 "(A) a statement certified by a multiem-
25 ployer plan's enrolled actuary of—

1 "(i) the present value of all vested bene-
2 fits under the plan as of the end of the plan
3 year, and
4 "(ii) the value of the plan's assets as of
5 the end of the plan year, and
6 "(B) a statement certified by the plan admin-
7 istrator of a multiemployer plan of each outstand-
8 ing withdrawal liability claim and its value deter-
9 mined under section 4201(d) as of the end of that
10 plan year, and as of the end of the preceding plan
11 year.".

12 **SEC. 107. CONTINGENT EMPLOYER LIABILITY INSURANCE.**

13 Section 4023 is repealed.

14 Subtitle F—Transition Rules and 15 Effective Dates

16 **SEC. 108. TRANSITION RULES AND EFFECTIVE DATES.**

17 Section 4082 is amended by—
18 (1) redesignating section 4082 as section 4401;
19 (2) striking out subsection (d) and inserting in lieu
20 thereof the following new subsection:
21 "(d) Notwithstanding any other provision of this title,
22 benefits guaranteed under subsection (c) may not be reduced
23 below the level at which those benefits would be guaranteed
24 under section 4022A, applied as of the date of plan termina-
25 tion."; and

1 (3) striking out subsection (e) and adding in lieu
2 thereof the following new subsections:
3 "(e)(1) Except as provided in paragraphs (2) and (3), the
4 amendments to this Act made by the Multiemployer Pension
5 Plan Amendments Act of 1979 are effective on the date of
6 enactment of that Act.
7 "(2) Section 4201, relating to withdrawal liability, is
8 effective February 27, 1979.
9 "(3) Sections 4241 through 4245, relating to multiem-
10 ployer plan reorganization, are effective, with respect to each
11 plan, on the first day of the first plan year beginning on or
12 after the earlier of—
13 "(A) the date on which the last collective bargain-
14 ing agreement providing for employer contributions
15 under the plan, which was in effect on the date of en-
16 actment of the Multiemployer Pension Plan Amend-
17 ments Act of 1979, expires, without regard to exten-
18 sions agreed to after the date of enactment of that Act,
19 or
20 "(B) 3 years after the date of enactment of the
21 Multiemployer Pension Plan Amendments Act of 1979.
22 "(f) The treatment of obligations imposed under section
23 4063 with respect to withdrawals from multiemployer plans
24 shall be prescribed in regulations of the corporation.".

1 TITLE II—AMENDMENTS TO TITLE II OF THE
2 EMPLOYEE RETIREMENT INCOME SECURITY
3 ACT OF 1974

4 **SEC. 201. AMENDMENTS TO TITLE II OF THE EMPLOYEE RE-**
5 **TIREMENT INCOME SECURITY ACT OF 1974.**

6 Whenever, in this title, an amendment is expressed in
7 terms of an amendment to a section or other provisions, the
8 reference is to a section or other provision of title II of the
9 Employee Retirement Income Security Act of 1974, unless
10 otherwise indicated.

11 **SEC. 202. MINIMUM FUNDING REQUIREMENTS.**

12 Section 1013(a) is amended by—
13 (1) striking out "(40 plan years in the case of a
14 multiemployer plan)" each place it appears in section
15 412(b) of the Internal Revenue Code of 1954, as
16 amended;
17 (2) striking out "(20 plan years in the case of a
18 multiemployer plan)" each place it appears in section
19 412(b) of the Internal Revenue Code of 1954, as
20 amended;
21 (3) adding at the end of section 412(b) of the In-
22 ternal Revenue Code of 1954, as amended, the follow-
23 ing new paragraphs:

1 "(6) AMORTIZATION OF CERTAIN CHARGES AND
2 CREDITS.—In the case of a multiemployer plan de-
3 scribed in section 414(f)(4)—
4 "(A) any amount described in paragraphs
5 (2)(B)(ii), (2)(B)(iii), or (3)(B)(i) of this section that
6 arose in a plan year beginning before [the date of
7 enactment of this Act] shall be amortized in equal
8 annual installments (until fully amortized) over 40
9 plan years, beginning with the year in which the
10 amount arose;
11 "(B) any amount described in paragraphs
12 (2)(B)(iv) or (3)(B)(ii) of this section that arose in a
13 plan year beginning before [the date of enactment
14 of this Act] shall be amortized in equal annual in-
15 stallments (until fully amortized) over 20 plan
16 years, beginning with the year in which the
17 amount arose;
18 "(C) any increase in past service liability
19 that arises by the end of the third plan year be-
20 ginning after [the date of enactment of this Act]
21 and results from a plan amendment adopted
22 before [the date of enactment of this Act] shall be
23 amortized in equal annual installments (until fully
24 amortized) over 40 plan years, beginning with the
25 year in which the increase arises; and

1 "(D) any increase in past service liability
2 that arises by the end of the second plan year be-
3 ginning after [the date of enactment of this Act]
4 and results from a group of participants' changing
5 from a lower benefit level to a higher benefit level
6 under a schedule of plan benefits that—
7 "(i) was adopted before [the date of en-
8 actment of this Act] and
9 "(ii) was effective for any plan partici-
10 pant before the beginning of the first plan
11 year after [the date of enactment of this Act]
12 shall be amortized in equal annual installments
13 (until fully amortized) over 40 plan years, begin-
14 ning with the year in which the increase arises.
15 "(7) WITHDRAWAL LIABILITY.—For purposes of
16 this section any amount received by a multiemployer
17 plan in payment of all or part of an employer's with-
18 drawal liability under section 4201 of the Employee
19 Retirement Income Security Act of 1974, as amended,
20 shall be considered an amount contributed by the em-
21 ployer to or under the plan. The Secretary may, by
22 regulation, prescribe additional charges and credits to a
23 multiemployer plan's funding standard account to the
24 extent necessary to prevent withdrawal liability pay-

1 ments from being unduly reflected as advance funding
2 for plan liabilities."; and
3 (4) adding after section 412(i) of the Internal Rev-
4 enue Code of 1954, as amended, the following new
5 subsections:
6 "(j) MULTIEMPLOYER PLAN REORGANIZATION.--
7 "(1) MULTIEMPLOYER PLAN IN REORGANIZA-
8 TION.—For purposes of this section and sections 411
9 and 4971, a multiemployer plan is in reorganization for
10 a plan year if its reorganization index is greater than
11 zero. For any plan year in which a multiemployer plan
12 is in reorganization, the plan's accumulated funding de-
13 ficiency under subsection (a) equals the reorganization
14 deficiency.
15 "(2) REORGANIZATION DEFICIENCY.—A reorga-
16 nization deficiency for a plan year in which a multiem-
17 ployer plan is in reorganization is the excess of—
18 "(A) the minimum contribution requirement
19 over
20 "(B) amounts considered contributed by the
21 employer to or under the plan for the plan year.
22 "(3) MINIMUM CONTRIBUTION REQUIREMENT.—
23 For any plan year in which a multiemployer plan is in
24 reorganization, the minimum contribution requirement
25 is an amount equal to the lesser of:

1 "(A) the plan's vested liabilities charge for
2 the plan year, or
3 "(B) the plan's vested liabilities charge for
4 the plan year multiplied by a fraction—
5 "(i) the numerator of which is the cur-
6 rent contribution base for the plan year and
7 "(ii) the denominator of which is the
8 valuation contribution base.
9 "(4) Notwithstanding paragraph (3), if the vested
10 liabilities charge is less than the plan's cash-flow
11 amount for a plan year, the plan's minimum contribu-
12 tion requirement for the plan year is the amount deter-
13 mined under paragraph (3) if 'cash flow amount' is sub-
14 stituted for 'vested liabilities charge' wherever that
15 term appears in paragraph (3). For purposes of this
16 paragraph, a plan's cash flow amount is the total
17 amount of benefits payable under the plan, plus the
18 plan's administrative expenses, for the plan year, less
19 the value of available plan assets determined under
20 regulations prescribed by the Secretary.
21 "(5) DEFINITIONS.—
22 "(A) REORGANIZATION INDEX.—For each
23 plan year, a multiemployer plan's reorganization
24 index equals the excess of—

1 "(i) the vested liabilities charge for the
2 plan year (determined without regard to any
3 accrued benefit reductions under section
4 411(e) that are first effective in the plan
5 year) over
6 "(ii) the charges determined under sub-
7 section (b)(2) minus the credits determined
8 under subsection (b)(3)(B).
9 "(B) VESTED LIABILITIES CHARGE.—For
10 each plan year, the vested liabilities charge equals
11 the amount that would be necessary to amortize a
12 multiemployer plan's unfunded vested liabilities in
13 equal annual installments—
14 "(i) over 10 years, to the extent attrib-
15 utable to persons in pay status; and
16 "(ii) over 25 years, to the extent attrib-
17 utable to all other participants.
18 In determining unfunded vested liabilities, plan
19 assets shall first be allocated to vested liabilities
20 attributable to persons in pay status.
21 "(C) At the election of the plan administra-
22 tor, the determination of unfunded vested liabil-
23 ities may be based either on a valuation per-
24 formed for the plan year or on a valuation per-

1 formed for any of the 4 preceding plan years, ad-
2 justed to reflect—
3 "(i) subsequent changes in benefits
4 under the plan, and
5 "(ii) events that substantially increase
6 the plan's unfunded vested liabilities, if the
7 plan administrator knew or should have
8 known of those events by the earliest of the
9 effective dates of any collective bargaining
10 agreement providing for employer contribu-
11 tions under the plan that is in effect in the
12 plan year for which the determination is
13 made.
14 "(D) UNFUNDED VESTED LIABILITIES.—For
15 purposes of this subsection, 'unfunded vested li-
16 abilities' means the excess of the present value of
17 vested benefits under the plan over the value of
18 the assests of the plan.
19 "(E) VESTED BENEFIT.—For purposes of
20 this subsection, 'vested benefit' means a benefit
21 with respect to which a participant has satisfied
22 the age and service requirements for entitlement
23 under the terms of the plan, whether or not the
24 benefit may be reduced by subsequent plan

1 amendment or as a result of a condition subse-
2 quent that has not occurred.

3 "(F) PERSON IN PAY STATUS.—For pur-
4 poses of this subsection and section 411(f), 'person
5 in pay status' means a participant or beneficiary
6 who, at any time during the plan year, received
7 an early, normal, or disability retirement benefit,
8 or a death benefit related to a retirement benefit,
9 and, to the extent provided in regulations pre-
10 scribed by the Secretary, a person entitled to
11 those or similar benefits under the plan.

12 "(G) CONTRIBUTION BASE.—

13 "(i) CURRENT CONTRIBUTION BASE.—
14 A plan's current contribution base for a plan
15 year is the number of contribution base units
16 with respect to which contributions were re-
17 ceived by the plan for that plan year, deter-
18 mined in accordance with regulations pre-
19 scribed by the Secretary.

20 "(ii) VALUATION CONTRIBUTION
21 BASE.—Except as provided in paragraph (8),
22 a plan's valuation contribution base for a
23 plan year is its current contribution base for
24 the plan year for which the valuation used in
25 determining unfunded vested liabilities was

1 performed, adjusted in accordance with regu-
2 lations prescribed by the Secretary for a con-
3 tribution base reduction caused by a strike or
4 lockout, or by unusual, peculiar and nonre-
5 curring events, such as fire, earthquake or
6 severe weather conditions.

7 "(6) CREDIT FOR OVERBURDENED PLANS.—

8 "(A) CREDIT.—An overburdened plan shall
9 apply an overburden credit against the plan's re-
10 organization deficiency for a plan year (deter-
11 mined without regard to this paragraph).

12 "(B) OVERBURDEN TEST.—A plan is over-
13 burdened, for a plan year, if—

14 "(i) pay status participants under the
15 plan constitute at least 50 percent of the
16 plan's extended participant group; and

17 "(ii) the rate of employer contributions
18 under the plan equals or exceeds the greater
19 of the rate for the preceding year or the rate
20 for the plan year prior to the first year that
21 the plan was in reorganization.

22 "(C) AMOUNT OF CREDIT.—The amount of
23 the overburden credit for a plan year is the prod-
24 uct of—

1 "(i) one-half of the average benefit paid,
2 multiplied by
3 "(ii) the overburden factor for the plan
4 year.
5 "(D) DEFINITIONS.—For purposes of this para-
6 graph—
7 "(i) 'pay status participants' means per-
8 sons in pay status under the plan (within the
9 meaning of paragraph (5)(F)) and, to the
10 extent prescribed in regulations of the Secre-
11 tary under this paragraph, inactive partici-
12 pants (within the meaning of section 411(e));
13 "(ii) 'extended participant group' means
14 all plan participants plus all other persons
15 with respect to whom an employer has an
16 obligation to contribute under the plan,
17 within the meaning of section 4201(b)(5) of
18 the Employee Retirement Income Security
19 Act of 1974, as amended;
20 "(iii) the average benefit paid is the
21 amount determined by dividing the total cov-
22 ered benefit payments made under the plan
23 by the number of persons in pay status under
24 the plan, for the plan year;

1 "(iv) a covered benefit payment is a
2 benefit payment at the level that would have
3 been payable under the plan if the plan had
4 been amended, effective the first year the
5 plan was in reorganization, to reduce ac-
6 crued benefits to the extent permitted by
7 section 411(e);

8 "(v) the first year that a plan is in reor-
9 ganization is the first plan year that the plan
10 was in reorganization that was not followed
11 by three or more consecutive plan years that
12 the plan was not in reorganization; and

13 "(vi) the overburden factor for a plan
14 year is the excess of pay status participants
15 over all other persons in the plan's extended
16 participant group.

17 "(E) INELIGIBILITY FOR CREDIT.—Notwith-
18 standing any other provision of this paragraph, a
19 plan is not eligible for an overburden credit for a
20 plan year if the Secretary finds that the plan's
21 current contribution base for the plan year was
22 reduced, without a corresponding reduction in the
23 plan's unfunded vested liabilities attributable pay
24 status participants, as a result of a change in an
25 agreement providing for employer contributions

1 under the plan. For purposes of this subpara-
2 graph, an employer withdrawal within the mean-
3 ing of section 4201(b) of the Employee Retire-
4 ment Income Security Act of 1974, as amended,
5 does not impair a plan's eligibility for an overbur-
6 den credit, unless the Secretary finds that a con-
7 tribution base reduction described in this subpara-
8 graph resulted from a transfer of liabilities to an-
9 other plan in connection with the withdrawal.
10 "(7) REDUCTION OF ACCRUED BENEFITS.—In
11 determining the minimum contribution requirement for
12 a plan year, the vested liabilities charge may be adjust-
13 ed to reflect a plan amendment reducing benefits under
14 subsection (c)(8) or section 411(e), provided that the
15 amendment is adopted and effective no later than 2½
16 months after the end of the plan year, or within such
17 extended period as the Secretary may prescribe in reg-
18 ulations under subsection (c)(10).
19 "(8) INSOLVENT PLANS.—For any plan year in
20 which a multiemployer plan is insolvent (within the
21 meaning of section 411(f)), 'valuation contribution base'
22 means the valuation contribution base for the plan year
23 preceding the first plan year in which the plan is insol-
24 vent.

1 "(9) VARIANCE FROM THE MINIMUM CONTRIBU-
2 TION REQUIREMENT.—In the case of a multiemployer
3 plan in reorganization, 'minimum contribution require-
4 ment' shall be substituted for 'minimum funding stand-
5 ard' and 'standard' wherever they appear in subsection
6 (d)(1).
7 "(10) TRANSITIONAL RULE.—A multiemployer
8 plan shall have no reorganization deficiency in the plan
9 year beginning on the effective date of this subsection
10 or in the 2 subsequent plan years, provided that the
11 plan is not amended after [the date of enactment of
12 this Act] to increase benefits with respect to service
13 prior to the date the amendment is adopted, if the rate
14 of employer contributions under the plan is increased
15 above the contribution rate for the last plan year
16 before the effective date of this subsection—
17 "(A) by at least 7 percent for the plan year
18 beginning on the effective date of this subsection;
19 "(B) by at least 14 percent for the first plan
20 year beginning after the effective date of this sub-
21 section; and
22 "(C) by at least 21 percent for the second
23 plan year beginning after the effective date of this
24 subsection.

1 "(11) EFFECTIVE DATE.—This subsection is ef-
2 fective, with respect to a plan, on the first day of the
3 first plan year beginning on or after the earlier of—
4 "(A) the date on which the last collective
5 bargaining agreement providing for employer con-
6 tributions under the plan that was in effect on
7 (the date of enactment of this Act) expires, with-
8 out regard to extensions agreed to after (the date
9 of enactment of this Act), or
10 "(B) 3 years from (the date of enactment of
11 this Act).
12 "(k) CERTAIN TERMINATED MULTIEMPLOYER
13 PLANS.—This section applies, with respect to a terminated
14 multiemployer plan to which section 4021 of the Employee
15 Retirement Income Security Act of 1974, as amended, ap-
16 plies, until the date on which the last employer withdraws
17 from the plan, within the meaning of section 4201 of that
18 Act.".
19 **SEC. 203. EXCISE TAXES.**
20 Section 1013(b) is amended by—
21 (1) adding at the end of section 4971(c)(1) of the
22 Internal Revenue Code of 1954, as amended, the fol-
23 lowing new sentence: "For purposes of this section, for
24 any plan year in which a multiemployer plan is in reor-
25 ganization, the accumulated funding deficiency equals

1 the reorganization deficiency determined under section
2 412(j)(2).''; and
3 (2) adding at the end of section 4971(d) of the In-
4 ternal Revenue Code of 1954, as amended, the follow-
5 ing new sentence: "In the case of a multiemployer
6 plan in reorganization, the same notice and opportunity
7 shall be provided to the Pension Benefit Guaranty Cor-
8 poration.".

9 **SEC. 204. DEDUCTIBILITY OF EMPLOYER LIABILITY PAY-**
10 **MENTS.**

11 (a) Section 1013(c)(1) is amended by striking out the
12 period at the end of section 404(a)(1)(A)(iii) of the Internal
13 Revenue Code of 1954, as amended, inserting in lieu thereof
14 a comma, and adding the following:
15 "(iv) an amount paid by an employer
16 under section 4062, 4063, 4064, or 4201 of
17 the Employee Retirement Income Security
18 Act of 1974, as amended.".
19 (b) Section 4081(a) (of title IV of the Employee Retire-
20 ment Income Security Act of 1974) is amended by—
21 (1) redesignating the text of section 404(g) of the
22 Internal Revenue Code of 1954, as amended, as para-
23 graph (1) of section 404(g);
24 (2) striking out "or 4064 of the Employee Retire-
25 ment Income Security Act of 1974" in section

1 404(g)(1) of the Internal Revenue Code of 1954, as
2 amended, (as redesignated), and inserting in lieu there-
3 of, ", 4064, or 4201 of the Employee Retirement
4 Income Security Act of 1974, as amended,"; and
5 (3) adding the following new paragraph in section
6 404(g) of the Internal Revenue Code of 1954, as
7 amended:
8 "(2) CONTROLLED GROUP DEDUCTIONS.—In the
9 case of a payment described in paragraph (1) made by
10 an entity that is liable because it is a member of a
11 commonly controlled group of corporations, trades or
12 businesses, within the meaning of subsection (b) or (c)
13 of section 414, the fact that the entity did not directly
14 employ participants of the plan with respect to which
15 the liability payment was made shall not affect the de-
16 ductibility of a payment that otherwise satisfies the
17 conditions of section 162 (relating to trade or business
18 expenses) or section 212 (relating to expenses for the
19 production of income).".
20 **SEC. 205. MINIMUM VESTING REQUIREMENTS.**
21 Section 1012(a) is amended by—
22 (1) adding at the end of section 411(a)(3) of the
23 Internal Revenue Code of 1954, as amended, the fol-
24 lowing new subparagraphs:

1 "(E) CESSATION OF CONTRIBUTIONS UNDER
2 MULTIEMPLOYER PLAN.—A participant's right to
3 an accrued benefit derived from employer contri-
4 butions to or under a multiemployer plan shall not
5 be treated as forfeitable solely because the mul-
6 tiemployer plan provides that benefits accrued as
7 a result of service with the participant's employer
8 before the employer was required to contribute to
9 the plan may not be payable if the employer
10 ceases contributions to the multiemployer plan.
11 "(F) REDUCTION AND SUSPENSION OF
12 BENEFITS BY A MULTIEMPLOYER PLAN.—A
13 right to an accrued benefit derived from employer
14 contributions to or under a multiemployer plan
15 shall not be treated as forfeitable solely because—
16 "(i) the plan may be amended to reduce
17 benefits under subsection (e) or under section
18 4281 of Employee Retirement Income Secu-
19 rity Act of 1974, as amended, or
20 "(ii) benefit payments under the plan
21 may be suspended under subsection (f) or
22 under section 4281 of Employee Retirement
23 Income Security Act of 1974, as amended.";

1 (2) striking out "and" in subparagraph (E) of sec-
2 tion 411(a)(4) of the Internal Revenue Code of 1954,
3 as amended;
4 (3) striking out the period in subparagraph (F) of
5 section 411(a)(4) of the Internal Revenue Code of
6 1954, as amended, inserting in lieu thereof "; and",
7 and adding the following new subparagraph:
8 "(G) In the case of a multiemployer plan,
9 years of service—
10 "(i) with an employer after that employ-
11 er has withdrawn from the plan, or, to the
12 extent permitted by regulations of the Secre-
13 tary, after a partial employer withdrawal,
14 within the meaning of section 4201 of the
15 Employee Retirement Income Security Act
16 of 1974, as amended, and
17 "(ii) with any employer under the plan
18 after the termination date of the plan under
19 section 4048 of the Employee Retirement
20 Income Security Act of 1974, as amended.";
21 (4) striking out "section 412(c)(8)" in section
22 411(d)(6) of the Internal Revenue Code of 1954, as
23 amended, and inserting in lieu thereof, "subsection (e),
24 section 412(c)(8), or section 4281 of the Employee Re-

1 tirement Income Security Act of 1974, as amended";
2 and
3 (5) redesignating section 411(e) of the Internal
4 Revenue Code of 1954, as amended, as subsection (g),
5 and inserting the following new subsections:
6 "(e) MULTIEMPLOYER PLANS IN REORGANIZA-
7 TION.—
8 "(1) NOTICE OF REORGANIZATION.—
9 "(A) IN GENERAL.—The plan administrator
10 of a multiemployer plan that is in reorganization,
11 within the meaning of section 412(j), shall, in ac-
12 cordance with regulations of the Secretary,
13 notify—
14 "(i) plan participants and beneficiaries,
15 "(ii) each employer that has an obliga-
16 tion to contribute under the plan, within the
17 meaning of section 4201 of the Employee
18 Retirement Income Security Act of 1974, as
19 amended, and
20 "(iii) each employee organization that,
21 for purposes of collective bargaining, repre-
22 sents plan participants employed by such an
23 employer,
24 that the plan is in reorganization and that accrued
25 benefits under the plan may be reduced, or an

1 excise tax may be imposed on employers, if con-
2 tributions to the plan are not increased.

3 "(B) OTHER NOTICE REQUIREMENTS.—The
4 Secretary may prescribe additional or alternative
5 requirements for assuring that the interested par-
6 ties receive appropriate notice that a multiem-
7 ployer plan is or may be in reorganization, are
8 adequately informed of the implications of reorga-
9 nization status, and have reasonable access to in-
10 formation relevant to a plan's reorganization
11 status.

12 "(2) AUTHORITY TO REDUCE BENEFITS.—A
13 multiemployer plan in reorganization may be amended,
14 in accordance with this subsection, to reduce or elimi-
15 nate accrued benefits attributable to employer contribu-
16 tions that, under section 4022A(b) of the Employee
17 Retirement Income Security Act of 1974, as amended,
18 are not guaranteeable by the Pension Benefit Guaranty
19 Corporation. An amendment reducing benefits under
20 this subsection or under section 412(c)(8) may be taken
21 into account under section 412(j) for a plan year if the
22 amendment is adopted and effective no later than 2½
23 months after the end of the plan year, or within such
24 extended period as the Secretary may prescribe in reg-
25 ulations under section 412(c)(10).

1 "(3) RESTRICTIONS ON BENEFIT REDUCTIONS.—
2 Accrued benefits may not be reduced under this section
3 unless—
4 "(A) notice has been given in accordance
5 with paragraph (1), except that notice satisfies
6 this paragraph if given at least 6 months before
7 the first day of the plan year in which the amend-
8 ment reducing benefits is adopted;
9 "(B) in accordance with regulations of the
10 Secretary—
11 "(i) reductions in accrued benefits of in-
12 active participants are substantially propor-
13 tionate to the reductions in other accrued
14 benefits subject to reduction under paragraph
15 (2),
16 "(ii) other benefits attribuatable to em-
17 ployer contributions and the rate of future
18 benefit accruals are reduced at least to an
19 extent equal to the reduction in accrued
20 benefits, and
21 "(iii) the accrued benefit of a participant
22 or beneficiary is reduced only by reducing
23 the benefit level, not by changing the benefit
24 form or the requirements that the participant

1 or beneficiary must satisfy to be entitled to
2 the benefit; and
3 "(C) the rate of employer contributions for
4 the plan year in which the amendment becomes
5 effective and for all succeeding plan years in
6 which the plan is in reorganization equals or ex-
7 ceeds the greater of—
8 "(i) the rate of employer contributions
9 for the plan year in which the amendment
10 becomes effective, or
11 "(ii) the rate of employer contributions
12 for the plan year preceding the year in which
13 the amendment becomes effective.
14 "(4) RECOUPMENT PROHIBITED.—A plan may
15 not recoup a benefit payment that is in excess of the
16 amount payable under the plan because of an amend-
17 ment retroactively reducing accrued benefits under this
18 subsection.
19 "(5) BENEFIT INCREASES UNDER MULTIEM-
20 PLOYER PLANS IN REORGANIZATION.—
21 "(A) RESTORATION OF PREVIOUSLY RE-
22 DUCED BENEFITS.—No benefit of a participant or
23 beneficiary may be increased with respect to prior
24 service under a plan that has been amended to
25 reduce accrued benefits under this subsection

1 unless the plan is amended to restore the accrued
2 benefit levels that were in effect before the benefit
3 reduction. For purposes of this subparagraph,
4 'prior service' means service before the later of
5 the date a plan amendment increasing benefits is
6 adopted or first becomes effective.
7 "(B) UNIFORMITY IN BENEFIT RESTORA-
8 TIONS.—If a plan is amended partially to restore
9 previously reduced accrued benefit levels, the
10 benefits of inactive participants must be restored
11 in at least the same proportions as other accrued
12 benefits that are restored.
13 "(C) BENEFIT INCREASES IN YEAR OF
14 BENEFIT REDUCTIONS.—No benefit increase
15 under a plan may take effect in a plan year in
16 which an amendment reducing accrued benefits
17 under the plan, in accordance with this subsec-
18 tion, is adopted or first becomes effective.
19 "(D) RETROACTIVE PAYMENTS.—A plan is
20 not required to make retroactive benefit payments
21 with respect to that portion of an accrued benefit
22 that was reduced and subsequently restored under
23 this subsection.
24 "(6) For purposes of this subsection and section
25 412(j), 'inactive participant' means a person in pay

1 status under the plan or a person entitled to deferred
2 vested benefits under the plan who is not in covered
3 service under the plan.
4 "(7) VARIATIONS IN BENEFIT ADJUSTMENTS.—
5 The Secretary may prescribe rules under which, not-
6 withstanding any other provision of this subsection, ac-
7 crued benefit reductions or benefit increases for differ-
8 ent participant groups may be varied equitably, to re-
9 flect variations in contribution rates and other relevant
10 factors reflecting differences in negotiated levels of fi-
11 nancial support for plan benefit obligations.
12 "(8) LUMP-SUM PAYMENTS UNDER PLANS IN RE-
13 ORGANIZATION.—Under a plan in reorganization, the
14 present value of a participant's nonforfeitable benefit
15 under a plan in reorganization attributable to employer
16 contributions (other than a death benefit) may not be
17 distributed if the value exceeds $1,750, unless the
18 Pension Benefit Guaranty Corporation approves the
19 payment of benefits under the terms of the plan in
20 greater lump sum amounts, based on the Corporation's
21 determination that the payment is in the interest of the
22 plan's participants and beneficiaries generally and does
23 not unreasonably increase the corporation's risk of loss
24 with respect to the plan.
25 "(f) INSOLVENT PLANS IN REORGANIZATION.—

1 "(1) SUSPENSION OF CERTAIN BENEFIT PAY-
2 MENTS.—Benefit payments (other than basic benefits)
3 under an insolvent multiemployer plan that exceed the
4 resource benefit level shall be suspended in accordance
5 with this subsection, unless an alternative procedure is
6 prescribed by the Pension Benefit Guaranty Corpora-
7 tion in connection with a supplemental guarantee pro-
8 gram established under section 4022A(g)(2) of the Em-
9 ployee Retirement Income Security Act of 1974, as
10 amended.
11 "(2) DEFINITIONS.—For purposes of this subsec-
12 tion, for a plan year—
13 "(A) a multiemployer plan is insolvent if—
14 "(i) the plan is in reorganization, and
15 has been amended to reduce accrued benefits
16 to the level at which they are guaranteeable
17 under section 4022A(b) of the Employee Re-
18 tirement Income Security Act of 1974, as
19 amended, and
20 "(ii) the plan's available resources are
21 not sufficient to pay benefits under the plan
22 when due for the plan year, as determined
23 under paragraph (4);
24 "(B) 'resource benefit level' means the level
25 of monthly benefits determined under paragraphs

1 (3) and (4) to be the highest level that can be paid
2 out of the plan's available resources;
3 "(C) 'available resources' means the plan's
4 cash, marketable assets, contributions, withdrawal
5 liability payments and other earnings, less reason-
6 able administrative expenses and amounts owed
7 the Pension Benefit Guaranty Corporation under
8 section 4261(d) of the Employee Retirement
9 Income Security Act of 1974, as amended;
10 "(D) 'basic benefits' means benefits guaran-
11 teed by the Pension Benefit Guaranty Corporation
12 under section 4022A of the Employee Retirement
13 income Security Act of 1974, as amended, with-
14 out regard to subsection (g) of that section; and
15 "(E) 'insolvency year' means plan year in
16 which a plan is insolvent.
17 "(3) BENEFIT PAYMENTS UNDER INSOLVENT
18 PLANS.—
19 "(A) DETERMINATION OF RESOURCE BENE-
20 FIT LEVEL.—The plan sponsor of a plan in reor-
21 ganization shall determine and certify the plan's
22 resource benefit level for each insolvency year,
23 based on the plan sponsor's reasonable projection
24 of the plan's available resources and benefit pay-
25 ments obligations.

1 "(B) UNIFORMITY OF BENEFIT SUSPEN-
2 SIONS.—The suspension of benefit payments
3 above the resource benefit level for a plan year
4 shall, consistent with regulations of the Secretary,
5 apply in substantially uniform proportions to the
6 benefits of all persons in pay status under the
7 plan (within the meaning of section 412(j)(4)(E)),
8 except that the Secretary may prescribe rules
9 under which benefit suspensions for different par-
10 ticipant groups may be varied equitably, to reflect
11 variations in contribution rates and other relevant
12 factors reflecting differences in negotiated levels
13 of financial support for plan benefit obligations.
14 "(C) Nothwithstanding subparagraph (B), a
15 plan sponsor may not determine and certify a re-
16 source benefit level for a plan year that is below
17 the level of basic benefits, unless the payment of
18 all benefits other than basic benefits is suspended
19 for that plan year.
20 "(D) EXCESS RESOURCES.—If, by the end
21 of an insolvency year, the plan sponsor deter-
22 mines that the plan's available resources in that
23 year could have supported benefit payments above
24 the resource benefit level for that year, the plan
25 sponsor shall cause the excess resources to be dis-

1 tributed to the participants and beneficiaries who
2 received benefit payments from the plan in that
3 insolvency year, in accordance with regulations of
4 the Secretary. For purposes of this subparagraph,
5 'excess resources' means available resources
6 above the amount necessary to support the re-
7 source benefit level, but no greater than the
8 amount necessary to pay benefits for the plan
9 year at the benefit levels under the plan.

10 "(E) UNPAID BENEFITS.—If, by the end of
11 an insolvency year, any benefit has not been paid
12 at the resource benefit level, amounts up to the
13 resource benefit level that were unpaid shall be
14 distributed to the participants and beneficiaries, in
15 accordance with regulations of the Secretary, to
16 the extent possible in light of the plan's total
17 available resources in that insolvency year.

18 "(F) RETROACTIVE PAYMENTS.—Except as
19 provided in this paragraph, a plan is not required
20 to make retroactive benefit payments with respect
21 to that portion of a benefit that was suspended
22 under this subsection.

23 "(4) PLAN SPONSOR DETERMINATIONS AND CER-
24 TIFICATIONS.—

1 "(A) TRIENNIAL TEST.—As of the end of
2 the first plan year that a plan is in reorganization,
3 and at least every 3 years thereafter (unless the
4 plan is no longer in reorganization), the plan
5 sponsor shall compare the value of plan assets
6 (determined in accordance with section 412) with
7 the total amount of benefit payments made under
8 the plan for that plan year. Unless the plan spon-
9 sor determines that the value of plan assets ex-
10 ceeds 3 times the total amount of benefit pay-
11 ments, the plan sponsor shall determine whether
12 the plan will be insolvent in any of the next 3
13 plan years.
14 "(B) CERTIFICATION OF INSOLVENCY.—If,
15 at any time, the plan sponsor of a plan in reorga-
16 nization reasonably determines, in light of the
17 plan's recent and anticipated financial experience,
18 that the plan's available resources are not suffi-
19 cient to pay benefits under the plan when due for
20 the next plan year, the plan sponsor shall certify
21 that the plan will be insolvent, no later than 3
22 months before the insolvency year.
23 "(C) CERTIFICATION OF RESOURCE BENE-
24 FIT LEVEL.—The plan sponsor of a plan in reor-
25 ganization shall determine and certify the resource

1 benefit level for each insolvency year no later
2 than 3 months before the insolvency year.
3 "(5) NOTICE REQUIREMENTS.—
4 "(A) IMPENDING INSOLVENCY.—If the plan
5 sponsor of a plan in reorganization determines,
6 under paragraph (4)(A), that the plan may be in-
7 solvent in the next 3 plan years, the plan sponsor
8 shall notify the Secretary, the Pension Benefit
9 Guaranty Corporation and the parties described in
10 subsection (e)(1) of that determination, and inform
11 the parties described in subsection (e)(1) that if in-
12 solvency occurs certain benefit payments will be
13 suspended, but that basic benefits will continue to
14 be paid.
15 "(B) RESOURCE BENEFIT LEVEL.—The plan
16 sponsor of a plan in reorganization shall notify the
17 Secretary, the Pension Benefit Guaranty Corpora-
18 tion and the parties described in subsection (e)(1)
19 of the resource benefit level determined and certi-
20 fied for each insolvency year, no later than 2
21 months before the first day of that insolvency
22 year.
23 "(C) POTENTIAL NEED FOR FINANCIAL AS-
24 SISTANCE.—In any case where the plan sponsor
25 anticipates that the resource benefit level for an

1 insolvency year may not exceed the level of basic
2 benefits, the plan sponsor shall notify the Pension
3 Benefit Guaranty Corporation at least 6 months
4 before the first day of that insolvency year.
5 "(D) REGULATIONS.—Notice required by
6 this paragraph shall be given in accordance with
7 regulations prescribed by the Secretary, except
8 that notice to the Pension Benefit Guaranty Cor-
9 poration shall be given in accordance with regula-
10 tions prescribed by the Corporation.
11 "(6) FINANCIAL ASSISTANCE.—
12 "(A) PERMISSIVE APPLICATION.—If the
13 plan sponsor of an insolvent plan for which the
14 resource benefit level is above the level of basic
15 benefits anticipates that, for any month in an in-
16 solvency year, the plan will not have funds suffi-
17 cient to pay basic benefits, it may apply for finan-
18 cial assistance from the Corporation.
19 "(B) MANDATORY APPLICATION.—A plan
20 sponsor that has determined and certified a re-
21 source benefit level for an insolvency year that is
22 below the level of basic benefits shall apply for fi-
23 nancial assistance from the Pension Benefit Guar-
24 anty Corporation.".

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1 **SEC. 206. DEFINITION OF MULTIEMPLOYER PLAN.**

2 Section 1015 is amended by striking out section 414(f)
3 of the Internal Revenue Code of 1954, as amended, and in-
4 serting in lieu thereof the following new subsection:

5 "(f) MULTIEMPLOYER PLAN.—

6 "(1) 'Multiemployer plan' means a plan—

7 "(A) to which more than one employer is re-
8 quired to contribute,

9 "(B) which is maintained pursuant to one or
10 more collective bargaining agreements between
11 one or more employee organizations and more
12 than one employer, and

13 "(C) which satisfies such other requirements
14 as the Secretary of Labor may prescribe in regu-
15 lations.

16 "(2) For purposes of this subsection, all corpora-
17 tions, trades or businesses (whether or not incorporat-
18 ed) that are under common control within the meaning
19 of subsections (b) and (c) of section 414 are considered
20 a single employer.

21 "(3) Notwithstanding paragraph (1), a plan is a
22 multiemployer plan on and after its termination date
23 under section 4048 of the Employee Retirement
24 Income Security Act of 1974 if the plan was a mul-
25 tiemployer plan under this subsection for the plan year
26 preceding its termination date.

1 "(4) For any plan year which begins before the
2 effective date of this paragraph, the term 'multiem-
3 ployer plan' means a plan described in this subsection
4 as in effect before that date.".

5 **SEC. 207. RELATED TECHNICAL AMENDMENTS.**

6 (1) Sections 1021(b) and 1015 are amended by striking
7 out the last sentence of sections 401(a)(12) and 414(e) of the
8 Internal Revenue Code of 1954, as amended, respectively,
9 and inserting in lieu thereof "The preceding sentence does
10 not apply to any transaction to the extent that participants
11 either before or after the transaction are covered under a
12 multiemployer plan to which title IV of the Employee Retire-
13 ment Income Security Act of 1974 applies.".

14 (2) Section 2003(a) is amended by—
15 (A) striking out "or" in section 4975(d)(12) of the
16 Internal Revenue Code of 1954, as amended;
17 (B) striking out the period in section 4975(d)(13)
18 of the Internal Revenue Code of 1954, as amended,
19 and inserting in lieu thereof "; or", and adding the fol-
20 lowing new paragraph:
21 "(14) any transaction under section 4201 of the
22 Employee Retirement Income Security Act of 1974, as
23 amended.".

1 TITLE III—AMENDMENTS TO TITLE I OF THE
2 EMPLOYEE RETIREMENT INCOME SECURITY
3 ACT OF 1974

4 **SEC. 301. AMENDMENTS TO TITLE I OF THE EMPLOYEE RE-**
5 **TIREMENT INCOME SECURITY ACT.**

6 Whenever, in this title, an amendment is expressed in
7 terms of an amendment to a section or other provision, the
8 reference is to a section or other provision of title I of the
9 Employee Retirement Income Security Act of 1974.

10 **SEC. 302. DEFINITIONS.**

11 Section 3 is amended by striking out paragraph (37) and
12 inserting in lieu thereof the following:

13 "(37)(A) The term 'multiemployer plan' means a plan—
14 "(i) to which more than one employer is required
15 to contribute,
16 "(ii) which is maintained pursuant to one or more
17 collective bargaining agreements between an employee
18 organization and more than one employer, and
19 "(iii) which satisfies such other requirements as
20 the Secretary of Labor may prescribe in regulations.

21 "(B) For purposes of this paragraph, all trades or busi-
22 nesses (whether or not incorporated) that are under common
23 control within the meaning of section 4001(c)(1) are consid-
24 ered a single employer.

1 "(C) Notwithstanding subparagraph (A), a plan is a mul-
2 tiemployer plan on and after its termination date if the plan
3 was a multiemployer plan under this paragraph for the plan
4 year preceding its termination date.
5 "(D) For any plan year which begins before the effective
6 date of this subparagraph, the term 'multiemployer plan'
7 means a plan described in this paragraph as in effect from
8 September 2, 1974, until the effective date of this subpara-
9 graph.".

10 **SEC. 303. MINIMUM VESTING REQUIREMENTS.**

11 Section 203 is amended by—
12 (1) adding at the end of subsection (a)(3) the fol-
13 lowing new subparagraph:
14 "(E) A participant's right to an accrued benefit
15 derived from employer contributions to or under a mul-
16 tiemployer plan shall not be treated as forfeitable
17 solely because the multiemployer plan provides that
18 such benefits accrued as a result of service with the
19 participant's employer before the employer was re-
20 quired to contribute to or under the plan may not be
21 payable if the employer ceases contributions to the
22 multiemployer plan.";
23 (2) striking out "and" in subsection (b)(1)(E); and

1 (3) striking out the period in subsection (b)(1)(F),
2 inserting in lieu thereof "; and", and adding the follow-
3 ing new subparagraph:
4 "(G) In the case of a multiemployer plan, years of
5 service—
6 "(i) with an employer after that employer
7 has withdrawn from the plan, or, to the extent
8 permitted by regulations of the Secretary of the
9 Treasury, after a partial employer withdrawal,
10 within the meaning of section 4201; and
11 "(ii) with any employer under the plan after
12 the termination date of the plan under section
13 4048.".
14 **SEC. 304. MINIMUM FUNDING REQUIREMENTS**
15 (a) Section 301 is amended by adding at the end thereof
16 the following new subsection:
17 "(c) This part applies, with respect to a terminated mul-
18 tiemployer plan to which section 4021 applies, until the date
19 on which the last employer withdraws from the plan, within
20 the meaning of section 4201.".
21 (b) Section 302 is amended by—
22 (1) striking out "(40 plan years in the case of a
23 multiemployer plan)" in subsection (b) each place it ap-
24 pears;

1 (2) striking out "(20 plan years in the case of a
2 multiemployer plan)" in subsection (b) each place it ap-
3 pears; and
4 (3) adding the following new paragraphs in sub-
5 section (b):
6 "(6) In the case of a multiemployer plan described in
7 section (3)(37)(D)—
8 "(A) any amount described in paragraph (2)(B)(ii),
9 (2)(B)(iii), or (3)(B)(i) of this section that arose in a plan
10 year beginning before the effective date of this para-
11 graph shall be amortized in equal annual installments
12 (until fully amortized) over 40 plan years, beginning
13 with the year in which it arose;
14 "(B) any amount described in paragraph (2)(B)(iv)
15 or (3)(B)(ii) of this section that arose in a plan year be-
16 ginning before the effective date of this paragraph shall
17 be amortized in equal annual installments (until fully
18 amortized) over 20 plan years beginning with the year
19 in which it arose;
20 "(C) any increase in past service liability that
21 arises by the end of the third plan year beginning after
22 the date of this paragraph and results from a plan
23 amendment adopted before the effective date of this
24 paragraph shall be amortized in equal annual install-

1 ments (until fully amortized) over 40 plan years, begin-
2 ning with the year in which the increase arises; and
3 "(D) any increase in past service liability that
4 arises by the end of the second plan year beginning
5 after the effective date of this paragraph, and results
6 from a group of participants' changing from a lower
7 benefit level to a higher benefit level under a schedule
8 of plan benefits that—
9 "(i) was adopted before the date of enact-
10 ment of this pargraph and
11 "(ii) was effective for any plan participant
12 before the beginning of the first plan year after
13 the date of enactment of this paragraph shall be
14 amortized in equal annual installments (until fully
15 amortized) over 40-plan years, beginning with the
16 year in which the increase arises.
17 "(7) For purposes of this part, any amount received by a
18 multiemployer plan in payment of all or part of an employer's
19 withdrawal liability under section 4201 shall be considered
20 an amount contributed by the employer to or under the plan.
21 The Secretary of the Treasury may, by regulation, prescribe
22 additional charges and credits to a multiemployer plan's fund-
23 ing standard account to the extent necessary to prevent with-
24 drawal liability payments from being unduly reflected as ad-
25 vance funding for plan liabilities.".

1 TITLE IV—RELATED TECHNICAL, CONFORMING
2 AND CLERICAL AMENDMENTS

3 **SEC. 401. RELATED TECHNICAL AMENDMENTS**

4 Whenever in this subsection an amendment is expressed
5 in terms of an amendment to a section or other provision, the
6 reference is to a section or other provision of title IV of the
7 Employee Retirement Income Security Act of 1974.

8 (1) Section 4001 is amended by—
9 (A) inserting "(other than a multiemployer plan)"
10 after "More than one employer" in paragraph (2) of
11 subsection (a);
12 (B) striking out "; and" in paragraph (6) of sub-
13 section (a), and inserting in lieu thereof "or section
14 4022A other than under section 4022A(g);";
15 (C) striking out the period in paragraph (7) of sub-
16 section (a) and inserting "or 4022A(g);";
17 (D) adding the following new paragraphs to sub-
18 section (a):
19 "(8) 'Code' means the Internal Revenue Code of
20 1954, as amended;
21 "(9) 'vested benefit' means a benefit with respect
22 to which a participant has satisfied the age and service
23 requirements for entitlement under the terms of the
24 plan, whether or not the benefit may be reduced by

1 subsequent plan amendment or as a result of a condi-
2 tion subsequent that has not occurred;
3 "(10) 'withdrawal liability' means an employer's
4 liability to a multiemployer plan under section 4201,
5 and 'withdrawal liability payment' means a payment
6 under section 4201(e);
7 "(11) 'reorganization index' means the amount de-
8 termined under section 4241(b);
9 "(12) 'insolvent', with respect to a multiemployer
10 plan, means the condition described in section 4245(b)
11 or 4281(d)(2); and
12 "(13) 'plan sponsor' means the plan sponsor as
13 defined in section 3(16)(B).";
14 (E) redesignating subsection (b) as subsection
15 (c)(1) and adding the following new subsection:
16 "(b) The corporation may, by regulation, prescribe defi-
17 nitions for any terms used in this title."; and
18 (F) adding the following new paragraphs (2), (3)
19 and (4) of subsection (c) (as redesignated):
20 "(2) For purposes of this title, unless otherwise indicat-
21 ed, any plan that is not a multiemployer plan is considered a
22 single-employer plan.
23 "(3) For purposes of this title, unless otherwise indicat-
24 ed, contributions or other payments are made under a plan

1 for a plan year if made within the period prescribed under
2 Code section 412(c)(10).
3 "(4) For purposes of subtitle E, 'Secretary of the Treas-
4 ury' means the Secretary of the Treasury or his or her dele-
5 gate.".
6 (2) Section 4003 is amended by—
7 (A) striking out "determine whether any person
8 has violated or is about to violate" in subsection (a)
9 and substituting in lieu thereof "enforce"; and
10 (B) striking out "redress violations of" in subsec-
11 tion (e)(1) and inserting in lieu thereof "enforce".
12 (3) Section 4007 is amended by inserting at the end of
13 subsection (a) the following:
14 "The corporation may waive or reduce premiums for a
15 multiemployer plan for any plan year during which such plan
16 receives financial assistance from the corporation under sec-
17 tion 4261.".
18 (4) Section 4021(a) is amended by inserting in the last
19 sentence "unless otherwise specifically indicated" before "a
20 successor plan".
21 (5) The following new section is added after section
22 4022B:
23 "PLAN FIDUCIARIES
24 "SEC. 4023. Notwithstanding any other provision of
25 this Act, a fiduciary of a plan to which section 4021 applies

1 shall discharge his or her duties with respect to the plan in
2 accordance with standards prescribed by this Act, and in ac-
3 cordance with the documents and instruments governing the
4 plan insofar as such documents and instruments are consist-
5 ent with the provisions of this Act.".

6 (6) Section 4042 is amended by—

7 (A) striking out "such small" in the last sentence
8 of subsection (a) and inserting in lieu thereof
9 "terminated";

10 (B) redesignating subsection (b) as paragraph (1)
11 of subsection (b), and inserting the following new para-
12 graph (2):

13 "(2) Notwithstanding any other provision of this title—

14 "(A) upon the petition of a plan administrator or
15 the corporation, the appropriate United States district
16 court may appoint a trustee in accordance with the
17 provisions of this section if the interests of the partici-
18 pants would be better served by the appointment of the
19 trustee, and

20 "(B) upon the petition of the corporation, the ap-
21 propriate United States district court shall appoint a
22 trustee proposed by the corporation for a multiem-
23 ployer plan that is in reorganization, or a multiem-
24 ployer plan to which section 4041A(d) applies, unless

1 such appointment would be adverse to the long-range
2 interests of the participants generally.
3 The corporation and plan administrator may agree to the ap-
4 pointment of a trustee without proceeding in accordance with
5 the requirements of this subsection.".
6 (C) striking out "and" in the first sentence of sub-
7 section (c) after "interests of participants" and insert-
8 ing in lieu thereof "or";
9 (D) striking out "further" wherever it appears
10 in subsection (c) and inserting in lieu thereof
11 "unreasonable";
12 (E) striking out "and" in paragraph (1)(A)(iv) of
13 subsection (d), redesignating paragraph (1)(A)(v) as
14 paragraph (1)(A)(vi), inserting "and" at the end of
15 paragraph (1)(A)(vi) (as redesignated), and inserting
16 after paragraph (1)(A)(iv) the following new paragraph:
17 "(v) in the case of a multiemployer plan, to
18 reduce benefits or suspend benefit payments under the
19 plan, give appropriate notices, amend the plan, and do
20 other acts required or authorized by subtitle E;";
21 (F) inserting after paragraph (1)(A)(vi) (as redesig-
22 nated) of subsection (d) the following new paragraph:
23 "(vii) to require the plan administrator, any con-
24 tributing or withdrawn employer, and any employee
25 organization representing plan participants to furnish

1 any information with respect to the plan that the trust-
2 ee may need in order to administer the plan.".
3 (G) striking out "allocation requirements of sec-
4 tion 4044" in paragraph (1)(B)(i) of subsection (d), and
5 inserting in lieu thereof, "requirements of this title";
6 (H) striking out ", except to the extent that the
7 corporation is an adverse party in a suit or proceed-
8 ing" in paragraph (1)(B)(iv) of subsection (d);
9 (I) striking out "and" subparagraph (B) of subsec-
10 tion (d)(2);
11 (J) striking out the period in subparagraph (C) of
12 subsection (d)(2), inserting a comma in lieu thereof and
13 adding the following new subparagraphs:
14 "(D) each employer that is or may be liable to the
15 plan under section 4201,
16 "(E) each employer that has an obligation, within
17 the meaning of section 4201(b), to contribute under a
18 multiemployer plan, and
19 "(F) each employee organization that, for pur-
20 poses of collective bargaining, represents plan partici-
21 pants employed by an employer described in subpara-
22 graph (C), (D), or (E).".
23 (7) Section 4044 is amended by—
24 (A) inserting "single-employer" before "defined
25 benefit plan" in subsection (a);

1 (B) inserting "single-employer" before "plan oc-
2 curring during" and before "plan occurring after" in
3 subsection (c); and
4 (C) inserting "single-employer" before "plan may
5 be distributed" in paragraph (1) of subsection (d).
6 (8) Section 4048 is amended by—
7 (A) redesignating section 4048 as section 4048(a),
8 and inserting "of a single-employer plan" after "date
9 of termination"; and
10 (B) adding the following new subsection (b):
11 "(b) For purposes of this title, the date of termination of
12 a multiemployer plan is—
13 (1) in the case of a plan terminated in accordance
14 with the provisions of section 4041A, the date deter-
15 mined under subsection (b) of that section; or
16 "(2) in the case of a plan terminated in accord-
17 ance with the provisions of section 4042, the date
18 agreed to between the plan administrator and the cor-
19 poration (or the trustee), or, if no agreement is
20 reached, the date established by the court.".
21 (b) Whenever in this subsection an amendment is ex-
22 pressed in terms of an amendment to a section or other provi-
23 sion, the reference is made to a section or other provision of
24 title I of the Employee Retirement Income Security Act of
25 1974.

1 (1) Section 208 is amended by striking out the last sen-
2 tence and inserting in lieu thereof the following: "The pre-
3 ceding sentence does not apply to any transaction to the
4 extent that participants either before or after the transaction
5 are covered under a multiemployer plan to which title IV of
6 this Act applies.".
7 (2) Section 403 is amended by—
8 (A) striking out "title" in subsection (a)(1) and in-
9 serting in lieu thereof "Act";
10 (B) striking "4042 and 4044" in subsection (c)(1)
11 and inserting in lieu thereof "4041A, 4042, 4044, and
12 4261"; and
13 (C) inserting in subsection (c)(2)(A) "or a payment
14 under section 4201" after "in the case of a contribu-
15 tion".
16 (c) Section 3002 of the Employee Retirement Income
17 Security Act of 1974 is amended at the end thereof the fol-
18 lowing new subsection:
19 "(e) The Secretary of the Treasury shall consult with
20 the Pension Benefit Guaranty Corporation with respect to
21 any proposed or final regulation authorized by section 411(e),
22 411(f), or 412(j) of the Internal Revenue Code of 1954, as
23 amended, or by sections 4241–4245 of this Act, before pub-
24 lishing any such proposed or final regulation.".

1 SEC. 402. CONFORMING AMENDMENTS.

2 (a) Section 4005 is amended by—

3 (1) striking out the second sentence of subsection
4 (a) and inserting in lieu thereof the following: "One of
5 the funds shall be used in connection with basic bene-
6 fits guaranteed under section 4022, one of the funds
7 shall be used with respect to basic benefits guaranteed
8 under section 4022A, one of the funds shall be used
9 with respect to non-basic benefits, if any are guaran-
10 teed by the corporation under section 4022, and the
11 remaining fund shall be used with respect to non-basic
12 benefits, if any are guaranteed by the corporation
13 under section 4022A.";

14 (2) inserting after "4022" in subsection (b)(2)(A)
15 "or 4022A".

16 (3) striking out subparagraph (B) of subsection
17 (b)(2) and redesignating subparagraphs (C), (D), and
18 (E) as subparagraphs (B), (C), and (D), respectively.

19 (b) Section 4007 is amended by striking out the second
20 sentence of subsection (a).

21 (c) Section 4022 is amended by—

22 (1) inserting "—SINGLE-EMPLOYER PLANS",
23 after "BENEFITS GUARANTEED" in the caption;

24 (2) inserting "single-employer plan" before "plan
25 which terminates" in subsection (a), striking out the

1 period at the end of subsection (a) and adding in lieu
2 thereof, "in accordance with this section.";
3 (3) striking out "8" in paragraph (1) of subsection
4 (b) and inserting in lieu thereof "(7)"; and
5 (4) striking out paragraph (5) of subsection (b) and
6 redesignating paragraphs (6), (7) and (8) as paragraphs
7 (5), (6) and (7), respectively.
8 (d) Section 4041 is amended by—
9 (1) striking out "by PLAN ADMINISTRATOR" in
10 the caption and inserting in lieu thereof "—SINGLE-
11 EMPLOYER PLAN",
12 (2) inserting "single-employer" after "termination
13 of a" in subsection (a), and
14 (3) striking out subsection (g).
15 (e) Section 4046 is amended by—
16 (1) inserting after "4022" in paragraphs (2) and
17 (3) "or 4022A";
18 (2) inserting before "benefits" in paragraphs (2)
19 and (3) "basic"; and
20 (3) striking out "4022(b)(5)" in paragraph (3) and
21 inserting in lieu thereof, "4022B".
22 (f) Section 4061 is amended to read as follows:
23 "SEC. 4061. The corporation shall pay benefits under a
24 single-employer plan terminated under this title subject to the
25 limitations and requirements of subtitle B of this title. The

1 corporation shall provide financial assistance to pay benefits
2 under an insolvent multiemployer plan subject to the limita-
3 tions and requirements of subtitles B, C, and E of this title.
4 Amounts guaranteed by the corporation under sections 4022
5 and 4022A shall be paid by the corporation out of the appro-
6 priate fund.".

7 (g) Section 4062 is amended by striking out "plan (other
8 than a multiemployer plan)" in subsection (a) and inserting in
9 lieu thereof, "single-employer plan (other than a plan to
10 which more than one employer contributes)";

11 (h) Section 4063 is amended by—

12 (1) inserting after "makes contributions" in the
13 first sentence in subsection (a), "(other than a multiem-
14 ployer plan)", and

15 (2) inserting after "of a plan" in the second sen-
16 tence of subsection (d), "(other than a multiemployer
17 plan)".

18 (i) Section 4064 is amended by inserting after "plan
19 under which more than one employer makes contributions"
20 in subsection (a), "(other than a multiemployer plan)".

21 (j) Section 4066 is amended by inserting after "more
22 than one employer", "(other than a multiemployer plan)".

23 **SEC. 403. CLERICAL AMENDMENTS.**

24 Section 1 of the Employee Retirement Income Security
25 Act of 1974 is amended by—

1 (a) inserting "—single-employer plans" before the
2 period at the end of "Sec. 4022. Benefits guaran-
3 teed.";
4 (b) inserting after Sec. 4022, the following: "Sec.
5 4022A. Benefits guaranteed-multiemployer plans." and
6 "Sec. 4022B. Aggregate limit on benefits guaran-
7 teed.";
8 (c) striking out "Sec. 4023. Contingent liability
9 coverage." and inserting in lieu thereof "Sec. 4023.
10 Plan Fiduciaries";
11 (d) striking out "Sec. 4041. Termination by plan
12 administrator.", and inserting in lieu thereof, the fol-
13 lowing: "Sec. 4041. Termination—single-employer
14 plan.";
15 (e) inserting after Sec. 4041, the following: "Sec.
16 4041A. Termination-multiemployer plan.";
17 (f) redesignating subtitle E as subtitle F and
18 adding after subtitle D the following:

"Subtitle E—Special Provisions for Multiemployer Plans

"Part 1—Employer Withdrawals

"Sec. 4201. Employer withdrawals.
"Sec. 4202. Approval of amendments.
"Sec. 4203. Determination of unfunded vested obligations.

"Part 2—Merger or Transfer of Assets or Liabilities

"Sec. 4221. Merger or transfer of assets or liabilities.
"Sec. 4222. Assets transferable.

"Part 3—Reorganization

"Sec. 4241. Reorganization status.
"Sec. 4242. Notice of reorganization.
"Sec. 4243. Funding requirements for plans in reorganization.
"Sec. 4244. Adjustments in accrued benefits.
"Sec. 4245. Insolvent plans.

"Part 4—Financial Assistance

"Sec. 4261. Financial assistance.

"Part 5—Benefits After Termination

"Sec. 4281. Benefits under certain terminated plans.

"Part 6—Enforcement

"Sec. 4301. Civil Actions.
"Sec. 4302. Penalty for failure to provide notice.";.

1 (g) deleting subtitle F (as redesignated) and insert-
2 ing in lieu thereof the following:

"Subtitle F—Transition Rules and Effective Dates

"Sec. 4401. Transition rules and effective dates.".

Senator BENTSEN. This hearing will come to order and our first witness will be Mr. Robert Nagle, Executive Director, Pension Benefit Guaranty Corporation.

If you will come forward, Mr. Nagle, and proceed with your testimony?

I might say at the beginning, Mr. Nagle, that the Pension Subcommittee of the Senate Finance Committee is holding hearings on the administration's proposal to restructure the termination insurance program with respect to multiemployer pension plans.

In 1974, this committee was informed that there was very little likelihood of the termination of a multiemployer pension plan. As a result, a lower funding level and lower premium rate were enacted for multiemployer pension plans as compared to single employer plans. We could not have been more misinformed.

It is essential for the Finance Committee to closely examine the proposals with respect to premium rates and other changes in the insurance program, to insure that we formulate a financially sound program.

I do not want us to enact legislation this spring only to be required to amend the law next year and the year after that because we underestimated the problem.

I will have to admit, at the time that we originally took it up in 1974, I did not know enough about multiemployer plans, but I did know something about single-employer plans. I cannot help but remember when they came and said they wanted a premium of 50 cents an employee on the single-employer plan. I said it sounds awfully low to me and the actuarial assumptions deeply concerned me, and are you sure that 50 cents was enough?

I was assured time and time again, it is enough.

I said, fine. Then let's double it.

I do not want people coming back to me telling me it was insufficient and we just have to add a little bit more. Let's just double the whole premium to a dollar.

So they finally did, with much opposition, and it was not long before a dollar was not enough and 50 cents was ridiculous.

They came back in with another incremental, small increase assuring me once again now that really was enough. I said, I do not believe it and finally pushed them up to $2.60 and we still have problems.

I want to see that we once and for all have a sound financial plan here. I think when they talk about $2.60 per employee per year I think that is ridiculously low for what they are asking for. The fact that they quibble over that, when you are talking about for one employee for 1 year, to have these kinds of guarantees really does not make a fair evaluation of the benefits that finally accrued to the employee by this kind of insurance.

And we ought to go ahead and make the thing actuarially sound. We should avoid formulating these programs on a best case projection when we know that the economic conditions in the months and years ahead may not be as good as we would like.

Now, Mr. Nagle, as the first victim of these hearings, would you proceed?

STATEMENT OF ROBERT E. NAGLE, EXECUTIVE DIRECTOR, PENSION BENEFIT GUARANTY CORPORATION, ACCOMPANIED BY GERALD E. COLE, ASSISTANT DIRECTOR FOR POLICY AND PLANNING, AND MITCHELL L. STRICKLER, DEPUTY GENERAL COUNSEL

Mr. NAGLE. Thank you, Mr. Chairman.

Before I start, I would like to introduce my associates here at the table with me. To my right is Mr. Gerald Cole who is our Assistant Executive Director for Policy and Planning. To my left is our deputy General Counsel, Mr. Mitchell Strickler.

Both of these gentlemen have been very much involved in the development of the legislation that you are now considering.

I have submitted a prepared statement and, if it meets with your pleasure, I will summarize it somewhat and elaborate on a couple of points.

You are certainly very correct in your observation that since 1974, we have learned a good deal more about multiemployer plans. We have learned, contrary to what may have been thought in 1974, that a number of them are, in fact, experiencing financial difficulty.

During that period we have covered three plans which have terminated under our discretionary coverage authority.

It has also become apparent during that period that the termination insurance provisions of title IV as they are now in the law and as they would go into full effect for multiemployer plans on May 1, absent other legislation, are provisions which would not foster the survival of multiemployer plans, but would actually contribute to their failure by encouraging employer withdrawals and plan terminations.

This is particularly true of plans covering employees in industries which are experiencing a decline. As the base of active workers erodes in relationship to the number of retired workers, the contribution rate must steadily escalate in order to fund the given level of benefits. At some point, termination begins to become an attractive alternative to continuation.

Active employees seeing increasingly larger portions of their wage packages going to support benefits for retirees may prefer termination to plan continuation, and many employers may conclude that plan termination would be cheaper than continuing the plan.

The current law limits an employer's liability to unfunded guaranteed benefits up to 30 percent of his net worth when the plan terminates. For many employers, 30 percent of net worth may be less than the cost of continuing to fund the plan.

Senator BENTSEN. Now, you said you are going to summarize and you are reading. Do you have a copy of the summary?

Mr. NAGLE. No, sir. I am just reading from some notes.

Senator BENTSEN. All right. It makes it a little bit difficult to follow, but go ahead.

Mr. NAGLE. We believe that the incentives provided by current law are pushing many troubled multiemployer plans in the wrong direction. After PBGC reported to Congress in September of 1977 that the insurance program might incur very high costs if coverage of multiemployer plans became mandatory under the existing pro-

visions of title IV, Congress twice extended the deadline to give an opportunity to develop a sounder insurance program.

The program provided in S. 1076 is a result of comprehensive studies by the PBGC and extensive consultations with all facets of the multiemployer plan universe, and we believe it reflects a broad labor-management consensus on the best way to solve the questions of multiemployer plans.

We believe that this bill eliminates features of current law that would create incentives for employers to leave a multiemployer plan. The bill would impose liabilities on those employers that withdraw and protect those that remain.

Senator BENTSEN. You know, I am really not satisfied with this presentation. I am deeply interested and concerned about this issue and I want to hear your point of view, so why do you not go right to your prepared statement.

Mr. NAGLE. All right, sir.

The bill would impose liability on employers who withdraw and protect those who remain. Plans would be further strengthened by tighter funding rules. New provisions would make it possible to keep plans going in situations——

Senator BENTSEN. Now tell me where you are.

Mr. NAGLE. I am on page 5, Senator.

Plans would be further strengthened by tighter funding rules. New provisions would make it possible to keep plans going in situations where they would terminate under current law; for example, in declining industries where the number of active employees is shrinking.

The risks inherent in multiemployer plans would be apportioned so that plan continuation would be in the interest of employers, to avoid potentially higher liability, and of participants, to avoid benefit reductions because of lowered guarantees.

Termination insurance would be provided only for involuntary events—plan insolvencies resulting from sustained declines in covered employment.

The key elements of the program are: One, an employer leaving a multiemployer pension plan would have to pay its fair share of the plan's liabilities. Two, a program of plan reorganization would provide financially weak plans an opportunity to restore the balance between benefit promises and contributions. Reorganization would also provide relief from escalating plan costs caused by declines in covered employment.

Three, the minimum fundings standards for multiemployer pension plans would be tightened to help insure that sufficient funds would be available to pay benefits.

Four, employers would be required to continue to comply with funding standards, even if the plan were terminated by an amendment that ceased the crediting of additional service.

Five, plan insolvency would be the only event insured by the PBGC.

A key problem for multiemployer plans, especially in declining industries, is employer withdrawal. If an employer leaves a multiemployer plan, the cost of maintaining the plan increases for the remaining employers.

These remaining employers must assume the burden of liabilities that were being funded by the withdrawing employer. As a result, the contribution rate for the remaining employers is pushed to higher and higher levels. This may cause additional employer withdrawals.

The current law imposes liability only if an employer makes at least 10 percent of the total contributions to the plan. Even then the employer is not required to compensate the plan. He must only put money in escrow or post a bond to protect the PBGC in case the plan terminates within the next 5 years.

If a plan does terminate, all employers who contributed to the plan for the 5 years preceding termination are liable up to 30 percent of their net worth. These rules penalize employers who remain with the plan until its termination and thus may encourage employers to leave a plan at the first sign of financial trouble.

Under S. 1076, a withdrawing employer would be required to make periodic payments to the plan. A withdrawal would occur when an employer has no obligation to contribute to the plan or ceases all covered operations.

Each plan would be free to choose the most appropriate method for allocating withdrawal liabilty. To avoid possible confusion or delay, one method is made presumptive—that is, it would apply unless a plan expressly chooses a different one.

We have concluded that the presumptive rule we originally proposed in S. 1076 might well have the effect of discouraging new employers from participating in multiemployer plans. The presumptive rule was therefore amended in the House Education and Labor Committee.

Under that amendment, the presumptive rule would distinguish between two kinds of unfunded plan liabilities—those which existed before the new employer withdrawal liability comes into effect, and added liabilities which accrue afterward.

In general, employers who were in the plan before the change would retain responsibility for the old liabilities until they are funded. New employers would be responsible upon withdrawal only for a share of additional unfunded liabilities arising after they join the plan.

Plans could also choose an alternative that would divide old and new liabilities in similar fashion but with a simplified method for allocating new liabilities.

Another alternative would allocate liability according to the employer's share of contributions during the 5 years ending with the year of withdrawal.

Plans that wish to attribute liabilities and assets on an employer by employer basis and have the necessary detailed records could do so under another alternative.

Finally, the program would allow a plan to seek to PBGC approval of other methods for assessing withdrawal liability.

A withdrawing employer would not be required to pay withdrawal liability in a lump sum. Payments would be set at an annual amount derived from an employer's contribution experience during its participation in the plan.

S. 1076, as introduced, provides for liability in the case of partial withdrawals, which would be defined in regulations. There has

been considerable feeling, however, that the legislation itself should specify the conditions under which partial withdrawal liability would apply, and the House Education and Labor Committee has amended the bill to provide such conditions.

Under its provisions, partial withdrawal is defined in terms of certain measures of reduced contributions over periods of time, the shutting down of certain activities and the like. We are in accord with the general principles involved in these rules, but we believe it important to retain considerable flexibility in administration so as to avoid unintended results and the possibility that temporary, or normally recurring, events may trigger liability.

Because construction projects are often short-term and employment fluctuates widely, different withdrawal rules were devised for construction industry plans. There, withdrawal occurs only if the employer ceases its obligation to contribute to the plan but continues to perform the same type of work within the area covered by the collective bargaining agreement.

Groups within the entertainment industry have urged that a comparable provision be made for that industry. In response, the House Education and Labor Committee amended the bill to apply such a rule to the entertainment industry, as defined in regulations to be issued by PBGC. We believe there are elements of the entertainment industry which share relevant characteristics with the construction industry and may therefore properly be treated in similar fashion. Any such withdrawal rules would be precisely focused to make sure their application is limited to the appropriate instances. The amendment referred to would appear to give PBGC the authority to do so.

The bill would shorten the time allowed for funding new increases in past service liability from 40 to 30 years. However, some plans may have insufficient reserves to assure adequate funding for the benefits of retirees and other workers. In such cases, plan assets would be called upon for benefit payments at a faster rate than the plan is being funded, even on a 30-year basis. The bill would provide an additional funding test that would identify such plans and place them in a program that we call reorganization.

Plans in reorganization must meet a minimum contribution requirement, based on the new funding test, that would prevent plan insolvency unless there were a sustained decline in employment.

The minimum contribution requirement would also act as a restraint on excessive benefit increases in multiemployer plans by requiring that contributions be high enough to fund benefit promises over a realistic period.

If higher contributions could not be negotiated through the collective bargaining process, the trustees would be permitted to reduce or eliminate benefit improvements of the past 5 years to lessen the funding burden. Note that a benefit would not be guaranteed by the PBGC unless it had been in effect for 5 years. This is in distinction to the provision under the single employer program, where benefit increases are phased in at 20 percent a year, so that there is partial coverage of benefits in effect less than 5 years.

The proposed reorganization program would also provide relief from the extreme escalation of funding costs that would result from prolonged or steep declines in active employment.

There are some plans where, because of employment declines, an increasing ratio of retirees to active employees has already imposed heavy financial burdens on active workers and their employers even under current law.

We cannot, in good conscience, ask them to carry an even greater load, nor is it realistic to expect that they would do so. The bill would provide that a plan in reorganization which is overburdened with retirees would be eligible for a special funding waiver which will reduce further increases in contributions required by the funding standards.

If despite reorganization, a multiemployer plan becomes unable to meet benefit payments, the bill would require the plan's board of trustees to suspend payment of benefits above the guaranteed level that cannot be paid from plan assets, contributions or other income.

In a declining industry, the employment base may continue to shrink so that a plan is unable to pay even guaranteed benefits after the cutbacks allowed under reorganization. At that point, the PBGC would provide financial assistance. Such assistance would be in the form of loans to make up the difference between guaranteed benefits and benefits that could be supported from contributions to the plan.

Employers that remained with the plan would not be required to increase contributions because of declines in employment after the plan became insolvent.

PBGC's financial assistance would be repaid only if a plan's financial condition greatly improved.

We think the proposed reorganization program would benefit both employers and participants. Employers would be insulated from escalating costs and therefore be able to continue to maintain the plan. We believe that plan continuation is the surest way to provide retirement income security. While some participants may experience some reductions in their benefits, they would be assured that, under no circumstances, would benefits be reduced below the guaranteed level.

The growth and continuance of private pension plans and the security of workers pension benefits are among the primary objectives of ERISA. These can be competing objectives.

The increased benefit security must be balanced against the increased costs of maintaining plans. The premiums needed to support benefit guarantees must be affordable, if plan continuation is to be assured.

The pension benefits guaranteed by the present law are at a level that covers most vested benefits. In a troubled plan, such guarantees may remove the incentive to avoid insolvency and may actually invite benefit improvements, even in a declining industry which cannot afford to fund those improvements.

A reduced guarantee will create a disincentive for the bargaining parties to let a plan become insolvent. With fewer insolvent plans, premium rates compatible with the growth of the private pension plan system could support the pension guaranty program.

The bill provides full guarantees for modest benefit levels and partial guarantees for additional benefits. The PBGC proposed a

guarantee of 100 percent of the first $5 per month for each year of service and 60 percent of the next $15.

This guarantee is weighted in favor of protecting benefits for low-wage workers. Our proposed 60 percent guarantee was increased by the House Education and Labor Committee to 70 percent, except for plans becoming insolvent before the year 2000 which do not meet certain specified funding tests.

We believe that that amendment would limit the higher guarantee to plans that appear to be the better funded plans and we doubt that the increase in that direction would cause a significant increase upon program costs.

It is our view that an increased premium over the current 50 cent rate is needed to support the mandatory insurance program under these legislative recommendations. We proposed a rate of $2.60 for each participant, which we believe is in the range necessary to support our recommended guarantee.

In our proposal, that increase was to be phased in over 5 years. The bill was amended by the House Education and Labor Committee to extend the phase-in to 9 years.

I should emphasize that, although we have made extensive efforts to develop reasonable cost projections for this program—and I will discuss some of those efforts with you—such projections are necessarily subject to considerable uncertainty.

They are dependent, among other things, upon changing economic conditions, future patterns in covered employment under multimployer plans, and the degree to which the provisions of the legislation may affect employer withdrawal from, and entry into, such plans, and also affect the sponsoring party's willingness to adjust contribution rates and benefit levels.

Accordingly, although we believe that the proposed premium may reasonably be expected to support the cost of this program, the bill provides that the PBGC must report to the Congress at least every 5 years concerning the need for, or appropriateness of, adjustments in benefit and guarantee levels.

It also provides a mechanism for the adoption of such adjustments.

In conclusion, we believe that these proposals reflect the interests of both employers and employees, and that they will make termination insurance work for multiemployer pension plans.

Multiemployer plans may be the only way that millions of workers in the private sector can earn vested retirement benefits.

Enactment of the proposed bill would be a significant step toward assuring those workers that they will receive pensions even if their pension plan fails.

This concludes my prepared statement, Mr. Chairman, and we would be happy to answer any questions that you or the subcommittee may have.

Senator BENTSEN. Mr. Nagle, I understand that the estimates of liabilities over the next 20 years, under the administration bill, the PBGC would have range from $55 to $275 million.

Now, if you took the worst case example instead of the best case, as I have seen too often in the past being done on this legislation, then would not a premium of $5 or $6 be more appropriate than a premium of $2.60?

Mr. NAGLE. Well, if you took the worst case under those projections, I think that we have projected that the appropriate premium for that would be in the area of $4.05.

Senator BENTSEN. And your $2.60 is based on what kind of a projection, then?

Mr. NAGLE. Well, let me say a little bit about how we arrived at the projections, because I think that, once numbers are given, they tend to take on a life of their own and perhaps more than they ought to.

In trying to develop realistic cost projections for this program, we put together a computer model into which was fed the available data regarding some 413 multiemployer plans which cover about 75 percent of plan participants.

We also included in the model Bureau of Labor Statistics projections for future employment in industries in which multiemployer plans are found, so that we would have some basis for projecting possible declines in contribution base for those plans.

Now, the model was able to develop, on the basis that I have mentioned, cost projections based upon two somewhat polarized assumptions. One assumption would be—and this would be at the lower end of the range—that the incentives that were built into the bill for plan continuation do, in fact, work very well; that plans that enter the reorganization process take the actions necessary under the bill and that program costs in that situation are limited to the relatively few plans which become insolvent because of inevitable declines in employment.

At the other end of the range—the worst case, if you will—we are assuming that—the incentives built into the bill do not work and that multiemployer plans reaching a certain level of financial difficulty just give up completely and terminate through mass withdrawal.

That assumption produces the costs that we have given at the higher end of the range.

Now, we believe that the true costs will actually occur somewhere within that range. We have no way of projecting——

Senator BENTSEN. I am a bit of a skeptic, you know, because I have listened to this sort of thing now since 1974 and historically what I have received is something that is, in effect, more on the best case side and it has not turned out that way.

Now I would hope that we are being a little bit more prudent in some of the studies we are making now than we have had presented to us in the past.

Mr. NAGLE. The $2.60 premium which we have recommended is not the best case premium. It is somewhere within the range.

Now, as I say, we do not know—and I could not possibly pretend to know—where in the range that the true costs will exist. We can only approximate it at this point. We think it prudent to select a figure somewhere within that range and that is what we have done.

I think what is really critical to this program is how well the incentives that are provided for in this legislation do, in fact, work. And that I think, we will know a little bit more about after there has been some experience under the legislation.

But the bill was designed to provide very strong incentives for employers and employees to want to continue their pension plans; particularly the reorganization provisions, the employer withdrawal liability provisions, and the reduced guarantees.

We think those will produce a highly different set of incentives, and hopefully highly different results, than we believe would exist under the present law.

Senator BENTSEN. I was looking at your testimony on page 12, where you talk about the declining industry and that the PBGC would step in there and provide financial assistance and that would be in the form of loans and that where you had the decline in employment continue, that PBGC's financial assistance be repaid only if the plan's financial condition greatly improved.

I am not sure that is not just taking on the Trade Adjustment Act's responsibilities to a degree.

Mr. NAGLE. That we would provide assistance to those companies?

Senator BENTSEN. Obviously you do not expect to be repaid under those kinds of conditions, from what I read here.

The other thing I see is, of course, under ERISA the Pension Benefit Guaranty Corporation has the right to go into Treasury and borrow $100 million. But that is a right, is it not?

Does the Secretary of Treasury have the right to refuse that loan if he decides it is not a proper loan?

Mr. NAGLE. I do not believe directly. The Secretary of the Treasury is on our Board of Directors and certainly any action that we took in that regard would need the approval of our Board of Directors.

Senator BENTSEN. He is one vote, is he not?

Mr. NAGLE. Yes, sir. The Secretary of Commerce and the Secretary of Labor are the other two members.

Senator BENTSEN. So he does not have a right to overrule it as it now is?

Mr. NAGLE. I do not believe so, no, although I assume he would not make the loan if he concluded that it was not authorized by the statute.

The point you made about the loans not being repaid, that would be true. That would be expected. What we are proposing is that for those plans that may be in a period of temporary decline, a temporary inability to meet the guaranteed level of benefits, PBGC would provide financial assistance.

There might be a situation where the number of retirees was so large in relation to the number of active employees that the plan was temporarily unable to pay all the benefits.

As the retirees die the solvency of the plan might improve.

That is one possible situation where there might be a subsequent improvement in the status of a plan. We would expect, then, to discontinue our financial assistance and possibly claim repayment of the loans that had been extended to it.

There may be other plans where the decline is going to be inevitable and they would never come out of it. There we assume that our financial assistance will not be repaid.

That is where we incur the program costs.

Senator BENTSEN. I have found it difficult from the very beginning to understand the incredible resistance to charging a premium that is adequate. As I relate what the benefit is to people who are retired by what we have tried to do in this piece of legislation and then to see the massive opposition to charging an adequate premium, I do not see it as that kind of a burden as related to the rest of the obligations that either companies or unions or employees have.

Do you have anything further that you would like to add at this time?

Mr. NAGLE. I do not believe so, Mr. Chairman.

Senator BENTSEN. Senator Packwood?

All right. Thank you very much for your testimony.

Mr. NAGLE. Thank you, sir.

[The prepared statement of Mr. Nagle follows. Oral testimony continues on p. 139.]

BEFORE THE SUBCOMMITTEE ON PRIVATE PENSION PLANS
AND EMPLOYEE FRINGE BENEFITS
SENATE FINANCE COMMITTEE

Testimony of Robert E. Nagle
Executive Director of the
Pension Benefit Guaranty Corporation

March 18, 1980

Mr. Chairman and members of the Subcommittee:

I am pleased to have this opportunity to discuss with you S.1076, the Multiemployer Pension Plan Amendments Act of 1979. I have with me Mitchell L. Strickler, Deputy General Counsel, and Gerald E. Cole, Assistant Executive Director for Policy and Planning.

The termination insurance program which PBGC administers was established by Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"). When ERISA was enacted, it was assumed that multiemployer plans were generally less likely to terminate than single-employer plans. Because there was some uncertainty regarding the impact of the plan termination provisions of Title IV on multiemployer plans, full insurance coverage for multiemployer plans was delayed. PBGC was given discretionary power to cover multiemployer plan terminations occurring before a mandatory program was put into place.

During this discretionary period, we have learned that a significant number of multiemployer plans are experiencing financial difficulties. There has also been a growing realization among those in the pension community that the current termination insurance provisions do not foster the survival of multiemployer plans and may actually contribute to their failure by encouraging employer withdrawals and plan terminations.

A multiemployer plan usually covers employees working within an industry or craft in a specified geographic area. Such a plan is created and maintained under a collective bargaining agreement. Employers pay into the plan at a rate determined by negotiation; the board of trustees that governs the plan usually has no control over contributions. The board generally establishes benefit levels based on assumptions about future employment levels and contributions, investment returns, retirement patterns, and workforce turnover. Since dramatic changes in these factors can and do occur, the projected funds needed for benefit payments may not materialize. A protracted decline in employment can cause serious financial problems -- a smaller base of employees must support an increasing number of retirees.

Before ERISA, a board of trustees of a multiemployer plan could do a number of things to meet such financial difficulties. The board could defer funding, restrict vesting and eligibility,

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or reduce benefits previously earned. However, in order to protect retirement benefits, ERISA greatly limited those traditional adjustments. As a result, unions and employers in declining industries may be faced with two hard choices: increasing contributions for existing benefit levels or terminating the pension plan.

Active employees, seeing increasingly larger portions of their wage packages going to support benefits to retirees, may prefer plan termination to plan continuation. And, since the current law insures against a voluntary act -- plan termination -- unions and employers can trigger payment of PBGC funds to participants by terminating a plan, even though they may have the financial ability to continue it.

In a significant number of cases, termination will be cheaper than plan continuation. The current law limits an employer's liability for meeting guarantee levels to 30 percent of its net worth when a plan terminates. For many employers, 30 percent of net worth is less than their cost of continuing to fund the plan. This limited liability, coupled with an absence of liability generally for withdrawal, creates incentives for employers to get out of financially troubled plans early. The incentives are pushing many troubled multiemployer plans in the wrong direction.

In September 1977, PBGC reported to Congress that the insurance program might incur very high costs if coverage of multiemployer plans became mandatory under the existing provisions of Title IV. Congress therefore extended the initial deferral of mandatory coverage to May 1, 1980 to allow development of a sound insurance program. In May of 1979, an Administration bill was introduced in the Senate (S.1076) and in the House (H.R.3904) to amend Title IV of ERISA. The bill was designed to provide a viable framework for multiemployer plans while protecting the essential interests of plan participants and sponsors. Its provisions were the results of comprehensive studies by the PBGC and extensive consultations with all facets of the multiemployer plan universe, and reflect a broad labor-management consensus on the best way to solve the problems of multiemployer plans.

As of this date, the Senate Committee on Labor and Human Resources, to which S.1076 was also referred, has begun marking up the bill. The counterpart measure in the House (H.R.3904) has been ordered reported with amendments by the Education and Labor Committee, and the Ways and Means Committee has now started its markup.

The bill would eliminate features of current law that would create incentives for employers to leave a multiemployer plan. Instead, the bill would impose liability on those employers

that withdraw, and protect those that remain. Plans would be further strengthened by tighter funding rules. New provisions would make it possible to keep plans going in situations where they would terminate under current law -- for example, in declining industries where the number of active employees is shrinking. The risks inherent in multiemployer plans would be apportioned so that plan continuation would be in the interest of employers -- to avoid potentially higher liability -- and participants -- to avoid benefit reductions because of lowered guarantees. Termination insurance would be provided only for involuntary events -- plan insolvencies resulting from sustained declines in covered employment. The key elements of the program are:

1. An employer leaving a multiemployer pension plan would have to pay its fair share of the plan's liabilities.

2. A program of plan reorganization would provide financially weak plans an opportunity to restore the balance between benefit promises and contributions. Reorganization would also provide relief from escalating plan costs caused by declines in covered employment.

3. The minimum funding standards for multiemployer pension plans would be tightened to help insure that sufficient funds will be available to pay benefits.

4. Employers would be required to continue to comply with funding standards even if the plan were terminated by an amendment that ceased the crediting of additional service.

5. Plan insolvency would be the only event insured by the PBGC.

EMPLOYER WITHDRAWALS

A key problem for multiemployer plans, especially in declining industries, is employer withdrawal. If an employer leaves a multiemployer plan, the cost of maintaining the plan increases for the remaining employers. These employers must assume the burden of liabilities that were being funded by the withdrawing employer. As a result, the contribution rate for the remaining employers is pushed to higher and higher levels. This may cause additional employer withdrawals.

The current law imposes liability only if an employer makes at least 10 percent of the total contributions to the plan.

Even then, the employer is not required to compensate the plan. He only puts money in escrow or posts a bond to protect the PBGC in case the plan terminates within the next 5 years. If a plan does terminate, all employers that contributed to the plan for the 5 years preceding termination are liable up to 30 percent of their net worth. These rules penalize employers that remain with a plan until its termination, and thus may encourage employers to leave a plan at the first sign of financial trouble.

Under S.1076, a withdrawing employer would be required to make periodic payments to the plan. A withdrawal would occur when an employer has no obligation to contribute to the plan, or ceases all covered operations.

Each plan would be free to choose the most appropriate method for allocating withdrawal liability. To avoid possible confusion or delay, one method is made presumptive; that is, it would apply unless a plan expressly chooses a different one. We have concluded that the presumptive rule we originally proposed in S.1076 might well have the effect of discouraging new employers from participating in multiemployer plans. The presumptive rule was therefore amended in the House Education and Labor Committee. Under that amendment, the presumptive rule would distinguish between two kinds of unfunded plan liabilities:

those that existed before the new employer withdrawal liability comes into effect, and added liabilities that accrue afterwards. In general, employers who were in the plan before the change would retain responsibility for the old liabilities until they are funded. New employers would be responsible upon withdrawal only for a share of additional unfunded liabilities arising after they join the plan. Plans could also choose an alternative that would divide old and new liabilities in similar fashion, but with a simplified method for allocating new liabilities. Another alternative would allocate liability according to the employer's share of contributions during the five years ending with the year of withdrawal. Plans that wish to attribute liabilities and assets on an employer by employer basis -- and have the necessary detailed records -- could do so under another alternative. Finally, the program would allow a plan to seek PBGC approval of other methods for assessing withdrawal liability.

A withdrawing employer would not be required to pay withdrawal liability in a lump sum. Payments would be set at an annual amount derived from the employer's contribution experience during its participation in the plan.

S.1076, as introduced, provides for liability in the case of partial withdrawal, which would be defined in regulations.

There has been considerable feeling, however, that the legislation itself should specify the conditions under which partial withdrawal liability would apply, and the House Education and Labor Committee amended the bill to provide such conditions. Under its provisions, partial withdrawal is defined in terms of certain measures of reduced contributions over periods of time, the shutting down of certain activities, and the like. We are in accord with the general principles involved in these rules, but we believe it is important to retain considerable flexibility in administration so as to avoid unintended results and the possibility that temporary or normally recurring events may trigger liability.

Because construction projects are often short-term and employment fluctuates widely, different withdrawal rules were devised for construction industry plans. There, a withdrawal occurs only if the employer ceases its obligation to contribute to the plan but continues to perform the same type of work within the area covered by the collective bargaining agreement.

Groups within the entertainment industry have urged that comparable provision be made for that industry. In response, the House Education and Labor Committee amended the bill to apply such a rule to the entertainment industry, as defined in regulations to be issued by PBGC. We believe there are elements of the

entertainment industry which share relevant characteristics with the construction industry, and may therefore properly be treated in similar fashion. Any such provision should be precisely focused to make sure its application is limited to the appropriate instances, and the amendment referred to would appear to give the PBGC the authority to do so.

FUNDING

The bill would shorten the time allowed for funding new increases in past service liability from 40 to 30 years. However, some plans may have insufficient reserves to assure adequate funding for the benefits of retirees and other workers under current funding standards. In such cases, plan assets would be called upon for benefit payments at a faster rate than the plan is being funded, even on a 30-year basis. The bill would provide an additional funding test that would identify such plans and place them in a program of reorganization.

REORGANIZATION

Plans in reorganization must meet a minimum contribution requirement based on the new funding test that would prevent plan insolvency unless there were a sustained decline in employment. The minimum contribution requirement would also act as a restraint

on excessive benefit increases in multiemployer plans by requiring that contributions be high enough to fund benefit promises over a realistic period. If higher contributions could not be negotiated through collective bargaining, the trustees would be permitted to reduce or eliminate benefit improvements of the past 5 years to lessen the funding burden. (A benefit would not be "guaranteed" by the PBGC unless it had been in effect for 5 years.)

The proposed reorganization program would also provide relief from the extreme escalation of funding costs that would result from prolonged or steep declines in active employment.

There are some plans where, because of employment declines, an increasing ratio of retirees to active employees has already imposed heavy financial burdens on active workers and their employers, even under current law. We cannot in good conscience ask them to carry an even greater load. Nor is it realistic to expect that they would do so. The bill would provide that a plan in reorganization which is overburdened with retirees would be eligible for a special funding waiver, which will reduce, or even eliminate, further increases in contributions required by funding standards.

If, despite reorganization, a multiemployer plan becomes unable to meet benefit payments, the bill would require the board of trustees to suspend payment of benefits above the guaranteed level that cannot be paid from plan assets, contributions, and other income.

In a declining industry, the employment base may continue to shrink so that a plan is unable to pay even guaranteed benefits after the cutbacks allowed under reorganization. At that point, the PBGC would provide financial assistance. Such assistance would be in the form of loans to make up the difference between guaranteed benefits and benefits that could be supported from contributions to the plan. Employers that remain with the plan would not be required to increase contributions because of declines in employment after the plan became insolvent. PBGC's financial assistance would be repaid only if a plan's financial condition greatly improved.

We think the proposed reorganization program would benefit both employers and participants. Employers would be insulated from escalating costs and therefore be able to continue to maintain the plan. We believe that plan continuation is the surest way to provide retirement income security. While some participants may experience some reductions in their benefits, they would be assured that under no circumstances would benefits be reduced below the guaranteed level.

RESTRUCTURED GUARANTEES AND PREMIUMS

The growth and continuance of private pension plans and the security of workers' pension benefits are among the primary objectives of ERISA. These can be competing objectives. Increased benefit security must be balanced against the increased costs of maintaining plans. The premiums needed to support benefit guarantee levels must be affordable if plan continuation is to be assured.

The pension benefits guaranteed by the present law are at a level that covers most vested benefits. In a troubled plan, such guarantees may remove the incentive to avoid insolvency and may actually invite benefit improvements, even in a declining industry which cannot afford to fund those improvements. A reduced guarantee creates a disincentive for the bargaining parties to let a plan become insolvent. With fewer insolvent plans, premium rates compatible with the growth of the private pension plan system could support the guarantee program.

The bill provides full guarantees for modest benefit levels and partial guarantees for additional benefits. The PBGC proposed a guarantee of 100 percent of the first $5 per month for each year of service, and 60 percent of the next $15. This guarantee is weighted in favor of protecting benefits

for low-wage workers. Our proposed 60 percent guarantee was increased by the House Education and Labor Committee to 70 percent, except for plans becoming insolvent before the year 2000 which do not meet certain specified funding tests.

It is our view that an increased premium (over the current 50 cent rate) is needed to support the mandatory insurance program under the legislative recommendations. We proposed a rate of $2.60 for each participant, which we believe is in the range necessary to support our recommended guarantee. In our proposal that increase was to be phased in over 5 years; the bill was amended by the House Education and Labor Committee to extend the phase-in to 9 years.

I should emphasize that although we have made extensive efforts to develop reasonable cost projections for this program, such projections are necessarily subject to considerable uncertainty. They are dependent, among other things, on changing economic conditions, future patterns in covered employment under multi-employer plans, and the degree to which the provisions of the legislation may affect employer withdrawal from and entry into such plans and also affect the sponsoring parties' willingness to adjust contribution rates and benefit levels. Accordingly, although we believe that the proposed premium may reasonably

be expected to support the costs of the program, the bill provides that PBGC must report to the Congress at least every five years concerning the need for, or appropriateness of, adjustments in benefit and guarantee levels. It also provides a mechanism for the adoption of such adjustments.

In conclusion, we believe that these proposals reflect the interests of both employers and employees and that they will make termination insurance work for multiemployer pension plans. Multiemployer plans may be the only way that millions of workers in the private sector can earn vested retirement benefits. Enactment of the proposed bill would be a significant step toward assuring those workers that they will receive pensions even if their pension plan fails.

That concludes my statement, Mr. Chairman. I would be happy to answer any questions you may have.

Senator BENTSEN. Our next witness will be Mr. Robert Georgine, president, Building Trades Department, AFL-CIO.

Senator PACKWOOD. While he is taking his seat, could I say a word, Mr. Chairman?

Senator BENTSEN. Yes, of course.

Senator PACKWOOD. I have got to go to another meeting but I wanted to congratulate Mr. Georgine on the coalition that he has put together and the effort that I think you have made in good faith in making this program workable. There were some legitimate problems on behalf of employers—in some cases, I believe, some illegitimate ones—but I think you have done a magnificent job in what you have pulled together, and you should be congratulated.

Mr. GEORGINE. Thank you very much, Senator Packwood.

Senator BENTSEN. Now, Mr. Georgine, why do you not tell me what kind of a job you did?

Mr. GEORGINE. I hope as good as Senator Packwood said.

Mr. Chairman, I have a longer statement that I have submitted for the record and I have a much shorter statement which does not go into as much detail but I think perhaps maybe we can get into the detail after any questions, if you would like.

I would like your permission to read the shorter statement.

Senator BENTSEN. All right, fine.

STATEMENT OF ROBERT GEORGINE, PRESIDENT, BUILDING TRADES DEPARTMENT, AFL-CIO

Mr. GEORGINE. As chairman of the National Coordinating Committee for Multiemployer Plans I would like to thank the committee for this opportunity to testify in support of the proposed legislation.

I also would like to request that my prepared statement be placed in the record.

The coordinating committee represents the interests of 8 million participants and has among its affiliates over 140 international unions. Their related and pension and welfare funds are in the local Taft-Hartley trusts.

These affiliates are in the construction industry, the food and beverage trades, the needle trades, the maritime trades, as well as in office work and heavy industry.

We who are involved in multiemployer plans feel that their continued existence and health must be an important goal for everyone concerned about providing pension benefits for the working men and women in this country and their families.

Multiemployer plans serve a need that simply could not be met by the single employer plan system. Unfortunately, fundamental aspects of the originally conceived system for guarantee and multiemployer plan benefits, a system now scheduled to take effect on May 1 of this year, threaten not only the health of such plans but of the benefit guaranty system as well.

I personally believe that allowing the current law to take effect on May 1 would prove disastrous to this country's multiemployer plan system because of the seriousness of the flaws in the existing system of guarantees.

I cannot stress too strongly the need for prompt enactment of legislation modifying the multiemployer plan provisions of title IV of ERISA. Moreover, the controversy surrounding multiemployer plans as a result of current law and uncertainty about legislative revision, is itself a big part of the problem.

Plans, participants, beneficiaries and contributing employers alike all deserve some certainty as to what their rights and obligations will be.

Mr. Chairman, the proposed legislation, specifically the concepts embodied in H.R. 3904 as favorably reported out by the unanimous vote of the House Committee on Education and Labor, squarely addresses the significant problems with current law that I have alluded to.

We have supported H.R. 3904 in the House and we urge strongly the adoption of its fundamental principles here for two very basic reasons. First, the provisions of H.R. 3904 reflect, in our judgment, the most workable and equitable solutions to the serious problems posed by current law. Just as importantly, there now exists an incredible, though fragile, coalition of support for H.R. 3904 which must not be allowed to unravel.

It is my sincere belief that virtually all substantial interests affected, both employer and employee interests, now support H.R. 3904 as reported out of the House Committee on Education and Labor.

The current near-consensus on the bill is the product of much work and of painstaking and delicate negotiations. Agreement on the appropriate level of premiums and of benefit guarantees was among the most difficult obstacles to formation of this coalition.

Changes from the provisions of H.R. 3904 in this respect will undoubtedly threaten the broad-base support the legislation now enjoys, thereby placing in doubt enactment by May 1.

We strongly urge the committee to avoid controversial changes of this nature.

Mr. Chairman, we also strongly support the guarantee levels provided in H.R. 3904. There are two reasons for that support.

First, multiemployer plans are established and maintained pursuant to collective bargaining. The guarantee system cannot work if all of the disincentives to withdrawal and to plan termination are imposed only on one side of the bargaining table.

H.R. 3904 imposes a significant, and we believe appropriate, disincentive on the labor side of this table by providing reduced guarantees for the portion of the retiree's benefit exceeding approximately $125 to $130 a month.

Where the parties to these negotiations are willing to pay a separate and additional premium for higher guarantee levels, this could be done under H.R. 3904.

Second, we believe that the premium provided for in H.R. 3904, an affordable premium which all parties to the coalition I spoke of earlier are ready to accept, represents a responsible matching with the level of guarantee set forth in H.R. 3904.

Increased guarantee levels would likely mean increased premium levels, not only because more of each benefit would be guaranteed, but also because the disincentive to withdraw would be decreased.

More withdrawals means more terminations and more costs imposed on the guaranty system. The higher premium would have to come either at the expense of the benefits, or at an additional expense to contributing employers, thus imposing an unwanted additional pressure at the bargaining table.

This additional pressure would be particularly unfortunate at a time when the uncertainty surrounding the future of multiemployer plans generally had not yet been laid to rest.

In conclusion, Mr. Chairman, I would like to reiterate in the strongest possible terms the coordinating committee's support for a bill which is substantially equivalent to H.R. 3904 as reported out of the Committee on Education and Labor, because the guarantee provisions of existing law and all their attendant problems, will otherwise be upon us beginning May 1.

Prompt, favorable action on such legislation is of the utmost importance. The broad-based coalition of support for H.R. 3904, including virtually all significant labor and management interests affected, underscores the importance of such legislation to the country's multiemployer plan system.

These plans provide the only significant pension benefits for millions of working men and women in this country. The continued health and existence of such plans is, therefore, of vital concern to the coordinating committee and to me personally and I am confident that you share our concern also, Mr. Chairman.

Senator BENTSEN. Let me say, Mr. Georgine, I have a deep respect for the work you have done and I am very much interested in pension benefits, obviously, or I would not have been on this committee and would not have done the work I did in 1974.

I am delighted to see that kind of a coalition. I want to satisfy myself, though, that the taxpayers are part of that coalition. It does not mean that the taxpayers finally bail the whole thing out and that is why I want to study this before I decide that I want to support it.

Mr. GEORGINE. I understand that, Senator, and I fully appreciate your concern for the taxpayers. We also have the same concern for the taxpayers, all of which are participants in our plan.

Senator BENTSEN. I understand that. Thank you very much for your testimony.

Mr. GEORGINE. Thank you, Senator.

[The prepared statement of Mr. Georgine follows. Oral testimony continues on p. 155.]

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National Coordinating Committee for Multiemployer Plans

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Statement

by

Robert A. Georgine, Chairman

National Coordinating Committee for
Multiemployer Plans

to

Committee on Finance

The United States Senate

March 18, 1980

As Chairman of the National Coordinating Committee for Multiemployer Plans, I would like to thank the Committee for this opportunity to testify in support of the proposed legislation. Let me begin by describing the Coordinating Committee itself.

The National Coordinating Committee for Multiemployer Plans is a nonprofit corporation representing the interests of eight million participants in collectively bargained multiple employer plans. The Coordinating Committee's affiliates include over 140 international unions, their related pension and welfare funds and local Taft-Hartley trusts. These affiliates are in the construction industry, the food and beverage trade, the needle trades, the maritime trades, as well as in office work and heavy industry. Together, the affiliates of the Coordinating Committee represent the great majority of the participants in multiemployer plans.(1)

The Coordinating Committee has its origins in the period surrounding the enactment of ERISA, the Employee Retirement Income Security Act of 1974. During and since that period we have sought to assure awareness of the unique characteristics of multiemployer plans, and the

consequent differences that should be drawn between the regulation of multiemployer and single-employer plans.

Historically, multiemployer plans were most often established in industries where there was little likelihood that meaningful benefits could be provided by single-employer plans. In some industries, such as construction, employees are generally hired for a specific project, and their employment terminates when the job is finished. In other industries, conditions of fierce competition, frequent business failures, or recurring layoffs prevent the establishment of a stable employer-employee relationship. In industries of these kinds, workers cannot obtain meaningful pension rights under a single-employer plan. Collectively-bargained, multiemployer plans were developed to provide pensions to workers in these highly volatile industries.

Besides allowing workers in such industries to earn benefits in the first place, multiemployer plans offer several inherent advantages to their participants and beneficiaries. For example, because a participant's benefit is not generally dependent on the continuing

participation, or even existence, of a particular employer, such plans provide an automatic form of termination insurance. Thus, the employees of an employer who gets into financial difficulty or who goes out of business will generally continue to receive pension benefits from a multiemployer plan in which such employer participated. Furthermore, the ability to earn pension credits for service with a number of different employers gives participants in multiemployer plans a form of benefit portability not generally available.

For reasons such as those I have stated, we who are involved with such plans feel that their continued existence and health must be an important goal for everyone concerned about providing pension benefits for the working men and women of this country and their families. Unfortunately, fundamental aspects of the originally-conceived system for guaranteeing multiemployer plan benefits, a system now scheduled to take effect on May 1 of this year, threaten not only the health of such plans, but of the benefit guarantee system as well. I personally believe that allowing the current law to take effect on May 1 would prove disastrous to this country's multiemployer plan system.

Because of the seriousness of the flaws in the existing system of guarantees, flaws I will outline in a moment, I cannot stress too strongly the need for prompt enactment of legislation modifying the multiemployer-plan provisions of Title IV of ERISA.

The most serious problems with the current law include the following. First, although multiemployer plans generally have an inherent stability attributable to their ability to look to more than one employer for contributions, changing economic and technological conditions have created instances of what is sometimes referred to as the "dying industry" problem. In such industries, long-term declines in employment have eroded significant portions of the plan's contribution base. Employers and others are concerned that under provisions of existing law termination of such plans could impose large, contingent liabilities on the plan's contributing employers, and large costs on the guarantee system generally. Because the guarantee system is funded by premiums which all multiemployer plans pay, participants and beneficiaries in other plans would ultimately bear the burden which must be absorbed by the guarantee system.

Second, the current guarantee system has aspects

which actually encourage employer withdrawal, and thereby increase the risk of plan termination. Under current law, an employer that withdraws from a multiemployer plan at least five years before the plan terminates has no ultimate liability, either withdrawal or termination, for any portion of the unfunded liabilities of the plan. In itself, this fact encourages withdrawal. Moreover, because ERISA requires the gradual funding of all unfunded liabilities, such employer withdrawals increase the funding obligations of those employers remaining in the plan. This arrangement has threatened to create a "last man out" mentality under which employers who fear contingent liability rush to withdraw from the plan. Such withdrawals actually increase the likelihood of termination, and, in a "vicious circle" kind of reasoning, justify the fear that prompts the employer's withdrawal in the first place.

Unfortunately, the 100 percent guarantee of benefits that would be provided by current law would mean that workers and their representatives may have little incentive to oppose such withdrawals, or to fight for the continued existence of the plan. As long as a worker's

benefit is 100 percent guaranteed, he will generally receive the same benefit, whether or not the plan terminates. Thus, the current system creates both an incentive for employers to withdraw, and an atmosphere in which workers and their representatives may feel no compulsion to oppose such withdrawals even where they threaten to result in the termination of the plan and the imposition of great cost on the guarantee system.

Finally, the current system allows, in some circumstances, the "dumping" on a multiemployer plan of significant benefit liabilities which will never be funded by the employer in whose service such benefits were earned. Such may be the case, for example, where an employer participates only for a short time, but his participation generates significant obligations in the plan with respect to his employees. This may increase the likelihood of plan termination, and is generally unfair to the other employers participating in the plan.

Mr. Chairman, the proposed legislation, specifically the concepts embodied in H.R. 3904 as favorably reported out by the unanimous vote of the House Committee

on Education and Labor, squarely addresses these problems. We have supported H.R. 3904 in the House, and we urge strongly the adoption of its fundamental principles here, for two very basic reasons.

First, as I will explain in a moment, the provisions of H.R. 3904 reflect the most workable and equitable solutions to the serious problems posed by current law. Second, there now exists an incredible, though fragile, coalition of support for H.R. 3904.

It is my sincere belief that virtually all substantial interests affected, both employer and employee interests, now support H.R. 3904 as reported out by the House Committee on Education and Labor. The current near-concensus on the bill is the product of much work and of painstaking and delicate negotiations. In light of the May 1 deadline, I must stress above all other points that the broad-based coalition of support for H.R. 3904 should not be allowed to unravel because of controversial changes and amendments or delay in the legislative process. As I will discuss in a moment, agreement on the appropriate level of premiums and of benefit guarantees was among

the most difficult obstacles to formation of this coalition. Changes from the provisions of H.R. 3904 in this respect will undoubtedly threaten the broad-based support the legislation now enjoys, thereby placing in doubt enactment by May 1. We strongly urge the Committee to avoid controversial changes of this nature.

Having described the major problems in existing law and the process by which a broad concensus as to the merits of the current bill was reached, I would like to outline briefly how the proposed legislation will help assure the continued existence and health of this country's multiemployer plan system. First, the bill will eliminate the potentially disastrous "last man out" problem I discussed earlier. Because withdrawing employers will, upon such withdrawal, generally be responsible for a reasonable and equitable share of the plan's unfunded liabilities, the incentive to withdraw in order to avoid such responsibility will be eliminated. (It is worth noting parenthetically that withdrawal liability will not have to be paid in a lump sum upon withdrawal, but rather may be paid over a period of years based on what

the employer was obligated to contribute before such withdrawal.) Removal of the incentive to withdraw will help to dissipate the current crisis of confidence as to the future of multiemployer plans. By assuring continuance of a broad funding base, removal of the withdrawal incentive will significantly decrease the likelihood of plan insolvency or termination. Furthermore, the imposition of withdrawal liability will prevent the "dumping" on multiemployer plans of unfunded benefit obligations in the manner I spoke of earlier. Employers who withdraw from a plan after causing the plan to generate or assume benefit obligations will generally remain responsible for funding an equitable share of the plan's unfunded obligations.

Second, under the proposed legislation, plan termination will no longer be the event triggering coverage by the PBGC. Employers will be obligated to continue funding a terminated plan; only when a plan becomes insolvent will financial assistance be provided. If a plan's financial difficulties are only temporary, the financial assistance provided by the PBGC, from the fund

maintained by multiemployer plan premiums, will allow the plan to recover, rather than terminate, and to repay the financial assistance received. This is only one of several aspects of the bill designed to insure the continuance, rather than the termination, of multiemployer plans in financial difficulty.

Third, under the proposed legislation, most multiemployer plan pension benefits will be 100 percent guaranteed to the extent of the first 125 to 150 dollars per month, while benefits in excess of this amount would generally be guaranteed at a reduced level. The Coordinating Committee hopes that each worker will receive every dollar of his promised benefits, but a guarantee of less than 100 percent serves, in our judgment, several beneficial purposes. For example, it helps to keep the cost of the guarantee system at an affordable level, a level at which the premiums to fund the guarantee will not have to be so large that premium payments significantly erode the plan's ability to provide benefits. Furthermore, it keeps the worker and his bargaining representatives vitally interested in both continuance of the plan and

responsible funding of the plan's benefit obligations. I believe that a reduced level of guarantee will be an important factor in assuring the continuance of multi-employer plans, and as such, helps to insure the maximization of benefits actually received by the working men and women of this country.

Mr. Chairman, we support the level of guarantees provided in H.R. 3904 for two reasons. First, multi-employer plans are established and maintained pursuant to collective bargaining. As I suggested earlier, the guarantee system cannot work if all of the disincentives to withdrawal and to plan termination are imposed only on one side of the bargaining table. H.R. 3904 imposes a significant, and we believe appropriate, disincentive on the labor side of this table. Where the parties to these negotiations are willing to pay an additional premium for higher guarantee levels, this could be done under H.R. 3904.

Second, we believe that the premium provided for in H.R. 3904, an affordable premium which all parties to the coalition I spoke of earlier are ready to accept,

represents a responsible matching with the level of guarantees set forth in H.R. 3904. Increased guarantee levels would likely mean increased premium levels, not only because more of each benefit would be guaranteed, but also because the disincentive to withdrawal would be decreased. A higher premium would have to come either at the expense of benefits or at additional expense to contributing employers, thus imposing an unwanted, additional pressure at the bargaining table. This additional pressure would be particularly unfortunate at a time when the uncertainties surrounding the future of multiemployer plans generally had not yet been laid to rest.

In conclusion, Mr. Chairman, I would like to reiterate, in the strongest possible terms, the Coordinating Committee's support for a bill which is substantially equivalent to H.R. 3904 as reported out of the Committee on Education and Labor. Because the guarantee provisions of existing law, and all their attendant problems, will otherwise be upon us beginning May 1st, prompt, favorable action on such legislation is of the utmost importance. The broad-based coalition of support for H.R. 3904, including virtually all significant labor and

management interests affected, underscores the importance of such legislation to the country's multiemployer plan system. As I stated earlier, such plans provide the only significant pension benefits for millions of working men and women in this country. The continued health and existence of such plans is therefore of vital concern to the Coordinating Committee and to me personally. I am confident that you share our concern.

Thank you very much.

Senator BENTSEN. Our next witness will be Mr. Robert Bibb, chairman of the board, National Construction Employers Council.

STATEMENT OF ROBERT BIBB, CHAIRMAN OF THE BOARD, NATIONAL CONSTRUCTION EMPLOYERS COUNCIL

Mr. BIBB. My name is Robert L. Bibb, Jr., and I am chairman and chief executive officer of the National Machine Co., a 92-year-old mechanical contractor and construction corporation in Nashville, Tenn.

I am accompanied this morning by Richard J. Grunewald, president of NCEC.

I am also chairman of the board of the National Construction Employers Council—NCEC. The NCEC membership consists of 17 major employer trade associations representing all facets of the unionized construction industry and encompassing over 90,000 individual contractors. Our membership list is attached to the copy of our testimony with which you have been provided.

Construction is this Nation's largest industry and accounts for over 50 percent of all multiemployer pension plans. We welcome this opportunity, Mr. Chairman, to appear before your committee today.

Before commenting on H.R. 3904 as reported out by the House Education and Labor Committee, we would like to remind the committee that unless Congress amends title IV of ERISA prior to May 1, 1980, it will be put into effect with catastrophic impact on the entire multiemployer plan system.

We offer the following examples. Drastic, contingent liabilities will be imposed on employers even though they made all required contributions.

Contingent employer liability insurance, CELI, committed in the law to protect the employer against such liabilities according to PBGC, is not workable, so the employer would be left holding the bag.

There would be incentives to withdraw from the plan and employers who continue to support plans would inherit the liabilities of those who withdraw.

There would be inadequate control on plans and their funding and there would be no recognition of the uniqueness and particular

needs of the construction industry, the majority industry in the entire multiemployer plan system.

NCEC believes the multiemployer plan concept is basically sound. However, if the provisions of ERISA now in Title IV go into effect on May 1, 1980 without change, it could be the beginning of the end of multiemployer plan systems with resulting disaster for the many employees we all want to protect.

We would now like to comment on H.R. 3904.

The staff of the Pension Benefit Guaranty Corporation—PBGC—turned out in the initial bill, which was thoughtfully drawn and addressed the key problems. The staff and Members of Congress on the House Pension Task Force and the House Committee on Education and Labor have given much time and thought to consider and make improvements to the bill.

In addition, many members of management and labor who are directly involved in multiemployer plans have contributed much in a positive way to share their experience and present sound ideas which have improved the legislation substantially.

This has been a remarkable achievement in commitment and cooperation.

In the construction industry, labor and management have worked out a significant and precedent-setting agreement that outlines our joint legislative objectives which, when met, will bring about necessary and constructive changes in the multiemployer plan provisions of the law, changes which not only are essential to construction but also essential to preserve the multiemployer plan system and assure its vitality.

Mr. Louis Diamond has just joined us, Mr. Chairman. Mr. Diamond, counsel to NCEC.

Senator BENTSEN. All right.

Mr. BIBB. A copy of this joint agreement between NCEC and the National Coordinating Committee for Multi-Employer Plans—NCCMP—is attached to your copy of this testimony. H.R. 3904 in the form reported out by the House Committee on Education and Labor meets extremely important objectives.

We believe that H.R. 3904 provides a monitor of the multiemployer plan system, the PBGC, which will make sure that provisions of the bill are carried out and that pension plans will meet funding standards that will assure delivery of promised employee benefits.

It establishes controls and incentives which will result in better management of funds and the setting of benefits in a prudent and realistic manner, establishes minimum funding requirements so that contribution levels will be adequate and not so unrealistic as to create a financing problem for the contributing employer.

It makes it possible for the employer who remains a plan participant and contributor to be free of any unknown liability while at the same time imposes penalties on the employer who withdraws.

Through the insurance program, it guarantees pension benefits at realistic levels to retirees and vested employees, if the plan becomes insolvent.

Beyond this, H.R. 3904 recognizes and makes provision for the unique characteristics and requirements of the construction industry represented by NCEC.

We have provided you with a supplement to our written testimony which spells out those significant provisions of H.R. 3904 which are so essential and meaningful to the union contractor. We believe, Mr. Chairman, that in general H.R. 3904 as reported out by the House Education and Labor Committee meets NCEC's primary objectives.

We also believe that it meets the understandings we reached in the joint agreement between NCEC and our union counterparts, NCCMP.

We expect that your committee fully appreciates the significance of this joint labor-management agreement and its importance in its substance to the bill and the preservation of the entire multiemployer plan system.

We would like to assure you and the Committee on Finance, Mr. Chairman, that if H.R. 3904 is passed in the House of Representatives in the form we expect it will be, a companion bill in the Senate, which might incorporate acceptable improvements to be considered by the two Senate committees, will have the endorsement and support of NCEC and its 17 member associations. We urge the passage of this corrective legislation prior to the May 1, 1980, deadline.

We appreciate this opportunity to present our testimony.

Senator BENTSEN. Thank you very much. Your time has expired and we are very appreciative of your testimony. We will take it in its entirety for the record.

We have so many witnesses this morning we are going to have to abide by the limitation we advised you on ahead of time.

Mr. BIBB. Thank you, Mr. Chairman.

[The prepared statement of Mr. Bibb follows:]

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TESTIMONY OF THE

NATIONAL CONSTRUCTION EMPLOYERS COUNCIL

BEFORE THE

SENATE COMMITTEE ON FINANCE

REGARDING H.R. 3904 (S. 1076) AND MULTIEMPLOYER RETIREMENT PLANS

March 18, 1980

My name is Robert L. Bibb, Jr. and I am chairman and chief executive officer of the Nashville Machine Company, a mechanical contracting construction corporation from Nashville, Tennessee. I am also chairman of the board of the National Construction Employers Council (NCEC). I am accompanied this morning by Richard J. Grunewald, president of NCEC and Louis H. Diamond, Esquire, counsel to NCEC. The NCEC membership consists of seventeen major employer trade associations representing all facets of the unionized construction industry and encompassing over 90,000 individual contractors. Our membership list is attached to the copy of our testimony with which you have been provided. Construction is this nation's largest industry and accounts for over 50% of all multiemployer pension plans.

We welcome the opportunity, Mr. Chairman, to appear before your Committee today.

Before commenting on H.R. 3904, as reported out by the House Education and Labor Committee, however, we would like to remind the Committee that unless Congress amends Title IV of ERISA prior to May 1, 1980, it will be put into effect with catastrophic impact on the entire multiemployer plan system. We offer the following examples:

- Drastic contingent liabilities would be imposed on employers even though they made all required contributions.
- Contingent Employer Liability Insurance (CELI) committed in the law to protect the employer against such liabilities, according to the PBGC, is not workable, so the employer would be left holding the bag.

- There would be incentives to withdraw from plans and -
- Employers who continue to support plans would inherit the liabilities of those who withdraw.
- There would be inadequate control on plans and their funding.
- There would be no recognition of the uniqueness and particular needs of the construction industry, the majority industry in the entire multiemployer plan system.

NCEC believes the multiemployer plan concept is basically sound. NCEC also believes, however, that if the provisions of ERISA, now in Title IV go into effect on May 1, 1980, without change, it could be the beginning of the end of the multi-employer plan system with resulting disaster for the many employees we all want to protect.

We would now like to comment on H.R. 3904.

The staff of the Pension Benefit Guaranty Corporation (PBGC) turned out the initial Bill which was thoughtfully drawn and addressed the key problems. The staff and Members of Congress on the House Pension Task Force and the House Committee on Education and Labor have given much time and thought to consider and make improvements in the Bill. In addition, many members of management and labor, who are directly involved in multiemployer plans, have contributed much, in a positive way, to share their experience and present sound ideas which have improved the legislation substantially. We believe this has been a remarkable achievement in commitment and cooperation.

In the construction industry, labor and management have worked out a significant and precedent-setting agreement that outlines our joint legislative objectives which, when met, will bring about necessary and constructive changes in the multiemployer plan provisions of the law -- changes which not only are essential to construction, but also essential to preserve the multiemployer plan system and assure its vitality. A copy of this joint agreement between NCEC and the National Coordinating Committee for Multiemployer Plans (NCCMP) is attached to your copy of this testimony.

NCEC believes that H.R. 3904, in the form reported out by the House Commitee on Education and Labor, meets extremely important objectives. We believe that H.R. 3904:

1. provides a monitor of the multiemployer pension plan system (the PBGC) which will make sure that provisions of the Bill are carried out and that pension plans will meet funding standards that will assure delivery of promised employee benefits.
2. establishes controls and incentives which will result in better management of funds and the setting of benefits in a prudent and realistic manner.
3. establishes minimum funding requirements so that contribution levels will be adequate and not so unrealistic as to create a financing problem for the contributing employer.
4. makes it possible for the employer who remains a plan participant and contributor to be free of any unknown liability while at the same time imposes penalties on the employer who withdraws.
5. through the insurance program, guarantees pension benefits at realistic levels to retirees and vested employees if a plan becomes insolvent.

and beyond this, H.R. 3904:

- recognizes and makes provision for the unique characteristics and requirements of the construction industry represented by NCEC.

We have provided you with a supplement to our written testimony which spells out those significant provisions of H.R. 3904 which are so essential and meaningful to the union contractor.

We believe, Mr. Chairman, that, in general, H.R. 3904, as reported out by the House Education and Labor Committee meets NCEC's primary objectives. We also believe that it meets the understandings we reached in the joint agreement between NCEC and our union counterparts (NCCMP). We expect that your Committee

fully appreciates the significance of this joint labor/management agreement and its importance, in its substance, to the Bill and to the preservation of the entire multiemployer plan system.

We would like to assure you and the Committee on Finance, Mr. Chairman, that if H.R. 3904 is passed in the House of Representatives in the form we expect it will be, a companion Bill in the Senate, which might incorporate acceptable improvements to be considered by the two Senate Committees, will have the endorsement and support of NCEC and its seventeen member associations. We urge the passage of this corrective legislation prior to the May 1, 1980 deadline.

We appreciate this opportunity to present our testimony.

Robert L. Bibb, Jr.
Chairman
National Construction Employers Council

Attachments:
1. Membership List
2. Joint Agreement - NCEC/NCCMP
3. Supplemental Testimony

NCEC National Construction Employers Council

MEMBER ASSOCIATIONS

ASSOCIATED GENERAL CONTRACTORS (AGC)

CEILINGS & INTERIOR SYSTEMS CONTRACTORS ASSOCIATION (CISCA)

CONTRACTORS MUTUAL ASSOCIATION (CMA)

GLAZING CONTRACTORS LABOR COMMITTEE (GCLC)

MASON CONTRACTORS ASSOCIATION OF AMERICA (MASONS)

MECHANICAL CONTRACTORS ASSOCIATION OF AMERICA, INC. (MCAA)

NATIONAL ASSOCIATION OF CONSTRUCTION BOILERMAKER EMPLOYERS (NACBE)

NATIONAL ASSOCIATION OF HOME BUILDERS (NAHB)

NATIONAL CONSTRUCTORS ASSOCIATION (NCA)

NATIONAL COUNCIL OF ERECTORS, FABRICATORS & RIGGERS (NCEFR)

NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, INC. (NECA)

NATIONAL ELEVATOR INDUSTRY, INC. (NEII)

NATIONAL ERECTORS ASSOCIATION (NEA)

NATIONAL INSULATION CONTRACTORS ASSOCIATION (NICA)

NATIONAL ROOFING CONTRACTORS ASSOCIATION (NRCA)

PAINTING & DECORATING CONTRACTORS OF AMERICA, (PDCA)

SHEET METAL & AIR CONDITIONING CONTRACTORS' NATIONAL ASSOCIATION, INC. (SMACNA)

January 23, 1979

Suite 200, 2033 K Street, N.W., Washington, D.C. 20006 (202) 223-1510

JOINT AGREEMENT OF

NCEC National Construction Employers Council

RICHARD J. GRUNEWALD
PRESIDENT

AND

National Coordinating Committee for Multiemployer Plans

Robert A. Georgine, Chairman

On May 1, 1980, the current law regarding termination insurance for multiemployer plans is scheduled to go into effect. That law is basically the same one that is designed for, and being applied to single employer plans. If the current law were to become effective without substantial modification, it would wreak havoc with employees covered by multiemployer pension plans, as well as with plan sponsors.

As presently stated, the law promotes plan termination rather than encouraging plan growth. It rewards employers who leave at the earliest possible date and punishes those who remain faithful to the pension promises made to their employees. Further, it jeopardizes the financial security of soundly financed plans by threatening to impose upon them the burden of insuring declining plans.

Multiemployer plans are the direct result of the collective bargaining process. These plans are an excellent example of the good that can be achieved as a result of labor-management cooperation. Millions of employees have benefited from these plans and have come to depend upon them for their future security. It is imperative that multiemployer plans flourish.

In order to save the multiemployer plan system, cooperation between labor and management cannot stop at the bargaining table. A joint effort is necessary to urge Congress to revise the termination insurance law as it applies to multiemployer plans.

It is with this in mind that the parties to this agreement address themselves to the legislation (H.R.3904, S.1076) before the Congress which does significantly revise the multiemployer termination insurance program. Our support for the legislation is predicated upon the conviction that no contributing employer who retains its affiliation with the plan should be obligated by the legislation to contribute more than the rate or amount contracted for through the collective bargaining process.

Our support is further predicated upon our understanding of the legislation as stated below;

1. Upon insolvency, the only obligation of an employer who retains its affiliation with the plan, is to continue making contributions for hours actually worked at a rate no higher than the bargained contract rate in existence prior to insolvency.

2. There is no withdrawal liability for any construction employer, (including one who only temporarily contributes to the plan) who ceases to work in the jurisdiction of the plan.

3. There is no withdrawal liability for a construction employer who, in fact, without regard to motivation, ceases doing business, including one who sells his business.

4. Since there is no "contingent" liability under this bill, there is no obligation to footnote any such "contingent" liability in employer financial statements.

5. There is no withdrawal liability for "small" employers, as defined by the proposed legislation.

In addition to the above, we agree that in order to achieve our objectives, the following elements should be included in any legislation enacted on termination insurance for multiemployer plans. They are the following:

1. Withdrawal liability, where applicable, should be paid in quarterly installments of an annual amount equal to the withdrawing employer's average annual required contribution for the five years preceding withdrawal.

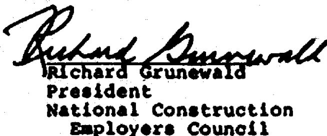
2. A "safe-harbor" rule is necessary to limit the amount of increase in any given year in the plan's funding standard account resulting solely from the operation of this Bill, e.g. an increase mandated by the Minimum Contribution Requirement.

3. In order to avoid saddling plans and employers with an unbargained for liability which might force otherwise healthy plans into termination, a provision should be made for federal assistance to "declining" plans.

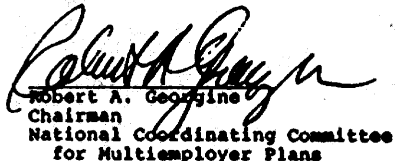
4. The statute should not authorize a plan to impose liability on a withdrawing construction employer who would not otherwise be liable under the construction exemption merely because the employer is a "long-term contributor".

5. The Bill or its legislative history should provide specific guidance in determining under what circumstances a "substantial reduction" in employer contributions would result in withdrawal liability. Specifically, it should be made clear that the ebb and flow of the work in the construction industry, and among individual employers which is one of its unique characteristics, should not result in withdrawal liability.

In reaching this accord we recognize that there is nothing less at stake than the preservation of the multiemployer plan system. We believe that through active cooperation between labor and management, the preservation and vitality of multiemployer plans can be achieved.



Richard Grunewald
President
National Construction
Employers Council



Robert A. Georgine
Chairman
National Coordinating Committee
for Multiemployer Plans

December 10, 1979

SUPPLEMENT TO THE TESTIMONY OF THE
NATIONAL CONSTRUCTION EMPLOYERS COUNCIL
AS PRESENTED TO THE
SENATE COMMITTEE ON FINANCE
REGARDING H.R. 3904 (S.1076) AND MULTIEMPLOYER RETIREMENT PLANS

March 18, 1980

In NCEC's prepared testimony, reference was made that H.R. 3904, as reported out by the House Education and Labor Committee, "recognizes and makes provision for the unique characteristics and requirements of the construction industry represented by NCEC." There are many favorable provisions of H.R. 3904, which NCEC supports, but this supplement spells out those significant provisions which are so essential and meaningful to the union contractor:

1. Any contractor who continues to be a plan participant and makes the contributions required by the collective bargaining agreement will never have to be concerned about any withdrawal liability payments.
2. There is no withdrawal liability for any construction contractor (including one who only temporarily contributes to a plan) who ceases to work in the jurisdiction of the collective bargaining agreement, goes out of business, sells his business or is considered to be a small business.
3. Because construction can have drastic shifts in employment levels, with the resulting highs and lows in contribution requirements, there is no withdrawal liability caused by such peaks and valleys.
4. There is no withdrawal liability when a contractor suspends contributions to a plan during a labor dispute with employees.

5. The contractor is considered to have withdrawn only when he has no obligation to contribute under the plan, continues to perform the same type work in the jurisdiction of the collective bargaining agreement or resumes such work within 5 years.
6. When a plan is frozen, terminates or becomes insolvent, the contractor's only obligation is to continue to make contributions at the rate in effect at the time such action takes place.
7. A contractor who does, in fact, withdraw, may pay off his obligation in installments based upon the average contributions he made over a period of years and make such payments for a limited number of years.
8. A contractor who withdraws and rejoins a plan, will make no further withdrawal payments and will make only the contributions required by the collective bargaining agreement.
9. If a plan becomes insolvent, H.R. 3904 would provide guaranteed benefits at respectable levels considerably below 100% as an incentive for trustees to manage funds in a manner which would prevent involvency and assure benefit payments at the 100% level.
10. Provides the guaranteed benefits when a plan is insolvent through an insurance program which requires each plan to pay a modest annual premium for each employee participant.
11. In the event that a plan has a funding deficiency, mandated contributions increases cannot exceed 7% per year and any such increase cannot be used to increase benefits.
12. Pension service credits will accumulate in direct proportion to hours worked by the participating employee.

Much confusion and misunderstanding has existed on a very complex issue as to just what H.R. 3904 will do for multiemployer plans, contractors and workers in the unionized segment of the construction industry. This supplement is provided as an important means to communicate to the Committee on Finance, other Members of Congress and the entire construction community, the provisions of H.R. 3904 which are of great importance to the union contractor, the workers and of great benefit to the entire multiemployer plan system.

Robert L. Bibb, Jr.
Chairman
National Construction Employers Council

Senator BENTSEN. Our next witness will be Mr. Ronald Whillock, controller—employee benefits, Evans Products Co.

Mr. WHILLOCK. Mr. Chairman, my name is Ron Whillock. I am controller of employee benefits with Evans Products Co.

Senator BENTSEN. If you would please abide by the 5-minute limitation, because we have quite a number of witnesses who have asked to testify, and we will take your entire testimony for the record.

Mr. WHILLOCK. Thank you, Mr. Chairman.

With me today is Don C. Alexander, counsel.

STATEMENT OF RONALD WHILLOCK, CONTROLLER, EMPLOYEE BENEFITS, EVANS PRODUCTS CO.

Mr. WHILLOCK. Like many other witnesses here today, we agree that something has to be done to amend the provisions of ERISA to provide the guarantees for multiemployer plans. In general, we agree with the provisions of Senate bill 1076 as spelled out.

However, we are concerned with the partial withdrawal liability provisions as revised by the Subcommittee on Labor Management Relations of the House Education and Labor Committee. That committee has set up partial withdrawal liability provisions which would impose retroactive withdrawal liability on employers who announce prior to December 13, the day that these withdrawal liability provisions were first put into the bill, that they intended to close down a facility.

Among other things, Evans Products Co. engages in the manufacture of plywood and lumber in the Northwest. Included in our forest and fiber products group is a plywood and saw mill in Missoula, Mont.

In the early part of September, we announced that we were going to close this facility due to substantial losses in 4 of the last 6 years. Our plan to shut down the mill was that we would continue to run out the log inventory and the cutting contracts that we currently had.

The employees at this mill are covered by a multiemployer plan. We entered into that plan in 1972 in conjunction with the collective-bargaining agreement.

At that time, we covered these employees with a company-sponsored plan but they demanded that we join the industry plan, and we did so, even though the industry plan was going to cost us slightly more than the company-sponsored plan. We have continued to contribute for those employees to this multiemployer plan. We also contribute to this multiemployer plan on behalf of about 70 employees at another location.

Subsequent to our announcement that we were going to close this mill we have learned that the closing of this mill could result in the assessment of $1,400,000 of withdrawal liability to this plan.

Up to this point we have contributed about $1,365,000 to this plan. We have estimated that the vested interests for our employees in this plan is about $1,560,000. Using the interest assumptions that the plan currently uses, our contributions should be worth about $1,600,000.

So effectively, we have fully funded the benefits for our employees, but yet we find that we are going to have $1,400,000 of withdrawal liability based on the bill as presented.

In conclusion, I would like to see this committee look at the bill and if they implement partial withdrawal provisions, these withdrawal provisions should take into consideration inequitable situations such as ours so that small employers who have funded benefits for their employees not be subject to the withdrawal provisions.

We are a very small employer in this plant. In 4 of the last 5 years in total we have contributed less than 2 percent of the contributions to the plan. For the Missoula facility we have contributed only 1.5 percent of the contributions to the plan.

So I urge you, Mr. Chairman, that in your consideration of this bill to look closely at inequitable situations such as this where an employer did something in good faith and now finds that it is going to have retroactive liability imposed upon it.

Senator BENTSEN. Is your retroactive liability there more or less than what the norm would be under those conditions?

Mr. WHILLOCK. This is the amount computed under the presumptive rule that was in the bill that PBGC proposed. The liability is there because of the operation of the plan. The plan has merged with several employer-sponsored plans in the last few years.

The benefit level has been increased and the participation in the plan has actually grown. This is a very strong plan from within a growth industry and it is just the way the numbers work out.

Senator BENTSEN. All right. Thank you very much.

Mr. WHILLOCK. Thank you.

[The prepared statement of Mr. Whillock follows. Oral testimony continues on p. 182.]

TESTIMONY OF
RONALD L. WHILLOCK
CONTROLLER-EMPLOYEE BENEFITS
EVANS PRODUCTS COMPANY

ON

S. 1076
MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1979

BEFORE THE
COMMITTEE ON FINANCE
SUBCOMMITTEE ON PRIVATE PENSION PLANS
AND EMPLOYEE FRINGE BENEFITS

UNITED STATES SENATE

MARCH 18, 1980

Mr. Chairman and members of the Committee, my name is Ronald L. Whillock. I am Controller-Employee Benefits for Evans Products Company of Portland, Oregon. We appreciate the opportunity to appear before you today to testify on S. 1076, the Multiemployer Pension Plan Amendments Act of 1979. In particular, we would like to focus on the Bill's withdrawal liability provisions; as well as the same provisions as they have been expanded during the consideration of S. 1076 by the Senate Labor Committee and during consideration of the companion Bill, H.R. 3904, by two committees of the House of Representatives.

Initially, I would like to briefly describe our company for you. Evans Products Company is headquartered

in Portland, Oregon. Evans is made up of five operating groups, with its two main business areas conducted by its Transportation Systems and Industrial Products Group, and by its Retail Group. Our other operating groups include the Homes Group, the Shelter Products Group, and the Forest and Fiber Products Group. We have manufacturing and retail locations throughout the United States and contribute to over 15 collectively bargained multiemployer pension plans.

Our concern with the possible course of S. 1076 results from certain events which occurred at a plywood and lumber mill in Missoula, Montana which we have operated as part of the Forest and Fiber Products Group.

Before getting into the details of that, however, let me first state that we support the basic objectives underlying the Bill before you: that multiemployer pension plans need strengthening; that contributing employers to such plans should bear their fair share of liabilities accruing under a plan through a reasonable rate of contribution, and, after reasonable notice, through withdrawal liability if their contributions have been insufficient to fund liabilities created by their participation; and that workers should be able to rely on their pension plans

to provide them with retirement security when they reach retirement age. We note that that the Bill as submitted to Congress by the Pension Benefit Guaranty Corporation (PBGC) is designed to meet these objectives by strengthening the financing of multiemployer plans through tightened funding standards on an ongoing basis and through the imposition of additional liability on employers who withdraw from them.

The Bill as it is now before you does not contain any substantive provisions with regard to potential liability for the less than total withdrawal of an employer from a plan. However, Section 4201(b)(6) of the Bill provides that PBGC be given unrestricted authority to create, through regulation, liability for a private employer "when there is a substantial reduction in the employer's contribution under the plan". We note with concern that this provision is totally without definition or limitation as to (1) the circumstances under which liability may be created; and (2) the amount of such liability. Moreover, this unrestricted authority of PBGC would be retroactive to February 27, 1979.

On December 13, 1979, for the first time, specific provisions were placed in H.R. 3904 by the Subcommittee on Labor Management Relations of the House Education and Labor Committee to establish specific liability for a partial

withdrawal from a plan; again, retroactive to February 27, 1979. [1/] On January 30, 1980, the full House Education and Labor Committee made further amendments to the partial withdrawal section, expanding the definition of a partial withdrawal and continuing the retroactive effective date. Last week the Senate Labor Committee issued a Committee Print which proposes, for the first time, the addition of partial withdrawal liability, retroactive again to February 27, 1979, to S. 1076.

It is possible that both the House Committee on Ways and Means and the Senate Labor Committee _may_ modify some of the harsh effects created by the provisions relating to partial withdrawal liability during the earlier stages of consideration of H.R. 3904 and this Bill. However, we firmly believe that this Committee has the opportunity today to prevent the inequities which would arise from the arbitrary imposition of partial withdrawal liability on a retroactive basis without due regard for the individual circumstances. This Committee, if it amends S. 1076 to add partial withdrawal liability, should not impose such liability in situations where the withdrawing

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1/ Because the Bill establishes the date of partial withdrawal as the last day of the plan year in which the partial withdrawal occurred, it is possible that this retroactivity will affect employers' actions occurring in 1978.

employer is not responsible for any funding deficiencies of the plan and made business decisions before it had any notice that such decisions might require substantial penalty payment through the imposition of partial withdrawal liability.

While we are in general agreement with the proposition that a withdrawing employer should not be able to leave his liabilities behind, we must point out that the retroactive imposition of withdrawal liability could have disastrous consequences for the withdrawing employer who has acted in complete good faith on the basis of the state of the law and general public knowledge at the time. Our situation demonstrates that the imposition of retroactive liability creates a gross inequity if applied to a withdrawal like ours -- one which was publicly announced and commenced prior to the introduction of the substantive provisions regarding partial withdrawal liability.

To explain our specific concern to you, let me review the situation at our Missoula, Montana Plywood and Lumber Mill. At that facility, Evans contributes on behalf of approximately 375 employees to a multiemployer pension plan. We also contribute to the same plan on behalf of

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approximately 70 workers employed at another facility in a different state, and we expect to continue to do so. Although the plan has been in existence since 1963, Evans did not become a contributor until October 1, 1972. From our initial participation in the plan through the first part of this year, we will have contributed approximately $1,365,000 on behalf of the Missoula employees. At all times we have been a small contributor to this plan. In 1978 (the year of our largest contribution), our payment equalled just over 2% of all contributions, with those on behalf of the Missoula employees alone equalling a little more than 1.6%. This year, with the Missoula closing, we will be well under 2% of total contributions.

The Missoula mill has operated at a substantial loss in four of the last six years. As a result, and because of difficulties in securing timber in the Missoula area, we reached the conclusion last year that we could no longer operate the mill and announced in the early fall our intention to close the mill. This decision has already resulted in a write-down of more than $4.25 million. Since the decision was made, we have actively sought to place our employees in other employment, and are determined to assure that these employees' rights in their pension plan are not undercut by the mill closing. However, after inquiring into the company's potential liability to the

plan under the versions of H.R. 3904 as it has been amended, we now find that although our contributions for our Missoula employees have been more than sufficient to fund the vested liability created by our participation in the plan, the formulae would require us to pay an additional $1,400,000 in partial withdrawal liability.

According to our actuary's calculations, using the plan's own earnings assumptions, our contributions to the plan for Missoula employees have resulted in the addition of approximately $1,603,000 to the assets of the plan. However, our participation has resulted in only $1,562,000 in vested liability to the plan. 2/ The actuary's calculations for total Missoula liability include $1,217,000 for 135 vested participants; $253,000 for 11 retirees; and $92,000 for 16 deferred vested participants. This means

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2/ All calculations are based on the plan's December 31, 1978 valuation, the latest available. Evans' potential liability is based on 1975 through 1978 contributions, as the five year totals (through 1979) for the plan are not yet available. However, we believe that these figures are representative for purposes of the formula contained in H.R. 3904. Where it was necessary to make assumptions, our actuary did so in a manner which was favorable to the plan and unfavorable to the company. For example, the assumption was made that all retirees and vested, separated employees are still alive, resulting in the maximum possible figure for our vested liability.

that, as the result of our participation as a contributing employer, the plan is actually better off-- to the tune of more than $40,000. Yet, because of the unfunded, vested liabilities attributable to other employers, we would be required to contribute an additional $1,400,000 when the Missoula mill closes if the standards approved by the House Education and Labor Committee are finally enacted. Having fully covered any liability which we may have added to the fund, we would now be required to almost double our total payment in order to withdraw.

It is crucial to remember that we began our participation in the multiemployer plan in 1973, almost ten years after the plan began. This was not only before ERISA's enactment - well before any concept of withdrawal liability was considered - but also after at least some of the plan's unfunded liabilities were incurred. The most recent collective bargaining agreement requiring our contributions to the plan was effective September 1, 1977, a year and one-half before PBGC submitted any recommendations to Congress for revising the multiemployer plan termination insurance program and more than two years before any substantive liability was created with regard to partial withdrawal. PBGC submitted its recommendations on

February 27, 1979, and shows that date as the effective date for the withdrawal liability rules. This was apparently done on the theory that participating employers in multi-employer plans were thereby given notice from that date that withdrawal could lead to increased liability. That same date has been accepted by other Committees when they added partial withdrawal liability to the Bills before them.

We, of course, had entered into a contractual commitment to contribute to the plan before February 27, 1979, and that commitment is not due to expire (if the Missoula facility remains open) until August 31, 1980. Consequently, if PBGC's concept of "notice" was intended to bear any relationship to fairness and equity, we fail to understand how we could have protected our position after receiving such "notice". When we signed our last labor contract, we did not know about withdrawal liability. When we determined that the Missoula facility should be closed, we had no idea that this type of partial withdrawal would result in more than $1 million in employer liability. It should be noted that under ERISA's current rules, we could withdraw without liability because we have never been a substantial employer under the plan.

The concept of fair notice is complicated by the fact that under the Bill now before you (and the companion

Bill as introduced), we would incur no liability for the closing of the Missoula mill, because we will continue to be a contributor under the plan on account of the 70 employees at a different location. 3/ However, as a result of last December's changes to the partial withdrawal rules in the companion Bill, the mill closing will constitute a partial withdrawal and subject us to liability. Thus, until quite recently -- months after our closing was announced -- we had no way of knowing that our planned closing could have such an extensive effect on the company's financial situation.

Why is the concept of notice so crucial? Quite simply, without it, business is forced to operate in the dark. Just as the federal government must do its budget planning well ahead of each fiscal year, businesses must be able to approximate their projected incomes and expenses far in advance. Consider the magnitude of the surprise created by suggested changes to the Bill -- over the past 7-1/2 years, we have contributed $1,365,000 to the plan. If we close the Missoula mill next week, and if the House Labor version of the Bill should pass by May 1, 1980, we would be asked to contribute an additional $1,400,000 -- more than the seven years' worth of payments already made.

3/ However, PBGC apparently could, under the authority in Section 4201 (b)(6), impose partial withdrawal liability on us months, or even years, after enactment of the Bill.

Now, when we remind you that we not only have fully funded our own vested liabilities but also have made a substantial dent in the unfunded liabilities attributable to other employers, we think you can understand our objection to many of the changes which have been considered for this Bill. Companies involved in collective bargaining relationships with unions often have little to say about the method for providing pension coverage for their employees and historically have had no reason to question the use of the multiemployer plan vehicle for funding pensions. In our own case, the Missoula employees were originally covered by a company plan, but when the union in 1972 demanded our participation in its multiemployer plan, we had little reason to argue. We understood that the large size of the fund would provide investment advantages that might not be duplicated elsewhere, and that liability was limited to the contributions called for under the collective bargaining agreement. It was impossible for us to foresee that such a pooled arrangement could result in the imposition of millions of dollars in liability on account of the inability or unwillingness of other employers to meet their obligations, or on account of liabilities attributable to employers remaining in the plan after we withdrew.

Year after year, we have to project our outlays; we have to estimate our contingent liabilities to our stockholders and creditors; and we have to do our business planning based on our assumed earnings and obligations. Never have we understood that because we agreed to participate in a multiemployer plan, our estimates should have been doubled or tripled.

Accordingly, Mr. Chairman, we urge this Committee to establish partial withdrawal liability provisions on a basis which is equitable to all parties involved in the multiemployer plan system and which are framed in a manner which prevents extreme hardship for withdrawing employers who made business decisions prior to being notified that any partial withdrawal liability would be retroactively applied. We believe that such provisions must reflect the fact that no notice with regard to partial withdrawal liability was established prior to December 13, 1979, and in terms of normal, legal notice, nothing has yet appeared in the Federal Register or the Congressional Record. It must be remembered too, that both employees and employers benefit when business decisions are carried out carefully and deliberately. Therefore, as in our case, a decision publicly announced to close a plant does not mean that that plant will be closed the next day.

Rather, to have an orderly shutdown, reduce losses as much as possible and make a difficult circumstance as easy as possible on those affected, a plant closure may take many months. Nevertheless, we recognize that exceptions should not be open-ended, and believe that a finite date should be established by which an employer should have closed his facility as the effectuation of a pre-December 13 decision and announcement. We think that a one-year time limit would meet such a test.

We believe our suggested "fine tuning" is fair and equitable. It cannot create any new rush of withdrawals from established plans, but permits an employer who has acted in good faith and decided to close a facility, not to be burdened with unforeseen liability.

This concludes my statement, Mr. Chairman. We would be happy to answer any questions you may have.

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Senator BENTSEN. Our next witness is Mr. Theodore Groom on behalf of the Western Conference of Teamsters Pension Trust Fund.

Mr. GROOM. Thank you, Mr. Chairman. We also have a long statement for inclusion in the record.

STATEMENT OF THEODORE R. GROOM, ESQ., ON BEHALF OF WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND

Mr. GROOM. The Western Conference of Teamsters Pension Plan is the largest multiemployer pension plan in the United States covering the 13 Western States and approximately 500,000 participants.

Senator BENTSEN. Half a million participants.

Mr. GROOM. Yes, sir, Senator Bentsen, basically up until very recently our plan opposed quite strenuously this legislation because we felt that the legislation would only impose cost on our plan and its participants and no benefits.

Essentially there are two reasons for this belief. First, our plan is a very healthy, well-funded plan covering a wide geographic area.

Second, we think that we will never need financial assistance from the PBGC. If we had our choice, we would not participate in the system.

Senator Bentsen, our unfunded liabilities, even though it is a healthy plan, are in excess of $2 billion. So that whatever premium you set——

Senator BENTSEN. How much, did you say?

Mr. GROOM. $2 billion.

Senator BENTSEN. That is B as in baker, billion?

Mr. GROOM. Yes, sir.

So that if we were to require financial assistance, total premiums received by PBGC of $20 million, $30 million or $50 million, would be totally inadequate to provide assistance, and, in short, our participants will never get any benefits from this program.

However, we do believe that the House Education and Labor Committee bill is a reasonable compromise of all the competing interests and so we have agreed, as much as we dislike it, to support it.

Now, Mr. Chairman, I would like to turn to page 6 of my written testimony in which I address the concern which is directly of concern to you and run through just a couple of those pages with you.

Senator BENTSEN. All right.

Mr. GROOM. As reported by the House—I am reading under the heading "The premium structure of H.R. 3904 provides a financially responsible way of funding the insurance system."

As reported by the House Labor Committee, the bill provides a 9-year phasein of premiums to a level of $2.60 per participant per year as a means of financing a guarantee program based on a guarantee of 100 percent of the first $5 of the annual accrual rate and a two-tier system of either 60 percent of the next $15 or an annual accrual of 70 percent of the next $15.

The higher level is applicable to plans that, in the decade prior to ERISA, satisfied specified minimum funding levels.

The premium level and the structure of H.R. 3904 is a sound way to fund the financial assistance program for the following reasons.

First, based on the PBGC estimates, the cost of the level of guarantees as adopted in H.R. 3904 would appear to require level premiums over 20 years starting in 1981 with a range of about $1.35 to $4.37.

The $2.60 graded premium of the House bill, which I approximate to be about $2.20, is substantially above the lower side of the PBGC estimates.

I am going to skip the second paragraph.

Third, there are a number of reasons why the higher range of the PBGC cost estimates are unlikely to occur. In short, PBGC states that the higher estimates are based upon the assumptions that all employers in financially troubled plans withdraw en masse instead of reorganizing, yet the very basis of its recommendations is that plan reorganization is going to work and, as I quote from their statement, plans which take the corrective actions required by plan reorganization generally would be able to avoid termination.

Thus, the high range of PBGC cost estimates are founded upon an assumption which is directly opposite the central thesis of its entire legislative proposal. If there is a foundation for the belief that employers in financially troubled plans are more likely to withdraw en masse than reorganize, Congress should fundamentally revise all of the PBGC guarantee proposals, not just tinker with the premium.

Senator, I realize I have exceeded my time limitations, but if I could have just 2 more minutes on this subject that I think is of critical interest——

Senator BENTSEN. Yes, I want to hear this. Go ahead.

Mr. GROOM. An important element of safety in the program arises from the probable timing of events. If the mass withdrawals that would result in a higher level of costs do, in fact, occur, they would probably occur during the first two collective bargaining cycles following the adoption of the program.

However, the cost following from such withdrawals would emerge gradually over the following 15 to 20 years. This means that if the doomsday assumptions did, in fact, occur, there would be ample time to make adjustments in the program.

And now we get really down to the guts of it, in my view. Given the unknown parameters of the program, what is the prudent way to proceed?

If this program were a voluntary insurance program, it might be proper to conservatively estimate premiums and then, if they were not fully needed, return excess premiums, like a mutual insurance company does, to the premium payers. It is essential to the understanding of the PBGC proposals that they are not of this nature.

Participation is neither voluntary, nor is the program one of insurance. Rather, participants in many plans such as ours are being forced by what is essentially a tax to forgo minimum levels of retirement income so that participants in other plans can receive certain minimal guarantees.

Moreover, there is an interstitial, self-fulfilling prophecy effect to any Government program that is overfunded—more funds for the

program ultimately results in more expenditures by the program, in this case in the probable form of higher guarantees and ballooning administrative expenditures.

Senator BENTSEN. I wish that was our problem.

Mr. GROOM. In these circumstances, the prudent, disciplined course to follow is to set the premium level within a range that seems adequate, but if the PBGC believes that it is necessary to obtain more funds, make it come back to Congress to prove its case.

This procedure is absolutely essential to protect the rights of those participants whose plans are involuntarily forced to participate in the system and to provide them the assurance that this program will be maintained at the lowest costs possible.

Senator BENTSEN. Thank you very much. That is an interesting approach to it, but it is the same kind of problem we have, it seems to me, on guaranteeing deposits for banks and savings for savings and loans, and we have got some strong ones and we have got some weak ones.

Mr. GROOM. The difference is that all of the banks—when the FDIC program was adopted, all of the banks were solvent, at least at that time. This program covers many plans that are already sick.

Senator BENTSEN. Do you think they are all solvent today?

Mr. GROOM. The banks or the plans?

Senator BENTSEN. The banks, particularly the thrift institutions. Thank you very much. I have to get on.

[The prepared statement of Mr. Groom follows. Oral testimony continues on p. 206.]

March 17, 1980

Summary of Testimony
of
Theodore R. Groom

(1) The WCT Plan supports H.R. 3904 as reported from the House Education and Labor Committee.

(2) The WCT Plan believes that adoption of H.R. 3904 prior to May 1, 1980 is imperative.

(3) The WCT Plan particularly urges your adoption of three aspects of H.R. 3904 as reported from the House Labor Committee

a. The nine year phase-in of the premium from $.50 to $2.60;

b. A guarantee level of 100% of the first $5 of annual accrual plus 70% (60% in the case of plans which do not satisfy the pre-ERISA funding standards) of the next $15 of annual accrual; and

c. Strict withdrawal liability provisions.

(4) The WCT Plan strongly opposes three aspects of the March 13, 1980 Senate Labor Committee print of S. 1076

a. The excessive premium structure;

b. The unreasonably high level of benefit guarantees; and

c. The grant of discretionary authority to PBGC to provide exemptions from withdrawal liability rules for certain industries.

(5) The WCT urges the Committee's rejection of a proposal to delay the effective date for partial withdrawal from February 27, 1979 to December 13, 1979.

TESTIMONY

OF

THEODORE R. GROOM

Groom and Nordberg
Washington, D.C.

on behalf of

THE WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND

on

S. 1076
and
H.R. 3904

THE MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1979

before the

Committee on Finance
United States Senate
Subcommittee on Private
Pension Plans and Employee
Fringe Benefits

March 18, 1980

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS TED GROOM. I AM A MEMBER OF THE WASHINGTON, D.C. LAW FIRM OF GROOM AND NORDBERG. I'M APPEARING TODAY AS COUNSEL FOR THE WESTERN CONFERENCE OF TEAMSTERS PENSION TRUST FUND.

THE WCT PLAN IS THE LARGEST MULTIEMPLOYER PLAN IN THE UNITED STATES. THE PLAN CURRENTLY RECEIVES CONTRIBUTIONS ON BEHALF OF MORE THAN ONE HALF MILLION EMPLOYEES WORKING UNDER TEAMSTER COLLECTIVE BARGAINING AGREEMENTS IN THE THIRTEEN WESTERN STATES. ADDITIONALLY, THE PLAN IS NOW PAYING BENEFITS TO OVER 80,000 PERSONS. THE ASSETS OF THE WCT PLAN ARE CURRENTLY ABOUT 2.8 BILLION DOLLARS. DEPENDING ON THE MEASURE, THE WCT PLAN REPRESENTS BETWEEN 5 TO 10 PERCENT OF THE MULTI-EMPLOYER PLAN UNIVERSE.

<u>IN PREVIOUS TESTIMONY, WE HAVE OPPOSED THE LEGISLATION</u>

ON THREE PREVIOUS OCCASIONS WE HAVE TESTIFIED IN OPPOSITION TO THE PROPOSED LEGISLATION. THE REASONS FOR OUR OPPOSITION MAY BE SUMMARIZED BRIEFLY AS FOLLOWS:

1. WE BELIEVE STRONGLY THAT THE PROPOSED INSURANCE PROGRAM WILL NEVER PROVIDE ANY BENEFITS TO PARTICIPANTS IN THE WCT PLAN. THERE ARE TWO REASONS FOR THIS BELIEF. FIRST, THE WCT PLAN IS A HEALTHY, WELL-FUNDED PLAN WITH A STABLE POPULATION BASE, COVERING WORKERS IN MANY DIFFERENT INDUSTRIES IN A WIDE GEOGRAPHIC AREA. THE

CHANCES THAT THIS PLAN WILL EVER REQUIRE FINANCIAL ASSISTANCE FROM THE PBGC ARE EXTREMELY REMOTE. SECOND, IF ECONOMIC CONDITIONS IN THE UNITED STATES ARE EVER SO SEVERE THAT THIS PLAN WERE TO REQUIRE FINANCIAL ASSISTANCE FROM THE PBGC, WE BELIEVE THAT THE ASSETS OF THE PBGC (DERIVED FROM CONTRIBUTIONS OF $20 MILLION PER YEAR) WILL IN NO WAY BE ADEQUATE TO CARRY THE OVER 2 BILLION DOLLARS OF UNFUNDED LIABILITIES OF OUR PLAN.

2. WHILE OUR PLAN RECEIVES NO BENEFITS FROM THE PROPOSED SYSTEM, THE SYSTEM DOES IMPOSE A SIGNIFICANT COST ON OUR PLAN. WHILE TO MANY A PROPOSED PREMIUM LEVEL OF $2.60 PER PARTICIPANT SEEMS SMALL, IT REPRESENTS AN INCREASE OF 420 PERCENT FROM THE CURRENT LEVEL (APPENDIX I). MOREOVER, OUR PROJECTIONS INDICATE THAT THE COST OF THE PBGC PROPOSAL FOR EACH WORKER IN OUR PLAN OVER HIS WORKING LIFETIME WOULD RANGE SOMEWHERE BETWEEN $400 AND $4,000. THIS TRANSLATES INTO AN ANNUAL LOSS OF PENSION BENEFITS FOR RETIREES OF OUR PLAN RANGING BETWEEN $40 AND $400 A YEAR. OVER THE LIFETIME OF AN AVERAGE WORKER THE COST TO OUR PLAN AS A WHOLE WOULD RANGE FROM A LOW OF $175 MILLION TO OVER $1.5 BILLION. (APPENDIX II).

3. WE HAVE CONSIDERED THIS FEDERAL PROGRAM OF ADDITIONAL COSTS, BUT NO BENEFITS, AS BEING TERRIBLY

UNFAIR FOR A NUMBER OF REASONS.

-OUR PLAN IS BEING TAXED TO SUBSIDIZE OTHER PLANS WHICH WERE IN A CONDITION OF FINANCIAL DISTRESS LONG BEFORE ERISA AND WHICH MAY BE IN A CONDITION OF FINANCIAL DISTRESS AS A RESULT OF DELIBERATE, IRRESPONSIBLE CHOICES.

-THE PBGC PREMIUM REPRESENTS A TAX THAT IS IMPOSED TO FURTHER A SOCIAL WELFARE PROGRAM THAT IS ALLEGED TO BE IN THE PUBLIC INTEREST. IRONICALLY, HOWEVER, THE TAX TO SUPPORT A PUBLIC PROGRAM IS BEING IMPOSED ON A SMALL NUMBER OF WORKERS RATHER THAN ON THE GENERAL PUBLIC.

-VIEWED AS AN INSURANCE PROGRAM, THE PROPOSED SYSTEM IMPOSES NONE OF THE BASIC FEATURES THAT ARE INHERENT TO A TRUE INSURANCE SYSTEM. THE ESSENCE OF INSURANCE IS THE POOLING OF FUTURE RISK BY PERSONS MORE OR LESS EQUALLY SUBJECT TO OCCURRENCE OF THE RISK INSURED AGAINST. NO SYSTEM OF INSURANCE EXISTS THAT PERMITS ONE TO APPLY FOR FIRE INSURANCE AFTER HIS HOUSE CATCHES FIRE, OR APPLY FOR LIFE INSURANCE AFTER HE CONTRACTS A TERMINAL ILLNESS, BUT THE PLAN TERMINATION INSURANCE SYSTEM PLACES IN A POOL THOSE PLANS THAT ARE CURRENTLY HEALTHY TOGETHER WITH THOSE PLANS THAT ARE ALREADY TERMINALLY ILL.

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OUR CURRENT POSITION IS THAT WE SUPPORT H.R. 3904
<u>AS ADOPTED BY THE HOUSE EDUCATION AND LABOR COMMITTEE</u>

NOTWITHSTANDING OUR RECORD OF PREVIOUS OPPOSITION, WE NOW SUPPORT H.R. 3904 AS ADOPTED BY THE HOUSE EDUCATION AND LABOR COMMITTEE, AND URGE THAT NO MAJOR REVISIONS BE MADE IN ITS BASIC STRUCTURE.

WE HAVE ADOPTED THIS POSITION FOR TWO BASIC REASONS. THESE ARE:

1. IF ONE ACCEPTS AS A STARTING POINT THAT THERE MUST BE A MULTIEMPLOYER INSURANCE SYSTEM, WE BELIEVE THAT THE LEGISLATION ADOPTED BY THE HOUSE EDUCATION AND LABOR COMMITTEE AS MUCH AS WE DISLIKE IT IN MANY RESPECTS REPRESENTS A REASONABLE COMPROMISE BETWEEN MANY CONTRARY AND WIDELY CONFLICTING INTERESTS.

2. WE BELIEVE THAT IT IS IMPERATIVE THAT H.R. 3904 BE ADOPTED PRIOR TO MAY 1, 1980 BECAUSE WE BELIEVE THAT

   -FURTHER DEFERRAL OF MANDATORY COVERAGE IS NOT POLITICALLY PRACTICABLE;
   -IT IS IMPERATIVE THAT LEGISLATION BE IN PLACE IN ORDER TO PREVENT MASS WITHDRAWALS OF EMPLOYERS FROM MULTIEMPLOYER PLANS; AND
   -THE ADOPTION OF MANDATORY COVERAGE OF MULTI-EMPLOYER PLANS UNDER THE STRUCTURE OF CURRENT

LAW WOULD IMPOSE SUCH HUGE COSTS ON THE SYSTEM AND ON THE PLANS THAT IT COULD MEAN THE DEMISE OF TAFT-HARTLEY PLANS.

FEATURES OF THE HOUSE LABOR COMMITTEE BILL THAT WE PARTICULARLY URGE YOU TO ADOPT

THERE ARE THREE ASPECTS OF THE BILL AS REPORTED BY THE HOUSE EDUCATION AND LABOR COMMITTEE THAT WE PARTICULARLY URGE FOR YOUR FAVORABLE CONSIDERATION.

THE HOUSE LABOR COMMITTEE BILL AMENDED THE ADMINISTRATION PROPOSED BILL IN SEVERAL RESPECTS TO REFLECT A CONCERN FOR THE PREMIUM PAYER. IT ADOPTED A NINE YEAR PHASE-IN OF THE PREMIUM FROM ITS CURRENT LEVEL OF FIFTY CENTS TO THE NEW PROPOSED LEVEL OF $2.60. IT ALSO ADOPTED PROVISIONS WHICH SET FORTH NEW RULES FOR CONGRESSIONAL REVIEW OF GUARANTEE LEVELS AND PREMIUMS. UNDER THESE RULES, IF INCREASED PREMIUMS ARE NEEDED TO MAINTAIN GUARANTEE LEVELS, AND THE INCREASED PREMIUMS ARE NOT APPROVED, GUARANTEE LEVELS WOULD AUTOMATICALLY BE REDUCED. THE EFFECT OF THESE RULES WOULD BE TO KEEP THE FUNDING OF THE SYSTEM IN BALANCE, THUS AVERTING THE NECESSITY OF GENERAL REVENUE FINANCING.

SECONDLY, THE HOUSE LABOR COMMITTEE BILL ADOPTS MUCH NEEDED REDUCTIONS IN GUARANTEES PROVIDED BY CURRENT LAW AND RECOGNIZES THAT PLANS THAT DID NOT MEET A MINIMUM STANDARD OF FINANCIAL RESPONSIBILITY PRIOR TO ERISA SHOULD NOT RECEIVE

THE FULL LEVEL OF GUARANTEES THAT ARE PROVIDED TO PARTICIPANTS IN PLANS THAT WERE RESPONSIBLY FUNDED.

THIRD, THE HOUSE LABOR COMMITTEE BILL TIGHTENED THE EMPLOYER WITHDRAWAL LIABILITY RULES. WE CANNOT URGE STRONGLY ENOUGH THAT TIGHT EMPLOYER WITHDRAWAL LIABILITY RULES ARE IMPERATIVE TO PREVENT MASS WITHDRAWALS FROM PENSION PLANS. MOREOVER, THE LABOR COMMITTEE BILL PROVIDED MUCH-NEEDED BALANCE BY PROVIDING A SERIES OF RULES INTENDED TO FACILITATE PARTICIPATION BY NEW EMPLOYERS WITHOUT BEING BURDENED BY THE PRIOR LIABILITIES OF THE PLANS.

THE PREMIUM STRUCTURE OF H.R. 3904
PROVIDES A FINANCIALLY RESPONSIBLE
WAY OF FUNDING THE INSURANCE SYSTEM

AS STATED ABOVE, H.R. 3904, AS REPORTED BY THE HOUSE LABOR COMMITTEE, PROVIDES FOR A NINE YEAR PHASE-IN OF PREMIUMS TO A LEVEL OF $2.60 PER PARTICIPANT PER YEAR AS A MEANS OF FINANCING A GUARANTEE PROGRAM BASED ON A GUARANTEE OF 100% OF THE FIRST $5 OF ANNUAL ACCRUAL RATE AND A TWO TIER SYSTEM OF EITHER 60% OF THE NEXT $15 OF ANNUAL ACCRUAL OR 70% OF THE NEXT $15. THE HIGHER LEVEL IS APPLICABLE TO PLANS THAT IN THE DECADE PRIOR TO ERISA SATISFIED SPECIFIED MINIMUM FUNDING LEVELS, WHILE THE LOWER LEVEL IS APPLICABLE TO PLANS THAT DID NOT MEET THESE MINIMUM STANDARDS. THE PREMIUM LEVEL AND STRUCTURE OF H.R. 3904 IS A SOUND WAY TO FUND THE FINANCIAL ASSISTANCE PROGRAM FOR THE FOLLOWING REASONS:

1. Based on PBGC estimates provided to the House Education and Labor Committee (Appendix III), the cost of the level of guarantees as adopted in H.R. 3904 would appear to require level premiums over 20 years starting in 1981 within a range of about ~~$1.35 to~~ $4.37. The $2.60 graded premium of the House bill - which may be viewed as a level premium of about $2.20 - is substantially above the lower side of the PBGC estimates and well within the middle reaches of the estimated range.

2. More recent cost estimates furnished to the Senate Labor Committee (Appendix IV) reflect somewhat higher costs. These costs are based on a higher level of guarantees than those reflected in H.R. 3904 and different assumptions as to when mass withdrawals are likely to occur. It is important to recognize that the different assumptions were not adopted because they were considered to be more reliable, but because they were easier to use for purposes of comparing different program costs. Consequently, the cost estimates furnished to the House Labor Committee are still a proper starting point for evaluation purposes.

3. There are a number of reasons why the higher range of PBGC cost estimates are unlikely to occur. In short, PBGC states:

> "The higher estimates are based upon the assumptions that all employers in financially troubled plans withdraw _en masse_ instead of reorganizing." (Note 1, PBGC letters)

YET IN ITS JULY 1, 1978 REPORT TO CONGRESS UPON WHICH ITS LEGISLATIVE RECOMMENDATIONS ARE BASED, PBGC STATED:

> "PLAN REORGANIZATION IS BEING CONSIDERED BY THE PBGC AS A CENTRAL ELEMENT OF THE MULTIEMPLOYER INSURANCE PROGRAM. THE PURPOSE OF PLAN REORGANIZATION IS TO ENCOURAGE PLANS FACING FINANCIAL DIFFICULTIES TO TAKE CORRECTIVE ACTION TO STABILIZE OR IMPROVE THEIR FINANCIAL CONDITION. PLANS WHICH TAKE SUCH CORRECTIVE ACTIONS GENERALLY WOULD BE ABLE TO AVOID TERMINATION."

THUS, THE HIGH RANGE OF PBGC COST ESTIMATES ARE FOUNDED UPON AN ASSUMPTION WHICH IS DIRECTLY OPPOSITE THE CENTRAL THESIS OF ITS ENTIRE LEGISLATIVE PROPOSAL! IF THERE IS A FOUNDATION FOR THE BELIEF THAT EMPLOYERS IN FINANCIALLY TROUBLED PLANS ARE MORE LIKELY TO WITHDRAW EN MASSE THAN REORGANIZE, CONGRESS SHOULD FUNDAMENTALLY REVISE ALL OF THE PBGC GUARANTEE PROPOSALS, NOT JUST TINKER WITH THE PREMIUM. (1)

4. AN IMPORTANT ELEMENT OF SAFETY IN THE PROGRAM ARISES FROM THE PROBABLE TIMING OF EVENTS. IF THE MASS WITHDRAWALS THAT WOULD RESULT IN THE HIGHER LEVEL OF COSTS DO IN FACT OCCUR, THEY WOULD OCCUR DURING THE FIRST TWO COLLECTIVE BARGAINING CYCLES FOLLOWING THE ADOPTION OF THE PROGRAM. HOWEVER, THE COSTS FOLLOWING FROM SUCH WITHDRAWALS WOULD EMERGE GRADUALLY OVER THE FOLLOWING FIFTEEN TO TWENTY YEARS. THIS MEANS THAT IF THE DOOMSDAY ASSUMPTIONS DID IN FACT OCCUR, THERE WOULD BE AMPLE TIME TO MAKE ADJUSTMENTS IN THE PROGRAM.

5. GIVEN THE UNKNOWN PARAMETERS OF THE PROGRAM, WHAT IS THE PRUDENT WAY TO PROCEED? IF THE PROGRAM WERE A VOLUNTARY INSURANCE PROGRAM, IT MIGHT BE PROPER TO CONSERVATIVELY ESTIMATE PREMIUMS AND THEN, IF THEY WERE NOT FULLY NEEDED, RETURN EXCESS PREMIUMS (LIKE A MUTUAL INSURANCE COMPANY DOES) TO THE PREMIUM PAYERS. IT IS ESSENTIAL TO AN UNDERSTANDING OF THE PBGC PROPOSALS THAT THEY ARE NOT OF THIS NATURE - PARTICIPATION IS NEITHER VOLUNTARY NOR IS THE PROGRAM ONE OF INSURANCE. RATHER PARTICIPANTS IN MANY PLANS ARE BEING FORCED BY WHAT IS ESSENTIALLY A TAX TO FOREGO MINIMUM LEVELS OF RETIREMENT INCOME (IN RETURN FOR NO BENEFIT) SOTHAT PARTICIPANTS IN OTHER PLANS CAN RECEIVE CERTAIN MINIMAL GUARANTEES. MOREOVER, THERE IS AN INTERSTITIAL, SELF FULFILLING PROPHECY, EFFECT TO ANY GOVERNMENT PROGRAM THAT IS OVER FUNDED - MORE FUNDS FOR THE PROGRAM ULTIMATELY RESULT IN MORE EXPENDITURES BY THE PROGRAM, IN THIS CASE IN THE PROBABLE FORM OF HIGHER GUARANTEES AND BALLOONING ADMINISTRATIVE EXPENDITURES.

6. IN THESE CIRCUMSTANCES, THE PRUDENT, DISCIPLINED COURSE TO FOLLOW IS TO SET THE PREMIUM LEVEL WITHIN A RANGE THAT SEEMS ADEQUATE, BUT IF PBGC BELIEVES THAT IT IS NECESSARY TO OBTAIN MORE FUNDS, MAKE IT COME BACK TO CONGRESS TO PROVE ITS CASE. THIS PROCEDURE IS ABSOLUTELY ESSENTIAL TO PROTECT THE RIGHTS OF THOSE PARTICIPANTS WHOSE PLANS ARE INVOLUNTARILY FORCED TO PARTICIPATE IN THE SYSTEM. CONGRESS MUST PROVIDE THESE PARTICIPANTS WITH ASSURANCE THAT PROGRAM COSTS WILL BE MAINTAINED AT THE LOWEST LEVEL POSSIBLE.

THE GUARANTEE LEVELS OF H.R. 3904 ARE MORE THAN ADEQUATE

THE ISSUE OF PREMIUM STRUCTURE IS INEXTRICABLY INTER-TWINED WITH THAT OF THE LEVEL OF BENEFIT GUARANTEES. SIMPLY STATED, THE HIGHER THE GUARANTEES THE HIGHER THE PREMIUM MUST BE TO SUPPORT THEM.

WE BELIEVE THAT UNREASONABLY HIGH GUARANTEES NOT ONLY SUBSTANTIALLY INCREASE THE COST OF THE SYSTEM FROM A PREMIUM STANDPOINT, BUT ALSO PROVIDE ENCOURAGEMENT FOR MARGINALLY FUNDED PLANS TO TERMINATE, THUS, SADDLING THE SYSTEM WITH POTENTIALLY STAGGERING AMOUNTS OF ADDITIONAL UNFUNDED LIABILITIES.

WE SUPPORT THE GUARANTEE LEVELS IN H.R. 3904 AS MORE THAN ADEQUATE IN PROVIDING THE NECESSARY PROTECTION FOR THE PARTICIPANT IN A PLAN REQUIRING FINANCIAL ASSISTANCE. AS INDICATED ABOVE, H.R. 3904 PROVIDES THROUGH A FORMULA, A GUARANTEE OF $450 PER MONTH AND HIGHER FOR LONG SERVICE EMPLOYEES.

GENERALLY, IN DETERMINING THE ADEQUACY OF THE GUARANTEE LEVEL ONE MUST FIRST RECOGNIZE THAT MULTIEMPLOYER PLAN BENEFITS ARE NOT "INTEGRATED" WITH A RETIREE'S SOCIAL SECURITY PAYMENTS AS ARE THE BENEFITS FROM MANY SINGLE-EMPLOYER PLANS. THEREFORE, ANY BENEFITS PAID BY THE PLAN OR PAID BY PBGC ARE IN ADDITION TO A PARTICIPANT'S SOCIAL SECURITY BENEFITS.

SECOND, IT IS IMPORTANT TO NOTE THAT PLANS THAT ARE APPROACHING INSOLVENCY MAY BE DOING SO IN SOME CASES BECAUSE THE PARTIES DECIDED TO TAKE THEIR SLICE OF THE COLLECTIVE BARGAIN-ING PIE IN THE FORM OF HIGHER WAGES RATHER THAN IN THE FORM OF

CONTRIBUTIONS TO THEIR PENSION PLAN. THE WCT PLAN IS WELL-FUNDED SUBSTANTIALLY BECAUSE ITS PARTICIPANTS HAVE BEEN DENIED WAGE INCREASES IN ORDER TO RESPONSIBLY FUND THEIR RETIREMENT BENEFITS. HOWEVER, AS PARTICIPANTS IN A PLAN WHICH DUE TO THEIR FINANCIAL SELF-SACRIFICE WILL NEVER DERIVE A BENEFIT FROM THE SYSTEM, WCT PLAN PARTICIPANTS ARE BEING REWARDED BY PBGC WITH HIGHER PREMIUMS TO FUND THE HIGH PENSION BENEFIT GUARANTEES OF LESS FISCALLY RESPONSIBLE PLANS.

THE GROSS INEQUITY OF THIS SITUATION IS FURTHER UNDERSCORED BY THE FACT THAT UNDER THE GUARANTEE FORMULA OF H.R. 3904 A PLAN PARTICIPANT WITH 30 YEARS OF SERVICE COULD HAVE AN AVERAGE BENEFIT GUARANTEED BY PBGC OF $450 PER MONTH. WHEREAS, THE AVERAGE MONTHLY RETIREMENT BENEFIT FOR THOSE 30 YEAR WCT PLAN PARTICIPANTS RETIRING THIS YEAR IS APPROXIMATELY $325 PER MONTH, AND THE AVERAGE MONTHLY BENEFIT PAID TO ALL WCT PLAN SERVICE RETIREES IS APPROXIMATELY $200.

THAT THE MORE PRUDENT WCT PARTICIPANTS ARE RECEIVING IN SOME CASES LESS THAN 50% OF THE MONTHLY RETIREMENT BENEFITS OF THOSE RETIREES WHOSE BENEFITS ARE PAID FOR BY THE SYSTEM IS CLEARLY UNFAIR. THIS ILLUSTRATION DOES, HOWEVER, DEMONSTRATE WITHOUT QUESTION THE ADEQUACY OF THE GUARANTEE STRUCTURE OF H.R. 3904.

FINALLY, WHILE WE HAVE NO DATA AVAILABLE TODAY TO SUPPORT THIS CONCLUSION IT IS OUR UNDERSTANDING THAT THE WCT PLAN IS REPRESENTATIVE OF MULTIEMPLOYER PLANS GENERALLY IN THAT ITS PARTICIPANTS RECEIVE ONLY A MODERATE LEVEL OF RETIREMENT BENEFITS. WE BELIEVE THAT IT IS ESSENTIAL FOR THE CONGRESS TO CONSIDER THE LEVEL OF BENEFITS IN THE AVERAGE MULTIEMPLOYER PLAN WHEN ESTABLISHING THE LEVEL OF GUARANTEES FOR THE SYSTEM.

PROVISIONS IN THE SENATE LABOR
COMMITTEE PROPOSAL THAT WE URGE
YOU TO OPPOSE

AS YOU KNOW, THE SENATE LABOR COMMITTEE WHICH HAS SCHEDULED A MARCH 24, 1980 MARK-UP FOR THIS LEGISLATION HAS PREPARED A COMMITTEE PRINT OF S. 1076 WHICH CONTAINS NUMEROUS SUBSTANTIVE CHANGES FROM THE ORIGINAL ADMINISTRATION PROPOSAL AND FROM THE HOUSE LABOR COMMITTEE VERSION OF H.R. 3904. THE WCT PLAN STRONGLY OPPOSES CERTAIN PROVISIONS OF THAT COMMITTEE PRINT WHICH PERTAIN TO THE PREMIUM STRUCTURE, BENEFIT GUARANTEE LEVELS AND WITHDRAWAL LIABILITY.

A. PREMIUMS: THE COMMITTEE PRINT WOULD GENERALLY PROVIDE AN INCREASE IN THE PREMIUMS FROM $.50 TO $2.60 OVER A THREE YEAR PERIOD, TO $3.00 IN THE FOURTH YEAR, AND TO $5.00 IN $.50 INCREMENTS OVER THE SUBSEQUENT FOUR YEARS. THE PBGC DOES, HOWEVER, HAVE DISCRETION TO POSTPONE ANY INCREASE AFTER $2.60 IF THE CORPORATION DETERMINES THAT SUCH PREMIUM INCREASES ARE NOT NECESSARY.

THE WCT PLAN BELIEVES SUCH A PREMIUM STRUCTURE TO BE EXCESSIVE AND WITHOUT PROPER ACTUARIAL FOUNDATION. FOR THE REASONS STATED EARLIER, WE SUPPORT THE PREMIUM STRUCTURE SET FORTH IN THE HOUSE LABOR COMMITTEE VERSION OF H.R. 3904.

B. LEVEL OF GUARANTEES: THE COMMITTEE PRINT PROPOSES BENEFIT GUARANTEE LEVELS AS FOLLOWS: 100 PERCENT OF THE FIRST $5 OF

ANNUAL ACCRUAL RATE AND 85% (80% IN THE CASE OF PLANS WHICH DO NOT SATISFY THE PRE-ERISA FUNDING STANDARD) OF THE NEXT $15 OF ANNUAL ACCRUAL RATE TIMES A PARTICIPANT'S YEARS OF SERVICE. ACCORDING TO SENATE LABOR COMMITTEE STAFF, THIS FORMULA PROVIDES AN EFFECTIVE GUARANTEE LEVEL OF 93%.

THE WCT PLAN BELIEVES THAT SUCH UNREASONABLY HIGH LEVELS OF GUARANTEED BENEFITS CONSTITUTE AN UNMISTAKABLE INVITATION FOR LARGE NUMBERS OF PLANS TO TERMINATE. SUCH A RESULT IS NOT ONLY CONTRARY TO THE EXPRESSED POLICY OF THE PBGC TO ENCOURAGE PLANS TO REMAIN VIABLE, BUT ALSO COULD LEAD TO HUGE ADDITIONAL OBLIGATIONS BEING IMPOSED UPON THE SYSTEM.

AS SET FORTH IN DETAIL EARLIER, WE SUPPORT THE GUARANTEE LEVELS OF H.R. 3904 AS REPORTED BY THE HOUSE LABOR COMMITTEE.

C. WITHDRAWAL LIABILITY RULES: CERTAIN PROVISIONS OF H.R. 3904 RELIEVE EMPLOYERS IN THE BUILDING AND CONSTRUCTION OR ENTERTAINMENT INDUSTRIES FROM WITHDRAWAL LIABILITY IN CIRCUMSTANCES SPECIFIED IN THE BILL. THE COMMITTEE PRINT RETAINS THAT RULE BUT ALSO GRANTS THE PBGC AUTHORITY TO PROVIDE THE SAME EXCEPTION TO OTHER INDUSTRIES WHICH DISPLAY SIMILAR CHARACTERISTICS TO THOSE EXCEPTED INDUSTRIES.

WE BELIEVE THAT SUCH ADDITIONAL DISCRETION, HOWEVER PRUDENTLY EXERCISED, IS UNWARRANTED AND COULD RESULT IN RENDERING THE CRUCIAL WITHDRAWAL LIABILITY PROVISIONS RELATIVELY

INEFFECTIVE. SINCE STRICT WITHDRAWAL LIABILITY RULES PROVIDE A STRONG DISINCENTIVE FOR WITHDRAWAL AND TERMINATION, THE WEAKENING OF SUCH RULES COULD AGAIN PROVIDE AN IMPETUS FOR A SUBSTANTIAL NUMBER OF PLANS TO TERMINATE.

WE SUPPORT THE WITHDRAWAL LIABILITY RULES OF H.R. 3904 AS REPORTED BY THE HOUSE LABOR COMMITTEE AS A MORE REASONABLE APPROACH FOR MAINTAINING THE INTEGRITY OF THE SYSTEM.

THE EFFECTIVE DATE IN H.R. 3904 FOR PARTIAL WITHDRAWAL LIABILITY SHOULD NOT BE DELAYED

IT IS OUR UNDERSTANDING THAT A PROPOSAL TO DELAY THE EFFECTIVE DATE OF THE PARTIAL WITHDRAWAL RULES IN H.R. 3904 AS REPORTED FROM THE HOUSE LABOR COMMITTEE MAY BE PRESENTED TO THIS SUBCOMMITTEE. THE PROPOSAL WOULD DELAY THE EFFECTIVE DATE FROM FEBRUARY 27, 1979 TO DECEMBER 13, 1979 (THE DATE THE HOUSE LABOR SUBCOMMITTEE MARKED-UP THE BILL).

THE WCT PLAN STRONGLY OPPOSES THIS PROPOSAL FOR THE FOLLOWING REASONS:

1. DELAYING THE EFFECTIVE DATE OF ONE FEATURE OF THE PARTIAL WITHDRAWAL RULES COULD LEAD TO DELAYING THE EFFECTIVE DATE FOR OTHER FEATURES OF THE WITHDRAWAL RULES; AND

2. EACH DELAY WOULD INCREASE THE COST OF THE TERMINATION SYSTEM, WOULD INCREASE PREMIUMS AND WOULD INCREASE THE UNFAIRNESS OF THE SYSTEM TO SOUND MULTIEMPLOYER PLANS.

WE, THEREFORE, URGE THIS SUBCOMMITTEE AND THE FULL COMMITTEE TO REJECT ANY PROPOSAL WHICH SEEKS A DELAY IN THE EFFECTIVE DATE.

WE KNOW THAT IN THE TESTIMONY THAT WILL FOLLOW, YOU WILL SOMETIMES BE URGED TO INCREASE GUARANTEES OR TO WEAKEN THE WITHDRAWAL LIABILITY RULES IN ORDER TO TAKE CARE OF VARIOUS CONCERNS. MANY WHO WILL URGE THIS WILL BE ABLE TO ADVANCE, LEGITIMATELY, THE CONCEPTS OF UNFAIRNESS. YOU MUST RECOGNIZE, HOWEVER, WHENEVER YOU CONSIDER THESE CONCERNS, THAT THIS LEGISLATION CONTAINS NO EQUITIES OR "GOODIES"; IT REPRESENTS A BALANCING AND PRIORITIZATION OF RELATIVE INEQUITIES. THE RESULTS OF A WEAKENING OF WITHDRAWAL LIABILITY OR OF AN INCREASING OF GUARANTEES IS TO PLACE FURTHER COSTS ON CONTINUING PARTICIPANTS IN THE PLANS DIRECTLY INVOLVED AND IN OTHER PLANS SUCH AS THE WCT PLAN, THAT IN THE AGGREGATE CONSTITUTE THE SYSTEM. IF YOU CONSIDER EACH REQUEST FOR RELIEF IN THE CONTEXT OF RELATIVE EQUITIES, I BELIEVE THAT YOU WILL FIND THAT THE GENERAL STRUCTURE OF THE CURRENT PROVISIONS OF THE BILL AS ACTED ON BY THE HOUSE LABOR COMMITTEE SHOULD BE SUSTAINED.

THANK YOU VERY MUCH.

Appendix I

Percentage Increase in PBGC Premiums As Provided in H.R. 3904

	Actual Premium	% Increase From Current Premium Level
Current Premium	$0.50	
1980 (after enactment of legislation)	1.00	100%
1981	1.00	100%
1982	1.40	180%
1983	1.40	180%
1984	1.80	260%
1985	1.80	260%
1986	2.20	340%
1987	2.20	340%
1988	2.60	420%

— Average annual rate of premium increase = 46.67%

Appendix II

Cost of PBGC Premium To WCT Participants

	Assume $2.60 Premium		Assume $3.79 Premium		Assume $5.00 Premium	
	Per Yr.	40 Yrs.	Per. Yr.	40 Yrs.	Per Yr.	40 Yrs.
Cost for each Worker	$2.60	$429	$3.79	$625	$5.00	$824
[illegible] for WCT (408,000 Participants)	$1,060,800	$175,000,000	$1,546,320	$255,000,000	$2,040,000	$336,000,000

Assumptions

1. Cost for 40 years is based on the accumulation of amounts at the conservative actuarial rate of 6 1/4% compounded annually.

2. Costs for the Plan are based on the cost per worker multiplied by the number of participants (rounded) on which premiums were paid in the WCT Plan's 1978 Premium Filing (PBGC-1).

Also WCT will contribute over $16 million to the administrative costs of the PBGC over the next 40 years based on the same assumptions.

APPENDIX III

IMPACT OF DIFFERENT LEVELS OF MULTIEMPLOYER PLAN BENEFIT GUARANTEES AND FUNDING RULES 1/

	Range of Number of Plans Requiring Assistance	Range of PBGC Costs	Range of Required Level Premiums Starting in 1981 2/	Approximate Percentage of Vested Benefits Paid 3/
H.R. 3904 Funding Rules				
Guarantee of 100% of first $5 of annual accrual rate and:				
60% of next $15	15 - 41	$145 - 350	$2.40 - 5.00	70%
80% of next $15	15 - 42	$210 - 455	$3.20 - 6.30	77%
Revised Funding Rules*				
Guarantee of 100% of first $5 of annual accrual rate and:				
60% of next $15	10 - 5[illegible]	$ 55 - 275	$1.25 - 4.05	78%
80% of next $15	11 - 53	$ 95 - 390	$1.75 - 5.50	86%

Estimates reflect the program costs arising from plans becoming insolvent or terminating by mass withdrawal during the 20-year forecast period (1977-1996). The lower estimates in this table assume that all plans reorganize. The higher estimates are based upon the assumption that all employers in financially troubled plans withdraw en masse instead of reorganizing. Mass withdrawal is assumed to occur when a plan meets three conditions: (1) it meets the criteria (referred to as a "termination screen") set out in the July 1, 1978 Multiemployer Report; (2) it is in reorganization; and (3) its annual withdrawal liability payments would be less than the expected annual contributions it would be required to pay during the next collective bargaining period. Data are based upon results from a sample of 413 plans; these data were then weighted to obtain estimates for all multiemployer plans. (The estimates in this table are based upon the assumption that all plans that enter reoganization increase their contributions to the extent necessary to meet the proposed minimum contribution requirement funding standards.)

2/ The premiums shown are the level annual premium per participant beginning in 1981 and continuing for 20 years. Required premiums include the cost of guaranteeing benefits to currently terminated plans as well as the cost of PBGC administrative expenses. These costs are estimated to be $0.54 per participant.

3/ Reflects the average percentage of vested benefits that would be guaranteed to participants after the point of plan insolvency.

Attachment to January 29, 1980 letter from Robert E. Nagle, Executive Director, PBGC to Honorable Frank Thompson, Jr., Chairman, Subcommittee on Labor-Management Relations, House Education and Labor Committee

*Note: The figures computed for this Section are those which are referred to in Mr. Groom's testimony.

APPENDIX IV

ESTIMATED COSTS, PREMIUMS, AND BENEFITS UNDER A MODIFIED VERSION OF H.R. 3904 1/

Level of Guarantee	Plans Potentially Requiring Assistance	Estimated PBGC Costs ($ millions)	Estimated Level Premium Starting in 1981 2/	Vested Benefits Paid 3/
Guarantee of 100% of first $5 of annual accrual rate and:				
. 80% of next $15	13 - 65	$ 95 - 445	$1.75 - 6.20	83 - 89%
. 85% of next $15	13 - 65	$105 - 480	$1.95 - 6.65	85 - 92%

1/ Estimates reflect the program costs arising from plans becoming insolvent or terminating by mass withdrawal during the 20-year forecast period (1977-1996). The lower estimates in this table assume that all plans reorganize. The higher estimates are based upon the assumption that all employers in financially troubled plans withdraw en masse instead of reorganizing. Mass withdrawal is assumed to occur when a plan meets two conditions: (1) it meets the criteria (referred to as a "termination screen") set out in the July 1, 1978 Multiemployer Report; and (2) it is in reorganization. Data are based upon results from a sample of 413 plans; these data were then weighted to obtain estimates for all multiemployer plans. (The estimates in this table are based upon the assumption that ongoing plans increase their contributions only to the extent necessary to meet the proposed funding standards.)

2/ The premiums shown are the level annual premiums per participant beginning in 1981 and continuing for 20 years. The premiums include $0.54 per participant to cover the costs of currently terminated plans and PBGC administrative expenses.

3/ Reflects the average percentage of vested benefits guaranteed to plan participants after plan insolvency.

Attachment to March 12, 1980 letter from Robert E. Nagle, Executive Director, PBGC to Honorable Harrison A. Williams, Jr., Chairman Committee on Labor and Human Resources, U.S. Senate

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Senator BENSTEN. Mr. Hall, Richard Hall, chairman, collective bargaining committee, The Associated General Contractors of America.

Mr. HALL. Thank you, Senator.

STATEMENT OF RICHARD HALL, CHAIRMAN, COLLECTIVE BARGAINING COMMITTEE, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Mr. HALL. My name is Richard E. Hall and I am president of the Underground Construction Co. in San Leandro, Calif. I am appearing before you today on behalf of the Associated General Contractors of America. Appearing with me today are Dennis Bradshaw and Valentin Riva of the association's national office.

Mr. Chairman, AGC is a founding member of the National Construction Employers Council and we are very pleased to appear with them today and endorse their views on H.R. 3904, the multiemployer pension plan amendments act of 1979.

Mr. Chairman, AGC is completely sympathetic to the goals of the Employee Retirement Income Security Act of 1974. To insure that employees covered by private employee pension plans receive those benefits which have been accrued over their working years is clearly a laudable objective.

AGC now basically supports H.R. 3904. However, we take this opportunity to address several remaining concerns and offer some recommendations.

The following are our comments on the January 29, 1980, version of H.R. 3904 which was ordered reported out of the House Education and Labor Committee and on S. 1076 as currently being considered by the Senate Human Resources and Labor Committee.

There are three specific tests for termination provided in section 4041A. It is our concern that undue pressure may be brought by employee representatives on employers or trustees that would result in the triggering of a plan termination under any one of these three tests.

For example, a union could successfully push for the cessation of pension contributions during a collective bargaining negotiation and thus trigger a mass withdrawal.

We feel that it is of the utmost importance that any such union initiated termination clearly not be construed as termination under the second test, since it would be patently unjust to penalize employers under such a situation.

This could readily happen when a local union becomes dominated by younger workers who have a less farsighted view of the value of pensions. In our written testimony, we have offered conceptual changes in this regard.

Another item which calls for change is the inherently inequitable difference between the benefits for which the PBGC will be held accountable under the bill and those for which employers will be held liable.

Under H.R. 3904, the corporation will guarantee basic benefits while employers will be accountable for vested benefits which, in almost all cases, represent higher amounts. We find this double standard and obligations to be inequitable.

We urge that the definition of plan sponsor clearly indicate that the sponsor does not assume the fiduciary responsibilities within the meaning of title I, part IV.

We most strongly urge the Congress to recognize the validity of our initial position regarding the understandings of labor and management when multiemployer pension plans were first established. The 1974 Act changed the nature of those prior understandings and should, therefore, preclude liability for benefits accrued prior to the bill enactments.

If some liability is deemed necessary by Congress for the purposes of this bill, we suggest as an alternative a gradual phasein of such prebill liability.

The current bill does not provide any form of abatement of employer withdrawal liability to financially sound plans. We urge the inclusion of abatement provision.

With regard to the major differences between H.R. 3904 and the version of S. 1076 being considered by this committee, we have these comments.

First, the Pension Benefit Guarantee level in H.R. 3904 is more realistic than the 85-percent level of S. 1076. The lower level is in keeping with an overall balance which provides a sharing of disincentives.

Second, the phasein of PBGC premium levels over 3 years, the Senate version, or 9 years, the House version, suffers from extremes. The original PBGC proposal and the 5-year phasein appears more realistic.

Finally, we endorse the Senate version's approach to, first, a more meaningful cap on withdrawal liability; second, the more realistic safe harbor provision covering required increases in pension contributions; and third, the plan's required annual disclosure to contributing employers of the plan's current unfunded vested liability, as well as each employer's proportional share of the unfunded vested liability.

Mr. Chairman, this bill has been subject to continuing revision. New versions seem to appear almost daily. We therefore request permission to comment further as we obtain and review revisions not currently available.

Mr. Chairman, this concludes our remarks on H.R. 3904 and S. 1076. We appreciate the opportunity to be here today.

Senator BENTSEN. I am pleased to have it, and we will take your additional remarks that you might have in their entirety.

[The material referred to follows:]

TESTIMONY OF

RICHARD E. HALL

FOR

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

PRESENTED BEFORE

SUBCOMMITTEE ON PRIVATE PENSION

PLANS AND EMPLOYEE FRINGE BENEFITS

MARCH 18, 1980

ON HR 3904 AND S.1076

AGC IS:

* 8,300 of America's leading general contracting firms employing 3,500,000 employees;
* 113 chapters nationwide;
* Over 20,000 affiliated firms;
* A $200 billion market;
* More than 80% of America's contract construction of commercial buildings, highways, industrial and municipal utility facilities;
* Over 50% of the construction performed abroad by American firms.

My name is Richard E. Hall and I am President of the Underground Construction Company, San Leandro, California. I am appearing before you today on behalf of the Associated General Contractors of America (AGC). Appearing with me today are Dennis M. Bradshaw and Valentin J. Riva of the Association's National Office.

Mr. Chairman, AGC is a founding member of the National Construction Employers Council and we are very pleased to appear with them today and endorse their views on HR 3904/S.1076, the "Multiemployer Pension Plan Amendments Act of 1979." Previously, we have testified before the House and Senate Labor Committees and submitted a statement for the July 25, 1979 Oversight Subcommittee hearings of this Committee stating our thoughts and suggestions regarding this complex and critical bill.

We must emphasize again, as we have repeatedly advised all other Congressional committees before which we have testified on this subject, that it is totally unfair to construction employers to make them responsible for any liabilities beyond the contributions negotiated for their employees in collective bargaining agreements (contracts). Current ERISA law is totally unfair in that regard, as is the proposed method by which the Pension Benefit Guaranty Corporation (PBGC) would implement ERISA. We would also emphasize that general contractors also differ from other construction and non-construction employers in that they generally contribute to many multiemployer pension plans and therefore have a far greater exposure to liability.

The Congressional committees we have urged to accept those valid points have refused to do so and we find ourselves today in

the position of facing the implementation of a bad and ill-conceived law or gaining essential improvements to that law through HR 3904/ S.1076.

We must also emphasize to you that there is no legislation now before Congress, nor has there been in recent years, that is more important to all segments in the construction industry than these amendments to ERISA. It is important that you understand the complexities of the prosed legislation, because it is so complex that it is not, despite our best efforts, fully understood by all employers.

Mr. Chairman, AGC is completely sympathetic to the goals of the Employee Retirement Income Security Act of 1974. To ensure that employees covered by private employee pension plans receive those benefits which have been accrued over their working years is clearly a laudable objective. AGC also supports HR 3904/S.1076, but we would like to take this opportunity to address several remaining concerns and offer some recommendations.

The following are our comments on the January 29, 1980 version of HR 3904 which was ordered reported out of the House Education and Labor Committee on that date.

<u>Termination, Section 4041A - Mass Withdrawal Initiated by Employee Organizations</u>

The specific tests for termination as provided in section 4041A are:

1. The adoption of a plan amendment that provides for no more credit for plan participants after the passage of such an amendment; or
2. The withdrawal of every employer within the meaning of

section 4201(b)(the withdrawal provisions); or

3. The adoption of an amendment that causes the plan to become a plan described in section 4021(b)(1) of the statute (i.e., making the plan a defined contribution plan).

It is our concern that undue pressure may be brought by employee representatives on employers or trustees that would result in the triggering of plan termination under any one of these three tests. Of particular concern, is the possibility of union pressure resulting in "mass withdrawal" as described in test number two (within the meaning of section 4201(b)(B)). This in turn would make all such "withdrawing" employers liable for the full withdrawal liabilities. For example, a union could successfully push for the cessation of pension contributions during collective bargaining negotiations and thus trigger a "mass withdrawal." We feel it is of the utmost importance that any such union initiated termination clearly not be construed as a termination, under the second test, since it would be patently unjust to penalize employers in such a situation. This could readily happen when a local union becomes dominated by younger workers who have a less far-sighted view of the value of pensions. The termination provisions should also offer employers protection from any form of liability in instances where, as a result of a collective bargaining impasse, no new agreement is consummated.

In recognition of the allegation of potential collusion between employers and employee organizations in the event this particular concept is adopted, we offer the following three tests for

collusion:

1. Written union proposal demanding the cessation of contributions to the pension plan, or
2. A record of negotiations documenting management's refusal to agree to such a contribution cessation, and
3. A collective bargaining impasse of a reasonable duration.

As another alternate it is suggested that where a union initiates mass withdrawal liability, the union could be prohibited from negotiating any form of pension plan (e.g., IRA, SEP, money purchase, target benefit, deferred benefit) for a period of 8 years.

Termination, Section 4041A - Employer Liaibility

Another item which calls for change is the inherently inequitable difference between the benefits for which the PBGC will be held accountable under the bill and those for which employers will be held liable in the event of such a mass withdrawal. Under HR 3904, the Corporation will guarantee basic benefits while employers will be accountable for vested benefits, which in almost all cases represent much higher amounts. Section 4201(e) prescribes a formula for calculating employer withdrawal liability that requires that unfunded benefit entitlements (unfunded vested liability) be pro-rated among contributing employers. We find this double standard in obligations to be inequitable. In contrast and with regard to equity, section 4062 of ERISA provides that the pro-rata share of employer liability shall be calculated based on unfunded guaranteed benefits.

The reason for holding employers liable for the higher vested benefits, as opposed to guaranteed benefits is evident.. It is seen as a cushion for the corporation to ward off the impact of "uncollectibles." Employers are asked to pay the higher amount so as to protect the

PBGC from those employers whose withdrawal liability is not paid. We propose that pension plans that adopt the Uncollectibles Withdrawal Liability Insurance under section 42[illegible] of HR 3904 should be held liable only for guaranteed benefits and not vested benefits. This solution would be equitable to concerned parties. We, therefore, urge the <u>return</u> to guaranteed benefits, currently in ERISA, as the basis for employer liability in the event of a mass withdrawal.

<u>Partial Withdrawal, 4201(c)(3)</u>

Section 4201(c)(3), which provides for partial withdrawal liability, delegates to the Pension Benefit Guaranty Corporation (PBGC) full authority to formulate, by regulations, the pro-rata portion of the employer's liability for such withdrawal based on the general withdrawal liability provisions. It is our recommendation that specific guidelines be included for the benefit of the PBGC.

<u>Withdrawal Liability Limitation, 4201(i)</u>

The liability limitation on the annual payments required of withdrawing employers under section 4201(i) provides a cumbersome formula which offers little relief to employers. We urge that a more realistic cap on employer liability be developed. In this regard, we favor the proposed reduction from 30 to 20 years, a five year look back at average contribution levels and the prior five year average of the contribution rate in the version of S.1076 being considered by the Senate Human Resources and Labor Committee.

<u>Abatement of Employer Withdrawal Liability</u>

The current bill does not provide any form of abatement of employer liability to financially sound plans. The current

provisions of the bill call for the payment of withdrawal liability without regard to any future improvements in the plan's financial health. The inclusion of the abatement provision will have the practical effect of serving as an added incentive to employers for participation in multiemployer plans. We urge the Committee to provide for abatement of employer withdrawal liability to plans that become financially sound.

Plan Sponsor, Section 401

We urge that the definition of plan sponsor clearly indicate that the sponsor does not assume the fiduciary responsibilities within the meaning of Title I, Part 4.

We recognize and support the right of employers, who will now have the potential for liability, to negotiate over benefit levels. Those same employers should not, however, have the added burden of fiduciary responsibilities.

Pre-Bill Liability

We most strongly urge Congress to recognize the validity of our initial position regarding the understandings of labor and management when multiemployer pension plans were established. The 1974 Act changed the nature of those prior understandings and should therefore preclude liability for benefits accrued prior to bill enactment. If pre-ERISA benefit liability cannot be eliminated, we suggest that a gradual phase-in approach is the most equitable manner to deal with this issue. This suggestion is in keeping with many concerns raised, as the bill has proceeded, regarding its impact upon prior contractual commitments.

Mr. Chairman, this bill has been subject to continuing revision. New versions seem to appear almost daily. We, therefore, request permission to comment further as we obtain copies of revisions not currently available.

Mr. Chairman, this concludes our remarks on HR 3904/S.1076. We appreciate the opportunity to appear here today and we assure you that we will work with your staff in any possible way on this legislation to make it responsive to the needs of employees and employers in our industry.

Senator BENTSEN. Our next witness is Mr. Frank Cummings on behalf of the Food Marketing Institute.

Mr. Cummings?

STATEMENT OF FRANK CUMMINGS, FOOD MARKETING INSTITUTE

Mr. CUMMINGS. Good morning, Mr. Chairman, I have with me Ms. Alicia Kershaw, an attorney in my law firm, and Mr. William S. Kies, Jr., legislative assistant of FMI.

Mr. Chairman, I am not going to read our statement or even try to summarize it. Instead I would like to talk about one point, which is really the main focus of our testimony. It is part of a joint position which the Food Marketing Institute, representing the bulk of the food marketing business in the country, and the United Food & Commercial Workers Union, the largest union in the AFL-CIO, have joined together in developing. We have attached that joint position to our testimony as well as draft bill language on every point in it.

INDUSTRY REINSURANCE FUNDS

The main focus of our testimony has to do with what we call a reinsurance fund or a reimbursement fund. We are not talking about the provision in the House bill, H.R. 3904 as reported from the Education and Labor Committee which has in section 4204(a) of it something like this, doubtless put in there at our behest. But that provision does not do it.

PURPOSES OF REINSURANCE FUNDS

The purposes of our reimbursement fund proposal would be to further the purposes of this bill, and of ERISA, first by encouraging unions, employers, and plans to solve their own problems without resort to public funds and without resort to PBGC insurance funds. Second, the proposal would prevent liability of one employer from shifting to other employers, and that occurs in cases such as bankruptcies or withdrawals which do not generate withrawal li-

abilities, such as de minimis withdrawals. For example, if a bankrupt employer does not pay withdrawal liability, somebody is going to pay, and it is going to be the other employers.

Third, the proposal would assure plan solvency even to a greater extent than this bill does and thereby protect the very reinsurance forms we have been talking about and restrain the need for further premium increases.

SUBSTANCE OF THE REINSURANCE FUND PROPOSAL

The proposal would allow a group of plans in an industry or within the jurisdiction of a single labor organization, or more than one labor organization, voluntarily to establish its own reimbursement program to pay for certain, unattributable or uncollectable portions of withdrawal liability which are factored into the equation under H.R. 3904 and the Senate bill.

Reimbursement funds would be voluntary and would be administered, not by the PBGC, but jointly, by employers and unions in the same manner as Taft-Hartley trusts.

Reimbursement fund assets would be built up by premiums payable by member plans and funds at rates set by the reimbursement funds. The reimbursement funds would guarantee and pay to each member plan at withdrawal of a contributing employer any or all of these certain unattributable and uncollectable amounts of withdrawal liability which would otherwise be payable under the bill. These elements are basically four.

First, there is liability which would have been attributable to, and payable by, employers who withdrew but who failed to pay because they are bankrupt.

Second, there are de minimis amounts which are not covered under the bill.

Third, there is withdrawal liability not paid because of a reduction in withdrawal liability in the cap provisions. You will see, in the various testimonies that have been presented to you, that there are notions of a 15-year cap and a 20-year cap. A cap is paying less than the formula for withdrawal liability.

Lastly, there is the piece of withdrawal liability attributable to an employer because some previous employer got out before the effective date of the bill.

Employers contributing to any plan which is a member of a reimbursement fund would not owe or pay these unattributable liabilities to the extent that the reimbursement fund pays them. If, upon any withdrawal the reimbursement fund is insufficient to pay the liabilities insured, then the withdrawing employer would still owe the difference.

So we are not asking to get away with anything. We are just asking to have the opportunity to insure it ourselves.

We have set forth the proposal in detail in our testimony. We think it ought to have an appeal to you because it permits a healthy industry, like ours—our plans are not declining—to solve our own problems and protect our own members from having liabilities bounce back and forth from one employer to another when, for example, one would go bankrupt and the other one would have to pick up a piece of the bankrupt's liability. What

kind of American business is that where the successful competitor has to pay the liabilities of the fellow who could not compete?

Instead, this way, they are insured and even the bankrupt employer paid his share of the premium.

Thanks for your consideration, Mr. Chairman.

Senator BENTSEN. Thank you very much, Mr. Cummings.

[The prepared statement of Mr. Cummings follows. Oral testimony continues on p. 244.]

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- SUMMARY -

Testimony of Frank Cummings*, attorney representing the Food Marketing Institute, prepared for delivery at Hearings on S.1076 before the Finance Committee of the U.S. Senate, 2221 Dirksen Senate Office Building, 10:00 a.m., Tuesday, March 19, 1980

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The Food Marketing Institute, in conjunction with the United Food and Commercial Workers, makes eight proposals for modifying S.1076:

(1) A provision in S.1076 that permits a national group of plans in a single industry to voluntarily form a Reinsurance Fund for Unattributable Withdrawal Liability ("Industry Fund" or "IF"). "IF" would be funded by premiums, perhaps experience-rated, payable annually by members on a perparticipant basis. Employers contributing to any fund which is a member of an IF would not owe or pay these unattributable liabilities. Their premiums to the IF would cover the cost.

(2) 15-year cap on withdrawal liability.

(3) If there is no actuarial impact on the plan, there will be no withdrawal liability.

(4) More stringent mandatory penalties for unjustified failure to make timely payments of withdrawal liability.

(5) Modify S.1076's partition provision --

(a) to partition a portion of unattributable liabilities (not merely those traceable to employees of the insolvent employer), and

(b) to allow partition without resort to Federal courts and whenever a non-de minimis contributor becomes insolvent.

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* Member of the firm of Marshall, Bratter, Greene, Allison & Tucker, Washington, D.C.

(6) When an employer newly enters a plan on a past-service basis, then the employer should, to that extent, be subject to a share of withdrawal liability just as if that past service had been accrued under the plan all along.

(7) S.1076 should be amended to provide that a contributing employer or the union may initiate a proceeding before the PBGC in cases where the plan administrator does not act to protect the interests of the plan and its contributors by making use of the provisions in S.1076.

(8) Inclusion of tax deduction carry-back provision of lump-sum withdrawal liability payments for employers who have gone out of business.

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FOOD MARKETING INSTITUTE PROPOSES AMENDMENTS
TO MAKE MULTIEMPLOYER PENSION BILL (S. 1076)
MORE EQUITABLE AND LESS BURDENSOME

Testimony of Frank Cummings*, attorney representing the Food Marketing Institute, prepared for delivery at Hearings on S. 1076 before the Finance Committee of the U.S. Senate, 2221 Dirksen Senate Office Building, 10:00 a.m., Tuesday, March 18, 1980

I. The Food Marketing Institute, Its Members and Employees

FMI is an association whose membership includes over 1,000 companies -- including chain stores, wholesale operations and independent grocers, operating over 24,000 facilities. A large segment of employees of FMI members are participants in multiemployer plans.

II. FMI's Interest in S. 1076

Mr. Chairman, we are the industry most directly affected by the legislation you have before you. We are the businesses which must pay for it. Yet we are not the source of the problem which makes this legislation necessary, for our

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* Member of the firm of Marshall, Bratter, Greene, Allison & Tucker, Washington, D.C.

industry, and our plans, are among the most healthy in the nation, and are not in danger of termination.

We generate no "horror stories" in terms of multiemployer terminations. Our plans do not terminate. And so Congressional Committees and PBGC staff rarely hear from us.

Yet the costs of the bill -- and they are very substantial costs, particularly when it comes to withdrawal liability -- fall heavily upon us. Accordingly, we have some proposals. We believe these proposals will strengthen the bill, will maintain the balance of incentives and deterrants built into the bill, will assure that every dollar of contributions and/or liability will be paid on time, but will make those payments more manageable from an employer's point of view.

III. A Joint Labor-Management (FMI/UFCW) Proposal.

FMI has joined with the United Food and Commercial Workers, which represents the bulk of the unionized employees in the food industry, to develop a joint proposal for improving the bill.

A. Principles and Premises of Our Position

Our Joint Position (a copy of which is attached as Appendix A to this statement) is based on four fundamental requirements of a workable bill:

(1) Pension Security. A shared concern that multiemployer plans should not be allowed to collapse and leave workers without retirement security after devoting substantial years of service to

this industry in the expectation of receiving pensions;

(2) Reasonableness of Economic Burden. A shared concern that the economic burdens imposed on employers by federal law should not be made so heavy as to weaken the economic viability of employers, deter the entrance of new employers, or create incentives to withdraw;

(3) Fair Allocation of Economic Burden. A common concern that federal law as applied to withdrawal liability and funding should not create a legal climate in which an employer withdrawing from a plan is permitted to shift that employer's pension liabilities to employers who remain in in the plan; instead, the law should provide that a "fair share" of accrued liability should be borne by each contributing employer; and

(4) Relieving Current Employers of Liabilities Left Behind by Pre-Cut-Off Date Employers Who Withdrew Without Liability. A joint recognition that, if the law cannot reach back and assign liability to employers who have already gone, the liability attributable to those employers should not be borne by employers who happen to remain in the plan.

B. Eight Specific Proposals

Based on these principles and premises, FMI, in conjunction with the UFCW, has developed eight proposals which we believe will improve S. 1076.

The proposals are explained below, and proposed bill language for each proposal is attached as Appendix B to this statement.

Proposal 1: Relief from Unfair and Overly Burdensome Aspects of Withdrawal Liability, Without Weakening Plan Funding

The Problem

The heart of S. 1076 is withdrawal liability.

Under old law, absent a plan termination, an employer's obligation to a plan was limited to contribution of the agreed amount per hour or week, under the contract, for the term of the contract.

The bill imposes on any employer now in a multiemployer plan a new and very large debt -- if he withdraws, he must pay a share of all the unfunded obligations of the plan to all employees -- even for employees of employers who left long ago, even of employers who are bankrupt and cannot pay their share, even of employers who are de minimis and need not pay their share. That is a massive liability beyond the scope of any current collective bargaining agreement.

Proposed Solution: Industry Funds

FMI proposes to lessen yet fully pay that liability -- without use of federal revenues and without shifting the liability to PBGC. Instead, we propose that S. 1076 permit a national group of plans in a single industry to voluntarily form a Reinsurance Fund for Unattributable

Withdrawal Liability ("Industry Fund" or "IF"). IF would be funded by premiums, perhaps experience rated, payable annually by members on a per-participant basis. The IF would guarantee, and pay to each member fund, amounts of otherwise-payable "unattributable" amounts of withdrawal liability which (1) would have been attributable to and payable by pre-2/27/79 employers but for the fact that they withdrew before the cut-off date; (2) would have been attributable to and payable by bankrupt employers who withdraw, making collection of their shares of withdrawal liability impossible; (3) _de minimis_ withdrawals exempt from withdrawal liability under the Bill; and (4) any other "pieces" of withdrawal liability exempted from payment by special provisions of the Bill.

Employers contributing to any fund which is a member of an IF would not owe or pay these unattributable liabilities. Their premiums to the IF would cover the cost. PBGC would have the power to waive the application of premium increases to plans which are members of the IF's.

The proposal is workable. It would allow an industry group to solve its own problems. It would impose no real burden on the Government. And it would allow an industry to solve the problems not really solved, satisfactorily, by the bill, especially the shifting of liabilities among current employers and between past and present employers.

Proposal 2: 15 Year Cap on Withdrawal Liability

The Problem

Withdrawal liability is not only burdensome but also impairs corporate planning because the amount of liability

will not be known until a withdrawal takes place. The liability should be lessened and it should be a known and knowable amount.

Proposed Solution: 15 Year Cap

We urge that a realistic "cap" be imposed on withdrawal liability. Instead of the provision in the Bill, which is in effect no cap at all, an employer should be able to know that its maximum obligation is to pay an annual amount for 15 years. The annual payment should be equal to the average contributions of the withdrawn employer over the five year period prior to withdrawal. If a reinsurance fund is created, any liability not paid as a result of the cap would be insured by the fund.

Proposal 3: If No Actuarial Impact, No Withdrawal Liability

The Problem

In a healthy industry like ours, change is a constant. Employers move in and out of any given area regularly, and in many cases when one employer moves out he is replaced by another. The plan is essentially unaffected. Yet under the Bill withdrawal liability is imposed (except for de minimis) even if the withdrawal does not affect the plan.

Proposed Solution: An Exemption From Liability for Withdrawal Without Actuarial Impact

Withdrawals that do not affect the financial condition of the plan should not cause employer liability. Section 4201(c)(6) of the Bill as reported out of the House Committee

on Education and Labor (H.R. 3904), which allows abatement of liability in certain circumstances should be simplified. The Bill should provide that a withdrawal that does not have an actuarial impact on the plan because of subsequent events (new entrants or hiring of laid-off employees by other contributing employers, for example) should not create liability. The two-year measurement contained in H.R. 3904 § 4201(c)(2) should be retained.

Proposal 4: Stronger Enforcement of Withdrawal Liability

The Problem

Withdrawal liability only works if it is paid, and therefore the obligation to pay withdrawal liability should be enforceable. Incentives to dispute the liability and tie up the plan in expensive and time-consuming litigation should be minimized. While the Bill takes some steps in this direction, it should go further.

Proposed Solution: Stricter Penalties; Escrowed Liability During Disputes; Presumptions in Litigation

The Bill should impose more stringent mandatory penalties for unjustified failure to make timely payments of withdrawal liability, and should require payment of liability into escrow during any litigation, or in the alternative, the posting of a bond. The present presumptions in favor of plan sponsor withdrawal liability determinations should be made clearly applicable to all determinations and all disputes.

<u>Proposal 5:</u> <u>Employer Insolvency</u>

<u>The Problem</u>

Under the Bill, when an employer contributing to the plan or paying withdrawal liability becomes insolvent, the liability owed by that employer must be absorbed by the employers remaining in the plan, and this liability can be quite large. This provision of the bill creates anti-competitive incentives, and it is simply unfair to burden the remaining employers with a debt not their own.

<u>Proposed Solution: Partition</u>

The Bill's partition provision, § 4223, should be modified (a) to partition a portion of unattributable liabilities (not merely those directly traceable to employees of the insolvent employer), and (b) to allow partition without resort to Federal courts and whenever a non-de minimis contributor becomes insolvent.

<u>Proposal 6:</u> <u>New Entrants</u>

<u>The Problem</u>

When an employer newly enters a plan, his employees are often credited with benefits for service prior to the employer's joining the plan. Thus, under the bill, the new employer need not absorb the plan's unfunded liabilities upon entry, but he may add considerable new liabilities of his own. If this employer then withdraws, the past service liability he brought into the plan will be paid <u>not</u> by him alone but by all the employers, under the presumptive rule. This should be prevented.

Proposed Solution: Provide the New Entrants Pay Any Past Service Brought In

The Bill should provide that if a new entrant joins the plan on a past-service basis, then the new entrant should, to that extent, be subject to a share of withdrawal liability just as if that past service had been accrued under the plan all along.

Proposal 7: PBGC Administrative Procedures

The Bill should be amended to provide that, where the plan administrator does not act, after request by the union or a contributing employer, to protect the interests of the plan and its contributors by making use of provisions in the Bill, then a contributing employer or the union may initiate a proceeding before the PBGC (subject to participation by the other parties) under the provisions of the law.

Proposal 8: Deductibility of Lump Sum Payments

Because an employer who is no longer in business may not be able to take tax advantage of the deductibility of a lump-sum withdrawal liability payment, a tax deduction carry-back provision should be included.

CONCLUSION

Mr. Chairman, these proposals will improve the bill. They will work. And we need them.

We are not wedded to the specific legislative language we have submitted, but we need the substance of these changes so that the healthy industries -- who are, after all, the majority of those covered by the bill -- can live reasonably with a law designed to solve the problems of a small minority of multiemployer plans.

APPENDIX A

February 4, 1980

JOINT POSITION OF FMI AND UFCW ON H.R. 3904

1. The Problem of Withdrawal Liability and a Solution

H.R. 3904 imposes on an employer now in a multiemployer plan a new debt -- if he withdraws, he must pay a share of all the unfunded obligations of the plan to all employees -- even for employees of employers who left long ago, even of employers who are bankrupt and cannot pay their share, even of employers who are de minimis and need not pay their share. That is a liability beyond the scope of any current collective bargaining agreement.

A way to minimize this withdrawal liability must be found. We are actively seeking a workable solution.

We support in concept a proposal that H.R. 3904 permit a national group of plans in a single industry to voluntarily form a reinsurance fund for unattributable withdrawal liability ("Industry Fund" or "IF"). IF would be funded by premiums, perhaps experience rated, payable annualy by members on a per-participant basis. The IF would guarantee, and pay to each member fund, amounts of otherwise-payable "unattributable" amounts of withdrawal liability which (1) would have been attributable to and payable by pre-2/27/79 employers but for the fact that they withdrew before the cut-off date; (2) would have been attributable to and payable by bankrupt employers who withdrew, making collection of their shares of withdrawal liability impossible; (3) de minimis withdrawals exempt from withdrawal liability under the Bill; and (4) any

other "pieces" of withdrawal liability exempted from payment by special provisions of the Bill.

Employers contributing to any fund that is a member of an IF would not owe or pay these unattributable liabilities. Their premiums to the IF would cover the cost.

This proposal will lessen yet fully pay that liability -- without use of federal revenues and without shifting the liability to PBGC. It would allow an industry group to solve its own problems. It would impose no real burden on the Government. And it would allow an industry to solve an array of problems not really solved, satisfactorily, by the bill; including the shifting of a bankrupt employer's debts, of the debts of de minimis employers and of the debts left behind by pre-1979 employers accrued on behalf of employees who never worked for current employers.

2. Cap on Withdrawal Liability (15 Year Continuous Contributions)

A cap on withdrawal liability was reported out of the House Subcommittee on Labor Management Relations. We urge that a realistic "cap" be imposed on withdrawal liability. Instead of the provision in the Bill, which is in effect no cap at all, an employer should be able to know that its maximum obligation is to pay an annual amount equal to the average contributions of the withdrawn employer over the five year period prior to withdrawal for 15 years.

3. If No Actuarial Impact, No Withdrawal Liability

Withdrawals that do not affect the financial condition of the plan should not cause employer liability. Section

4201(b)(3) of the Bill should be expanded to provide that:

a. a withdrawal that does not have an actuarial impact on the plan because of subsequent events (new entrants or hiring of laid-off employees by other contributing employers, for example) should not create liability;

b. the demand for withdrawal liability by the plan should be postponed until the end of the second plan year after year in which the withdrawal occurred, with the posting of a bond to protect the plan until the liability is demanded;

c. if at the time of demand, the contribution base units of the plan have not declined since the withdrawal, the withdrawn employer should be required only to post bond for the amount of otherwise-applicable withdrawal liability. The withdrawal liability would be payable from the bond if the plan goes into reorganization within five years of the withdrawal. If the plan does not go into reorganization within five years, the bond would expire.

4. Enforcement of Withdrawal Liability

The Bill should impose more stringent mandatory penalties for failure to make timely payments of withdrawal liability, including requiring payment of liability into escrow during any litigation, or in the alternative, the posting of a bond.

5. <u>Withdrawn Employer Insolvency</u>

The Bill's partition provision, § 4223, should be modified (a) to partition a portion of unattributable liabilities, not merely those directly traceable to insolvent employer, and (b) to allow partition without resort to Federal courts and <u>whenever a non-de minimis contributor becomes insolvent</u>

6. <u>New Entrants</u>

We agree on two principles with respect to new (employer) entrants: (1) a new entrant ought not automatically nor immediately absorb a share of the plan's previously created liability as a potential withdrawal liability; but (2) if a new entrant joins the plan on a past-service basis, then the new entrant should be subject to its fair share of withdrawal liability just as if its past service had been accrued under the plan all along.

7. <u>PBGC Administrative Procedures</u>

The Bill should be amended to provide that, where the plan administrator does not act, after request by the union or a contributing employer, to protect the interests of the plan and its contributors by making use of provisions in the Bill, then a contributing employer or the union may initiate a proceeding before the PBGC (subject to participation by the other parties) under the provisions of the law.

8. <u>Deductibility of Lump Sum Payments</u>

Because an employer who is no longer in business may not be able to take tax advantage of the deductibility of a lump sum withdrawal liability payment, a tax deduction carry-back provision should be included.

APPENDIX B

Amendments to S.1076*
REINSURANCE FUNDS

(Joint Position Item 1)

"Sec. 4204(a). The plan sponsors of multi-employer plans maintained by employers in a single industry or within the jurisdiction of a single labor organization may establish or participate in a reinsurance fund."

(b) "Reinsurance fund" means a trust that --

(1) is established and maintained under § 501(c)(22) of the Internal Revenue Code of 1954;

(2) maintains reinsurance agreements with plans that cover a substantial portion of those participants who are in multi-employer plans in the industry or in the jurisdiction of a labor organization and whose plans are eligible to participate in the reinsurance fund;

(3) is funded by premiums paid by the plans that participate in the reinsurance fund; and

(4) is administered by a Board of Trustees that equally represents --

(A) employers that are obligated to contribute to the plans participating in the reinsurance fund; and

(B) employees who are participants in plans that participate in the reinsurance fund.

(c) (1) Upon the withdrawal of an employer from a plan that participates in a reinsurance fund, the fund shall pay to the plan from which the employer withdrew, to the extent agreed upon by the fund and the plan --

(A) the share of such employer's liability for a plan's unfunded benefit obligations determined under § 4201(e) or (f) (whichever is applicable), that is not attributable to plan participants' service with an employer that was obligated to contribute to the plan on or after February 27, 1979;

(B) such employer's withdrawal liability payments that would have been due but for § 4201(d) or § 4201(i)(2)(B); or

(C) such employer's withdrawal liability payments to the extent that they are uncollectible.

(2) (A) The trust of a reinsurance fund shall be maintained for the exclusive purpose of paying --

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* Section references are to ERISA as amended by H.R. 3904 as reported out of the House Committee on Education and Labor.

(i) the withdrawal liability described in paragraph (1); and

(ii) administrative expenses in connection with the operation of the trust and the processing of claims against the reinsurance fund.

(B) The premiums paid by a plan to a reinsurance fund shall be deemed a reasonable expense of administering the plan under §§ 402(c)(1) and 404(a)(1)(A)(ii), and the payments made by a reinsurance fund to a participating plan shall be deemed services necessary for the operation of the plan within the meaning of § 408(b)(2).

(d) The corporation may provide by regulation rules not inconsistent with this section governing the establishment and maintenance of reinsurance funds only if necessary to prevent unreasonable risks to the multi-employer plan insurance system.

(e) To the extent of reimbursement paid by the reinsurance fund to a member fund, such payments shall be credited to withdrawal liability otherwise payable; withdrawal liability shall apply to any employer to the extent the reinsurance fund does not reimburse the plan.

(f) No payments shall be made from a reinsurance fund to a member fund on the occasion of a withdrawal or partial withdrawal of an employer from such a member fund if the employees representing the withdrawn contribution base units continue, after such withdrawal, to be represented under § 9 of the National Labor Relations Act by the labor organization which represented such employees immediately preceding such withdrawal.

Bill Section 4006(a)(3)(B)

". . . more than once for any plan year. The corporation may prescribe in regulations the extent to which premium increases not provided in the Multiemployer Pension Plan Amendments Act of 1979, if any, shall not apply to a multiemployer plan which is a member of a fund under § 4204.

Internal Revenue Code Section 501(c)(22) (new)

"(22) A trust of trusts established in writing, created or organized in the United States, and contributed to by any person if --

"(A) the purpose of such trust or trusts is exclusively --

"(i) to satisfy, in whole or in part, the liability of such person for benefit obligation for pension benefits, as provided in 29 U.S.C. §1501(d)(2); and

"(ii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust and the processing of claims against such person under ERISA; and

"(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than --

"(i) the purposes described in subparagraph (A), or

"(ii) investments (but only to the extent that the trustee determines that a portion of the assets is not current needed for the purposes described in subparagraph (A)) not prohibited by reason of any provision of ERISA."

Amendments to S.1076

Cap on Withdrawal Liability (Joint Position Item 2)

Section 4201(i) should be amended by:

Moving paragraphs (i)(1) and (i)(3)-(9) to subsection (j) paragraphs (4)-(11) and by amending and renumbering subparagraph (i)(2) to read as follows:

"(i)(1)(A) The liability of an employer determined under subsection (e) or (f), whichever is applicable, shall be limited to the lesser of --

"(i) the liability determined under subsection (e) or (f), whichever is applicable; or

"(ii) the present value of 15 annual payments equal to the average contributions of the employer over the five years prior to the plan year in which the withdrawal occurred, determined based on the assumptions used for the most recent actuarial valuation for the plan.

"(B) In the event of --

"(i) the termination of a multiemployer plan by the withdrawal of every employer from the plan, or

"(ii) the withdrawal of substantially all the employers from a plan, pursuant to an agreement or arrangement to withdraw, the liability of each such withdrawn employer shall be determined under paragraph (1)(A)(i) without regard to paragraph (2)(A)(ii). Withdrawal from a plan within a period of 3 years of substantially all the employers required to contribute under the plan shall be deemed to be withdrawal pursuant to an agreement or arrangement within the meaning of this subsection, unless the employer proves otherwise by a clear preponderance of the evidence."

* * *

Section 4201(j) should be amended to specify a 15 year period over which withdrawal liability shall be paid by inserting a paragraph to read as follows:

"Except as provided in paragraphs i(1) and j(7) an employer shall pay the liability determined under subsection (e), (f), or (g), whichever is applicable, over the lesser of --

"(A) 15 years, or

"(B) the period of years necessary to amortize the liability in level annual payments, determined under subparagraph (2) as if each payment were made at the end of the year in which it is due.

"The determination of the amortization period shall be based on the assumptions used for the most recent actuarial valuation for the plan.

"(2) The amount of each annual payment shall be the average annual contribution of the employer over the five years ending prior to the year the withdrawal occurred."

Amendments to S.1076

Withdrawals Which Have No Actuarial Impact on the Plan Shall Have No Resulting Liability to the Employer

(Joint Position Item 3)

Amend Bill § 4201(c)(6) to read as follows:

An employer's liability shall be abated upon a showing by such employer that the contribution base units with respect to all employers contributing to the plan within two plan years of such employer's withdrawal equal or exceed the plan's total contribution base units immediately preceding such employer's withdrawal.

Amend Bill § 4201(c)(2)(A) to read as follows:

"(A) A partial withdrawal occurs when the number of contribution base units with respect to which the employer has an obligation to contribute to the plan is less, for two consecutive plan years, than 75% of the average number of contribution base units with respect to which that employer had an obligation to contribute under the plan for the five plan years preceding those two plan years; provided, however, that (1) equal portions of any payment of withdrawal liability for a partial withdrawal shall be credited periodically against any withdrawal liability resulting from any subsequent total or partial withdrawal by the same employer, and (2) in any case described in subsection 4201(c)(6), withdrawal liability otherwise payable shall be abated."

Amendments to S.1076

Reduce Incentives to Litigation (Joint Position Item 4)

Amendment #1:

Bill § 4203(a), which creates presumptions that § 4201 determinations are correct, should be amended to expand its coverage to Part 6 of the Bill, § 4301, by amending as follows:

"Sec. 4203(a) For purposes of this part and for purposes of Section 4301 . . . [etc.]."

Amendment #2:

Bill § 4201(j) should be amended to require employers to pay withdrawal liability into an escrow account during the pendency of any litigation by addition of § 4201(j)(4) as follows:

"(4) The employer shall pay the amount of the withdrawal liability even if the employer disputes any determination relating to the employer's liability except that during the pendency of any litigation either the liability shall be paid into an escrow account or the employer shall furnish a bond for the amount of the liability."

Amendment #3:

Bill § 4301(b) should be expanded and amended to provide standards for awards of liquidated damages, by:

inserting after the words "withdrawal liability", the phrase "whether or not initiated by the plan,"

by: striking the word "may" and substituting the word "shall" and by changing the final period to a comma;

and by adding at the end of the subsection, the following:

"if the court finds that the employer's challenge to the plan sponsor's determination or refusal to pay withdrawal liability was willful, frivolous, in bad faith or for purposes of delay."

Amendment #4:

Bill § 4301(e) should be amended to provide that attorney's fees and costs shall be awarded to the prevailing party absent exceptional circumstances by:

striking the word "may" and replacing it with "shall";

and by changing the final period to a comma and adding "absent exceptional circumstances."

Amendments to S.1076

Expansion of Partition Provision (§ 4223)
(Joint Position Item 5)

Section 4223 should be modified and expanded to read as follows:

"PARTITION

"SEC. 4223. (a) In the event of a case or proceeding under title 11, United States Code, with respect to an employer, or a similar proceeding under State law, which has resulted or will result in a non *de minimis* reduction in the amount of aggregate contributions under the plan or in a default in payment of withdrawal liability determined to be payable under § 4201, the plan sponsor may, upon notice to the PBGC and to the participants and beneficiaries whose benefit entitlements would be partitioned, partition the plan pursuant to subsection (b) of this section.

"(b) The partition shall transfer the nonforfeitable benefits directly attributable to service with the employer referred to in paragraph (a) together with the share of the unattributable liabilities the employer would have been obligated to pay on withdrawal, and an equitable share of plan assets, subject to regulations of the corporation.

"(c) Subsections (c) through (h) of section 4042 shall apply to the portion of the plan partitioned under this section, without regard to notice.

"(d) The corporation shall treat the partitioned plan --

"(1) as a successor plan to which section 4022A applies, and

"(2) as a terminated multiemployer plan to which section 4041A(d) applies, with respect to which only the employer described in subsection (a)(1)(A) has withdrawal liability, and to which section 4068 applies."

Section 4203(c) of the Bill should be amended by inserting "or § 4223" after the words "section 4201".

Amendments to S.1076

New Entrants Rule
(Joint Position Item 6)

Section 4201(i) (as amended by the Cap, see Item 2, hereof) should be amended by adding the following as section (i)(2):

"i(2) If an employer withdraws or partially withdraws from a plan in a year which is less than ten full plan years after the plan year in which that employer first had an obligation to contribute to the plan, the employer's withdrawal liability shall include liability for the benefits of that employer's employees accrued under the plan as a result of service with the employer before the employer had an obligation to contribute under the plan to the extent not forfeited under the plan in accordance with § 411(a)(3)(E) of the Internal Revenue Code of 1954; Provided that any such liability shall be reduced by one-twentieth for each plan year during which the employer contributed to the plan."

Amendments to S.1076

Allow Petition to PBGC by Any Party
(Joint Position Item 7)

The Bill should be amended by adding a new section, § 4303, as follows:

"4303. Any union or employer may petition the PBGC for any approvals or actions required or authorized by this Act if the plan sponsor fails to so petition after request of the employer."

Amendments to S.1076

Expand Deductibility of Lump Sum Withdrawal Payments
(Joint Position Item 8)

Bill § 204 (amending IRC 404(a)(1)(D)) should be amended to read as follows:

"(C) Section 404(a)(1)(D) is amended to read as follows:

"(D) CARRYOVER AND CARRYBACK -- Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the foregoing limitations, provided, however, that a lump sum payment of withdrawal liability by an employer under § 4201 of ERISA may be carried back or forward for seven years to offset against the employer's profits, even if such employer is no longer in business and, for that reason, the payment would not otherwise be deductible under § 162 or § 212."

Senator BENTSEN. Our next witness is Mr. Donald Seifman on behalf of the United Food & Commercial Workers International Union.

I may have mispronounced that. If I have, please correct me.

Mr. SLEVIN. Mr. Chairman, my name is Barry Slevin.

Senator BENTSEN. Well, that is a long way off.

Mr. SLEVIN. It is a very different pronunciation.

Mr. Seifman asked me to express his regrets to the chairman and the committee that he could not be here today.

Senator BENTSEN. All right. Please proceed.

Mr. SLEVIN. Thank you.

STATEMENT OF BARRY SLEVIN, THE UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION

Mr. SLEVIN. I represent the United Food & Commercial Workers International Union, which has almost 1 million participants in over 100 multiemployer plans. We are extremely interested in this legislation and its impact on multiemployer plans and the participants who depend on those plans for their retirement income.

We have a prepared statement that I would like submitted for the record.

I would like to focus on the withdrawal liability provisions of the bill and first of all state that we strongly support the principles in H.R. 3904. As previous witnesses have pointed out, a number of groups have gotten together and worked on these provisions in an attempt to come up with a consensus on what is an appropriate way of dealing with the problems in the multiemployer plan universe. We feel that H.R. 3904 as reported out of the House Labor and Education Committee addresses most of those concerns.

Specifically in the withdrawal liability area, it has changed the presumptive allocation rule for withdrawal liability in order to insure that new employers are not discouraged from entering into multiemployer plans. It has also varied the de minimis rule from that in the administration's proposal in order to make sure that very small employers, small businesses, are not faced with withdrawal liability in situations where their withdrawal does not have an impact on the plan.

The UFCW and FMI have discussed, as Mr. Cummings pointed out, the concept of a reinsurance fund, which we think is a key in helping the remaining problems with withdrawal liability. I am referring to the fact that it is still possible that employers in multiemployer plans will be paying for other employers' obligations.

Mr. Cummings specified the circumstances and the types of liabilities where such unattributable liabilities can be paid by a competing employer.

We have come up with an idea which we think is eminently workable. It calls for no allocation of budget funds. It calls for no allocation of off-budget funds, such as PBGC funds. It is not a burden on the PBGC or any Government entity.

What we are suggesting is statutory authorization and encouragement for industry-by-industry funds to be set up to take care of their own problems, to have a layer of insurance before the PBGC even has to step in. That is why we support this reinsurance fund

concept. The Senate Labor Committee print of March 18 contains statutory provisions along these lines, and we will submit statutory language which we think will improve on that, although the Senate Labor Committee print goes a long way in stating the workable concept that we have discussed.

That concludes my statement.

Senator BENTSEN. Thank you very much. We look forward to studying it in more detail. Thank you.

[The prepared statement of Mr. Slevin follows:]

STATEMENT OF BARRY S. SLEVIN*

ON BEHALF OF

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION

BEFORE THE SENATE FINANCE COMMITTEE

March 18, 1980

Mr. Chairman, members of the Committee, thank you for the opportunity to appear before you.

We are here today to discuss a matter of vital importance -- the protection of participants in multiemployer pension plans, who are threatened with the loss of benefits they have earned. The health of multiemployer plans is of great importance to the UFCW membership. There are over 100 multiemployer plans covering UFCW members. Almost one million UFCW members are participants in those plans and depend on the plans for their retirement.

This Committee and the Congress as a whole has shown a commendable concern in protecting employees against loss of benefits promised by their pension plans. The Employee Retirement Income Security Act of 1974 -- a law designed to protect employees justifiable expectations -- was an important step. After more than five years of experience of operation of multiemployer plans under that law, we all realize that it was only a first step.

When ERISA was passed, Congress was aware that there were tremendous uncertainties involved in the regulation of multiemployer plans, especially in the area of plan termination insurance. There were

*Barry S. Slevin is with the law firm of Seifman & Lechner, P.C.

hopes that termination insurance for multiemployer plans was unnecessary. Thus, when ERISA was passed it postponed mandatory insurance for multiemployer plans until January 1, 1978. In the meantime the PBGC was authorized to extend its guarantee to multiemployer plans that terminated. Other provisions -- most important, those relating to employer withdrawals -- were effective immediately.

From the start, it was clear that the 1974 Act was not enough. Almost immediately following enactment, PBGC received requests for insurance from five multiemployer plans. The unfunded liability of those plans exceeded the PBGC's resources for the foreseeable future. At the same time, it became clear that rather than providing protection, the plan termination insurance provisions worked to the detriment of the plan, the participants, and the contributing employers. The employer liability provisions of the 1974 Act encouraged employers to withdraw from the plan and discouraged new entrants. The provisions relating to employer withdrawals provided no protection. By the time mandatory coverage was scheduled to go into effect, it was obvious that ERISA's provisions were unworkable and that mandatory coverage could prove to be catastrophic. Therefore, mandatory insurance was postponed until July 1, 1979 and PBGC was asked to propose a new program. A basis for that program is reflected in S. 1076. Both Houses of Congress approved a third postponement of mandatory coverage, to May 1, 1980.

This recent history proves two points. First, drastic changes in the present program are necessary. Of course, the changes should be made with the program's primary purpose firmly in mind: the protection of plan participants against loss of benefits that they have earned with their

work. The second lesson is that time is of the essence. Until Congress enacts a new program, the decline of multiemployer plans will continue as they are forced to deal with the counterproductive impact of ERISA, especially in the area of employer liability, which encourages employers to withdraw from plans to place the funding burden upon the employers that remain with the plan. At the same time, participants of the plans that are undermined by the law are left with little protection. This state of confusion that surrounds the status of multiemployer plans is unacceptable.

The Provisions of S. 1076

In general, the United Food and Commercial Workers International Union supports S. 1076. Finetuning of the original bill, which has taken place in other congressional committees, has generally improved it. We will refer to H.R. 3904, reported by the House Committee on Education and Labor, which made many helpful changes. If enacted, the proposals will create a balanced insurance system that will protect plan participants. However, in certain areas we see the possibility of improving the bill so as to provide more equity for employers. Also, these improvements could provide more protection for employees who are presently in these plans and those who will join the plans in the future.

Employer Withdrawals

The provisions dealing with employer withdrawals are key elements of the insurance program. The presumptive rule provided in the House version bill is very beneficial because it will not discourage new employers from joining a plan. That provision is a substantial improvement over the original administration proposal. However, new ERISA

Section 4201(e) as proposed, will provide that uncollectible withdrawal liability is added to a liability to be paid by new employers unless insured under a separate program to be established by the PBGC. Additionally, amounts that are not collected due to the *de minimus* rule and the cap on liability are to be paid by post-February 27, 1979 employers. These additional liabilities are an unknown quantity and may adversely affect the willingness of employers to join multiemployer plans. The position taken by the UFCW and the FMI in favor of voluntary industry-wide supplemental reinsurance funds to cover these liabilities would enhance the ability of multiemployer plans covered by such a supplemental insurance program to attract new employers.

There is a significant omission in the present proposals. Under the bills, if an employer withdraws, either because it is selling its business or for any other reason, the bill could be read to impose withdrawal liability even if its withdrawal has no impact. For instance, if employer X sells its business to Y and Y continues to employ the same employees and contribute to the plan, X could be liable even though Y has stepped into its shoes. In such a situation, the plan is unjustly enriched, since it is, in effect, receiving double payment for the same participants. This is why we have proposed that the bill unambiguously provide for the abatement of withdrawal liability in such situations.

In addition, simplified partial withdrawal liability rules are needed. The present proposals are too complex, and necessitate reference to PBGC regulations, that cannot expect to be published for some time. A partial withdrawal should occur when an employer has significantly reduced its participation in the plan, for instance, by 25%. The reduction should

be measured by looking at the employer's average participation over a number of years preceding the withdrawal to prevent an employer from avoiding liability by slowly phasing out its operations. These principles, combined with abatement of liability when the plan has recovered from the impact of a full or partial withdrawal, should result in a simplified but workable partial withdrawal liability rule.

Another change in the bill that should be considered by the Committee is the strengthening of Section 4201(b)(4). This provision generally provides for withdrawal liability in the event of a change in corporate structure as described in Section 4062(d). However, as I read Section 4062(d) of ERISA, an employer could escape liability by use of certain changes in corporate structure. If, upon such change in structure, the original employer maintained contributions by funneling them through the new entity to the plan for a sufficient period under the bill's liability formulae, the original contributing employer could escape withdrawal liability completely. We suggest that the predecessor be primarily liable (and the successor secondarily liable) in the case of corporate reorganizations. This protection is already found in the Black Lung Act's liability provisions. Also, a bond or escrow requirement could be provided to protect the plan in the event of a change in corporate structure.

Premium Structure and Guarantee Level

The United Food and Commercial Workers International Union supports a guarantee level that is greater than the one provided in the bill. The Union would like to see a guarantee level that is equivalent to the single employer plan guarantee.

The bill provides that the PBGC is to develop a risk premium structure. The UFCW looks favorably upon the development of such a system. However, we wish the risk factor to be in addition to a base per capita premium, which is necessary to preclude overly burdensome premiums to unhealthy plans. Also, development of a risk related system should be mandatory, not permissive. Furthermore, the systems should result in substantially reduced future premium increases for plans participating in the supplemental industry-wide reinsurance funds. This is because such participation should decrease the risk to the PBGC.

We wish to stress that the bill was drafted to help a small minority of multiemployer plans within the multiemployer plan universe in response to the so-called "dying industry" problem. Very little is provided in the bill to benefit healthy multiemployer plans. A mandatory requirement that a risk related premium be developed (for at least a portion of the premium to be paid to PBGC) would be very helpful and would be a reward for those multiemployer plan trustees who are doing their job well. Multiemployer plans have received too much unfavorable publicity in the newspapers and other media as a result of the PBGC's initial report on multiemployer plans and the exploration of alternatives to ERISA's present provisions. It is time that Congress recognized that the vast majority of multiemployer plans are doing an excellent job.

<u>Conclusion</u>

It is the belief of the UFCW that if the bill is enacted as we suggest it be amended, multiemployer plans will be in a better legal environment than they are today. UFCW believes that these plans will again be able to thrive given such an environment.

Senator BENTSEN. Our next witness is Mr. Paul Jackson of the Wyatt Co. on behalf of the National Small Business Association.

Mr. Jackson?

Mr. Jackson is not here so we will proceed with the next witness, Karen Ferguson, Pension Rights Center.

Ms. FERGUSON. Good morning.

Senator BENTSEN. Good morning.

Ms. FERGUSON. I apologize for not having a prepared statement. I just finished writing my statement and I will submit copies later this afternoon.

Senator BENTSEN. All right.

Ms. FERGUSON. May I just ask, is Mr. Nichols here? Would Mr. Nichols come up to the table?

Senator BENTSEN. Who are you asking?

Ms. FERGUSON. Mr. Ernest Nichols I have asked him to join me.

Senator BENTSEN. Who is he?

Ms. FERGUSON. He is a participant in a multiemployer pension plan. I mentioned to Dave Allen that he would be coming, if that will be all right with you.

Senator BENTSEN. All right, within the time limitations we will be pleased to have him.

Ms. FERGUSON. Thank you.

STATEMENT OF KAREN FERGUSON, PENSION RIGHTS CENTER

Ms. FERGUSON. This subcommittee is under tremendous pressure, as you are well aware, to report out S. 1076 in its present form. You have been told that the bill reflects a delicate balance between the interests of major employers and unions and that it is the product of several years of work and that it has the approval of the relevant Government agencies.

Yet the fact is that if this bill is enacted in its present form it will hurt a great many people, people who were not represented in the creation of the delicate balance, whose interests were not considered during all of those years of work and whose concerns seem to have been overlooked by the administrative agencies.

The people who will be hurt by this bill are those who have already retired in reliance on the benefits they were promised. They are people who were never told by their employers, their unions, or their Government that their benefits could be cut. They are people who need every cent they are getting.

For these people, it is too late to find other sources of retirement income. For them, S. 1076 will be nothing more than a great Government takeaway.

It is important to realize what exactly it is that S. 1076 proposes to do. It does not simply cut back on insurance protection. It requires plans actually to cut back on pension benefits.

Under the bill, the cutbacks take effect in two stages. When a plan gets into financial trouble as defined by the bill, unless employers agree to increase contributions—which is most unlikely in a declining industry—benefits must be cut back to the levels in effect 5 years before. For many retirees, this will mean that increases their unions have gained for them in an effort to compensate, however modestly, for the ravages of inflation, will be completely wiped out.

For others who retired more recently, counting on increased benefits, it will mean that they will get a fraction of what they had counted on getting.

The second reduction takes place if employer contributions are not enough to fund benefits at the 5-year cutback level. Here there is no option. The benefits must be cut.

All monthly benefits over $15 per year of service are eliminated entirely and only 80 to 85 percent of the benefits between 5 and 15 years of service can be paid.

Mr. Nichols' pension plan is an example of how these provisions can work. Mr. Nichols retired from Asbestos Workers Local 24 pension plan in July 1978 after more than 37 years of work. At the time he retired, the monthly pension benefit for people who had worked more than 25 years in the industry was $24.80 per year of service.

Under the provisions of this bill, Mr. Nichols' pension would be cut to $13.50 per month per year of service. Instead of the $920 a month he got when he retired, he would get a benefit of $503 a month, a difference of more than $5,000 a year.

Mr. Nichols' situation is, of course, not typical of all retirees under multiemployer plans. Most retirees receive smaller benefits, but he is certainly not alone.

A truckdriver retiring now from the Central States Teamsters pension plan, having worked from ages 37 to 57, receives $575 a month. If his plan were to get into financial trouble—which is not inconceivable, given past financial mismanagement, the price of diesel fuel and the consequences of deregulation—his benefit would be cut under this bill to $270 a month.

In considering the impact of this bill it is worth remembering that benefits in nonmanufacturing industries now average more than $16 a month and in manufacturing more than $11 a month.

Although the vast majority of retirees retired on the much lower benefits of earlier years, there are also a great many more recent retirees, most of whom, like Mr. Nichols, simply would not have retired had they not counted on receiving their full benefits.

I asked Mr. Nichols to join us here today not only to illustrate the potential dollars and cents impact of the bill, but for two other reasons.

First, Mr. Nichols and the 30 other retirees receiving benefits from Local 24's pension plan already know firsthand what it is like to have the benefits you counted on receiving stripped away without any say and without any recourse.

Second, because his experience is the most effective response I can think of to the many arguments being advanced to justify the bill's cutback provisions.

According to the trustees of the Local 24 plan, it is already in financial trouble. They claim that the plan is short of money because the return on investments is low and there has been a decline in the number of people working on particular job sites.

On the strength of these claims, they succeeded last year in persuading the IRS to exercise its authority under ERISA to cut benefits back to the levels in effect in 1977, 1 year before Mr. Nichols retired.

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The IRS action was accomplished by private letter ruling, without notice to any of the participants and based solely on the representations of plan officials. Until his lawyer filed a lawsuit on his behalf, Mr. Nichols was not even allowed to see the application made by the plan for the reduction much less the IRS ruling.

Mr. Nichols is now contesting the IRS action on the grounds, among other things, that the representations made by the plan officials were false, that in fact plan participants are working on the sites they claim they were not, and that the plan's financial condition is not as precarious as claimed.

The kind of arbitrary action taken by the Local 24 trustees is precisely the kind of action encouraged by S. 1076. My guess as is that what happened is that after having gotten rid of Mr. Nichols and others by inducing them to retire on the promise of high benefits, the union and company representatives on the board of trustees decided that the cost of paying these benefits was too high.

The active workers covered by the plan are much younger and in fact, none are likely to reach retirement age for another 13 years. Since the retirees were not represented in the decisionmaking process, it was all too easy for the representatives of the active workers who owe no legal duty to the retirees to agree with the employers to cut the retirees' benefits.

No consideration whatsoever was given to the impact on Mr. Nichols of this very substantial impact.

The argument heard most frequently in support of the S. 1076 cutback provisions is that they provide a disincentive to unions and companies to bargain for unrealistically high benefit levels. As Mr. Nichols' case shows, the contrary is far more often likely to be the case.

Instead of providing a disincentive to unrealistic increases it will encourage unrealistic increases. High benefits can be bargained to encourage older workers to retire, or simply to score a significant gain at the bargaining table, almost a surefire way of assuring the reelection of union officials and the reappointment of trustees——

Senator BENTSEN. Ms. Ferguson, that will be helpful to us and we will take your full remarks in the record.

Did you say you wanted to amplify it this afternoon?

Ms. FERGUSON. I would like to submit a written statement in which I have a number of very specific recommendations.

Senator BENTSEN. That would be fine. I think you have added an extra dimension to the hearings and I appreciate your testimony.

Ms. FERGUSON. Thank you.

[The material to be furnished follows:]

STATEMENT OF KAREN W. FERGUSON
PENSION RIGHTS CENTER
BEFORE THE SUBCOMMITTEE ON
PRIVATE PENSION PLANS AND EMPLOYEE FRINGE BENEFITS
SENATE FINANCE COMMITTEE
WASHINGTON, D.C.

March 18, 1980

Good morning, Mr. Chairman. I am Karen W. Ferguson, director of the Pension Rights Center. Appearing with me today is Ernest Nichols, a retiree receiving benefits from a multiemployer pension plan.

This Subcommittee is under tremendous pressure to report S. 1076 out in its present form. You have been told that the bill reflects a "delicate balance" between the interests of major employers and unions, that it is the product of several years of work and that it has the approval of the relevant government agencies.

Yet the fact is that if the bill is enacted in its present form, it will hurt a great many people, people who were not represented in the creation of the "delicate balance", whose interests were not considered during all of those years of work and whose concerns seem to have been overlooked by the administrative agencies.

The people who will be hurt by this bill are those who have already retired in reliance on the benefits they were

promised. They are people who were never told -- by their employers, their unions or their government -- that their benefits could be cut. They are people who need every cent they are getting. For these people it is too late to find other sources of retirement income. For them S. 1076 will be nothing more than a "great government take-away".

It is important to realize exactly what it is that S. 1076 proposes to do. It does not simply cut back on insurance protection. It requires plans actually to cut back pension benefits. Under the bill, the cut backs take effect in two stages.

When a plan gets into financial trouble as defined by the bill, unless employers agree to increase contributions -- which is most unlikely in a declining industry situation -- benefits must be cut back to the levels in effect 5 years before. For many retirees this will mean that increases their unions have gained for them in an effort to compensate, however modestly, for the ravages of inflation, will be completely wiped out. For others who retired counting on increased benefits, it will mean that they will get a fraction of what they had counted on getting.

The second reduction takes place if employer contributions are not enough to fund benefits at the five-year cut back level. Here there is no option. The benefits must be cut.

All monthly benefits over $15 per year of service are eliminated entirely and only 80 to 85 percent of the benefits between 5 and 15 years of service can be paid.

Mr. Nichols' pension plan is an example of how these provisions can work. Mr. Nichols retired from the Asbestos Workers Local 24 Pension Plan in July of 1978 after more than 37 years of work. At the time he retired, the monthly pension benefit for people who had worked more than 25 years in the industry was $24.80 per year of service. Under the provisions of this bill, Mr. Nichols' pension would be cut to $13.50 per year of service. Instead of the $925 a month he got when he retired, he would get a benefit of $503 a month, a difference of more than $5000 a year! Mr. Nichols' situation is, of course, not typical of all retirees under multiemployer plans. Most retirees receive smaller benefits, but he is certainly not alone. A truck driver retiring now from the Central States Pension Plan having worked from age 37 to 57 receives $575 a month. If his plan were to get into financial trouble (which is not inconceivable given past financial mismanagement, the price of diesel fuel and the consequences of deregulation) his benefit would be cut under this bill to $270 a month. In considering the impact of the bill it is worth remembering that benefits in nonmanufacturing industries now average more than $16 a month and in manufacturing more than $11 a month.

Although the vast majority of retirees retired on the much lower benefit of earlier years, there also are a great many more recent retirees, most of whom, like Mr. Nichols simply would not have retired had they not counted on receiving their full benefit.

I asked Mr. Nichols to join me here today not only to illustrate the potential dollars and cents impact of the bill, but for two other reasons. First, Mr. Nichols and the 30 other retirees receiving benefits from the Local 24 Plan already know first hand what it is like to have the benefits you counted on receiving stripped out from under you without any say on your part and second, because his experience is the most effective response I can think of to the arguments being advanced to justify the bill's cutback provisions.

According to the trustees of the Local 24 Plan, it is already in financial trouble. They claim that the plan is short of money because the return on investments is low there has been a decline in the number of people working on particular job sites. On the strength of these claims they succeeded last year in persuading the IRS to exercise its authority under ERISA to cut benefits back to the levels in effect in 1977, one year before Mr. Nichols retired.

The IRS action was accomplished by private letter ruling, without notice to any of the participants and based

solely on the representations of plan officials. Until his lawyer filed a lawsuit on his behalf, Mr. Nichols was not even allowed to see the application made by the plan for the reduction, much less the IRS ruling. Mr. Nichols is now contesting the IRS action on the grounds, among other things, that the representations made by the plan officials were false, that in fact plan participants were and are working in the areas the plan said they were not and that the plan's financial condition is not as precarious as claimed.

The kind of arbitrary action taken by the Local 24 trustees is precisely the kind of action encouraged by S. 1076. My guess is that what happened is that after having gotten rid of Mr. Nichols and others by inducing them to retiree on the promise of high benefits, the union and company representatives on the board of trustees decided that the cost of paying those benefits was too high. The active workers covered by the plan are much younger, and in fact none are likely to reach retirement age for another 13 years. Since the retirees were not represented in the decision-making process, it was all too easy for the representatives of the active workers (who owe no legal duty to the retirees) to agree with the employers to cut the retirees' benefits. No consideration whatsoever was given to the impact on Mr. Nichols of this very substantial cut.

The argument heard most frequently in support of the

S. 1076 cutback provisions is that they provide a disincentive to unions and companies to bargain for unrealistically high benefit levels. As Mr. Nichols' case shows, the contrary is far more often likely to be the case. Instead of providing a disincentive to unrealistic increases, it will encourage unrealistic increases. High benefits can be bargained to encourage older workers to retire, or simply to score significant gains at the bargaining table (almost a surefire way of assuring the reelection of union officials and continued appointment as fund trustees). The trustees and bargaining parties either assume that the fund will never get into financial trouble (in Mr. Nichols' case, they were assured by the fund's actuaries at the time of the increase that there was plenty of money to pay for the promised benefits) or they are willing to gamble that if the plan ever gets into trouble, it will be long after they are out of office or if they are still around they can simply say that the United States Congress requires the cutbacks. It's not their doing at all.

The second argument for the cutbacks is not generally made publicly, but it is the argument that everyone had to give up something in this bill. Trade offs were made, nobody is happy, everybody gains and everybody loses. The problem is that, as in the Local 24 situation, these trade offs were made, the deal was cut, without the retirees' participation.

The fact is that the interests of the more than one million retirees receiving benefits from multiemployer pension plans were not represented in the development of the bill. They didn't agree (just as Mr. Nichols didn't agree) to giving up their benefits.

If retirees now in pay status had been cut into the deal, had been asked how they would have resolved the problem of how to devise a viable multiemployer pension insurance program, their answer would not have been to cut benefits. They simply couldn't afford to give that answer.

What would their answer have been? I asked Mr. Nichols whether he thought younger workers as well as retirees would be willing to pay an extra penny or even two cents a day to guarantee that retirees would get their full benefits. He pointed out that $1.39 for every hour worked is already going into his pension plan. As far as he could see active and retired workers would consider even 10 cents a work day to be cheap. If my arithmetic is right, that would produce more than $208 million a year. Retirees would be willing to contribute even more, $5 a month would still be a bargain. And to respond to Ted Groom, retirees in healthy industries as well as others have lived long enough to know that no one can predict what industries will remain healthy. They all wore hats once not so long ago.

Quite frankly, neither of us understand what the concern is about increased premiums. The money that goes to the PBGC is money taken out of take-home pay. It is not "plan" money. It is not -- or should not be -- considered to be a part of plan administrative costs. Nor can it realistically be considered employer money.

The GAO has reported that it is "virtually impossible to reliably estimate the costs and premium requirements" of the insurance program. If that is the case, why compel people who have already retired to bear the risk of that uncertainty? Once retirees have lost benefits for a particular year, these benefits can never be recouped. Wouldn't it make far more sense to put more money into the PBGC, enough at least to pay what has already been promised to people already retired and then if it turns out that there is too much money, the excess can be returned to the plans at some future date. Since many of the problems plans are now experiencing are attributable to inadequate funding before ERISA, those problems will phase out over time. Long before that time, it should be possible dramatically to reduce premiums.

I recognize that your reaction to what I am saying is likely to be, it's too late. The agreement is already set in concrete. We have to get a bill out by May 1st, how can we make drastic changes now? The answer is that you don't

have to make drastic changes -- at least in terms of reworking the basic provisions of the bill. All that is needed is the following:

First, to continue the benefit guarantees now provided in Title IV of ERISA (which are not all that great to begin with) to all plan participants now in pay status.

Second, you need to increase premiums to whatever level necessary to reasonably assure payment of those benefits. Assess these payments on active workers as of the next collective bargaining agreements, so that specific premium payments are taken directly out of the wage package. And assess premiums on retirees by requiring plans to reduce monthly benefits in the amount needed to pay the cost of the premiums.

Third, provide that plan trustees specifically disclose to active workers at the time of any increase that that increase can be taken away if the plan gets into financial trouble within 5 years and that other benefits can be reduced by the formula contained in S. 1076.

Finally, if deterrents to unrealistic benefits are needed, impose increased funding standards for increases, as Canada does. (Canada requires increases to be funded over 15 years.)

Three other changes are also needed in the bill:

(1) A deterrent to mass withdrawal. As the bill

presently reads, it invites employers to withdraw en masse and freeze retirees benefits either at current levels (or in some cases at levels in effect five years before). The provision presently in the bill would invite the Bituminous Coal Operators Association to freeze the United Mineworkers of America's plan for miners who retired before 1976. These retirees would be denied all possibility of any future increases in their benefits, even though their union has succeeded in getting them benefit increases in past negotiations. In our office we call the ice floe provision. The BCOA can put the retirees on the ice floe, leaving them to sail out to sea and provide increases only to active workers.

(2) There should also be disclosure of the fact that past service credit will be canceled when employers withdraw from a plan. Workers are frequently induced to join a union because of the promise that they will get credit for their past service in the industry. They need to be told that this service can be canceled.

(3) Finally, we suggest that there be a mandatory self-insurance program for the construction and entertainment industries to supplement the PBGC insurance. As presently structured the bill would impose an unfair burden on retirees and the PBGC in the event of any serious long-term recession in these industries.

This Subcommittee in the past has consistently shown a strong concern for retirees and an unwillingness to go along with labor-management arrangements that leave them out. I ask you to look long and hard at the cut back provisions. I am convinced that if you do, you will find that they are neither necessary or justified.

Mr. Nichols and I would both be pleased to answer any questions you may have.

Senator BENTSEN. Our next witness is James Hacking, assistant legislative counsel for the American Association of Retired Persons and the National Retired Teachers Association.

Mr. HACKING. Thank you, Mr. Chairman.

On my right is one of our legislative representatives, Steve Zaleznick.

I would like to submit my statement for the record of the hearing and proceed from an edited copy of the summary we have prepared.

STATEMENT OF JAMES HACKING, ASSISTANT LEGISLATIVE COUNSEL, AMERICAN ASSOCIATION OF RETIRED PERSONS & NATIONAL RETIRED TEACHERS ASSOCIATION

Mr. HACKING. Let me get to our associations' central point. There is something in S. 1076 that causes us a problem.

In section 3, the bill declares that:

> * * * the determination of the extent to which an industry can afford to continue full support for all obligations of a multiemployer plan is, in the first instance, best made through the process of collective bargaining.

This declaration manifests itself to the potential disadvantage of retirees in the provisions dealing with reorganization, insolvency and benefit guarantees. In short, S. 1076 allows for reductions in retirees' benefits if the plan gets into serious financial trouble. Decisions with respect to any benefit reductions would be made initially in the context of the collective bargaining process. The problem with this is that the collective bargaining process is too charged with potential for conflict of interest to be the kind of vehicle on which retirees can rely for adequate protection.

We think the benefit reduction scheme of the bill intensifies the risk of worker-retiree conflict. As we looked at the dynamics of this bill, we got the impression that the multiemployer pension plan would become a function of the labor-management process, a process in which retirees are not directly represented and one in which they have no advocates who lack the potential for conflict of interest.

We hope this subcommittee will try to alleviate our concerns. Perhaps some financing arrangement can be developed that will allow for a full guarantee of promised benefits. If planned premium

levels are inadequate, then perhaps consideration could be given to raising them and accelerating their implementation.

If the final legislation does fail to provide a 100-percent benefit guarantee, certainly some changes still could be made that would insure that decisions are at least made in the interests of retirees. Certainly retirees should be told which, or what amount of, their benefits are not guaranteed.

Along with notice of benefit liberalizations, plan participants should be told that these benefits would be guaranteed in 5 years if their plan maintains its financial health.

The notice would give participants, including retirees, the incentive to watch the dealings of their plan and perhaps thereby demand greater accountability on the part of decisionmakers and plan trustees. In addition to a notice requirement, we believe that the concerns of retirees must be made apparent to plan trustees, and there must be a mechanism available whereby trustees can act on them.

Perhaps boards of trustees should be required to include retirees. Certainly we think there should be some language included in this bill which at least clarifies the fiduciary nature of the retiree-trustee relationship.

In conclusion then, Mr. Chairman, I hope that your subcommittee will consider the impacts this legislation could have on retirees and act to minimize any potential for damage.

Thank you very much.

Senator BENTSEN. Thank you very much for your testimony.

[The prepared statement of Mr. Hacking follows:]

STATEMENT

of the

NATIONAL RETIRED TEACHERS ASSOCIATION

and the

AMERICAN ASSOCIATION OF RETIRED PERSONS

before the

SENATE FINANCE COMMITTEE

SUBCOMMITTEE ON PRIVATE PENSION PLANS AND EMPLOYEE FRINGE BENEFITS

on

S. 1076

MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1979

March 18, 1980

Washington, D. C.

As representatives of 12.6 million members over the age of 55, the National Retired Teachers Association/American Association of Retired Persons have serious concern about S. 1076, the "Multiemployer Pension Plan Amendments Act of 1979." Therefore, we appreciate the opportunity to express these concerns today to the Subcommittee on Private Pension Plans and Employee Fringe Benefits of the Senate Finance Committee.

It is clear to us that action must be taken in the multiemployer pension plan sector. If Congress does not act, termination insurance will become automatic as of May 1, of this year. Given the incentives that are presently created by economic conditions and by ERISA's current multiemployer plan provisions, many plans will take advantage of the Pension Benefit Guaranty Corporation's insurance after the May 1 date. The likely loser will be the PBGC, which would be crippled by the expected termination burden. And if the PBGC were destroyed, a major protector of retiree's benefits would be eliminated.

While S. 1076 addresses the incentives that push a multiemployer pension plan toward termination, it creates new incentives, which we believe are also not in the interest of the retirees. Specifically, in the reorganization, insolvency and benefit guarantee sections, S. 1076 allows for reductions of retiree's benefits for plans that are in trouble. However, at no time does this bill allow for a retiree voice in the decisions that could avoid potential trouble or lessen the difficulties once they arise. Yet the retirees

are the ones who feel the immediate impact of benefit cuts at a time when they are most vulnerable. Active workers may lose in the long run (although if the plan emerges from its financial troubles, their expected benefits can be reinstated), but it is the retiree who will be forced to pay in the most immediate sense.

Our Associations believe that the flaws in S. 1076 result from a major premise that is clear throughout the bill. In Section 3 of the bill it is stated that Congress finds that "the determination of the extent to which an industry can afford to continue full support for all obligations of a multiemployer plan is, in the first instance, best made through the process of collective bargaining."

At no time during the collective bargaining process is the voice or political and economic power of retirees heard. Yet it is this process that sets benefits for active workers, suggests benefit changes for retirees and generally helps direct the fiscal integrity of the multiemployer plan. If the plan does have financial problems, it is this collective bargaining process again that begins the formulation of benefit reduction decisions. It is this process that is foreign to retirees.

Our Associations believe that the suggested findings of Congress in S. 1076 and the benefit reduction plans that result, conflict with the reality of federal labor law, as interpreted by the United States

Supreme Court. In fact, in Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971), the Supreme Court held that benefits for retirees are not a mandatory subject of bargaining under the National Labor Relations Act. Under the confines of this decision, our Associations have considerable concern about the ability of the collective bargaining process to decide the fate of retirees' interest in their multiemployer pension plan.

Even if a labor-management dialogue were to consider the question of benefits to retirees, the problem of representation of the interest of retirees remains. In an insightful comment in the Pittsburgh Plate Glass case, Justice Brennan, speaking for the majority of the Court, expressed the problem. He said, "Pensioners' interest extend only to retirement benefits, to the exclusion of wage rates, hours, working conditions, and all other terms of active employment. Incorporation of such a limited-purpose constituency in the bargaining unit would create the potential for severe internal conflicts that would impair the unit's ability to function and would disrupt the process of collective bargaining. Moreover, the risk cannot be overlooked that union representatives on occasion might see fit to bargain for improved wages or other conditions favoring active employees at the expense of retirees' benefits." Pittsburgh Plate Glass at p. 173.

As we look at the dynamics of S. 1076, we at times get the impression that the multiemployer pension plan would become entirely a function of the labor-management process, while the retirees silently go along on the ride. We believe that this process reflects a distortion of labor law principles, and it is a setback to the security that ERISA otherwise provides to retirees.

We hope that this Committee will view S. 1076 in terms of the labor law problems we raise and in terms of the incentives that we spoke of early in this testimony. While our Associations must, out of necessity, defer to the expertise of the PBGC and multiemployer plan administrators on some of the most detailed aspects of this complicated bill, we do think that we can raise some issues that we believe for the benefit of retirees, must be answered.

Our concerns can best be expressed by looking at the influence particular provisions of this bill will have upon decisionmakers. Reorganization and insolvency provisions call for cuts in benefits that have not been in effect for at least five years. With this provision available we are worried that those who hold power in the multiemployer plan can negotiate potentially unrealistic benefit levels, knowing that the law gives them an out if problems arise. The escape can be made by rolling back benefits -- a solution that has an immediate effect only on retirees.

The reorganization rule of S. 1076, Sec. 4244, says that a multiemployer plan undergoing reorganization "may be amended" (emphasis added). We assume that this provision means that, once again, benefit decisions will be made through the collective bargaining process. Sec. 4244 does have protective rules, such as proportionality of reduction requirements. However, we can envision a decision to reduce benefits for everyone gained in the past five years. The reduction for retirees would be very real, while the reduction for active workers would be on paper only. If the plan saved enough through this effort, it appears as if it would be relatively easy to restore benefits, again with the proportionality rule in effect. S. 1076 specifically withdraws the need to reimburse retirees for their losses. At this point, a reimbursement would probably have been meaningless anyway, since a retiree relies on a steady pension income stream, and the reduction in benefits would have already constituted a significant adverse impact on the retirees.

If the multiemployer pension plan decisionmakers do not reduce benefits enough in reorganization to stabilize their plan, the government will step in to make the reduction. Under the insolvency provisions, Section 4245, benefits are lowered to the level guaranteed by the PBGC (a level lower than that bargained for under the reorganization provisions). Once again the retirees are the immediate losers. Also, under this section, the federal government, in mandating benefit level reductions, will easily be recognized as the initiator of the reduction. We have some

concerns that this approach will allow for the bidding-up of retirement benefits with the knowledge that decisions during difficult times will be mandated by a removed party.

If the multiemployer plan reaches the state where benefits equal the PBGC guarantee level, most retirees will suffer a decrease in their pension from its level of five years earlier. To place this burden on top of the strain that inflation is already causing is particularly onerous to retirees. In addition to the fact that the actual benefit level will be reduced is our concern that this reduction will be almost immediate. At least the active worker, if his or her pension is to be reduced, will be aware of the situation and will be able to plan major retirement-oriented decisions accordingly. Once again, we feel that the major burden of this legislation will fall on retirees.

Our Associations have several suggestions for relieving some of the concerns we raise. First, we ask this Subcommittee to try to find a financing arrangement that will allow for a full guarantee of promised benefits. If planned premium levels are inadequate, then consideration should be given to raising them and accelerating their implementation. We must emphasize that the income for a very vulnerable class of people is at stake and every means possible should be made to provide for their security.

If the final legislation does fail to provide a one hundred percent benefit guarantee, some changes must still be made to ensure that decisions are made in the interest of retirees. Retirees should be told that some of their benefits are not

guaranteed, but this disclosure must be made in a manner that does not cause an unwarranted scare. Along with a notice of benefit liberalization, plan participants could be told that these benefits would be guaranteed in five years if their plan maintained its financial health. This notice would give participants, including retirees, the incentive to watch the dealings of their plan and thereby demand greater accountability on the part of decisionmakers.

In addition to a notice requirement we believe that retiree representation is essential in the decisionmaking body. The need for representation is particularly pressing when retirees become the first to lose by a decision of the multiemployer plan's trustees, and as we have stated, retirees would be the first to lose under S. 1076. We believe that the concerns of retirees must be made apparent to plan trustees, and there must be a mechanism available whereby trustees can act on them. Therefore, the board of trustees of the retirement plan must contain retirees. Also, we would support language in this bill which clarifiies the fiduciary nature of the trustee-retiree relationship.

While we see many problems with S. 1076, our Associations also realize that the status quo -- the passage of no legislation by Congress, can have a similarly damaging effect on retirees. We therefore feel that efforts should be made to reverse the incentives for plan termination after May 1, 1980, and to end the ease with which employers can jeopardize multiemployer plans through withdrawal. S. 1076 does begin to address these problems. By requiring insolvency rather than termination to trigger insurance mechanisms, the bill negates earlier incentives to terminate as a means of getting the government to pay for an expense that the employers

are capable of handling. Also, withdrawal liability forces payment of pension expenses onto the employer that actually incurs them. That employer therefore loses the economic incentive to withdraw that is available under current law. Another favorable aspect of this bill is the acceleration of funding requirements. If benefit liberalizations have to be paid over a shorter period of time, the cost of those liberalizations will be better understood by the employer.

The above favorable provisions strengthen multiemployer plans. In fact, we have some question as to whether these provisions alone can strengthen these plans enough to make the problems of multiemployer plans in the future attributable, for the most part, to defects in the law prior to the introduction of these provisions. If this is the case, perhaps the earlier problems can be isolated and somehow dealt with. Then, a transition to a more problem-free multiemployer universe can be made.

Our Associations hope that multiemployer plans can be successfully maintained. However, we want to stress to this Subcommittee our belief that the plan maintenance, at the expense of the retiree, is inequitable. This is especially so when the status of the retiree, and the possibility that the retiree can lose benefits, is subject to the collective bargaining process -- a process in which the retiree has absolutely no clout. It is our belief that the benefit reducation procedures in S. 1076, as provided by the reorganization, insolvency and guarantee section unfairly concentrate the risk of loss on the retiree. We would like to see this Subcommittee speak to these concerns and consider our recommendations when it decides on the future of S. 1076.

Senator BENTSEN. That will conclude the hearings for this morning.

[Thereupon, at 11:30 a.m. the subcommittee recessed to reconvene at the call of the Chair.]

[By direction of the chairman the following communications were made a part of the hearing record:]

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

DEPUTY ASSISTANT SECRETARY
(Tax Legislation)

March 17, 1980

Dear Mr. Chairman:

In connection with the hearings of March 18 before the Senate Finance Committee Subcommittee on Private Pension Plans & Employee Fringe Benefits regarding S.1076, Multiemployer Pension Plan Amendments Act, I would like to submit my statement of February 19 before the Ways and Means Committee. The Treasury Department would like to again emphasize the importance of enacting legislation prior to May 1.

Sincerely,

Daniel I. Halperin

The Honorable
Lloyd Bentsen, Chairman
Subcommittee on Private Pension
Plans & Employee Fringe Benefits
Senate Finance Committee
Washington, D.C. 20510

Enclosure

Department of the TREASURY NEWS
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STATEMENT OF DANIEL I. HALPERIN
DEPUTY ASSISTANT SECRETARY OF
THE TREASURY (TAX LEGISLATION)
BEFORE THE
COMMITTEE ON WAYS AND MEANS
February 19, 1980

Mr. Chairman and Members of the Committee:

I am pleased to have the opportunity to present the views of the Treasury Department on H.R. 3904, the Multiemployer Pension Plan Amendments Act of 1979. The primary purpose of the bill is to provide a workable and comprehensive program for the protection of pension benefits in the event of the termination of multiemployer plans. Multiemployer plans are pension plans maintained under collective bargaining agreements under which more than one employer contributes to a common fund.

M-329

As you are aware, the Employee Retirement Income Security Act of 1974 (ERISA) established the Pension Benefit Guaranty Corporation (PBGC) to guarantee that vested pension benefits up to a specified level (now $1,159 per month) would be paid despite plan termination. Prior to ERISA, most employers limited their liability to the plan assets on hand at the moment of termination. If upon termination of the plan, these assets were insufficient to pay the promised benefits, the employee had no recourse. The benefit, although normally both earned and vested was nevertheless lost.

ERISA now requires that employers maintaining single employer plans provide in the event of termination for the payment of vested benefits (up to the guarantee level) provided that the required payment does not exceed 30% of the employer's net worth. Any deficiency would be made up by the PBGC from premiums paid by all employers maintaining single employer defined benefit plans. Employees retain the risk of loss as to vested benefits above the guarantee level and as to accrued but not vested benefits for which there are not adequate funds in the plan at the time of termination.

The sharing of the burden among employers, employees and the guarantee fund maintained by PBGC requires a delicate balancing. We need to prevent an undue desincentive to the establishment and maintenance of qualified pension plans; in particular we need to avoid pressures on defined benefit plans to shift to defined contribution plans which we believe provide less certainty and protection for employees. On the other hand, if the guarantee fund bears too much of the burden we would not only be providing protection for participants in plans which would have terminated absent ERISA but we would also create a climate which would encourage the termination of plans which might have otherwise managed to survive; thus placing the burden on PBGC and through it upon the entire pension community.

At the same time, the entire system of encouraging retirement programs through special tax concessions breaks down if employees cannot count on the receipt of promised benefits. It is difficult for an employee to comprehend that he or she may not receive a promised pension even if an employer is solvent. If employees understood the risk and saved for retirement as if their pension would not be forthcoming, double saving for retirement would unduly restrict their standard of living during the working years.

With the enactment of ERISA in 1974 a program was devised and implemented providing termination insurance for plans maintained by single employers. However, it was believed that a mandatory termination insurance program should not be imposed immediately with respect to multiemployer plans. The current rules in the law will however go into effect on May 1, 1980 unless new legislation is enacted.

H.R. 3904 was developed through the close cooperation of the staffs of the Treasury Department, the Department of Labor, and the Pension Benefit Guaranty Corporation. I therefore wish to generally defer to the comments on this bill which will be made by PBGC.

The overriding concern is that legislation be enacted quickly so that the benefits of participants in multiemployer plans can be protected as of May 1 in a fair and workable manner. Allocation of the risk of termination among employers, employees and the guarantee fund is even more difficult in the case of pension plans maintained under collective bargaining agreements to which more than one employer contributes. Such plans need to be able to both attract new employers and to retain their present membership. The prospect of employer liability under provisions of current law may endanger this ability particularly if the amount of risk cannot be foreseen. Further, the limit of liability to 30% of net worth combined with guarantee levels above the general level of benefits may well create a powerful incentive to terminate multiemployer plans unduly burdening the guarantee fund.

Thus, it is unlikely that any solution can achieve all each of us would wish from our own particular perspective. This bill is well designed to encourage the continuation of multiemployer plans while proving maximum feasible protection for both employees and the guarantee fund.

We believe that this legislation deserves prompt enactment.

That concludes my statement Mr. Chairman, I would be happy to answer any questions you may have.

TESTIMONY OF

JOSEPH P. BRENNAN
PRESIDENT
BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.

SUBMITTED TO

COMMITTEE ON FINANCE
SUBCOMMITTEE ON PRIVATE
PENSION PLANS AND EMPLOYEE
FRINGE BENEFITS

U. S. SENATE
WASHINGTON, D. C.
MARCH 18, 1980

S 1076
PROPOSED AMENDMENTS TO ERISA
REGARDING TERMINATION INSURANCE FOR
MULTIEMPLOYER PENSION PLANS

My name is Joseph P. Brennan, President of the Bituminous Coal Operators' Association (BCOA) a multiemployer bargaining unit that represents its member coal operators in collective bargaining matters with the United Mine Workers of America (UMWA).

I welcome this opportunity to present the BCOA position on the proposed legislation to amend Title IV of the Employee Retirement Income Security Act (ERISA) in regard to the Pension Benefit Guaranty Corporation (PBGC) and termination insurance for multiemployer pension plans. As you know, the coal industry, through the UMWA Health and Retirement Funds, supports two of the largest multiemployer pension plans in the United States. One called the 1950 Pension Trust covers 76,000 workers who retired prior to January 1, 1976. This is a closed fund and many of its beneficiaries were never employed by the companies currently bearing the funding burden. The second fund, for miners who retire after January 1, 1976, involves approximately 140,000 active and 9,000 retired miners and was established during the negotiations for the 1974 Wage Agreement.

The coal industry retirement fund was established when the mines were under seizure by the federal government in the mid 1940's. During the period of seizure the United Mine Workers of America and the Department of the Interior signed the so-called Krug-Lewis Agreement, which established a Health and Welfare Fund designed to provide pensions, death benefits and medical care for the coal miners of the United States and their families.

The extensive pension and medical care programs were to be paid from a common fund supported by a royalty on each ton of coal produced.

The operators did not participate in those negotiations, but, as a condition for the return of the mines to private ownership, were required to accept the concept of this Health and Welfare Fund and the royalty method of revenue raising on a continuing basis. The Fund, established under government control and subsequently financed by industry royalty payments, represented one of the first efforts in an industrywide health and retirement system. That system was predicated upon: a "pay-as-you-go" basis for providing benefits; the type and level of benefits determined at the sole discretion of the Trustees; and a mixing of pension and welfare monies in a common fund. There was little or no concern in the original agreement, and as the Fund developed, for any type of funding for past service liability for pension payments. Indeed, despite the industry objections, the Trustees of the early Fund made a deliberate policy decision to operate on a "pay-as-you-go" basis. As a result of this, pension levels were raised or lowered depending on the availability of funds, usually on a short-term basis. In fact, during the period 1950 through 1969, pension levels were both increased and decreased in order to match income and outgo and to maintain a minimum level of solvency within the Trust Fund.

Until the early 1970's there was little accumulation of assets in the Fund to provide for past service unfunded liability, although such liability continued to increase, exacerbated from time to time by adverse court decisions and eligibility rule changes such as the court imposed Blankenship decision which added over 22,000 beneficiaries. Thus, in 1974 when the ERISA legislation was passed, the Health and Welfare Fund was faced with the needed major revision in its operating philosophy and had to make-up the deficiencies and funding levels which had their roots in the framework of the Fund as set forth in the original Krug-Lewis Agreement.

In 1974 the parties established a contractual mechanism to begin to pay for the substantial unfunded liability of the Trust Funds. They included in the Agreement employer contributions to the two pension funds established by that Agreement which would, if continued in subsequent negotiations, reduce and eventually eliminate the unfunded liability. However, ERISA eliminated much flexibility that previously existed in relating benefit levels to the financial condition of the pension funds and may impose certain liabilities on the contributing employers regardless of the course of future negotiations or the make-up or relative financial position of the multiemployer group. This is particularly significant in view of the current unfunded liability of the Pension Trusts of $4 billion, and the fact that a portion of that unfunded liability is for employees of now defunct coal companies most of which went out of operation prior to 1974. Therefore, the BCOA member companies are well aware of the problems of both multiemployer funds and of the ERISA legislation.

Let me state at the outset that we applaud this effort to rectify those problems, caused by the multiemployer plan termination insurance provisions of ERISA, which, ironically, have tended to diminish ERISA's goal of pension security for working Americans. We are particularly concerned about employers withdrawing from a fund and leaving behind their liabilities to be assured by the remaining companies and also, the problems with declining industries.

The economic benefits of any labor agreement presuppose the health of the industry in which that Agreement operates. In our society a healthy industry almost always means one enjoying economic growth and the wage and benefit levels in those industries enjoying rapid expansion tend to lead other industrial sectors.

The 1974 and 1977-78 wage negotiations were conducted against a backdrop of national commitment to the coal industry -- a commitment clearly enunciated by three Presidents and based upon the comparative advantage of coal reserves to a nation seeking energy self-sufficiency. Unfortunately, the coal industry has not grown anywhere near what was anticipated, and the UMWA segment of the industry has actually seen a decline. For the purposes of our two pension funds, only 46 percent of national production of bituminous coal during the latter quarter of 1978 was produced by UMWA miners as opposed to 65 percent in 1974 and 72 percent in 1970. A continued stagnation or decline of UMWA coal production will create problems for the two pension plans. Although the assumptions upon which cost estimates and contributions are based

are conservative for both short and long term, the problem of declining UMWA share of industry production has been exacerbated in the 1950 Pension Trust because of declining productivity since the 1950 Pension Trust, as noted before, is funded entirely by a contribution paid on each ton of coal mined.

We support the general thrust of the legislation as an appropriate response to the needs of pensioners and future retirees. We wholeheartedly concur in PBGC's endorsement of the collective bargaining process as the principal means to establish the level, extent and obligations of employers and employees in a negotiated multiemployer pension plan and suggest that the legislative language be explicit in that regard.

The rest of my presentation will be a summary of our position on the major areas of legislative change and, where we feel necessary, suggested changes to the proposed bill.

I. Withdrawal Liability

We support the proposals revising the law to insure that employers cannot withdraw from a continuing plan and shift their liabilities to the remaining employers. Such an amendment is necessary for the future viability of pension plans, as the law currently provides an incentive for employers to withdraw from a multiemployer plan, thereby reducing the funding base. The methods in the proposed legislation to insure that a withdrawing employer continues to meet his obligations to the liability of the pension fund are appropriate and equitable.

We are also pleased to note and support the concept that the parties to a collective bargaining agreement can define the limits of a plan administrator's authority through negotiation of a basic wage agreement and supporting trust documents. The ability to amend a plan is especially important in the de minimis test for exemption from withdrawal liability. In a large multiemployer plan with a significant number of small employers, the proposed de minimis exemption could be an incentive to withdrawal. While each company's contribution might be insignificant, the total impact could threaten the soundness of the funding base. We believe the proposals should be further amended to make it clear that the parties to a collective bargaining agreement can negotiate appropriate amendments to the plan at the time of their next contract negotiation retroactive to the effective dates of the legislation. For example, in the coal industry there would be a time lag between the effective date of the proposed legislation (February 27, 1979) and the expiration of our Wage Agreement (March 27, 1981), and thus it should be permissible that any negotiated amendments to the plans in 1981 be applicable to the interim time period. The legislation should make it clear that the liability for withdrawing employers during the interim time period should be determined in accordance with the five-year contribution rule.

The amendments concerning transfers of liabilities and assets assure that liabilities not transferred remain the responsibility of the transferring employer. These amendments are structured in a way that prevents an escape from withdrawal liabilities, which

makes it clear that a portion of the unallocated liability of a plan is still the responsibility of the transferring employer. Therefore, we support these proposals as an appropriate mechanism for a transfer situation.

The variations of industry structure in the United States makes it imperative that the PBGC be given authority to prescribe by regulations when a substantial reduction in contributions by an employer would result in withdrawal liability. However, we respectfully suggest that the Congress should advise the PBGC that in formulating such regulations the PBGC should generally follow the body of experience developed in such determinations for single employer plans. For example; identification of a partial withdrawal based upon the closing of a facility would be inappropriate in a depleting natural resource industry such as coal. Coal mines are being depleted and new ones opened with regularity. A relatively stable work force is nonetheless maintained because most of the employees affected by mine closings are absorbed by new mine openings or expansion of existing facilities by the employer. One appropriate alternative rule for establishing partial withdrawal, which would be more practical, might be the same rule as applied to a single employer pension program (i.e. where the reduction in the number of participants in the plan by one employer exceeds the 20% level within one plan year or 25% within two plan years). Such a rule would also protect the interests of other employers in the multiemployer plan.

II. Minimum Funding

We strongly support the concept of minimum funding standards to provide protection for both employees and employers. In fact, in the coal industry we have based our contributions on a 30-year funding program for the active miners fund and even a shorter period for the 1950 Trust.

However, the coal industry has many ups and downs and, as you are probably aware, suffers from time to time from wildcat strikes, transportation strikes, and rapid changes in market conditions. We feel, therefore, that flexibility is needed in the law to take into account these situations and that it is advantageous to maintain the minimum funding standards at 40-year amortization of past service liabilities. Otherwise, over the life of a negotiated contract, it may very well result in a situation where, in a financially stable or well-funded plan, it would nonetheless put the parties in a position of having to enter negotiations with part of their economic package already committed. Furthermore, we feel that built into the program are new and sufficient safeguards such that the 40-year term is adequate.

We support the concept of a Minimum Contribution Requirement. We believe the concept as proposed provides enough flexibility in its application for it to be an effective tool.

III. Plan Reorganization and Guarantees

We would be prepared to support the plan reorganization concept as an incentive for plan continuation in the event a plan, for whatever reason, would run into financial difficulties. However, we believe that the legislation should make clear that the parties should negotiate the financing changes for a plan in reorganization. If negotiations were to fail to resolve the financial difficulty, then there must be a statutory provision requiring the plan administrator to implement a reduction of the benefit level.

The restraint on withdrawals, the continuation of benefit payments at least at specified reduced levels, continuation of funding, and accrual of credited service creates a compelling incentive for a plan to enter reorganization and avoid termination.

We do have some reservations about the details of the reorganization proposals:

- While use of an index to determine when a plan is in reorganization is a useful tool, we recommend that the Secretary should be able to waive a determination that a plan was in reorganization when a unique set of facts or circumstances can be demonstrated as the cause of the index reaching its trigger level. We have a specific problem here in that under the proposed legislation the 1950 Fund would be considered to be in reorganization. Given the

accelerated funding of the 1950 Pension Plan, and the unique closed group character of that Plan, we believe that the legislation should indicate that the reorganization test was not intended to shift that Plan into immediate reorganization.

•For existing plans, on the effective date of the legislation, the eligibility for overburden credit should be based on the participant population of that plan. The proposed method determining eligibility for overburden credit should apply only to new plans or plans which first exclude active employees on or after the effective date.

•The rules covering the phase-in of benefit reductions are reasonable and provide adequate flexibility. However, we urge that the legislation be specific on how the five-year phase-in period is determined.

•The rules requiring plan sponsors (trustees) to certify as to insolvency and to give prior notice to the PBGC and interested parties should differentiate between an actual insolvency and a situation in which insolvency could result but is unlikely, such as at a contract termination when good faith negotiations are continuing.

•As we have noted, the complete package of legislative changes are for the most part a positive incentive for the parties to collective bargaining agreements to properly maintain a multi-employer pension plan. However, as these plans are the result of collective bargaining, employers should not be liable beyond

the contractual commitment of the collective bargaining agreement, at least with respect to historical liabilities generated prior to the effective date of the law. Legislation which retroactively imposes additional liabilities on employers is particularly onerous in funds that have a large number of retirees who worked for firms which are now defunct and were never the responsibility of the employers currently funding the past service liability. The original Title IV provisions of ERISA concerned us in this regard and the proposed legislation further compounds our concern by uncapping the employer's liability, guaranteeing higher levels of benefits upon termination and possibly requiring more rapid funding for a terminated plan than an ongoing plan.

IV. Premiums

We have no objection to the increase in the premium to $2.60, with the five-year phase-in period to that level.

V. Mergers

We support the proposals to resolve problems existing in the current law by giving specific statutory authority covering mergers and transfers of assets and liabilities among multiemployer plans. We think the two proposed restrictions -- nonreduction of a participant's accrued benefits and not allowing a worse reorganization index for the merged plan than the premerger reorganization index of any plan involved in the merger or transfer -- are an appropriate remedy.

VI. Definition of Multiemployer Plan

We support the proposed definition as we recognize the need to clarify this determination.

VII. Enforcement

We do not believe that there is any need to expand authority in this area as the plan administrators and the PBGC will have the necessary means to protect pensioner's rights.

That concludes my prepared testimony. I'll be happy to answer any questions you may have.

MINNESOTA TRANSPORT SERVICES ASSOCIATION

1821 UNIVERSITY AVENUE ST. PAUL, MINNESOTA 55104 TELEPHONE (AREA 612) 646-4075

Serving Minnesota's Local Cartage — Household Goods Moving — Short Haul Trucking — Public Warehouses and Related Industries ...

ABE ROSENTHAL
Executive Vice President
General Manager

STATEMENT

OF

ABE ROSENTHAL*

ON BEHALF OF

MINNESOTA TRANSPORT SERVICES ASSOCIATION

REGARDING PROPOSALS TO AMEND

THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

OF 1974 (ERISA)

S. 1076

BEFORE

COMMITTEE ON FINANCE

U. S. SENATE

WASHINGTON, D.C.

TUESDAY, MARCH 18, 1980

*Mr. Rosenthal is the Executive Vice President of Minnesota Transport Services Association.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

MY NAME IS ABE ROSENTHAL. I AM THE EXECUTIVE VICE PRESIDENT OF A SMALL BUSINESS TRUCKING AND WAREHOUSE TRADE ASSOCIATION CALLED MINNESOTA TRANSPORT SERVICES ASSOCIATION (MTSA) WITH OFFICES LOCATED AT 1821 UNIVERSITY AVENUE, SUITE 310N, ST. PAUL, MINNESOTA.

THE HISTORY OF MTSA'S MEMBERSHIP

MTSA IS NOW IN ITS 44TH YEAR OF SERVING MINNESOTA'S LOCAL AND SHORT HAUL TRUCKING, HOUSEHOLD GOODS MOVING AND PUBLIC WAREHOUSE INDUSTRIES. MEMBERS OF MTSA ARE PARTIES TO THREE DIFFERENT MULTI-EMPLOYER LABOR MANAGEMENT BARGAINING UNITS AND MULTI-EMPLOYER PENSION PLANS. WITHOUT DOUBT MEMBERS OF MTSA HAVE DEVELOPED GOOD LABOR-MANAGEMENT RELATIONS WITH THEIR EMPLOYEES AND THEIR LABOR REPRESENTATIVES (UNIONS) DURING OUR 44 YEAR HISTORY. MUTUAL INTEREST AND CONCERN FOR THE JOBS AND FIRMS HAS MANIFESTED ITSELF INTO A HARMONIOUS AND PEACEFUL EXISTENCE IN THE DEVELOPMENT AND ADMINISTRATION OF LOCAL ADDENDUMS TO THE NATIONAL AND AREA LABOR CONTRACTS AND AT THE LOCAL GRIEVANCE TABLE. VERY SELDOM DURING OUR FOUR DECADE PLUS RECORDED ASSOCIATION HISTORY, HAVE THE DIFFERENCES BETWEEN OUR EMPLOYEES, THEIR UNIONS AND OUR SMALL BUSINESS MEMBERS ERUPTED INTO STRIKES AND LOCKOUTS. THIS DESPITE NUMEROUS STRIKES AND LOCKOUTS WITHIN OUR COMMUNITIES IN MINNESOTA BETWEEN THESE SAME UNIONS AND THE LARGE, AFFLUENT, SUCCESSFUL LONG DISTANCE COMMON CARRIER INDUSTRY.

BETWEEN OUR EMPLOYEES AND THEIR UNIONS THERE HAS BEEN A LONG STANDING RECOGNITION THAT THEY SHOULDN'T IMPOSE THE SAME FINANCIAL AND WORKING CONDITION REQUIREMENTS OF THE LONG HAUL COMMON CARRIER INDUSTRY ON THE LOCAL AND SHORT

HAUL TRUCKING, HOUSEHOLD GOODS MOVING AND LOCAL WAREHOUSE INDUSTRY. SINCE THAT ACTION WOULD LITERALLY DRIVE MTSA MEMBERS OUT OF BUSINESS DUE TO THE EXTREMELY NARROW MARGIN OF PROFIT, EXTREMELY COMPETITIVE MARKET AND THE MARGINAL CAPITALIZATION OF THESE SMALL FIRMS. THERE IS LITTLE, IF ANY, DOLLARS IN RESERVE IN THE ACCOUNTS OF THESE FIRMS FOR STRIKES, LOCKOUTS OR OTHER ECONOMIC DISORDER AND IT HAS BEEN THIS WELL KNOWN "FACT OF LIFE" THAT HAS KEPT IT ALL TOGETHER IN OUR COMMUNITY AND IN MANY OTHER COMMUNITIES AROUND OUR COUNTRY.

MTSA'S SECOND REPRESENTATION BEFORE ANY CONGRESSIONAL COMMITTEE

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, THIS IS MTSA'S SECOND REPRESENTATION BEFORE ANY CONGRESSIONAL COMMITTEE. IT IS OUR FIRST EFFORT TOWARD PLEADING OUR CAUSE IN OUR NATION'S CAPITOL. MTSA MEMBERS ARE CAUGHT UP IN THE OLD PARADOX, DAMNED IF WE DO, AND DAMNED IF WE DON'T, SINCE WE CAN ILL AFFORD THIS EFFORT. MY MEMBERS REQUIRE THE DEDICATION OF OUR ASSOCIATION AND ITS DUES MONIES TO PROBLEMS AT HOME. THERE HAVE BEEN MANY NATIONAL ISSUES OF GREAT MERIT, YET MTSA HAS JUSTIFIED ITS ABSENCE FROM THE WASHINGTON SCENE ON THE BASIS OF ITS LIMITED RESOURCES AND CAPABILITY AS A LOCAL AND STATE SMALL BUSINESS TRADE ASSOCIATION WITH ITS HANDS LITERALLY FULL IN OUR OWN BACKYARD. NOW SOMETHING HAS HAPPENED TO CHANGE ALL THAT. SOMETHING OF PROFOUND SIGNIFICANCE THAT IS CHANGING OUR BUSINESS LIFESTYLE AND COULD VERY WELL DRIVE OUR MEMBERS OUT OF BUSINESS DURING THE NEXT EIGHTEEN (18) TO TWENTY-FOUR (24) MONTHS (THE REMAINING PERIOD OF OUR CURRENT LABOR CONTRACTS). THAT SOMETHING IS THE BILL (H.R. 3904-S. 1076) PENDING BEFORE THE CONGRESS AND THIS COMMITTEE WHICH PROPOSES TO "AMEND THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974" (ERISA) AND TO STRENGTHEN THE FUNDING REQUIREMENTS FOR THOSE PLANS AND ALSO TO REVISE PENSION PLAN TERMINATION INSURANCE. PLEASE NOTE THAT THERE HAS BEEN NO TRUCKING IN-

DUSTRY TESTIMONY ON THIS BILL AND THAT THIS IS THE FIRST HEARING ON ERISA SINCE WE LEARNED OF THE BILL LAST FALL.

DOES THE END (GOAL) JUSTIFY THE MEANS?

THE TITLE OF THE BILL AND THE PREAMBLE CLEARLY OUTLINES A NOBLE AND DESIRABLE GOAL. CERTAINLY A GOAL THAT EVERY MEMBER OF THIS BODY CAN BE PROUD OF AND ASPIRE TO PLAY A MEANINGFUL ROLE, THAT IS, THE STRENGTHENING OF THESE PENSION PLANS TO ASSURE ALL WORKERS OF A SECURE RETIREMENT INCOME.

MTSA COMMENDS THE CONGRESS FOR ESTABLISHING THIS DESIRABLE GOAL AND WE DESIRE TO PLAY A ROLE IN ACHIEVING THIS GOAL FOR OUR EMPLOYEES. HOWEVER, BEFORE WE CAN EVEN CONSIDER A SOLUTION IT IS WELL TO CONSIDER THE HISTORY OF OUR LOCAL MULTI-EMPLOYER AGREEMENTS AND PENSION PLANS THAT ARE AFFECTED BY ERISA 1974.

PRE-ERISA PENSION PLANS

PRIOR TO ERISA 1974, MTSA MEMBERS KNOWLEDGE, CONTACTS AND DEALINGS WITH ITS LABOR ORGANIZATIONS AND MULTI-EMPLOYER PENSION PLANS WERE NOT UNLIKE OUR COUNTER-PARTS IN CERTAIN AREAS OF THE COUNTRY. THAT IS, ONCE THE NATIONAL AND AREA-WIDE LABOR CONTRACTS WERE ADOPTED, OUR MEMBERS MET WITH OUT LOCAL UNIONS AND PEACEFULLY DEVELOPED LOCAL MONETARY AND WORKING CONDITIONS THAT GREATLY AFFECTED OUR TOTAL ECONOMIC PACKAGE. THIS WAS CAUSED MAINLY BY THE RECOGNITION ON THE PART OF OUR EMPLOYEES AND THEIR UNIONS OF OUR "SPECIAL NEEDS" AS DESCRIBED EARLIER IN OUR STATEMENT. IT HAS BEEN THIS DEVIATION IN MONETARY OBLIGATIONS AND WORKING CONDITIONS THAT HAS KEPT OUR MEMBERS IN BUSINESS. THIS NEED HAS BECOME EVEN MORE ACCUTE SINCE PASSAGE OF THE TAFT HARTLEY AMENDMENTS TO THE

NATIONAL LABOR RELATIONS ACT WHICH RESULTED IN THE GROWTH OF NON-UNION COMPETITION IN OUR MARKETPLACES. OUR LOCAL UNIONS COMPLAIN THAT THESE TAFT HARTLEY REGULATIONS HAVE MADE THEM INEFFECTIVE IN SIGNING UP A SUBSTANTIAL PART OF OUR NON-UNION COMPETITION. FOR EXAMPLE, IN 1970 WHEN I JOINED MTSA AS ITS EXECUTIVE VICE PRESIDENT AND GENERAL MANAGER, SEVENTY PERCENT (70%) OF OUR MARKET WAS UNION. OUR 1976 MARKET CONDITION STUDY DISCLOSED THAT OUR SHARE OF THE MARKET HAD SHRUNK IN JUST SIX YEARS TO FIFTY PERCENT (50%). WHILE OUR EMPLOYEES HAVE BECOME OLDER AND OUR OBLIGATIONS GREATER AND FEWER MORE YOUTHFUL EMPLOYEES HAVE JOINED OUR FIRMS BECAUSE OF OUR MEMBERS LOSS OF ITS PROMINENCE IN THE MARKETPLACE. ANOTHER STARTLING STATISTIC IS THAT AT ONE TIME THERE WERE 108 EMPLOYERS IN ONE OF OUR PENSION PLANS, TODAY THERE ARE ONLY 25 EMPLOYERS IN THAT PLAN.

THEREFORE, THE FUTURE OF OUR MEMBERS HAS BECOME DEPENDENT UPON CERTAIN ECONOMIC CONSIDERATIONS. IN THE PAST WE HAVE BEEN ABLE TO ADJUST NATIONAL AND AREA LABOR CONTRACT MONETARY REQUIREMENTS TO MEET LOCAL ECONOMIC CONDITIONS. THAT HAS BEEN BASED ON THREE DIFFERENT MULTI-EMPLOYER LABOR AGREEMENTS. THE MULTI-EMPLOYER PENSION PLANS THAT OUR MEMBERS CONTRIBUTE TO HAVE BEEN COMPLETELY INDEPENDENT OF ANY OUTSIDE INFLUENCE AND ABLE TO DETERMINE THEIR OWN BENEFIT PROGRAM. OUR EMPLOYERS HAVE NEVER PROMISED THEIR EMPLOYEES ANYTHING OTHER THAN WHAT THEIR HOURLY OR WEEKLY CONTRIBUTION WOULD BUY AND THERE WAS NO SET AMOUNT (DEFINED BENEFIT). OUR SIGNING OF A LABOR AGREEMENT ONLY REQUIRED THEM TO MAKE CONTRIBUTIONS ON AN HOURLY OR WEEKLY BASIS TO ONE OF THREE LOCAL MULTI-EMPLOYER PLANS. PASSAGE OF ERISA 1974 HAS ACCORDED A "DEFINED BENEFIT" STATUS TO OUR LOCAL PENSION PLANS THAT WAS NEVER CONTEMPLATED NOR NEGOTIATED BY OUR EMPLOYERS. EVERY EMPLOYEE, UNION OFFICIAL AND EMPLOYER FULLY UNDERSTOOD THAT OUR LOCAL PLANS WERE FULLY DEPENDENT UPON THESE WORKERS' CONTINUED EMPLOYMENT, THEIR EMPLOYERS' EXISTENCE AS A VIABLE FIRM

AND THE AMOUNT OF CASH FLOW INTO THE PENSION PLANS. UNDER NO CIRCUMSTANCES COULD ANY OF THE COMMUNICATIONS BETWEEN ALL PARTIES BE INTERPRETED TO CREATE OR PROMISE BENEFITS WITHIN THEN REASONABLE CONCEPT OF A "DEFINED BENEFIT". HOWEVER, CONGRESS IN ITS WISDOM CHANGED ALL OF THAT IN 1974 WITH THE PASSAGE OF THE ERISA LEGISLATION.

IT'S DESTRUCTIVE AND UNFAIR TO IMPOSE INHERITED LIABILITIES ON EMPLOYERS

ERISA 1974 PASSAGE IMPOSED A "DEFINED BENEFIT" STATUS TO OUR PLANS AND CREATED A CONCEPT OF PLAN UNFUNDED LIABILITY BY ESTABLISHING ACTUARIAL STANDARDS TO THESE PLANS AS "DEFINED BENEFIT" PLANS AND NOW THIS BILL CARRIES WITH IT AN EXTREMELY HARMFUL AND INEQUITABLE CONCEPT OF INDIVIDUAL EMPLOYER RESPONSIBILITIES TO THE PENSION PLAN FOR "INHERITED" OBLIGATION. ALL EMPLOYERS WHO HAVE CONTINUED IN THE INDUSTRY AND UNDER UNION CONTRACT NOW FACE LIABILITY FOR THOSE WHO HAVE LEFT THE PLAN OVER THE YEARS SINCE THE PENSION PLAN WAS CREATED. (NOTE THE ABOVE EXAMPLE OF THE UNFUNDED LIABILITIES OF 108 EMPLOYERS BEING IMPOSED UPON THE REMAINING 25 EMPLOYERS.)

IF THAT WERE NOT ENOUGH, WE HAVE ALSO THE PROBLEM OF "INHERITED" LIABILITIES BECOMING EVEN MORE BURDENSOME BY PENSION PLAN RULES THAT ACCORDED SERVICE CREDITS FOR "PRIOR SERVICE IN THE INDUSTRY" FOR EMPLOYMENT SERVICE FOR WHICH NO PENSION CONTRIBUTIONS WERE PAID.

PRIOR SERVICE RULES MAKE EXPERIENCED UNEMPLOYED WORKERS UNEMPLOYABLE — THEY ARE MARKED PEOPLE

THE PRIOR SERVICE RULES CREATE CRITICAL EMPLOYABILITY PROBLEMS FOR ANY WORKER WHO WHILE UNEMPLOYED SEEKS A JOB IN OUR INDUSTRY AS A RESULT OF THESE RULES

BECAUSE THEIR EMPLOYMENT WITH AN EMPLOYER IN A PLAN WILL ADD TO THE UNFUNDED LIABILITY OF ALL EMPLOYERS IN A PLAN. EVEN THE PROPOSED AMENDMENTS TO THE BILL WHICH ARE DESIGNED TO ENCOURAGE NEW EMPLOYERS TO JOIN THE PLAN FALL FAR SHORT SINCE THEY FAIL TO PROVIDE THAT "PRIOR SERVICE" WITH ANY EMPLOYER IN THE INDUSTRY WILL NOT EARN SERVICE CREDITS IN THE PENSION PLAN.

CERTAIN FEDERAL GOVERNMENT AND CONGRESS ACTION EFFECT
OUR SMALL BUSINESS MEMBERS VIABILITY

RECENT ACTIONS BY THE INTERSTATE COMMERCE COMMISSION (ICC) HAS AGGRAVATED OUR MEMBERS FINANCIAL SITUATION BY ITS (THE ICC) AGGRESSIVE DEREGULATION EFFORT. OUR BANKING AND LENDING INSTITUTIONS HAVE BECOME CONCERNED OVER OUR ECONOMIC STABILITY AND HENCE MORE CONSERVATIVE IN THEIR CREDIT POLICIES WITH OUR MEMBERS. IT IS NOW AN UNWRITTEN RULE FOR BANKS AND OTHER FINANCIAL INSTITUTIONS TO EVALUATE THE CAPABILITY OF OUR MEMBERS TO SURVIVE IN A DEREGULATED ECONOMIC ENVIRONMENT. THEREFORE, OUR MEMBERS ARE NOW EXPERIENCING SIGNIFICANT PROBLEMS IN FINANCING THEIR OPERATIONS.

SINCE OUR LABOR AGREEMENTS REQUIRE PAYMENT OF WAGES AT END OF EACH WEEK, AND OUR CUSTOMERS AS AN INDUSTRY PRACTICE PAY FOR SERVICES ON A TEN DAY TO THIRTY DAY BASIS, WITH A SIGNIFICANT PORTION OF ACCOUNTS RECEIVABLE BEING PAID DURING A SIXTY (60) DAY TO NINETY (90) DAY PERIOD; THIS REQUIRES OUR SEGMENT OF TRUCKING AND WAREHOUSING TO FINANCE WAGES AND OPERATIONAL EXPENSES ALMOST WEEKLY. ANYTHING THAT INCREASES BANKER CONCERN OVER OUR MEMBERS' FINANCIAL CONDITION FURTHER JEOPARDIZES OUR RELATIONSHIP WITH OUR BANKS AND OTHER LENDING INSTITUTIONS AND WILL DESTROY OUR MEMBERS' ABILITY TO STAY IN BUSINESS.

THE SO-CALLED "UNFUNDED LIABILITY" CONCEPT OF ERISA 1974 AND THIS BILL WILL HAVE CATASTROPHIC EFFECTS ON OUR MEMBERS' ABILITY TO FINANCE THEIR OPERATIONS. THIS OCCURS BECAUSE EACH PLAN WILL BE REQUIRED TO DETERMINE ITS ASSETS, LIABILITIES AND THE UNFUNDED LIABILITIES (INCLUDING THE SO-CALLED "INHERITED" UNFUNDED LIABILITY) OF EACH PARTICIPATING EMPLOYER AND PUBLISH THAT INFORMATION EACH YEAR IN ITS PLAN REPORT.

ON THE UNFUNDED LIABILITIES ISSUE —
THE NATIONAL COORDINATING COMMITTEE FOR MULTI-EMPLOYER PLANS
IS IN ERROR

IN THE SPECIAL ISSUE (FEBRUARY 1980) THE "IF DIGEST" PUBLICATION OF THE INTERNATIONAL FOUNDATION OF EMPLOYEE BENEFIT PLANS, INC. ALLEGES THAT ". . . NO CONTINGENT OR OTHER LIABILITY WOULD APPEAR ON ITS (SIC EMPLOYER'S) BALANCE SHEET ..."

THE BALANCE SHEET ISSUE IS A CRITICAL ERISA BILL ISSUE, NOT TO BE DISPENSED WITH SO SIMPLY IN A FLIPANT STATEMENT RELATIVE TO THE CONSTRUCTION INDUSTRY. OUR INDUSTRY HAS LEARNED THE HARD WAY THAT EVEN WITHOUT CONGRESS ACTING ON THE DEREGULATION ISSUE, THE OVERT TRUST OF THE ICC HAS SERIOUSLY AFFECTED OUR MEMBERS' ABILITY TO GET FINANCIAL ASSISTANCE FROM OUR BANKS AND LENDING INSTITUTIONS. ENACTMENT OF A CONTINGENT UNFUNDED LIABILITY RULE IN THIS BILL SHALL HAVE A "DEFACTO PLACE" ON EVERY SMALL EMPLOYERS BALANCE SHEET, EVEN IF ALL CERTIFIED PUBLIC ACCOUNTANTS COULD ETHICALLY CHOOSE TO IGNORE IT. A DECISION, IN OUR OPINION, EXTREMELY UNLIKELY.

THE NATIONAL COORDINATING COMMITTEE AND OTHER ERISA BILL PROPONENTS SIMPLY AREN'T RECOGNIZING THE TRUE STATE OF AFFAIRS AS IT AFFECTS OUR SMALL BUSINESS COMMUNITY.

THE ERISA BILL WILL DESTROY MANY WORKERS' JOBS AND PENSION PLANS

OUR MEMBERS' STUDY OF THIS ERISA BILL CAUSES US TO HAVE GRAVE CONCERN OVER ITS APPLICATION TO OUR MEMBERS AND THEIR SEGMENT OF THE TRANSPORTATION INDUSTRY. IT FAILS TO RECOGNIZE OR PROVIDE FOR THE BASIC DIFFERENCES OF EMPLOYERS WITHIN AN INDUSTRY. ITS APPLICATION ACROSS THE BOARD WILL DESTROY THE JOBS AND PENSION PLANS OF MANY WORKERS IT SEEKS TO PROTECT. THIS OCCURS BECAUSE OF ITS FINANCIAL AND ADMINISTRATIVE REQUIREMENTS THAT:

1. IMPOSES ON OUR MEMBERS SUBSTANTIAL UNFUNDED INHERITED LIABILITIES OF EMPLOYERS WHO HAVE ESCAPED THESE PLANS, MANY WHO WERE COMPETITORS OF OUR MEMBERS. THIS RULE CONTROLS THE ABILITY OF OUR MEMBERS (SHOULD THEY DESIRE) TO SELL OR MERGE THEIR BUSINESSES BECAUSE NO BUYER WILL ASSUME THESE LIABILITIES. SHOULD AN EMPLOYER BE IN FINANCIAL DISTRESS, IT WILL EFFECTIVELY DESTROY THE ABILITY TO SELL AND RECOUP SOME OF THE FIRM'S ASSETS.
2. THE STRICT FIDUCIARY RULES IN THE BILL DESTROY THE ABILITY OF PENSION PLANS ON A GROWTH PATTERN FROM MERGING WITH DECLINING PLANS WHICH HAVE SUBSTANTIAL UNFUNDED LIABILITIES. WITHOUT SOME FINANCIAL INCENTIVE OR SPECIAL PROTECTIVE INSURANCE PROGRAM THE BILL MERELY PROVIDES A THEORETICAL OR LEGAL BASIS FOR PLAN MERGERS UNDER ADVERSE CONDITIONS TANTAMOUNT TO A TUG-OF-WAR BETWEEN HEALTHY PENSION PLAN BENEFICIARIES, PENSION PLAN TRUSTEES, AND EMPLOYERS TO KEEP OUT ANY PENSION PLANS THAT ARE UNDERFUNDED AND/OR IN A DECLINING CONDITION.
3. THE CONTINGENT UNFUNDED LIABILITIES PROVISIONS IN THE BILL WILL DESTROY OUR MEMBERS' ABILITY TO OBTAIN OPERATIONAL LOANS FROM THEIR BANKS AND OTHER FINANCIAL SOURCES.

4. DESTROYS THE COMPETITIVE RELATIONSHIP BETWEEN EMPLOYERS IN OUR MARKETPLACE WHO ARE PARTY TO DIFFERENT PENSION PLANS WITH DIFFERING FINANCIAL REQUIREMENTS AS A RESULT OF THIS LEGISLATION. ERISA CREATES A NON-COMPETITIVE RELATIONSHIP BETWEEN COMPETITORS IN OUR MARKET WHICH SHALL CAUSE LABOR/MANAGEMENT STRIFE AND STRIKES DURING OUR NEXT COLLECTIVE BARGAINING PERIOD IN EIGHTEEN (18) TO TWENTY-FOUR (24) MONTHS. THE BILL IMPOSES SUBSTANTIAL FINANCIAL OBLIGATIONS AND LEAVES ONLY STRIKE AS A LEGAL BASIS TO DISCONTINUE CONTRIBUTIONS WHICH DUE TO COMPETITION OUR EMPLOYERS WILL NOT BE ABLE TO PAY; BUT WILL BE REQUIRED TO PAY BY PENSION PLAN ADMINISTRATORS UNDER THE BILL IF THEY CONTINUE TO OPERATE OR QUIT BUSINESS AND WITHDRAW FROM THE PLAN.

THE BILL DISCRIMINATES AGAINST OUR MEMBERS

THIS BILL DISCRIMINATES AGAINST ANY EMPLOYER IN OUR INDUSTRY WHO IS LOCATED IN AN AREA OR MARKETING PLACE THAT CONTAINS A HEALTHY AND GROWING MULTI-EMPLOYER PENSION PLAN AND A DECLINING MULTI-EMPLOYER PLAN. THAT IS JUST WHAT WE HAVE IN MINNESOTA AND IN MANY OTHER PLACES. THIS OCCURS BECAUSE IT IMPOSES AN INFLEXIBLE DEMAND ON PLAN FUNDING IRRESPECTIVE OF COMPETITIVE OR ECONOMIC CONDITIONS IN A MARKETPLACE. FOR SURVIVAL OF SMALL BUSINESS TRUCKING AND WAREHOUSING, THE BILL MUST BE DEFEATED OR EXTENSIVELY AMENDED.

PLAN MERGER RULES SHOULD BE AMENDED

A POSSIBLE PLAN MERGER CHANGE THAT HOLDS SOME PROMISE TO AID IN PREVENTING THE CREATION OF A LABOR DISTURBANCE CAUSED IN WHOLE OR IN PART BY THE ERISA RULES IS THE CREATION OF A MECHANISM IN THE BILL TO FOSTER MERGERS IN ANY INDUSTRY AND MARKETPLACE THAT CONTAINS TWO OR MORE MULTI-EMPLOYER PENSION PLANS

WHENEVER ONE PLAN IS DEEMED TO BE ON A GROWTH PATTERN, WHILE ONE PLAN (AT LEAST) IS ON THE DECLINE.

THIS WOULD REQUIRE MODIFICATION OF THE BILL'S FIDUCIARY RULES TO PREVENT LITIGATION AND EXPOSURE OF CLAIMS OF MISCONDUCT OF PLAN TRUSTEES AND ADMINISTRATORS. THE UNFUNDED LIABILITY RULES WOULD HAVE TO BE AMENDED TO COVER SUCH MERGERS WITH AN INSURANCE PLAN FUNDED BY A STATUTORILY CREATED INDUSTRY SELF-INSURED FUND, THE EMPLOYER CONTRIBUTION TO THE PENSION BENEFIT GUARANTEE CORPORATION (PBGC) OR GENERAL REVENUE.

RATIONALE FOR THIS ACTION IS THE PUBLIC POLICY OF MINIMIZING THE PENSION PLAN LIABILITIES OF THE PBGC AND ENCOURAGING PEACEFUL SETTLEMENT OF LABOR MANAGEMENT DISPUTES. IT IS THE ERISA LEGISLATION, AND ITS FUNDING AND FIDUCIARY STANDARDS THAT SHALL INADVERTENTLY TRIGGER A LABOR DISPUTE AND WITHDRAWALS FROM A MULTI-EMPLOYER PENSION PLAN. IT WOULD ALSO REQUIRE MINIMAL FUNDING BECAUSE OF THE SIZE AND NUMBER OF PENSION PLANS AND EMPLOYERS POTENTIALLY INVOLVED IN A PROGRAM OF THIS KIND. SUCH ELIGIBLE EMPLOYERS AND PENSION PLANS WOULD BE REQUIRED TO:

1. BE LOCATED IN A LABOR MARKET (TO BE DEFINED) WHERE THERE IS AT LEAST TWO MULTI-EMPLOYER PENSION PLANS COVERING WORKERS IN THE SAME INDUSTRY; AND
2. HAVE ONE PLAN ON A GROWTH PATTERN AND AT LEAST ONE PLAN ON THE DECLINE, WITH SUBSTANTIAL UNFUNDED LIABILITIES; AND
3. HAVE NEED TO MAINTAIN THE COMPETITIVE RELATIONSHIPS BETWEEN EMPLOYERS IN THESE PLANS THAT CAN BE MAINTAINED ONLY IF A MERGER OCCURRED IN A TIMELY MANNER; AND
4. HAVE NEED TO MAINTAIN A REASONABLE COMPETITIVE RELATIONSHIP TO AVOID A LABOR DISTURBANCE (WITHIN THE FIRST THREE YEARS OF ENACTMENT) DUE TO DIFFERENT CONTRIBUTION LEVELS REQUIRED BY THE ERISA PENSION PLAN FUNDING RULES; AND

5. HAVE THE MERGER INSURANCE PICK UP ALL INCREASED CONTRIBUTION LEVELS CAUSED BY THE ERISA RULES IN ORDER TO MAINTAIN COMPETITIVE EQUITY IN CONTRIBUTION LEVELS.

MTSA REQUESTS MODIFICATION OF ERISA LEGISLATION

THE PASSAGE BY CONGRESS OF ERISA 1974, CREATED A "DEFINED BENEFIT" CONCEPT FOR THESE PLANS, A "PROMISE" STATUTORILY ATTRIBUTED TO EMPLOYERS WHO PLAYED, IN MOST CASES, NO IMPLICIT OR EXPLICIT ROLE IN CREATING THE SO-CALLED "PROMISE" OF DEFINED BENEFITS AT RETIREMENT.

ERISA 1974, CREATED STATUTORILY A CONCEPT OF NEW FINANCIAL RESPONSIBILITIES UPON SMALL BUSINESS BY CREATING A CONCEPT OF "UNFUNDED LIABILITIES" TO THESE FUNDS. THIS FINANCIAL DESIGNATION IS WHAT MAKES THE BILL SO HARMFUL TO SMALL BUSINESS BY VIRTUE OF ITS CREDITOR STANDING COVERING A PRO-RATA SHARE OF THE ALLEGED UNFUNDED LIABILITY OF THE MULTI-EMPLOYER PENSION FUND THE EMPLOYER CONTRIBUTES TO.

SINCE IT IS A ROUTINE TRUCKING INDUSTRY PRACTICE TO FINANCE PAYROLL AND OTHER OBLIGATIONS BY PERIODIC (IN SOME CASES "WEEKLY") LOANS FROM BANKS. UNLESS APPROPRIATE CONGRESSIONAL ACTION IS TAKEN BEFORE MAY 1, 1980, OUR MEMBERS AND THOUSANDS OF OTHER SMALL BUSINESSES FACE DESTRUCTION BY ERISA 1974 AND ERISA 1979-80 AMENDMENTS.

THEREFORE, WE REQUEST THAT ERISA 1979-80 BE AMENDED. IN ADDITION TO OUR PROPOSED MERGER RULE AMENDMENTS WE RECOMMEND:

1. ELIMINATE INDIVIDUAL EMPLOYER AND PENSION FUND UNFUNDED LIABILITY COVERING PERIOD PRIOR TO THE EFFECTIVE DATE OF ERISA 1974 AND FOR PERIODS

SUBSEQUENT TO 1975 CREATED BY EMPLOYERS WHO HAVE LEFT THE VARIOUS PLANS AND DIDN'T PAY THEIR SHARE OF UNFUNDED LIABILITY. MTSA SUGGESTS THAT THE PENSION BENEFIT GUARANTEE CORPORATION (PBGC), A STATUTORILY CREATED INDUSTRY SELF-INSURED FUND, OR THE GENERAL FUND BE CHARGED TO FUND THESE LIABILITIES (FOR PRECEDENT - SEE RAILROAD RETIREMENT ACT). THERE IS NO RATIONAL BASIS FOR IMPOSING INHERITED LIABILITIES ON OUR MEMBERS.

2. CONTINUE THE CURRENT RULES ON PAYMENT FOR UNFUNDED LIABILITY AMORTIZATION AT 40 YEARS AND EXPERIENCE GAINS OR LOSSES AT 20 YEARS.
3. REESTABLISH THE INVIOLATE NATURE OF THE COLLECTIVE BARGAINING PROCESS ON EMPLOYERS AND EMPLOYEES TO ESTABLISH CONTRIBUTION LEVELS ON THEIR PENSION PLANS AND THE RIGHT TO TERMINATE OR CHANGE THEIR PLANS THROUGH THE COLLECTIVE BARGAINING PROCESS.
4. REESTABLISH PENSION PLAN TRUSTEE LIMITS OF AUTHORITY AND RESPONSIBILITIES TO MANAGE PENSION FUND CONTRIBUTIONS AS AUTHORIZED UNDER COLLECTIVE BARGAINING AGREEMENTS AND TO ESTABLISH BENEFIT PLANS WITHIN THE FINANCIAL LIMITS OF THE FUNDING MADE AVAILABLE TO THE FUND IN A REASONABLE MANNER FOR THE BENEFIT OF THE EMPLOYEE BENEFICIARIES.
5. ELIMINATE THE CREDITOR STANDING FOR SO-CALLED INHERITED "UNFUNDED LIABILITIES" FROM BEING APPLICABLE TO INDIVIDUAL EMPLOYERS SINCE THESE UNFUNDED LIABILITIES ARE THE "CREATURES" OF THE ERISA ACT OF 1974, NOT THE COLLECTIVELY BARGAINED ACT OF EMPLOYERS.
6. RETAIN THE PROVISIONS OF THE BILL TO AUTHORIZE FUNDS TO REDUCE BENEFITS IF THE FUND IS UNDERFUNDED.
7. RETAIN THE PROVISION OF THE BILL THAT ELIMINATES THE CURRENT RULE THAT PERMITS CERTAIN EMPLOYERS TO ESCAPE THEIR RESPONSIBILITIES TO THEIR FUND AND IMPOSES EQUAL EMPLOYER LIABILITIES ON A PRO-RATA SHARE (BASIS).
8. LIMIT PBGC PREMIUMS TO BE APPLICABLE TO FUNDING OR INSURING PENSION PLAN UNFUNDED LIABILITIES OF THE CONTRIBUTING EMPLOYERS AND MERGERS.

PLEASE TAKE APPROPRIATE ACTION TO SEEK THESE AMENDMENTS PRIOR TO MAY 1, 1980. HOWEVER, IF THAT IS NOT POSSIBLE, THEN ANOTHER POSTPONEMENT OF THE REQUIREMENTS OF THE ERISA 1974 RELATING TO THE SO-CALLED 'UNFUNDED LIABILITIES'' IS REQUIRED TO AVOID WIDESPREAD INDUSTRY STRIKES AND WHOLESALE DESTRUCTION OF SMALL BUSINESS WITH A CONCOMITANT LOSS OF THOUSANDS OF JOBS.

THANK YOU.

TESTIMONY OF

FRANK J. WHITE, JR.

on behalf of

THE ASSOCIATED GENERAL CONTRACTORS OF CONNECTICUT, INC.
6 Lunar Drive, Woodbridge, Connecticut 06525
(203) 397-0808

presented to the

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
ROOM 1100, LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
FEBRUARY 19, 1980

in OPPOSITION to

H.R. 3904, MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1979

Mr. Chairman and Members of the Committee, my name is Frank J. White, Jr., and I am President of The Associated General Contractors of Connecticut, Inc., an association representing union employers and firms indirectly involved in Connecticut's construction industry. As such, I am the full time chief staff executive officer of the Association.

Seldom do we play such an active role in the national legislative process. But we are adamantly opposed to H.R. 3904 which many national industry and labor organizations are supporting in one degree or another. We appreciate having this opportunity to present our views to the Committee.

We have often expressed our concern for the gross inequities in Title IV of ERISA since before its enactment in 1974. We began a major effort to inform everyone of our views on H.R. 3904 and S. 1076 on September 4, 1979 when it became apparent that many were interpretating the legislation quite differently than we interpret it. I appreciate the interest expressed by many Members of Congress during the past five and one-half months. I am particularly grateful to Congressmen Cotter and Giaimo who have done far more than could have been expected in communicating with other Members and informing us of their views.

The current version of H.R. 3904 is even more complex than the original PBGC proposal. Since it will be impossible to cover all of our concerns in the brief period allotted, my remarks will not be comprehensive.

To begin with our conclusion, H.R. 3904 is unfair and inequitable and should be defeated, the effective date for mandatory coverage of multiemployer plans under Title IV should be extended to January 1, 1981 to permit equitable resolution of the Title IV dilemma, and the PBGC should be requested to develop an alternative proposal for pension benefit protection which does not require that employers underwrite the program.

The basic concept behind Title IV and H.R. 3904, that there is similarity between the liabilities of single employer and multi-employer plans, is faulty. The vast majority of construction employees are identified by area, not employer. Construction industry pension plans are area-wide, they are mandatory subjects of bargaining and, under law, they are administered by completely independent trustees who must act solely in the interest of plan participants and beneficiaries, not employers. Liabilities of such plans have never been employer liabilities and, thus, there would exist no incentive for employers to leave or terminate plans absent a Congressional mandate that employers be held liable. Since employers have agreed in bargaining only to pay an hourly contribution, and since I don't know of a single employer that would have wanted funds to extend themselves beyond the fully funded level (if the IRS would have permitted this), those that argue that liability "rightly belongs" to contributing employers are wrong. It is interesting to note that under the construction industry exceptions in H.R. 3904, union employers that continue to support the plan will endure the potential liability of those that can withdraw without liability.

With my compliments to the draftsmen, many now erroneously think "withdrawal liability" applies only to individual firms leaving an ongoing plan and that there would be no liability should a plan terminate. In fact, H.R. 3904's withdrawl liability is Title IV's employer contingent liability but without limit as to benefit levels or employer worth.

Simply put, H.R. 3904 will destroy the integrity of collective bargaining by imposing on employers the obligation to pay more in contributions to fund an inadequately funded pension plan, suffer an excise tax for their failure to pay more in contributions, or pay all "benefit entitlements" upon plan termination - whether such termination occurs by action of independent trustees, by virtue of a change in employee bargaining representative, by dissolution of a union, by agreement or any other means. Except in one unrealistic circumstance, employer liability will be for the full, not the reduced or guaranteed, benefit amounts.

Benefits of a plan in reorganization <u>may</u> be reduced, while contributions <u>must</u> be increased. And, except in one instance, voluntary action to reduce benefits to the guarantee level would be necessary before a plan could reach insolvency, the only insurable event.

Some of your colleagues have argued that Title IV's high guarantees provide considerable incentive for employees to insist on plan termination, and I agree. But why wouldn't the same employees have an overwhelming incentive to terminate under H.R. 3904 if they could collect <u>all</u> "benefit entitlements" from employers rather than

reduced benefits in reorganization or insolvency?

It is my opinion that the adverse political and bargaining implications of distribution of the H.R. 3904 reorganization notice to employees and employers will be enormous.

Under H.R. 3904, volunteer trustees (without even minimal compensation pursuant to ERISA) would have to administer an Act which would be impossible to administer and bear all of the greatly increased fiduciary risks involved. I'm not certain that any employer could serve without a prohibited conflict of interest. Who would want to?

The increased cost for trying to determine the impossible with respect to employer withdrawals and partial withdrawals in construction are incalculable. Construction employment is both casual and highly volatile.

When compared with the PBGC's original proposal, the Committee Bill changes two terms of great significance, "administrator" to "sponsor" and "vested liabilities" to "benefit entitlements". The new definition of "sponsor" is absurd in that independent trustees with right to amend the plan could actually delegate many functions and liabilities to bargaining parties and individuals.

Since the Bill also uses the terms "unfunded vested obligations", "nonforfeitable benefits" and "unfunded benefit obligations", are "benefit entitlements" vested benefits or do they include service

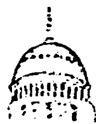
and other credits prior to vesting? If we're still talking about vested benefits, why the change? If we're talking about more than vested benefits, the inequitable employer liability concept of Title IV has been expanded beyond belief.

Thank you.

Professional Drivers Council

Dedicated to the safety, health, and working conditions of professional drivers and all Teamster members.

Teamsters for a Democratic Union



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June 9, 1980

Members of the Senate Finance Committee
United States Senate
Washington, D.C. 20510

RE: Multiemployer Pension Plan Amendments Act, S. 1076

Dear Senator:

I am writing on behalf of the 8000 members of Teamsters for a Democratic Union and thousands of other Teamsters who support the goals of TDU. TDU is a rank and file organization of Teamsters dedicated to reforming the Teamsters union, ridding it of corruption, and making it more democratic and responsive to the needs of its members.

Our membership is greatly alarmed by S. 1076 in its present form and would urge this Committee to make several important amendments in the bill before reporting it out to the Senate. First, the bill should be changed so the pensions of plan participants who have already retired, or who are within five years of ordinary retirement age, will not be cut back in the event their pension plans get into economic trouble. Younger workers may have some hope of making alternative arrangements for their retirement years if their pension plans fail, but for older workers, it is too late. The government has an obligation to see to it that the promises made to these workers for a secure retirement by their employers, their unions, and the pension reform act of 1974 are kept.

Second, the bill should be amended to raise the premiums multiemployer plans must pay into the PBGC to a higher level than the bill presently requires, and those raises in premiums should be implemented at a faster pace than that proposed in the bill. Premiums pegged at $5.00 per covered employee per year, or even $10.00, are a small price to pay to guarantee workers with vested pensions the retirement income they have been promised, and to minimize the cuts in benefits that may be required by large scale plan failures.

Members of the Senate Finance Committee
June 9, 1980
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TDU is aware of the testimony presented to this Committee by a spokesman for the Western Conference of Teamsters Pension Trust Fund, stating that S. 1076 as written provided "more than adequate" protection to the participants of financially troubled pension plans, and opposing further increases in PBGC premiums. This Committee should be aware that this testimony does not reflect the views of thousands of rank and file Teamsters. A bill that could require Teamster pension benefits to be cut from $525 per month to $340 per month surely does not provide "more than adequate" protection. Teamster Western Conference spokesmen may be confident that their pension plan is financially sound and will never need help from the PBGC, but unfortunately that cannot be said for many other Teamster pension plans around the country.

My experience, for example, is typical of many Teamsters. During my career as a Teamster, I have been covered at various times by three different Teamster pension plans -- the Central States Pension Fund and the pension plans of Teamster Locals 701 and 478. All three of these plans have been scandal ridden and have been under frequent government investigation. Moreover, in times like these, with the recession deepening and the nonunion sector of the trucking industry on the increase -- a trend likely to worsen with the enactment of trucking deregulation -- no Teamster pension fund is so sound that its participants are not entitled to insurance guaranteeing their benefits even if their plans stumble into hard times.

Again, we urge you to limit the cutback provisions and increase the PBGC premium levels in S. 1076 before reporting this bill out of your Committee. Teamsters do not want to retire into poverty, only to become parasites on their families and the rest of society.

Sincerely,

Frank Greco

Frank Greco
Co-Chair