126461

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Effects Of Liabilities Assessed Employers Withdrawing From Multiemployer Pension Plans

The most controversial changes the Multiemployer Pension Plan Amendments Act of 1980 made to the Employee Retirement Income Security Act of 1974 concerned the liability imposed on employers withdrawing from multiemployer defined benefit pension plans. Under the amendments a withdrawing employer must generally continue payments to the plan for its share of the plan's unfunded vested benefits, which are the value of nonforfeitable benefits under the plan less the value of the plan's assets.

GAO believes that the liability imposed on withdrawing employers increases the pension security of participants in poorly funded plans. It also provides an additional measure of protection for the Pension Benefit Guaranty Corporation's insurance fund established by the 1974 act to guarantee plan benefits. However, changes can be incorporated to make application of withdrawal liability more effective and equitable. Toward that end, this report proposes two amendments to the withdrawal liability provisions for the Congress to consider.

126467

GAO/HRD-85-16
MARCH 14, 1985

031504

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-214411

To the President of the Senate and the
Speaker of the House of Representatives

This is one in a series of reports in response to the requirement in the Multiemployer Pension Plan Amendments Act of 1980 that GAO study the effect of the act on employers, participants, and others. It focuses on the implementation and effects of the withdrawal liability provisions of the act on multiemployer plans not covered by special rules. Special rules or exemptions from withdrawal liability apply mainly to construction and entertainment industry plans and was the subject of a separate May 1984 report.

Copies of this report are being sent to the Director, Office of Management and Budget; the Secretaries of Labor and the Treasury; the Commissioner of Internal Revenue; the Board of Directors and Executive Director of the Pension Benefit Guaranty Corporation; and other interested parties.

Charles A. Bowsher

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

EFFECTS OF LIABILITIES ASSESSED EMPLOYERS WITHDRAWING FROM MULTIEMPLOYER PENSION PLANS

D I G E S T

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) amended portions of the Employee Retirement Income Security Act of 1974 (ERISA), which was the first comprehensive federal legislation regulating the private pension system. One of ERISA's major features was the establishment of an insurance program for guaranteeing the payment of certain benefits to participants of defined benefit pension plans if a plan terminates without sufficient assets to provide vested benefits. A government corporation, the Pension Benefit Guaranty Corporation (PBGC), was established to administer the insurance program.

Defined benefit pension plans generally provide definitely determinable benefits to participants based on such factors as years of employment, retirement age, and compensation received. All plans must provide that an individual participating in the plan will, after meeting certain requirements, retain a right to the benefits earned or some portion of them even though service with the contributing employer may terminate before retirement. A participant who has met such requirements is said to have a vested benefit. The excess of the value of the vested benefits of all plan participants over the plan's assets is referred to as the unfunded vested benefits. (See pp. 1 and 2.)

MPPAA made a significant change in contributing employers' relationships to multiemployer pension plans which are established pursuant to collective-bargaining agreements between employee representatives and more than one employer. Prior to MPPAA, employers were required only to contribute to the plans according to their collective-bargaining agreements and could generally withdraw from the plans without any continuing obligation. MPPAA generally requires withdrawing employers to pay for their allocated portion of the plan's unfunded vested benefits--referred to as withdrawal liability. (See pp. 2 and 3.)

MPPAA requires GAO to study the effects of its provisions on employers, participants, and others. This report is one in a series of reports GAO is issuing on multiemployer plans. It focuses on the implementation and effects of the withdrawal liability provisions of MPPAA in multiemployer plans not covered by special rules. Special rules or exemptions from withdrawal liability apply mainly to construction and entertainment plans. (See pp. 1 and 2.)

This report is based primarily on information obtained from 91 sampled pension plans with about 2.7 million participants in such industries as manufacturing, transportation, retail and wholesale trades, and mining. These plans represent 10.2 percent of all multiemployer plans (with 100 or more participants) in industries other than construction and entertainment and 47 percent of the 5.6 million participants in such plans. The 91 plans were part of a GAO sample of 149 multiemployer plans analyzed to carry out all segments of the required study of MPPAA. (See pp. 4 to 7.)

EFFECT OF MPPAA ON WITHDRAWING EMPLOYERS

MPPAA has generally given multiemployer plans the authority to assess and collect withdrawal liability, and most of the 91 plans in GAO's sample were enforcing collection. The plans had calculated liabilities of about $258.2 million for 1,216 withdrawing employers, of which about $186.7 million had been assessed and initial payments from the employers were due. Of the $186.7 million, an estimated $32.8 million was determined to be collectible, $24.5 million was uncollectible, and the collectibility of $129.3 million had not been determined because of various reasons, including the employer being in bankruptcy or the amount in dispute. (See pp. 46 to 48.)

GAO found that for most employers the effect of withdrawal liability was eliminated or reduced by various provisions of MPPAA. For example, for those withdrawing employers that had provided a relatively small portion of a plan's total contributions, MPPAA provided for the elimination or reduction of their liability. Other MPPAA provisions placed limits on the collection of liabilities from individual employers. The effect of withdrawal liability on employers is discussed in chapters 6, 8, and 9 of this report.

CHOICE OF INTEREST RATE AFFECTS AMOUNT CALCULATED FOR EMPLOYERS' LIABILITY

In estimating the unfunded vested benefits, the determination of appropriate interest rate assumptions to be used is complex. The assumptions should reflect the long-term expectation of rates of return on the investment of plan assets realistically achievable on the types of assets held by the plan and the plan's investment policy. This is necessary because benefits attributable to the plan participants' services, at the time the employer withdraws, will be paid over a long future period, and during this period, the rates of return on investments will fluctuate based on changes in economic conditions. Thus, it is appropriate that the interest rate assumption be determined by the plan actuary who is an expert in the design, financing, and operation of pension plans. (See pp. 32 and 33.)

In GAO's sample, 26 plans used rates in calculating withdrawal liability that differed from the rates used in determining the plans' costs to comply with ERISA's funding requirements. The difference between the rates show how withdrawal liability can vary significantly depending on the interest rate used.

For example, one of the plans used interest rates published by PBGC for use by terminating single employer plans to calculate unfunded vested benefits of about $418 million compared to unfunded vested benefits of about $576 million using its funding rate. The PBGC rates included a 10-percent rate for immediate annuities while the funding rate was 6 percent. Employers withdrawing from this plan would benefit from the higher actuarially assumed interest rate because the unfunded vested benefits were about $158 million or 27.4 percent less than they would have been using the funding rate. (See p. 29.)

MPPAA provides that PBGC may prescribe by regulation actuarial assumptions which may be used by a plan actuary in determining the unfunded vested benefits for purposes of calculating an employer's withdrawal liability. PBGC advised

GAO that it was not actively considering whether regulations should be issued. However, PBGC stated that, if the occurrence of subsequent events warrants, it will consider the need for regulations. (See pp. 30 and 31.)

Because of the effect that withdrawal liability can have on withdrawing employers, GAO believes there is a need to monitor determinations of withdrawal liability by multiemployer plans and agrees with PBGC that, if the occurrence of subsequent events warrants it, the issuance of regulations on actuarial assumptions should be considered. (See p. 33.)

COMPLETE AND PARTIAL WITHDRAWALS FROM MULTIEMPLOYER PLANS

An employer may withdraw completely or partially from a multiemployer plan. For a partial withdrawal, the employer's liability is a prorated amount of the liability for a complete withdrawal. (See p. 18.)

There were 3,278 employers that had withdrawn from the 91 plans in GAO's sample. At the completion of GAO's fieldwork, however, there was little information available to determine the effect of partial withdrawals on plans and employers because one of the principal ways set forth in MPPAA to determine partial withdrawals had not become effective. This provision, in general, provides that a partial withdrawal is a 70-percent decline in an employer's contributions to a plan over a 3-year period, except in the retail food industry where plans have the option of adopting a 35-percent decline rule. Thus, even if an employer--subject to the 70-percent rule--permanently lays off a substantial number of its employees, no withdrawal liability can be assessed against the employer until layoffs result in a 70-percent decline in the employer's contributions to the plan. (See pp. 18 and 19.)

In some circumstances, declines of less than 70 percent by one or more major employers could significantly affect a plan's overall contributions. For example, in one plan in GAO's sample which was only 37 percent funded for vested benefits, the largest contributing employer accounted for 22 percent of the $1.9 million in total annual contributions to the plan. Before this employer can be assessed withdrawal liability, its annual contributions must decline by about $295,000 ($1.9 million x .22 = $422,180 x .70) or about 15 percent of the total annual contributions from all employers contributing to the plan. None of the other 43 employers in the plan made annual contributions as great as this amount. Thus, the adverse effect to this plan's financial condition caused by a decline of less than 70 percent in its largest employer's contributions could be greater than the complete withdrawal of any of the other 43 employers. (See p. 21.)

ALLOCATION OF UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

MPPAA sets forth four methods which may be used in allocating a plan's unfunded vested benefits to withdrawing employers. The methods are the basic allocation method--referred to as the presumptive method--and three alternative methods--referred to as the (1) modified presumptive method, (2) rolling five method, and (3) attribution method. The mechanics of computing the allocations under the presumptive, modified presumptive, and attribution methods can result in liabilities being allocated to some employers withdrawing from plans that are fully funded for vested benefits. This, however, cannot occur under the rolling-five method. The mechanics of computing the allocation under all four methods are discussed in appendix I. (See pp. 34, 35, and 66 to 70.)

In GAO's sample of 91 plans, it found only one example in which a withdrawing employer was assessed a liability by a plan which was fully funded for vested benefits. GAO recognizes that the occurrence of an employer withdrawing from a fully funded plan and being assessed a liability has not been frequent. However, the assessment of such a liability could become more frequent in the future.

The Congress apparently intended withdrawal liability to be a remedy for the adverse effects of an employer withdrawing from a multiemployer plan. Because there are no adverse effects where an employer withdraws from a fully funded plan, application of withdrawal liability in such cases does not seem to have been contemplated under MPPAA. (See pp. 35 and 36.)

OVERALL CONCLUSION ON NEED FOR WITHDRAWAL LIABILITY

In the 91 sampled plans, unfunded vested benefits amounted to about $10 billion. About $6.2 billion was concentrated in 24 plans that were less than 50 percent funded and had low ratios of assets to benefit payments. These are important indicators of when a plan has a high potential for insolvency. Thus, without the assessment of withdrawal liability, withdrawals from such plans could have a major effect on the plans' financial conditions resulting in (1) increased contributions being required from employers remaining in the plans and (2) a risk to the PBGC fund established to guarantee benefits of plan participants. (See p. 8.)

GAO believes that the liability imposed by MPPAA on employers withdrawing from multiemployer plans increases the pension security of participants in poorly funded plans. It also provides a measure of protection against insolvency of the PBGC insurance fund by reducing the contingent liability against the program resulting from the billions of dollars in unfunded vested liabilities of poorly funded plans. (See p. 17.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

To better protect the financial condition of plans against declines in contributions by major employers, the Congress may wish to consider amending MPPAA to allow all plans to adopt an option similar to the 35-percent partial withdrawal liability rule now available to retail food industry plans. Also, because the application of withdrawal liability in fully funded plans does not seem to have been contemplated under MPPAA, the Congress may wish to consider amending MPPAA to exempt employers in fully funded plans from withdrawal liability. (See pp. 23 and 40.)

AGENCY COMMENTS AND GAO'S EVALUATION

Copies of a draft of this report were provided for review and comment to PBGC, the Internal Revenue Service (IRS), and the Department of Labor. IRS and Labor by letters dated October 23, 1984, and October 29, 1984, respectively, advised GAO that they did not have any comments on the draft report. PBGC, by letter dated October 31, 1984 (see app. II), questioned GAO's selection of sample plans and reporting of the sample plans' unfunded vested benefits.

GAO agrees with PBGC that its sample, showing 26.4 percent of the plans reviewed were under 50 percent funded for vested benefits, is biased to financially weak plans. However, when GAO's sample is statistically weighted, it projects that 15.9 percent of the sampled plans were less than 50 percent funded for vested benefits. This projection is statistically valid and is in line with the 18.7 percent and 15 percent figures cited in separate PBGC and Labor studies released in April 1983 and November 1984, respectively. (See pp. 12 to 14.)

GAO also agrees with PBGC that the unfunded vested benefits in this report may be overstated because of conservative actuarial assumptions. As discussed in chapter 4, reported vested benefits often understate the extent to which assets could actually pay for vested liabilities if the plans were to cease operation. However, even without conservative actuarial assumptions, the plans' unfunded vested benefits would be in the billions of dollars and would still represent a considerable contingent liability against the PBGC insurance fund which, as of September 30, 1984, had estimated program assets of only $36.6 million available to pay future claims. (See pp. 14 and 15.)

PBGC stated that GAO's arguments for changing the law for partial withdrawals are not compelling, would represent a substantial change in the policy underlying MPPAA, and might have only marginal benefits. PBGC also stated that the potential risks GAO cited are hypothetical and do not appear significant enough to justify what would be perceived as a considerable expansion of the scope of withdrawal liability.

GAO recognizes that the examples cited are hypothetical because the MPPAA partial withdrawal provision concerning a substantial decline in contributions was not in effect at the time of the GAO review. However, GAO believes the demographics of its sample shows there are plans in industries other than the retail food industry in which the bulk of a plan's contributions come from a few employers. Accordingly, GAO believes that giving plans the option of whether to adopt something other than the 70-percent rule could strengthen the financial condition of plans. This could occur in those situations where plan officials determine that a decline in contributions of less than 70 percent by one or more major employers would adversely affect the plans. (See pp. 22 and 23.)

PBGC agreed that the Congress probably did not intend for an employer to be assessed liability upon withdrawal from a fully funded plan and stated that it is not clear that the law in fact permits assessment in such cases. (See p. 39.)

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ABBREVIATIONS

ERISA	Employee Retirement Income Security Act of 1974
GAO	General Accounting Office
IRS	Internal Revenue Service
MPPAA	Multiemployer Pension Plan Amendments Act of 1980
PBGC	Pension Benefit Guaranty Corporation

CHAPTER 1

INTRODUCTION

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), Public Law 96-364, enacted on September 26, 1980, made major changes to the Employee Retirement Income Security Act of 1974 (ERISA). The most significant and controversial change was the imposition of liability on employers withdrawing from multiemployer defined benefit pension plans.[1] MPPAA generally requires a withdrawing employer to continue payments to the plan for its share of the plan's unfunded vested benefits (referred to as the employer's withdrawal liability).[2] Under prior law, a withdrawing employer had no liability unless the plan was terminated within the 5-year period following withdrawal.

A multiemployer pension plan is one that is established and maintained through collective bargaining between employee representatives and more than one employer. A major objective of MPPAA was to provide a financially self-sufficient insurance program to guarantee benefits of participants in multiemployer plans. The withdrawal liability provisions were enacted to reduce the cost of the insurance system by discouraging withdrawals from multiemployer plans and shifting potential liabilities from PBGC to employers that withdraw.

MPPAA requires us to study the effect of its provisions on employers, participants, and others. This is one in a series of reports[3] we have issued on multiemployer plans. It focuses on

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[1]Defined benefit pension plans generally provide definitely determinable benefits to participants based on such factors as years of employment, retirement age, and compensation received.

[2]Unfunded vested benefits are equal to the value of nonforfeitable benefits under the plan, less the value of the plan's assets. A nonforfeitable, or vested, benefit is one that an individual has earned and can elect except for nonsatisfaction of any waiting period, actual retirement, or submission of plan administration application forms.

[3]Prior reports issued on multiemployer plans were (1) Multiemployer Pension Plan Data Are Inaccurate and Incomplete (GAO/HRD-83-7, Oct. 25, 1982), (2) Assessment of Special Rules Exempting Employers Withdrawing from Multiemployer Pension Plans from Withdrawal Liability (GAO/HRD-84-1, May 14, 1984), (3) Incomplete Participant Data Affect Reliability of Values Placed by Actuaries on Multiemployer Pension Plans (GAO/HRD-84-38, Sept. 6, 1984), and (4) The 1980 Multiemployer Pension Plan Amendments Act: An Assessment of Funding Requirement Changes (GAO/HRD-85-1, Feb. 27, 1985).

the implementation and effects of the withdrawal liability provisions on multiemployer plans not covered by MPPAA's special rules. We previously reported on special withdrawal liability rules which apply to the building and construction; entertainment; long and short haul trucking, household goods moving, and public warehousing industries.

Chapter 2 of this report sets forth our overall conclusion on the need for withdrawal liability. The remaining chapters in the report describe the various technical provisions of MPPAA and discuss their effect based on our analysis of data accumulated from sampled plans. For some provisions the data are of a disclosure nature adding to the cumulative knowledge of the effect of individual provisions. For other provisions our analysis showed that changes are needed to make the application of withdrawal liability more effective and equitable.

BACKGROUND

ERISA created the Pension Benefit Guaranty Corporation (PBGC) to administer an insurance program for private defined benefit pension plans. For single employer plans, the insurance program generally became effective in September 1974. The program to guarantee benefits of participants in multiemployer plans was not made fully effective at that time. Instead, if a multiemployer plan terminated, PBGC was granted interim authority to decide whether to guarantee benefits. This discretionary authority was initially scheduled to be replaced by mandatory coverage after December 1977, but was subsequently extended by Public Law 95-214 because of concerns over the magnitude of unfunded vested benefits in multiemployer plans and their potential effect on PBGC's insurance fund.

Before 1974, an employer's obligation to a multiemployer plan generally was limited to the contributions specified by the collective-bargaining agreement. In 1974, ERISA made employers liable to PBGC for a proportionate share of a multiemployer plan's unfunded PBGC-guaranteed benefits in the event the plan terminated. Those employers contributing to the plan at the time it terminated, as well as employers who contributed during the 5 preceding plan years, were subject to liability. ERISA limited an employer's liability to 30 percent of its net worth.[4] Any costs not recovered from the employer were to be borne by the PBGC insurance fund.

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[4]Generally, the difference between the value of the business assets and liabilities accumulated at a point in time.

Pre-MPPAA provisions required withdrawing employers whose contributions were 10 percent or more of a plan's total contributions to post bond or deposit escrow funds with PBGC as security for their contingent liability. If the plan did not terminate within 5 years after withdrawal, the employer was free of any liability and the bond was released or escrow refunded.

The pre-MPPAA provisions also provided employers with an incentive to leave plans--especially those plans in financial difficulty--before the possibility of plan termination arose. This, in turn, could increase costs for remaining employers, encourage more employers to withdraw, and eventually result in the plan being terminated.

In a 1978 study, which was required by Public Law 95-214, PBGC analyzed its multiemployer plan termination insurance program. It concluded that 10 percent of multiemployer plans covering 15 percent of all participants were experiencing financial difficulties that could result in plan terminations over the next 10 years. It predicted that the annual insurance premiums paid by multiemployer plans to PBGC could increase from $.50 to as much as $80 per participant. The employer liability provisions of ERISA were a major factor contributing to PBGC's conclusions.

MPPAA was enacted to strengthen multiemployer pension plans, encourage their continuation rather than termination, and remove the undesirable incentives contained in the prior law. MPPAA changed the event for guaranteeing multiemployer plan benefits from plan termination to plan insolvency. A multiemployer plan is insolvent if its available assets are not sufficient to pay benefits under the plan when due for the plan year.

When a plan is unable to pay benefits at the PBGC-guaranteed level, MPPAA requires PBGC to provide financial assistance to pay guaranteed benefits. Such assistance generally is to be provided after application by the plan and pending PBGC verification that the plan is insolvent and unable to pay guaranteed benefits when due. Also, the assistance is to be provided under conditions PBGC determines are equitable and appropriate to prevent unreasonable loss to PBGC and is to be repaid on reasonable terms prescribed by PBGC.

The withdrawal liability provisions enacted by MPPAA were intended to discourage withdrawals and to impose immediate liability on those employers that withdraw, regardless of whether the plan subsequently terminates. MPPAA deleted the 30-percent net worth limitation contained in prior law for employers withdrawing from multiemployer plans. However, it added other provisions to reduce or limit a withdrawing employer's liability. The effects of these provisions on employer withdrawal liability, such as the reductions in liability provided to small contributors, are discussed in chapters 6, 8, and 9 of this report.

OBJECTIVES, SCOPE, AND METHODOLOGY

Generally, our legislatively mandated study objectives were to determine MPPAA's effects on parties associated with multiemployer plans. Because of the broad objectives and complexities of the issues involved, we separated the study into segments by major functions and areas of concern which MPPAA was believed to affect. This report is on withdrawal liability and covers plans in manufacturing, transportation,[5] retail, service, and other industries to which special withdrawal liability rules do not apply. Our objectives were to assess the need for withdrawal liability and its effects on plans and withdrawing employers. To accomplish this, we examined the key withdrawal liability provisions of MPPAA, reviewed their implementation by the plans we sampled, and developed comprehensive data on employer withdrawals.

In order to have a common frame of reference and basis for overall analysis of the various segments of our study and to minimize the effect of our study on multiemployer plans and associated parties, we (1) focused our study on a stratified sample of 149 multiemployer pension plans and (2) used the data collected on the 149 plans as the primary data source for all segments of our study.

We used random selection techniques to select the 149 plans. They were selected from plans which had 100 or more participants or beneficiaries and were recorded by PBGC in July 1981 as having paid premiums for plan year 1979. The sample included 30 plans identified as financially weak by our actuaries and 10 other plans with large numbers of participants.

The 149 plans had about 3.5 million participants and were being administered at locations within 14 states and the District of Columbia. The following chart presents a comparison of our sample as it relates to all multiemployer plans with 100 or more participants and those in the 14 states and the District of Columbia with 100 or more participants.

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[5]Includes trucking and warehousing plans which did not qualify for special withdrawal liability rules.

GAO Sample as It Relates to All Multiemployer Plans and Those in the 14 States and the District of Columbia with 100 or More Participants

	Plans	Participants	GAO sample as a percentage of Plans	GAO sample as a percentage of Participants
GAO sample	149	3.5 million	-	-
14 states and the District of Columbia	1,276	6.2 million	11.7	56.2
Nationwide	1,924	8.3 million	7.7	41.8

We did not review any of the 212 plans with less than 100 participants within the areas covered by our review. Many of them were incorrectly listed as multiemployer plans. They also represented only a small number of the total participants reported by plans listed as multiemployer plans--7,129 of the 6.2 million participants (less than 0.1 percent).

To determine if the 149 plans were representative of our universe, we compared the sample plans, stratified by size and primary industry represented by the plans, with the similarly stratified total of 1,276 plans with 100 or more participants administered in the geographic area covered by the review. For purposes of classifying the sampled plans by industry, we used the classification designated by the plans, unless we had evidence that such classification was erroneous. Based on this comparison, we believe that the 149 plans reasonably represent the sizes and industries common to multiemployer plans being administered in the geographic area.

This report covers 91 of the 149 plans. These 91 plans represent 10.2 percent of all multiemployer plans (with 100 or more participants), in industries other than construction and entertainment, and 47 percent of the 5.6 million participants in such plans. The other 58 plans included 54 construction, 3 entertainment, and 1 trucking plan qualifying for special withdrawal liability rules.

We conducted our study of plans primarily from March 1982 through February 1983. We obtained available plan financial, actuarial, and employer withdrawal data from plan officials. We did not audit the accuracy of data obtained.[6] Where data items appeared inconsistent with other data obtained, however, we inquired further to resolve the apparent inconsistency and made changes where appropriate.

We interviewed plan officials (administrators, trustees, attorneys, and actuaries), union officials and contributing employer representatives to obtain their views on withdrawal liability. We also reviewed applicable legislative provisions and their legislative history and implementing regulations and discussed them with PBGC officials. We performed our work in accordance with generally accepted government audit standards.

For purposes of conducting the mandated study, MPPAA authorizes us to have access to and the right to examine and copy any books, documents, papers, records, or other recorded information within the possession or control of the plan administrator or sponsors of any plan which is pertinent to the study. MPPAA provides that we shall not disclose the identity of any person in making any information obtained under this authorization available to the public.

Data on employers withdrawing from plans prior to enactment of MPPAA included in our study

The withdrawal liability provisions of MPPAA generally were effective for withdrawals occurring on or after April 29, 1980, some 5 months before MPPAA's enactment on September 26, 1980. MPPAA established an earlier effective date of May 3, 1979, for substantial employers in the west coast seagoing industry. Employers challenged the constitutionality of the retroactive provisions in the courts, but on June 18, 1984, the U.S. Supreme Court ruled that the provisions were constitutional. Later, however, the Tax Reform Act of 1984 eliminated the retroactive provisions and provided for the refund of any amounts paid by employers as a result of the retroactive provisions.

Our study was undertaken before the retroactive withdrawal liability provisions of MPPAA were repealed. Thus, statistical data we obtained from the plans include information on the employers withdrawing from multiemployer plans during the retroactive period (April 29, 1980, through September 25, 1980).

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[6]Although we did not audit the accuracy of the data obtained, we previously reported on the development and reporting of actuarial information (Incomplete Participant Data Affect Reliability of Values Placed by Actuaries on Multiemployer Pension Plans, GAO/HRD-84-38, Sept. 6, 1984).

In many cases, the plans in our sample provided us with data on withdrawals from April 29, 1980, through the completion of our fieldwork in February 1983 without identifying the individual employers' dates of withdrawal. Thus, we were not able to delete, in all cases, the data applicable to employers that withdrew during the retroactive period. Therefore, we did not delete any data relating to the employers that withdrew during the retroactive period.

We believe that including withdrawals during the retroactive period in our statistical data does not adversely affect the results of our work because this phase of our overall study focused on the implementation and effects of the withdrawal liability provisions of MPPAA. The withdrawals during the retroactive period were subject to liability under the then-existing law and were administered by the plans in the same manner as later withdrawals and provide a broader basis for our analysis of the effect of MPPAA's withdrawal liability provisions.

CHAPTER 2

ANALYSIS OF SAMPLED PLANS' UNFUNDED VESTED BENEFITS AND RATIO OF ASSETS TO BENEFIT PAYMENTS

Employers withdrawing from multiemployer plans not covered by special withdrawal liability rules are generally required by MPPAA to continue payments to the plans for their share of the plans' unfunded vested benefits. For the 91 plans in our sample, unfunded vested benefits[1] were about $10 billion. About 62 percent of the unfunded vested benefits were concentrated in 24 plans that were less than 50 percent funded and had low ratios of assets to benefit payments. These are important indicators of when a plan has a high potential for insolvency. Thus, without the assessment of withdrawal liability, withdrawals from such plans could significantly affect the plans' financial condition resulting in (1) increased contributions being required from employers remaining in the plans and (2) a risk to the PBGC insurance fund.

For plans with a high potential for insolvency, we believe that the liability imposed by MPPAA on employers withdrawing from such plans provides increased financial protection for the plans. Also, in view of the billions of dollars in contingent liability against the PBGC multiemployer insurance program, compared to PBGC's estimate $36.6 million in assets available for future claims as of September 30, 1984, we believe that withdrawal liability provides a measure of protection against insolvency of the program.

This chapter summarizes the results of our analysis of unfunded vested benefits for the 91 sampled plans showing the funding of vested benefits by percent funded, industry, and size of plan. It also shows the ratio of plan assets to benefit payments for the different funding levels of the plans in our sample.

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[1]Vested benefits for 89 of the sampled plans were based on amounts they reported to the Internal Revenue Service (IRS). For the remaining two plans, which had terminated, vested benefits were based on the termination values calculated by those plans. For purposes of this analysis, assets were assigned the market values reported by plans. The data were based on reports submitted for plan year 1981, or for plan year 1980 when 1981 reports were not available. This was the most current data available when we performed our review.

ANALYSIS OF SAMPLED PLANS' UNFUNDED VESTED BENEFITS

Vested benefits for the 91 sampled plans amounted to $20.1 billion, of which about 50 percent was funded by the plans' assets. Most of the $10 billion in unfunded vested benefits was concentrated in 24 plans that were less than 50 percent funded. The funding of vested benefits varied widely among sampled plans in different industries. In addition, the smaller plans in our sample were generally better funded than the larger ones.

The extent to which vested benefits are funded is an indicator of a plan's financial condition frequently used by accountants, actuaries, and other users of financial data. Large unfunded vested benefits represent (1) significant potential liabilities for withdrawing employers and (2) potential risks to the PBGC insurance fund. As shown by the following table, of the 91 plans, 67 were either fully funded or more than half funded. However, unfunded vested benefits in the 24 plans that were less than 50 percent funded were about $6.2 billion. The 24 plans covered 35.4 percent of the approximately 2.7 million participants in the 91 sampled plans and 30 percent of the 56,673 contributing employers.

Schedule of Sampled Plans' Unfunded Vested Benefits by Percent Funded

Percent funded[a]	Sampled plans: Number	Sampled plans: Percent of total[b]	Unfunded vested benefits: Amount (millions)	Unfunded vested benefits: Percent of total	Employers: Number	Employers: Percent of total	Participants: Number	Participants: Percent of total
Fully funded	16	17.6	$ 0	-	3,054	5.4	133,518	5.0
75 - 99	17	18.7	141	1.4	6,685	11.8	211,093	7.8
50 - 74	34	37.3	3,637	36.5	29,908	52.8	1,394,913	51.8
25 - 49	20	22.0	2,894	29.1	7,381	13.0	377,429	14.0
Less than 25	4	4.4	3,290	33.0	9,645	17.0	574,833	21.4
Total	91	100.0	$9,962	100.0	56,673	100.0	2,691,786	100.0

[a]Assets as a percentage of the value of vested benefits.

[b]In our sample, 26.4 percent of the 91 plans were less than 50 percent funded for vested benefits. However, 20 of the 91 plans were included in our sample because they were identified as financially weak by our actuaries. When the sample is statistically weighted to eliminate the bias resulting from the inclusion of the 20 financially weak plans, we project that 15.9 percent of the nonconstruction plans with 100 or more participants in the geographic area covered by our review were less than 50 percent funded for vested benefits.

Four plans in our sample were less than 25 percent funded, had $3.3 billion in unfunded vested benefits, and 17 and 21.4 percent of the employers and participants, respectively, in our sample of 91 plans.

Major differences in funding of vested benefits by industry

The funding of vested benefits varied widely among sampled multiemployer plans in different industries, as well as among plans in the same industry. Plans in the apparel and textile products and mining industries had the lowest funding ratios of all industries in the sample. The 10 plans in those two industries were only 25 percent funded compared to an average of 64 percent for the 81 plans in all other industries.

Vested benefits in our sampled plans were better funded in some industries, such as lumber, wood, and paper products, and fabricated metal products, where all plans were at least 50 percent funded. In other industries, however, major differences existed in the funding ratios of plans. For example, while vested benefits were 60.6 percent funded on the average for 18 retail and wholesale trade plans, 7 of these plans were less than 50 percent funded and 6 were more than 75 percent funded.

The following table shows the funding of vested benefits by industry for the 91 plans in our sample.

Schedule by Industry of Total Plans and Unfunded Vested Benefits and Participants of Sampled Plans

Industry classification	Total multi-employer plans[a]	Sampled plans: Number of plans by percent funded: Total	75 percent or more	50-74 percent	Less than 50 percent	Percent funded (average)	Unfunded vested benefits (millions)	Number of participants
Printing and publishing	58	8	4	2	2	91.4	$ 20	62,323
Lumber, wood, and paper products	21	8	4	4	0	90.8	37	96,338
Fabricated metal products	71	10	7	3	0	71.5	267	176,715
Trucking and warehousing	55	8	1	5	2	64.4	2,173	668,972
Services	143	7	4	2	1	62.5	284	171,238
Retail and wholesale trades	270	18	6	5	7	60.6	731	267,189
Maritime	45	7	2	4	1	59.2	494	65,262
Food and related products	45	7	1	3	3	54.7	654	202,234
Mining	9	4	0	0	4	25.0	3,446	268,915
Apparel and textile products	29	6	0	2	4	24.5	1,762	604,642
Miscellaneous	149	8	4	4	0	66.2	94	107,958
Total	895	91	33	34	24	50.5	$9,962	2,691,786

[a]PBGC records show that there were 1,924 multiemployer plans with 100 or more participants that paid premiums to PBGC for plan year 1979. Of these plans, 1,029 were classified as construction or entertainment plans to which special withdrawal liability rules apply.

Funding of vested benefits by size of plan

The smaller plans were generally better funded than the larger plans in the sample. The following schedule compares the funding of different size plans. Size was based on the total number of participants reported by these plans for plan year 1981.

Summary of Funding of Sampled Plans by Size of Plans

Number of participants	No. of plans in sample	Percent of plans: At least 75 percent funded	50-74 percent funded	Less than 50 percent funded	Total
Less than 1,000	19	47.4	36.8	15.8	100.0
1,000 - 9,999	32	40.6	31.3	28.1	100.0
10,000 or more	40	27.5	42.5	30.0	100.0
Total	91	36.3	37.3	26.4	100.0

Of the 51 plans with less than 10,000 participants each, 13 were fully funded for vested benefits (25.5 percent) compared to only 3 of the 40 plans (7.5 percent) with 10,000 or more participants.

RATIO OF ASSETS TO BENEFIT PAYMENTS

Solvency of the plans in our sample was measured based on the ratio of the plan's assets at the beginning of the year to benefit payments made during the year. This ratio, which was used by PBGC in its 1978 study Multiemployer Study Required by P.L. 95-214 as one of its measures for identifying plans with a high likelihood of termination, is an indicator of which plans may have a limited ability to continue to make benefit payments should adverse contingencies arise. It is also an indicator of potential risk to the PBGC insurance program, because plan insolvency is the event which triggers PBGC financial assistance. The following table shows that less well-funded plans in our sample had lower ratios of assets to benefit payments.

Ratio of Assets to Benefit Payments in Sampled Plans

Percent funded	Number of plans	Ratio of assets/benefit payments (median)
Fully funded	16	15.0
75-99	17	15.4
50-74	34	10.4
25-49	20	4.9
Less than 25	4	1.2
Total	91	10.8

Plans that were less than 50 percent funded had a median assets to benefit payments ratio of 4.5 years, compared to 12.7 years for those plans at least 50 percent funded. Fifteen of the 24 plans that were less than 50 percent funded had assets which were equivalent to less than 5 years of current benefit payments. These 15 plans, initially established between 1945 and 1962, represented seven different industries and accounted for $3.9 billion in unfunded vested benefits. Some of these plans may find it difficult to continue making benefit payments which could result in the need for financial assistance from PBGC.

AGENCY COMMENTS AND OUR EVALUATION

Copies of this draft report were provided for review and comment to PBGC, IRS, and the Department of Labor. Each of these agencies has responsibilities for carrying out ERISA and MPPAA provisions and publishes regulations implementing provisions of the acts. IRS and Labor have programs of enforcement to ensure compliance with ERISA and MPPAA.

Labor deals primarily with protecting employee and beneficiary benefit rights. This includes plan reporting and disclosure to plan participants and their beneficiaries and use of plan assets solely for the benefit of such participants and beneficiaries. IRS deals with provisions of the Internal Revenue Code embodied in these acts. These provisions include minimum funding standards, determining the tax status of plans, and appropriateness of the employers' deductions for contributions to the plans.

By letter dated October 23, 1984, and October 29, 1984, IRS and Labor, respectively, advised us that they did not have any comments on our draft report.

PBGC by letter dated October 31, 1984 (see app. II), raised questions on our

--selection of sample plans,

--reporting of the sample plans' unfunded vested benefits, and

--conclusion that withdrawal liability is generally necessary to protect plans' financial conditions and the PBGC insurance fund.

PBGC also stated that our analysis does not address the major objections that have been raised against withdrawal liability. PBGC's comments and our evaluation follows.

Selection of sample plans

PBGC noted that our sample included plans identified as financially weak by our actuaries which implied that a preliminary screen was applied to the multiemployer plans universe to ensure a large representation of financially weak plans. PBGC stated that this inference is supported by the significantly higher percentage of poorly funded plans in our sample than other studies have discovered. PBGC referred us to a study it had performed on multiemployer plans[2] and one Martin E. Segal Company[3] had performed. PBGC stated that the findings of the Segal study are significant because Segal is the consulting actuary for about one-quarter of all multiemployer plans.

We agree with PBGC that our sample, showing 26.4 percent of the plans we reviewed were under 50 percent funded for vested benefits, is biased toward financially weak plans (see explanation in the footnote added to the table on p. 9). However, when our sample is statistically weighted, we project that 15.9 percent of the nonconstruction plans with 100 or more participants in the geographic area covered by our review were less than 50 percent funded for vested benefits. This projection is statistically valid and is in line with the 18.7 percent cited in the PBGC study and a 15-percent figure cited in a Labor

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[2]Memorandum for the Honorable William A. Niskanen, Member of the Council of Economic Advisors on PBGC Analysis of Multiemployer Funding Status dated April 19, 1983.

[3]Martin E. Segal Company 1984 Survey of the Funded Position of Multiemployer Plans dated July 24, 1984.

study.[4] Both studies basically used 1978 plan data, which were the latest data available for the PBGC and Labor studies issued on April 19, 1983, and November 19, 1984, respectively.

The Segal study, however, indicates that of the nonconstruction plans Segal surveyed in 1983 and 1984, 8 percent and 5.1 percent, respectively, were less than 50 percent funded for vested benefits. The substantial difference between the Segal survey and the GAO, PBGC, and Labor studies could result from the higher interest rates used by Segal in calculating the plans' unfunded vested benefits. As discussed in chapter 4, a plan's unfunded vested benefits can vary significantly depending on the interest rate used by the actuary.

Sample plans' unfunded vested benefits

PBGC noted that our figures for unfunded vested benefits are based on amounts reported in the plans' Form 5500 annual reports without adjustments for the varying actuarial assumptions underlying the calculation of liabilities. PBGC stated that, because the assumptions used for plan funding calculations tend to err on the conservative side, these calculations may overstate unfunded vested liabilities. PBGC also stated that, in any case, the unadjusted Form 5500 liability numbers are not comparable from plan-to-plan and should not be aggregated without drawing attention to this fact.

We agree that a plan-to-plan comparison of unfunded vested benefits might be inappropriate if the amounts reflect widely disparate actuarial assumptions. However, in our opinion, aggregating unadjusted unfunded vested benefits and using the total to demonstrate the significance of the unfunded vested benefits across a group of ongoing plans does not require consistent assumptions.

We concur with PBGC that unfunded vested benefits may be overstated because of conservative actuarial assumptions. As discussed in chapter 4 of this report, reported vested benefits are usually based on plans' funding interest rates, which often understate the extent assets could actually pay for vested liabilities if the plans were to cease operation. The average reported funding rate for the sample plans was about 6 percent, while annuity purchase prices from the same period were based on rates around 10 percent. Our actuaries adjusted all the unfunded vested benefits of all the plans in our sample to rates

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[4]Report of the Secretary of Labor to the Congress on The Funding Status of Multiemployer Pension Plans and Implications for Collective Bargaining, November 19, 1984.

published by PBGC for the 1980-81 period (8-3/4 and 10 percent for immediate annuities and lower rates for deferred annuities)[5] and obtained an unfunded total of $5.4 billion. This calculation illustrates how use of current annuity rates could result in lower unfunded vested liabilities. However, the calculation also illustrates that, even without conservative interest rates, the unfunded liability is in the billions of dollars and represents a considerable contingent liability against the PBGC multiemployer insurance program which, as of September 30, 1984, had estimated program assets of only $36.6 million available to pay future claims.

Protection of plans' financial conditions and PBGC's multiemployer insurance fund

PBGC stated that it did not believe the analysis in our draft report supported the conclusion that "the liability imposed by MPPAA on employers withdrawing from multiemployer plans is generally necessary to protect plans' financial conditions and the PBGC insurance fund." PBGC concluded one might legitimately infer that some plans need increased financial protection, perhaps in the form of employer withdrawal liability. PBGC also concluded, however, that it is something of a leap to conclude that withdrawal liability is generally necessary to protect plans' financial conditions and the PBGC insurance fund.

In view of the excellent financial condition of many of the multiemployer plans, we have revised the statement on page 8 to recognize that for those plans with a high potential for insolvency, withdrawal liability provides increased financial protection. However, in view of the billions of dollars in contingent liability against the PBGC multiemployer insurance program, compared to the limited assets of the program available to pay future claims, we continue to believe that withdrawal liability is a needed protection against insolvency of the program.

Major objections raised against withdrawal liability

PBGC stated that, because the principal criticisms of withdrawal liability are not answered in our report, critics of MPPAA may infer that they are unanswerable. PBGC also stated that critics have contended that withdrawal liability

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[5]See page 26 for a discussion of interest rates published periodically by PBGC applicable to terminating single employer plans for determining the value of plan benefits and the employer's liability to PBGC.

--weakens troubled plans by discouraging the entry of new contributing employers;

--distributes burdens irrationally without regard to a withdrawing employer's actual role in the growth of unfunded vested benefits;

--is unreasonably costly, particularly for small employers; and

--provides little financial cushion for plans since a high proportion of assessed liability is uncollectible.

PBGC further stated that it does not endorse these criticisms but believes that the report should address them to provide a full picture of the arguments for and against withdrawal liability.

Entry of new employers in multiemployer plans

Responses from plan officials on how withdrawal liability would affect the entry of new employers in their plans were mixed. Officials representing plans in declining industries, which had experienced no growth rate before MPPAA, generally did not foresee the potential for the entry of new employers in their plans. Officials representing plans with growth potential generally believed that withdrawal liability would discourage the entry of new employers in their plans.

We were unable to determine to what extent withdrawal liability affected the entry of new employers in multiemployer plans. However, the question of growth of plans was addressed, to a limited extent, in Labor's November 19, 1984, report on multiemployer plans. Labor stated that (1) during the 5-year period from 1975 to 1979, which was before MPPAA, multiemployer plans showed little growth in the number of participants and (2) the low growth rate may be attributable to a reduction in the formation of new plans and stable or declining employment levels in industries in which they predominate.

Distribution of withdrawal liability

The criticism that withdrawal liability distributes burdens irrationally without regard to a withdrawing employer's actual role in the growth of unfunded benefits, in our opinion, is not correct. MPPAA sets forth specific methods to be used in computing and allocating liability to withdrawing employers which are based primarily on the relationship of the withdrawing employer's contributions to the contributions of other employers in a plan. The allocation of unfunded vested benefits to withdrawing employers and a general description of methods for allocating liability to employers are discussed chapter 5 and appendix I of this report, respectively.

Cost of withdrawal liability

PBGC's statement that this report does not address the reported criticism that withdrawal liability is unreasonably costly, particularly for small employers, is not accurate. Chapter 6 discusses how the de minimis rule provides relief for most withdrawing employers; chapter 8 discusses the effects on withdrawing employers, including the significance of the liability in relation to employers' past contributions; and chapter 9 discusses the circumstances under which employers may not be subject to withdrawal liability.

Collection of withdrawal liability

PBGC's statement that this report does not address the reported criticism that withdrawal liability provides little financial cushion for plans since a high proportion of assessed liabilities is uncollectible does not recognize that chapter 7 discusses the assessment and collection of withdrawal liability. However, at the completion of our fieldwork, the status of most liabilities had not been determined, and the plans were having limited success in collecting from bankrupt employers which accounted for about one-third of the assessed liabilities.

CONCLUSIONS

Many multiemployer plans are well funded. However, many of the 8.3 million participants in multiemployer defined benefit pension plans are in plans which are not well funded. The 24 plans in our sample, which were less than 50 percent funded for vested benefits, have over 950,000 participants. Labor, in its November 19, 1984, study of multiemployer pension plans, found that 15 percent of all multiemployer plans were less than 50 percent funded and that such plans tended to be much larger in size than average, covering 29 percent of all participants.

MPPAA provides increased financial protection for multiemployer plans to the extent that the withdrawal liability provisions (1) discourage employers from withdrawing from plans and (2) result in the collection of a part or all of a withdrawing employer's allocated share of a plan's unfunded actuarial liability. This in turn increases the pension security of participants in poorly funded plans. It also provides a measure of protection against insolvency of the PBGC multiemployer insurance program by reducing the contingent liability against the program resulting from the billions of dollars in unfunded vested liabilities of poorly funded plans.

CHAPTER 3

WITHDRAWALS FROM MULTIEMPLOYER PENSION PLANS

Employers withdrawing from multiemployer pension plans are generally liable for their share of the plan's unfunded vested benefits. An employer may withdraw completely or partially from a plan. For a partial withdrawal, the employer's liability is a prorated amount of the liability for a complete withdrawal.

At the completion of our fieldwork in February 1983, there was little information available to determine the effect of partial withdrawals on plans and employers. Only three plans had assessed liability to 12 employers for partial withdrawals.

Also, one of the principal ways set forth in MPPAA to determine partial withdrawals, a substantial decline in contributions, did not become effective until the end of the first plan year beginning after April 28, 1982. For most plans, this provision was not effective until the end of December 1983. None of the plans we sampled had assessed any liability based on this provision at the time of our review. However, based on our analysis of MPPAA's withdrawal liability provisions, the provisions may not sufficiently protect plans because under these provisions major contributing employers may reduce their contributions to the plans substantially before becoming subject to the partial withdrawal liability provisions.

COMPLETE AND PARTIAL WITHDRAWAL LIABILITY PROVISIONS

MPPAA generally defines a complete withdrawal from a multiemployer pension plan as one in which an employer permanently ceases to have an obligation to make contributions to the plan for all of its employees. An employer is considered to have partially withdrawn from a multiemployer pension plan if it (1) permanently ceases to have an obligation to make contributions to a plan for part of its employees[1] or (2) experiences a decline in its employees which results in a 70-percent reduction

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[1]Under this provision, a partial withdrawal would occur if an employer permanently ceases to have an obligation to make contributions to a plan (1) under at least one but not all collective-bargaining agreements, but continues work in the jurisdiction of the agreement or transfers work to another location, or (2) for work performed at one or more but not all its facilities covered under the plan, but continues to perform the same type work at the facilities.

in contributions to the plan over a 3-year period.[2] Retail food industry plans, however, have the option of adopting a 35-percent decline rule instead of the 70-percent rule.

If an employer, subject to the 70-percent rule, permanently lays off a substantial number of its employees, no withdrawal liability can be assessed against the employer until layoffs result in a 70-percent decline in the employer's contributions to the plan. This would also apply to an employer subject to the 35-percent rule in a retail food industry plan, except the decline in the employer's contributions would only have to reach 35 percent before the employer would be subject to withdrawal liability.

REVIEW OF SAMPLED PLANS

Based on available data and discussions with plans' officials, there were 3,278 employers that had withdrawn from the 91 plans in our sample at the completion of our fieldwork. However, because the partial withdrawal liability provisions were not fully in effect at the time of our review, only three of the sampled plans had assessed liability to 12 employers for partial withdrawals. Also, of the eight plans in our sample covering employers in the retail food industry, three had adopted the 35 percent option for assessing withdrawal liability.

Complete withdrawals

Many plans in our sample had incomplete or no information on the reasons for withdrawals, resulting in insufficient data for statistical analysis. Plan officials could provide us with the reasons for employers withdrawing from the plans for only 602 (about 19 percent) of the withdrawing employers. Withdrawals for 386 (about 64 percent) occurred because the employers went out of business. An additional 54 employers (about 9 percent) did not renew collective-bargaining agreements, but continued to operate as nonunion businesses. Other circumstances cited by plan officials that resulted in a complete withdrawal from a plan included:

--Decertification of the union by employees resulting in the employer's withdrawal from the pension fund.

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[2]An employer is entitled to a subsequent abatement of a partial withdrawal liability attributable to a decline in contributions under certain circumstances, such as when there is a subsequent 10-percent increase in the employer's contributions.

--Closing down operations of a subsidiary within the area covered by the pension fund, but continuing to operate in other areas.

--Relocating business operations outside the jurisdictional area of the pension fund.

--Sale of a business to a buyer that did not continue contributions to the pension fund.

--Termination of plan by withdrawal of all employers (referred to as mass withdrawal).

--Death or retirement of owner.

Partial withdrawals

Officials in about one-third of the sampled plans anticipated that the partial withdrawal provisions would apply to their plans. Officials in other plans did not anticipate any partial withdrawals because they believed the nature of the industry or size of contributing employers made it unlikely that partial withdrawals would apply to their plans.

Plan officials had either no opinion or differing opinions as to the adequacy of the 70-percent partial withdrawal rule. In the 27 nonretail food plans that anticipated some partial withdrawals, officials in 15 plans had no opinion; 5 believed a lower percentage would be more effective because it would enable the plans to collect greater amounts of withdrawal liability; 5 said the 70 percent was adequate; and 2 wanted a higher percentage or none at all to apply. One reason cited for not wanting a lower percentage to apply is that it would be too easy to trigger withdrawal liability in smaller businesses. In other plans, however, the concern was that a plan could be seriously harmed before the 70-percent decline level was reached.

Eight of the 91 sampled plans covered employees in the retail food industry. Only three of the eight adopted the 35-percent option. Officials in those three plans cited the following reasons for adopting the option:

--To prevent systematic closing leading to complete withdrawal.

--To protect employers remaining in plan.

--To benefit the plan by not permitting employers to avoid liability by gradually withdrawing.

Four plans did not adopt the option because (1) they were not aware of it, (2) they did not understand it, (3) the plan was healthy, or (4) the trustees could not reach agreement. The one remaining plan, at the completion of our review, was still considering whether to adopt the option.

PARTIAL WITHDRAWAL LIABILITY RULE MAY NOT PROTECT FINANCIAL CONDITION OF PLANS

There was little information available at the completion of our fieldwork in February 1983 to determine with any certainty how a substantial decline in contributions by an employer would affect plans and employers. However, information was available from annual reports or plan officials on 27 plans which enabled us to identify the largest contributing employers. In the 27 plans, the largest individual contributors provided from 7 to 67 percent of the total contributions to the individual plans.

Based on data from the 27 plans, we believe that declines in contributions of less than 70 percent by one or more major employers could significantly affect a plan's overall financial condition, possibly greater than complete withdrawals by other smaller employers. For example, in one plan which was only 37 percent funded for vested benefits, the largest contributing employer accounted for 22 percent of the $1,919,000 in total annual contributions to the plan. Before this employer can be assessed withdrawal liability, the employer's annual contributions must decline by about $295,500 ($1,919,000 x .22 = $422,180 x .70) or about 15 percent of the total annual contributions from all employers contributing to the plan. None of the other 43 employers in the plan made annual contributions as great as this amount. Thus, the adverse affect to this plan's financial condition caused by a decline of less than 70 percent in its largest employer's contributions could be greater than the complete withdrawal of any of the other 43 employers. In such a situation, the smaller employer would be subject to withdrawal liability, while the larger would not.

Another of the 27 plans was a retail food industry plan which adopted the 35-percent rule and was 69 percent funded for vested benefits. The largest contributing employer accounted for 33 percent of the plan's annual contributions. In this situation, if a decline in the largest employer's contributions reaches 35 percent--equivalent to a 11.5-percent decline in total annual contributions to the plan--it would result in the employer being subject to withdrawal liability. If the plan had not adopted the 35-percent rule, the employer would not be subject to withdrawal liability until its decline in contributions reaches 70 percent--equivalent to a 23-percent decline in total annual contributions to the plan. While use of the 35-percent rule does not eliminate the adverse effect of an employer's declining contributions on the plan's financial condition, as shown by this example, it does reduce the effect.

CONCLUSIONS

None of the plans we sampled had assessed partial withdrawal liability on employers as a result of declining contributions because the provision was not in effect at the time of our fieldwork. However, based on our analysis, we believe that the partial withdrawal liability rules may not sufficiently protect plans from substantial contribution declines by their larger employers. To be more effective, the rule would have to be restructured to more adequately reflect the relative harm to the plan's financial condition. Thus, the 70-percent rule may need to be revised to better protect certain plans against reduced participation by its major contributing employers.

It may be appropriate to permit all plans to adopt an option, similar to the 35-percent rule now available to retail food industry plans, to reduce the adverse effect of a major employer's declining contributions on the financial condition of a plan.

PBGC COMMENTS AND OUR EVALUATION

PBGC stated that our arguments for changing the law governing partial withdrawals are not compelling, would represent a substantial change in the policy underlying MPPAA, and might have only marginal benefits. PBGC also stated there was no intention that shrinkage in an employer's work be, in and of itself, an occasion for liability. Plans in the retail food industry were, however, allowed to adopt more stringent partial withdrawal rules to reflect the structure of that industry in which the bulk of a plan's contributions often came from a few employers.

PBGC concurred that a lower threshold for partial withdrawal liability would be "more protective" of plans, but it would also complicate plan administration and impose liability for contribution declines resulting from normal business fluctuations. PBGC further stated that the potential risks cited in the report are hypothetical and do not appear significant enough to justify what would be perceived as a considerable expansion of the scope of withdrawal liability.

We recognize that the examples we cited are hypothetical because the MPPAA partial withdrawal provision concerning a substantial decline in contributions was not in effect at the time of our review. However, the demographics of our sample shows that there are plans in industries other than the retail food industry in which the bulk of a plan's contributions come from a few employers. Accordingly, we believe that giving plans the option of whether to adopt something other than the 70-percent rule could strengthen the financial condition of plans. This could occur in those situations where plan officials determine that a decline in contributions of less than 70 percent by one or more major employers would adversely affect the plans. Further, such a decision should not result in liabilities being imposed as a result of normal business fluctuations because the liability would be based on a decline in contributions over a 3-year period. In addition, an employer would be entitled to an abatement of liability under certain circumstances, such as an increase in the employer's contributions.

MATTER FOR CONSIDERATION BY THE CONGRESS

To better protect the financial condition of plans against declines in contributions by major employers, the Congress may wish to consider amending MPPAA to revise the partial withdrawal liability rules to allow all plans to adopt an option similar to the 35-percent rule now available to retail food industry plans.

CHAPTER 4

CHOICE OF INTEREST RATE AFFECTS

AMOUNT CALCULATED FOR EMPLOYERS' LIABILITY

The liability of an employer withdrawing from a multiemployer plan can vary significantly depending on the interest rate used by the actuary in calculating the plan's unfunded vested benefits which is the basis for allocating the withdrawal liability to the employers in the plan. The value of vested benefits is the lump-sum amount--at a point in time--that, together with future expected earnings, would be sufficient to pay all vested benefits when due. The higher the interest rate used, the lower the value of vested benefits; conversely, a lower interest rate results in a relatively higher value for vested benefits. A 1-percent change in the interest rate used could change the value of vested benefits by 8 to 10 percent.

MPPAA authorizes plans to use their own actuarial assumptions, including the interest rate assumption, to determine unfunded vested benefits for purposes of withdrawal liability provided they are reasonable in the aggregate (taking into account plan experience and reasonable expectations) and offer the actuary's best estimate of anticipated plan experience. The interest rate assumption used by the actuary in calculating the withdrawal liability does not have to be the same rate as used in determining the plan's costs to comply with ERISA's minimum funding requirements. The rate may depend on the philosophy of the actuary or actuarial firm employed by the plan or on a decision of the plan's trustees. Notwithstanding the variables inherent in the determination of a plan's withdrawal liability, MPPAA provides that a plan's determination is presumed correct in disputes resulting in arbitration unless the employer can show that it is unreasonable or in error.

MPPAA also authorized PBGC to prescribe regulations setting forth the actuarial assumptions and methods which a plan may use to determine unfunded vested benefits for calculating an employer's withdrawal liability. As of February 1985, PBGC had not issued such regulations.

Actuaries for multiemployer plans do not agree on which interest rate or rates are appropriate and reasonable for valuing vested benefits for withdrawal liability purposes. The differences in opinions among actuaries basically center on whether the interest rate(s) for withdrawal liability purposes should be the same as or higher than the rate(s) used in funding the plan. In valuing vested benefits for withdrawal liability purposes, actuaries for the sampled plans generally used one or a combination of the following rates:

--The funding rate, i.e., the rate used for determining the plan's costs to comply with ERISA's minimum funding requirements and in reporting of vested benefits to IRS.

--The PBGC rates applicable to terminating single employer plans for determining the value of plan benefits and the employer's liability to PBGC.

--Other rates, generally higher than the funding rate.

The following summarizes the basis for interest rates used by 26 actuarial firms in our study to calculate vested benefits for withdrawal liability purposes in 73 of the sampled plans.[1] Five of the firms prepared actuarial valuations for 40 of the 73 plans. The other 21 firms provided valuations for three or fewer plans each.

Basis for Interest Rate Used

Actuarial firm	Funding rate	PBGC rates	Other	Total
A	1	15	-	16
B	5	-	3	8
C	4	2	1	7
D	5	-	-	5
E	4	-	-	4
Remaining 21 firms	28	1	4	33
Total	47	18	8	73
Percent of total	64.4	24.7	10.9	100.0

Funding rates, used in about two-thirds of the above plans, are generally low interest rates which would result in higher unfunded vested benefits to be allocated to withdrawing employers. PBGC and other rates used by the remaining plans would generally result in relatively lower unfunded vested benefits.

[1]Excludes 2 plans that terminated, and 16 plans that did not calculate withdrawal liability because they were fully funded or had no withdrawals. The two terminated plans in our sample used the PBGC rates applicable to terminating single employer plans.

FUNDING RATES

Interest rates used by the 91 sampled plans for funding purposes ranged from 5 to 8 percent.[2] Eighty percent of the plans used interest rates of less than 7 percent. The most common rate, used by 42 percent of the plans, was 6.0 percent. Funding rates were generally lower than prevailing interest rates because they represented expected rates of return on investments over a 50- or 60-year period. Actuaries tend to assume relatively conservative rates of return for funding purposes because of their desire to protect plans against future uncertainties.

Actuaries and plan officials cited the following reasons for using the plan's funding rate for withdrawal liability purposes:

--Preferred using current funding assumptions until PBGC issues guidance on assumptions to be used.

--In best interest of plan to use a consistent interest rate to preclude controversy and assess withdrawal liability in concert with historic plan funding policy.

--Present interest rate assumption was in keeping with what the fund has been earning and could be defended.

--Simple, consistent, and had been upheld in a court case.

--Trustees wanted to maximize the liability to withdrawing employers.

PBGC RATES FOR TERMINATING SINGLE EMPLOYER PLANS

PBGC periodically publishes interest rates for use by terminating single employer plans in determining their liability to PBGC. These rates, which are revised monthly, are based on a survey of rates charged by insurance companies for group annuity contracts. Published rates include those for immediate annuities (those being paid to retirees) and progressively lower rates for use in valuing deferred annuities (those to be paid to future retirees). For example, PBGC rates effective for October 1982 were 10.75 percent for immediate annuities, and 10.0, 8.75, and 4.0 percent for use in valuing deferred annuities, depending on the number of years to retirement.

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[2]Generally reflects interest rates reported by plans for plan year 1981 which was the most current data available at the completion of our fieldwork in February 1983.

Unfunded vested benefits for withdrawal liability purposes are determined as of the end of a plan year. PBGC interest rates for immediate annuities effective in December--the end of the plan year for most sampled plans--are shown below:

Year	Percent
1979	8.50
1980	9.25
1981	11.00
1982	10.25

Actuary A, a large national firm, has a policy which treats the withdrawal like a single employer plan termination for that portion of the vested benefits that could be purchased by existing assets. It uses PBGC termination interest rates to value vested benefits to the extent of assets on hand and applies funding rates to the remaining benefits. Actuary A used this method to calculate vested benefits in 15 of its 16 plans included in our sample. The one exception occurred in a plan where the trustees apparently overruled the actuary and decided to use the more conservative funding rate to maximize the amount of liabilities to withdrawing employers.

Actuary A's rationale for using PBGC rates instead of funding rates, to the extent of assets on hand, is that future experience for withdrawal liability purposes is different from future experience for funding because

--the benefit payout period is shorter for vested participants who are older, on average, than the average for all participants;

--withdrawal liability payments will be made over a shorter period of time (less than 20 years) than contributions for all accruing benefits;

--the funding rate represents the more conservative end of the best estimate range of future experience, and withdrawing employers do not share in investment gains which will reduce future costs; and

--the rate of return for assets on hand can be counted on with greater assurance than the rate of return on future assets.

Actuaries from three other actuarial firms also believed termination rates were more appropriate than funding rates because:

--The determination of withdrawal liability is performed on a one-time basis, and therefore a look to the current investment environment is appropriate.

--Personally favors the use of termination rates even though he uses funding rate assumptions in all the plans for which he is the actuary.

--Seems appropriate to use PBGC rates because withdrawal liability, like a plan termination, involves a snapshot of the plan at a certain point in time.

OTHER RATES

Eight of the 73 plans used interest rates for withdrawal liability purposes that were higher than the funding rate but less than the current PBGC termination rates. Five of these plans used interest rates somewhat higher than their funding rate; e.g., 8 versus 6 percent and 7 versus 5 percent. Two plans used superseded PBGC rates which were lower than the current PBGC termination rates. One plan used the PBGC rate for immediate annuities to determine vested benefits of retirees and beneficiaries, but applied the funding rate to the benefits of all other participants.

Some of the reasons cited for using the above rates were that they

--were fairer to the withdrawing employer,

--would be easier to defend if assessment were challenged,

--more clearly reflected the plan's current return on investments, and

--represented the middle ground between the two extremes.

EFFECT OF DIFFERENT INTEREST RATES ON AMOUNT OF UNFUNDED VESTED BENEFITS

As noted earlier, the amount of unfunded vested benefits will vary depending on the assumed interest rate(s). The difference can be significant for the withdrawing employer and for the plan.

The following are examples of the differences in unfunded vested benefits calculated by plans based on funding rates,[3] when compared with the amounts calculated and actually used for withdrawal liability purposes by those plans which based their withdrawal liability determinations on PBGC termination rates.

	Plans' calculations based on funding rates		Plans' withdrawal liability calculations		Differences	
Plan	Unfunded vested benefits (000 omitted)	Interest rate	Unfunded vested benefits (000 omitted)	Interest rate[a]	Unfunded vested benefits (000 omitted)	Percent
A	$575,776	6.0	$417,884	10.00	$157,892	27.4
B	238,143	6.0	156,962	9.25	81,181	34.1
C	113,712	5.5	74,088	9.25	39,624	34.8
D	7,146	6.0	0	11.00	7,146	100.0

[a]PBGC rate applicable to immediate annuities as of the end of the plan's year for which the above calculations were made.

As shown above, unfunded vested benefits for withdrawal liability purposes were 27 to 100 percent less than what they would have been using the plans' funding rates. Employers withdrawing from these plans would benefit from the higher actuarially assumed interest rates used. For example, if an employer withdrew from plan B and was assessed a $1 million withdrawal liability based on PBGC's termination rate, it would be about $517,000 less than the liability that would have been assessed if the plan's funding rate had been used in the calculation. Also, in plan D, use of PBGC's termination rates results in no withdrawal liability being assessed by the plan; whereas, if the plan had used its funding rates in calculating the withdrawal liability, a 10-percent contributing employer that withdraws would have a liability of about $714,600.

The amount that employers withdrawing from plans benefit from actuarially assumed higher interest rates also represents an equivalent amount the plan does not receive. On the other hand, if a plan's funding rate is more than the rate used to calculate the withdrawal liability, the withdrawing employer

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[3]The funding rate for all plans was reported to IRS in Schedule B (Actuarial Information) attached to the Annual Return/ Report of Employee Benefit Plan (Form 5500). Twenty-six of the plans used interest rates in calculating withdrawal liability that differed from the funding rates, and, as illustrated in the case examples, the amount of withdrawal liability can vary significantly depending on the interest rate used.

would be assessed a larger withdrawal liability and the plan would receive larger payments from the employer. However, we believe that this situation would not occur often because none of the 91 plans in our sample used an interest rate in determining withdrawal liability which was less than the funding rate.

BURDEN ON WITHDRAWING EMPLOYER TO PROVE PLAN'S INTEREST RATES ARE UNREASONABLE

MPPAA provides that when a withdrawing employer does not agree with the determination of withdrawal liability, the dispute is to be resolved through compulsory arbitration. One of the major issues that has been involved in such arbitration cases is the actuarially assumed interest rates used in calculating the withdrawal liability. MPPAA places the burden on the withdrawing employers to prove the plan's interest rates are unreasonable.

MPPAA provides that a plan's determination of its unfunded vested benefits for withdrawal liability is presumed correct unless the contesting party shows by a preponderance of evidence that

(1) the actuarial assumptions and methods used in the determination were unreasonable in the aggregate or

(2) a significant error was made by the plan's actuary in applying actuarial assumptions or methods.[4]

PBGC REGULATIONS

MPPAA provides that PBGC may prescribe by regulation actuarial assumptions which may be used by a plan actuary in determining the unfunded vested benefits of a plan for purposes of

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[4]However, MPPAA's presumption of correctness provisions has been declared unconstitutional by the U.S. Court of Appeals for the First Circuit. The court held that the presumption of correctness in favor of the actuarial calculations used by multiemployer pension funds in assessing withdrawal liability is arbitrary and violates an employer's constitutional right to procedural due process. Thus, in the jurisdiction of the first circuit, an arbitrator cannot presume that the actuarial calculations are correct, although the arbitrator's decision, itself, will remain subject to MPPAA's presumption of correctness unless it is disapproved by the preponderance of the evidence. (Keith Fulton & Sons, Inc. v. New England Teamsters and Trucking Industry Pension Fund, No. 83-1804, 1st Cir., August 6, 1984.)

calculating an employer's withdrawal liability. A PBGC official advised us that, as of February 1985, a decision had not been reached on whether to issue such regulations, and PBGC was not actively considering whether regulations should be issued. Also, PBGC does not plan to devote any resources, in the immediate future, to determining whether regulations are needed. However, if the occurrence of subsequent events warrants it, PBGC will consider the need for regulations. If regulations are issued, their use will not be mandatory. Instead, a plan will be allowed to use its own actuarial assumptions provided such assumptions are reasonable in the aggregate.

RECOMMENDATIONS OF THE AMERICAN ACADEMY OF ACTUARIES

The American Academy of Actuaries publishes recommendations for specific standards of practice by its members. The standards provide that if an actuary uses procedures which deviate materially from the Academy's recommendations, the actuary should be prepared to support the use of such procedures.

For the selection of actuarial assumptions, the Academy recommends that the assumptions selected reflect the actuary's best judgment of future events affecting the related actuarial present value. It also recommends that the actuary take into account the actual experience of the covered group to the extent information is available and applicable, but in recognition of the nature of a pension plan, the actuary should also reflect expected long-term future trends rather than give undue weight to recent past experiences. The Academy further recommends that the actuary:

--Consider the impact of inflation and the method of valuing assets in selecting the actuarial assumptions to be used.

--Give consideration to the reasonableness of each actuarial assumption independently on the basis of its own merits and to the combined impact of all the assumptions.

--Give careful attention to changes in plan design which may significantly alter the level and trend of expected future experience, such as a liberalization of early retirement benefits, which may make advisable a revision in the retirement assumptions.

--Take into account, to the extent deemed suitable, general or specific information available from other sources, such as investment managers and accountants, which may result in the development of actuarial assumptions that differ from plan to plan.

--May find it desirable to assume a conservative posture in selecting actuarial assumptions in conjunction with the actuarial cost method employed, bearing in mind the degree of uncertainty in assumptions and the potential for adverse fluctuations.

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In addition to the actuarial assumption for interest, the method used by the actuary in valuing a plan's assets can result in a variance in the liability of an employer withdrawing from a multiemployer plan because the value of vested benefits less the value of the plan's assets is the plan's unfunded vested benefits. However, our review of the 91 sampled plans showed that the asset values by the two principal methods used did not differ significantly in most plans. We found that the choice of what asset value to use had less of an effect on the unfunded vested benefit determinations than did the choice of the interest rate.

MPPAA does not specify the basis to be used in valuing assets, nor has PBGC issued regulations on valuing assets for withdrawal liability purposes. Also, there is no requirement that the basis for valuing assets for withdrawal liability purposes be consistent from year to year. Actuaries have two principal choices for valuing assets: (1) market value and (2) actuarial value used for minimum funding purposes. Actuarial asset valuation methods attempt to smooth out temporary swings in market value. In general, any actuarial method is acceptable for minimum funding purposes so long as the resulting adjusted plan asset value is between 80 to 120 percent of market value and is applied consistently. While market value is generally accepted as appropriate for plan terminations, actuaries differ as to the basis to be used in valuing assets to determine unfunded vested benefits of ongoing plans.

OBSERVATIONS AND CONCLUSIONS

In estimating the unfunded vested benefits of which an employer withdrawing from a multiemployer plan is responsible for an allocated portion, the determination of an appropriate interest rate assumption to be used is complex. The interest rate assumptions should reflect the long-term expectation of rates of return on the investment of plan assets realistically achievable on the types of assets held by the plan and the plan's investment policy. This is necessary because benefits attributable to the plan participants' service, at the time the employer withdraws, will be paid over a long future period, and during this period, the rates of return on investments will fluctuate based on changes in economic conditions. Thus, it is appropriate that the interest rate assumption be determined by the plan actuary who is an expert in the design, financing, and operation of pension plans.

Because of the variable factors involved in making actuarial assumptions, the amount of unfunded vested benefits for withdrawal liability will vary depending on the interest rate assumptions used by the actuary, and the differences can be significant for withdrawing employers and the plan. However, the American Academy of Actuaries, in recommendations for specific standards of practice by its members, recognizes that such differences can occur because actuarial assumptions may be developed which appropriately differ from plan to plan.

Notwithstanding the appropriateness of different actuarial assumptions for different plans, the calculations of a plan's unfunded actuarial liability involves considerable judgment by the actuary concerning future uncertainties. Because of such uncertainties, the actuary's estimates of future returns on a plan's investments could result in determinations of liabilities that could be inequitable to the withdrawing employers. Thus, in view of the effect that withdrawal liability can have on withdrawing employers, we believe there is a need to monitor determinations of withdrawal liability by multiemployer plans and agree with PBGC that, if the occurrence of subsequent events warrants it, the issuance of regulations on actuarial assumptions should be considered.

CHAPTER 5

ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

MPPAA sets forth four methods which may be used in allocating a plan's unfunded vested benefits to withdrawing employers. Also, if a plan obtains advanced approval from PBGC, it may use an allocation method not set forth in MPPAA. Depending on the method selected, the amounts allocated may differ between new and current employers or between growing and declining employers. However, regardless of the method selected, the burden of withdrawal liability falls on those employers who were contributing to the plan when MPPAA became effective and those who have subsequently become contributing employers.

With the passage of MPPAA, employers became responsible not only for liabilities related to service earned in their employ but also for employees of employers who withdrew before September 26, 1980. The remaining employers assumed these obligations through allocation of 100 percent of the plan's unfunded vested benefits. This could significantly affect the amount of liability for employers, especially those contributing to plans in declining industries which had experienced numerous withdrawals in the years prior to MPPAA. For example, plans in such industries as mining, dairy, and apparel manufacturing had experienced substantial declines since they were initially established due to changes in consumer demand, changes in technology, or competition from foreign imports.

Employers in multiemployer plans also share in liabilities that are uncollectible or unassessable to employers withdrawing after the effective date of the act. Unassessable amounts are those forgiven withdrawing employers by the act's relief provisions (see chs. 6, 8, and 9).

The four methods set forth in MPPAA for allocating liability to withdrawing employers are the basic allocation method--referred to as the presumptive method--and three alternative methods--referred to as the (1) modified presumptive method, (2) rolling-five method, and (3) attribution method.

--The presumptive method generally applies unless the plan adopts an alternative method. Basically, this method segregates a plan's liabilities into separate pools for withdrawal liability determination purposes. The plan's cumulative unfunded vested benefits as of the end of the plan year ended before September 26, 1980, are considered a single pool. Changes in unfunded vested benefits for each subsequent plan year are considered separate pools. A withdrawing employer may be allocated liability from each of the pools.

--The modified presumptive method segregates the plan's liabilities for plan years before and after September 26, 1980. In this two-pool method, changes to unfunded vested benefits for plan years beginning after September 26, 1980, are accumulated in a single pool instead of separate pools for each year as under the presumptive method.

--The rolling-five method makes no distinction between pre- and post-MPPAA liabilities. Unfunded vested benefits as of the end of the plan year prior to an employer's withdrawal are allocated to the withdrawing employer based on the relationship of the employer's individual contributions to the total contributions to the plan in the 5 years before withdrawal. For certain mining plans,[1] this method applies unless the plan elects a different method.

--Under the attribution method, unfunded vested benefits are allocated to a withdrawing employer based on service of plan participants attributable to service with the employer.

The mechanics of computing the allocation under the presumptive, modified presumptive, and attribution methods can result in liabilities being allocated to some employers withdrawing from plans that are fully funded for vested benefits. This, however, cannot occur under the rolling-five method. The mechanics of computing the allocation under all four methods are discussed in appendix I of this report.

WITHDRAWAL LIABILITY IN FULLY FUNDED PLANS

In our sample of 91 plans, we found one example in which a withdrawing employer was assessed a $124,000 liability by a plan fully funded for vested benefits. This employer withdrew from one of the two plans in our sample which adopted the direct attribution method. In another plan not included in our sample, an arbitrator ruled that an employer that withdrew from a fully

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[1]Plans established before January 1, 1954, as a result of an agreement between employee representatives and the Government of the United States (section 404(c) of the Internal Revenue Code of 1954).

funded multiemployer plan under the direct attribution method of determining liability must pay withdrawal liability.[2]

We recognize that the occurrence of an employer withdrawing from a fully funded plan and being assessed a liability has not been frequent. However, the assessment of such a liability could become more frequent in the future and it appears inconsistent with MPPAA. Under MPPAA, withdrawing employers are liable for a share of the unfunded vested benefits. Therefore, there should be no liability for employers withdrawing from fully funded plans.

Further, the findings and declaration of policy set forth in MPPAA state that withdrawals of contributing employers from a multiemployer pension plan frequently

--result in substantial increased funding obligations for employers who continue to contribute to the plan and

--adversely affect the plan, its participants and beneficiaries, and labor-management relations.

MPPAA also states that one of the policies of the act is to provide reasonable protection for the interests of participants and beneficiaries of financially distressed multiemployer pension plans.

It thus appears that the Congress intended withdrawal liability to be a remedy for the adverse effects of an employer withdrawing from a multiemployer plan. Since there are no adverse effects where an employer withdraws from a fully funded plans, application of withdrawal liability in such cases does not seem to have been contemplated under MPPAA.

ALLOCATION METHODS SELECTED BY PLANS

The 91 plans in our sample selected the following methods for allocating unfunded vested benefits to withdrawing employers.

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[2]Penn Textile Corp. and Textile Workers Pension Fund (Case No. 14 62 0001 82 J. June 11, 1982, Arb. Malcolm L. Pritzker).

Allocation method	Number of plans
Presumptive	51
Modified presumptive	8
Rolling five	27
Attribution	2
Other	3
Total	91

Following is a discussion of the reasons for plans selecting a particular allocation method.

Presumptive method

The presumptive method automatically applied to some plans because the trustees took no action. These were generally plans that had no unfunded vested benefits.

Most of the plans that adopted this method did so because they considered it more equitable than the alternative methods. Plans chose the presumptive method for the following reasons:

--To encourage new employers to join in that they would not inherit liabilities generated in the past.

--Good compromise between accuracy and administrative expense.

--Would best represent employers' contributions over the years.

--Recommended by actuary as most equitable to employers and most advantageous to plan.

--Fairer than modified presumptive or rolling-five methods and less costly to administer than attribution method.

Officials in one plan were considering switching from the presumptive to the rolling-five method because of concerns related to participating employers' sale of assets. The use of the presumptive method had resulted in substantial differences between the seller's liability and the liability assumed by the buyer. According to a plan official, the rolling-five method would eliminate such differences.

Modified presumptive method

The reasons cited for adopting the modified presumptive method were similar to those of plans choosing the presumptive method:

--Fairest because it segregates old and new liabilities.

--Provides some incentive for new employers because they do not have to share in preexisting liabilities.

--More equitable than rolling-five method.

The key factor cited by these plans in selecting the modified presumptive over the presumptive method was that it was easier and less burdensome to administer. One plan that initially adopted the presumptive method later changed to the modified presumptive method after being advised by its actuary that the presumptive method was too cumbersome.

Rolling-five method

The majority of plans adopting the rolling-five method did so because it was the easiest and least costly to administer and the simplest to understand and explain. Other reasons cited were that (1) large employers lobbied for this method because it allocates a greater share of liability to new employers, (2) the presumptive method was unacceptable because it could result in withdrawal liability even though the plan was fully funded, or (3) it was best suited to an older industry plan with large past service obligations.

A number of plans indicated their decision to select the least costly method was based in part on the fact that no new employers were joining the plan. One plan adopted this method even though its actuary believed it was unfair to new and current employers. However, some plan officials considered this the fairest method and did not believe it would discourage new employers from joining.

Attribution method

Only two plans adopted the attribution method. An official in one of these plans stated that this method is fairest to employers because it relates withdrawal liability directly to an employer's employees. He believes this method is reasonable in industries with stable employment.

One other plan had initially adopted the attribution method, but later determined it was not practical from a record-keeping standpoint. It switched to the modified presumptive method in 1982.

Other alternative methods

Three of the plans requested PBGC approval for an alternative method other than one of the four statutory methods. Two of these plans are using the higher of the amount calculated under one of the presumptive methods or the attributable portion of the liability under the attribution method.[3] The third plan adopted a three-pool method which it considered fairer in that it tends to limit an employer's liability to the unfunded vested benefits generated during the periods the employer contributed to the fund.

CONCLUSIONS

Plan officials have adopted allocation methods authorized by MPPAA or have requested PBGC approval of alternative methods which they believe are best suited for their plans' needs based on equity and cost considerations. In each of the allocation methods, employers assume a share of the liabilities attributable to those that withdrew before MPPAA became effective. This could significantly affect the amounts allocated employers in plans which had numerous or major withdrawals before 1980.

Three of the four withdrawal liability allocation methods authorized by MPPAA can result in liability to employers withdrawing from fully funded plans. Although, at this point in time, this has apparently not affected many withdrawing employers, the assessment of such a liability does not seem to have been contemplated in the establishment of withdrawal liability under MPPAA.

PBGC COMMENTS

PBGC agrees that the Congress probably did not intend for an employer to be assessed liability upon withdrawal from a fully funded plan and stated that it is not clear that the law in fact permits assessment in such cases.

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[3] In commenting on a draft of this report, PBGC advised us that it was of the opinion that the alternative allocation method described in this sentence violates the statute, although its use was approved in a few very early instances.

MATTER FOR CONSIDERATION BY THE CONGRESS

Because the application of withdrawal liability in fully funded plans does not seem to have been contemplated under MPPAA, the Congress may wish to consider amending MPPAA to exempt employers in fully funded plans from withdrawal liability. Such an exemption would be consistent with withdrawal liability being based on a share of the plan's unfunded vested benefits and should have little effect on the plan or its contributing employers.

CHAPTER 6

DE MINIMIS RULE PROVIDES RELIEF

FOR MOST WITHDRAWING EMPLOYERS

An employer's withdrawal liability may be reduced by an amount computed under a de minimis rule authorized by MPPAA. The de minimis rule requires plans to reduce an employer's liability by the lesser of (1) $50,000 or (2) 0.75 percent of the plan's unfunded vested benefits. The de minimis amount is phased out, dollar for dollar, for liabilities in excess of $100,000. Thus, the rule does not normally apply to liabilities of $150,000 or more. The maximum de minimis reduction of $50,000 would apply to any plan having unfunded vested benefits of at least $6 2/3 million. The following examples illustrate how de minimis works for withdrawing employers in such plans.

Employer	Gross liability	De minimis reduction	Net liability
A	$ 50,000 or less	$50,000	$ 0
B	90,000	50,000	40,000
C	120,000	30,000	90,000
D	150,000 or more	0	150,000

Plans may adopt an option to increase the maximum reduction up to $100,000. Under this discretionary rule, the de minimis amount would be phased out, dollar for dollar, beginning at $150,000.

The basis for granting de minimis relief was the belief that withdrawals by employers contributing a relatively small portion of a plan's contributions would not significantly reduce overall contributions to the plan. The de minimis rule is mandatory for all plans, except that it does not apply to certain mining plans exempted by MPPAA and to plans where all employers withdraw.

We found that the de minimis rule is providing relief to small employers for withdrawal liability as intended by MPPAA. Of the 2,868 employers withdrawing from the plans we sampled, 2,024 owed no liability because of de minimis offsets and 464 of the remaining employers had their liabilities reduced.[1] Only two of the plans we sampled adopted the discretionary rule.

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[1]Excludes withdrawals from the two terminated plans in our sample to which the de minimis rule did not apply and from certain mining plans for which the rule is not mandatory.

Also, officials from most of the plans told us that they expected the de minimis rule to have no effect on their plans and considered the rule reasonable, but would not have voluntarily adopted it.

PLANS CHOSE LOWER DE MINIMIS

Only two of the sampled plans, less than 3 percent, decided to adopt the discretionary de minimis rule. One was fully funded and the other over 90 percent funded. One plan official stated that his plan would have adopted an even higher de minimis, if permitted, to avoid as much effect as possible from MPPAA.

All other plans preferred the lower de minimis to the higher optional amount. Their reasons are summarized below:

--Allows for greater recovery of liability.

--Limits the number of employers that would be exempted whereas the higher de minimis would have exempted too many employers.

--Less adverse effect on the plan.

--More practical and equitable.

--Would help keep employers in plan.

EFFECT OF DE MINIMIS ON WITHDRAWING EMPLOYERS

Analysis of 2,868 withdrawals from plans with unfunded vested benefits and required to apply the de minimis rule disclosed that about 87 percent of withdrawing employers had either no liability or a reduced liability.

Effect on employers	Number of withdrawing employers	Percent of total
Liability eliminated	2,024	70.6
Liability reduced	464	16.2
No change to liability	380	13.2
Total	2,868	100.0

Relief provided the 2,488 employers amounted to $36.1 million, or 65 percent of their total liabilities before de minimis offsets. The remaining 380 employers received no de minimis reduction from their $213 million in liabilities.

Effect on employers	Number of employers	Gross liabilities	De minimis reductions	Net liabilities
		------------(000 omitted)------------		
Eliminated liability	2,024	$ 16,928	$16,928	$ 0
Reduced liability	464	38,429	19,186	19,243
None	380	212,994	0	212,994
Total	2,868	$268,351	$36,114	$232,237

The average reduction for the 464 employers who had their liabilities reduced was 50 percent. The reductions for individual employers ranged from a nominal amount (less than 1 percent) to more than 99 percent. Over 85 percent of these employers, however, had their liabilities reduced by 20 percent or more.

EFFECT OF DE MINIMIS ON PLANS' ASSESSMENTS OF WITHDRAWAL LIABILITY

In those sampled plans to which the de minimis rule applied, application of the rule reduced total withdrawal liability assessments by an average of 13.5 percent. The following table summarizes the experience of those plans by comparing liabilities before (gross) and after (net) offsets for de minimis.

	Number of plans	Number of withdrawals	Amount	Percent
			(millions)	
Gross withdrawal liability	60	2,868[a]	$268.3[b]	100.0
De minimis reductions	53	2,488[a]	36.1[b]	13.5
Net withdrawal liability	56	844	$232.2	86.5

[a]Includes 615 withdrawals resulting in no net liability for which plans did not prepare or retain calculation.

[b]Excludes amounts for the 615 withdrawals for which calculations were not available.

Nineteen plans did not prepare or retain calculations for 615 of the above withdrawals where de minimis resulted in no liability. Plan officials stated that the liability of these employers would obviously have been well below the plan's de minimis amount and calculations were unnecessary.

The de minimis reductions affected some plans more than others. Potential collections of the following plans were reduced by 20 percent or more by de minimis. Each of these plans had at least 25 withdrawals and de minimis reductions of at least $500,000. Because the de minimis amounts are not collected from withdrawing employers, they increase the portion of liability for each employer continuing to contribute to the plan.

Effects of De Minimis on Selected Plans

Plan	Number of withdrawals	Gross liabilities	De minimis reductions	Net liabilities	Percent reduction
		---------(000 omitted)---------			
A	28	$ 752	$ 629	$ 123	83.6
B	506	18,170	8,187	9,983	45.1
C	221	15,276	4,329	10,947	28.3
D	203	11,962	2,950	9,012	24.7
E	32	4,007	864	3,143	21.6

OPINIONS OF PLAN OFFICIALS

Discussions with officials in 87 of the sampled plans disclosed that they generally (1) expected de minimis to have no effect on their plan, (2) considered the de minimis concept reasonable, but (3) would not have adopted the de minimis rule if it had been voluntary.

	Opinions on de minimis		
Responses of plan officials	Some adverse effect on plan	Concept reasonable	Would have voluntarily adopted it
	-----------(percent of plans)-----------		
Yes	32.2	38.0	15.0
No	52.9	31.0	38.0
No opinion	14.9	31.0	47.0
Total	100.0	100.0	100.0

Plan officials who were not in favor of the de minimis rule generally believed that all employers should be responsible for their share of the plan's unfunded vested benefits and that the plans should collect the full amount of liability from withdrawing employers.

Plan officials generally took one of three positions:

1. De minimis is reasonable and has no impact on the plan.

2. De minimis is unreasonable and unfair to larger employers, and trustees should be allowed to waive this requirement.

3. Although the concept is reasonable, the de minimis amount is too high and should be left to the discretion of the trustees.

CONCLUSION

Of the 2,868 employers withdrawing from plans in our sample, 2,024 owed no withdrawal liability because of de minimis offsets and 464 of the remaining employers had their liabilities reduced. Thus, the de minimis rule is providing relief to small employers as intended by MPPAA.

CHAPTER 7

ASSESSMENT AND COLLECTION OF WITHDRAWAL LIABILITY

Multiemployer pension plans generally have the authority needed to collect withdrawal liability, and most of the sampled plans were enforcing collection. Although the collection status of most liabilities had not been determined at the completion of our fieldwork in February 1983, the sampled plans had collected millions of dollars in liabilities from withdrawing employers during the first 2 years after the enactment of MPPAA. However, the plans have had limited success in collecting from bankrupt employers.

PAYMENT OF WITHDRAWAL LIABILITY

MPPAA sets forth specific rules for payment of withdrawal liability. The plan must notify the employer of the amount of liability and provide a payment schedule for paying off the liability. The payment schedule is based on the annual amount of withdrawal liability payment. This amount is determined by multiplying (1) the withdrawing employer's average number of contribution base units for the 3 highest consecutive plan years in the 10 years[1] prior to withdrawal by (2) the highest contribution rate required of the employer for the 10-year period, including the year of withdrawal. The resulting level annual payment is payable over the period of years, not to exceed 20, needed to amortize the liability. Instead of using the above formula, a plan may be amended to use an alternative method, set forth in MPPAA, for plan years ending before 1986.

MPPAA provides that the employer's payments include interest at the rate assumed in the plan's most recent actuarial valuation. This interest rate applies to payments of all liabilities even if the plan had used a higher interest rate in computing the amount of withdrawal liability. Most employers withdrawing from sampled plans were, therefore, paying interest of about 6 percent[2] on their liabilities. The plan's payment schedule would require the employer to make quarterly, monthly, or other installments of the annual payment for specified time periods.

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[1]A plan may be amended to provide that for the first plan year ended on or after September 26, 1980, 5 years may be substituted for 10 years and be increased by one each year until it reaches 10 years.

[2]The valuation or funding rate used by most plans for plan year 1981.

COLLECTIBILITY OF ASSESSMENTS

Of the $258.2 million in liabilities calculated by the sampled plans, about $186.7 million had been assessed for which initial payment was due from withdrawing employers.

	Number of liabilities	Amount
		(000 omitted)
Total liabilities calculated	1,216	$258,194
Less: Liabilities for which first payment was not yet due	290	68,309
Status unknown	26	3,216
Liabilities assessed for which initial payment was due	900	$186,669

The collection status of the $186.7 million in liabilities is generally based on information obtained from plans at the completion of our fieldwork in February 1983. The following chart summarizes the status of liabilities at that time.

Collection Status of Assessed Liabilities

Collectibles	Amount of liability	
	(000 omitted)	
Payments being received in part or in full	$28,832	
Lump-sum settlements	2,574	
Bankruptcy settlements (estimated)	1,455	
Total estimated collectibles		$ 32,861
Uncollectibles		
Bankruptcies (estimated)	20,838	
Lump-sum reductions	3,441	
Employers not located	239	
Total estimated uncollectibles		24,518
Collectibility not yet determined		
Bankruptcies	39,825	
Delinquent or in default	30,995	
Being reviewed by plan	26,558	
Litigation	21,917	
Arbitration	9,995	
Total not yet determined		129,290
Total		$186,669

Payments being received in part or in full

Plans had received payments from 211 withdrawing employers for liabilities totaling $28.8 million. Individual liabilities ranged from more than $1 million to less than $1,000. Plans were collecting over $6 million a year from 176 of these employers as partial payments of liabilities amounting to $28.6 million. Collections of $223,000 had been received from 35 other employers as full payment of their liabilities.

Lump-sum settlements

Plan trustees have in some cases decided to accept lump-sum settlements for less than the full amount of liability. Eight plans had negotiated settlements with 10 withdrawing employers resulting in a 42.8-percent collection of the liabilities assessed.

	Amount (000 omitted)
Assessed liabilities	$6,015
Negotiated reductions	3,441
Negotiated settlements	$2,574
Settlements as a percent of liabilities	42.8

The basis for the negotiated settlements included the following:

--The lump-sum amounts could be invested at current interest rates which would, over a period of time, result in recoveries equivalent to the amount of liability.

--In lieu of the buyer of a business posting bond,[3] the plan and the selling employer agreed to a lump-sum settlement equal to the lesser amount of liability that would have been assigned the buyer.

--Plan accepted a negotiated settlement for a disputed withdrawal which the employer claimed occurred prior to the effective date of MPPAA.

--Enforcing sales contract and bonding requirements would have caused sale of business to fall through with little chance of recovery. Plan, therefore, negotiated settlement with seller, allowing a continuation of business by buyer as a contributing employer.

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[3]See chapter 9 for a discussion of bonding or escrow requirements normally imposed on the buyer of a business which is participating in a multiemployer plan.

Trustees in some plans advised us that, as part of their fiduciary responsibilities, they have and will continue to evaluate the advisability of accepting lump-sum settlements for less than the full amount of the withdrawal liability. In commenting on a draft of this report, PBGC advised us that it believes this practice is supported by section 4224 of ERISA and its legislative history.

Bankruptcies

Plans have had limited success in collecting from bankrupt employers. The collection status of 105 liabilities assessed by 24 plans to employers in bankruptcy status is summarized below:

Collection status	Amount of liability
	(000 omitted)
Collectibles[a]	$ 1,455
Uncollectibles[b]	20,838
Not yet determined	39,825
	$62,118

[a]Includes actual and estimated settlements.

[b]Based on plans' determinations that no assets were available for collection, in addition to actual and estimated settlements.

Multiemployer pension plans generally have the status of general unsecured creditors for withdrawal liability claims in bankruptcy proceedings. Plans have filed bankruptcy claims for most of the $39.8 million for which collectibility had not yet been determined. Based on the experience of plans as of the time we completed our review, less than 10 percent of the liabilities due from bankrupt employers were collectible. A plan's ability to collect withdrawal liability will, therefore, depend to a large degree on the extent to which its withdrawing employers are in bankruptcy.

Employers not located

One plan could not locate six employers to assess them liabilities amounting to $239,000. The plan was still attempting to locate another employer in connection with a $600,000 liability, and its collectibility was still undetermined.

Delinquent or in default

Employers were delinquent or in default for 336 liability assessments amounting to over $30 million in liabilities. An employer is considered to be delinquent if a payment is not made within 60 days of the plan's initial demand notice. An employer is in default if it fails to make payment within 60 days of a second notice. In the event of default, the plan may require immediate payment of the balance of the employer's withdrawal liability plus any accrued interest from the due date of the first payment.

A number of plans had initiated action in civil proceedings to recover the full amounts of liability due from employers who had defaulted. Most of these actions were begun in late 1982 or early 1983, and the results were not available at the completion of our review.

Being reviewed by plan

Plans were reviewing 118 withdrawals amounting to $26 million in liabilities at the time of our study. These reviews covered a number of situations, including

--contested withdrawals involving the date of withdrawal, sale of asset bonding requirements, or labor disputes and

--determination or recalculation of the final amount of liability.

Litigation

Sixty-five lawsuits were pending in 21 of the plans for liabilities amounting to about $22 million. Litigation issues centered on the constitutionality of MPPAA, the constitutionality of the act's retroactive provisions, and the actuarial assumptions used by the plans. In at least three of the plans, all litigation was frozen in anticipation that the Supreme Court would eventually rule on the constitutionality of MPPAA.[4] The freeze on litigation and the posting of security deposits by the employers were agreed to by the plans and the involved employers.

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[4]On June 18, 1984, the U.S. Supreme Court ruled that the retroactive provisions were constitutional. Subsequently, however, the Tax Reform Act of 1984 eliminated the retroactive provisions and provided for the refund of any amounts paid by employers as a result of the retroactive provisions.

Arbitration

Forty-eight liabilities assessed by 11 plans amounting to about $10 million were in some stage of arbitration at the completion of our review. Arbitration had either been requested, initiated, or recently completed. In those completed cases in our sample for which information was available, the arbitrator had ruled in the plan's favor.[5] Arbitration issues included whether a withdrawal had actually occurred, the reasonableness of actuarial assumptions used by the plan, and the constitutionality of MPPAA.

CONCLUSIONS

Collections of withdrawal liability have increased the income of plans by millions of dollars, thereby somewhat reducing the plans' unfunded vested benefits and the liability of employers remaining in the plans. Multiemployer plans appear to have the necessary authority to collect liabilities, and most are enforcing that authority. The one exception involves bankruptcies, where plans do not have priority status for withdrawal liability claims. It is still too soon to determine the extent to which bankruptcies could reduce the effectiveness of withdrawal liability for multiemployer plans or whether employers could use bankruptcy as a means to evade withdrawal liability.

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[5]In commenting on a draft of this report, PBGC noted "that employers have prevailed in several of the dozen or so arbitration decisions that have been published to date."

CHAPTER 8

EFFECTS ON WITHDRAWING EMPLOYERS

The effects on employers withdrawing from multiemployer pension plans in our sample and not relieved of all liability by the de minimis rule are summarized below:

--Forty-one percent owed liabilities of more than $100,000.

--Liabilities for some employers were equivalent to 10 or more years of contributions.

--Few had their liabilities reduced by the act's 20-year cap on payments.

--A small number had their liabilities substantially reduced by the act's dollar limitation provisions.

--Relatively few employers withdrawing from well-funded plans had any liability, and the amounts owed were comparatively small.

--Employers withdrawing from less well-funded plans often had substantial liabilities.

In previous chapters, we discussed the effects of actuarial assumptions, allocation methods, and the de minimis rule on a withdrawing employer's liability. This chapter addresses the significance of the liabilities assessed employers, relief provided employers by the act's 20-year cap and dollar limitation provisions, and the differing effects on employers withdrawing from well-funded plans and less well-funded plans.

NUMBER AND SIZE OF LIABILITIES

Liabilities to withdrawing employers amounted to $258.2 million in the plans sampled. Liabilities over $100,000 each were owed by 41 percent of these employers, accounting for over 90 percent of the total liability amounts due the plans.

The $258.2 million in liabilities covered 1,216 withdrawals from 59 plans that generally took place between April 29, 1980, and September 30, 1982.[1]

Summary of Liabilities
by Dollar Amount

Amount of liability	Liabilities to employers		Total liabilities owed plans	
	Number	Percent of total	Amount	Percent of total
			(millions)	
$1 million or more	54	4.4	$106.1	41.1
$500,000-999,999	64	5.3	44.7	17.3
$100,000-499,999	381	31.3	88.5	34.3
$10,000-99,999	462	38.0	17.9	6.9
Less than $10,000	255	21.0	1.0	0.4
Total	1,216	100.0	$258.2	100.0

The liabilities of 54 employers withdrawing from 23 plans were more than $1 million each. Five of these employers were making scheduled payments and one had agreed to a lump-sum settlement. The remaining employers had either filed for bankruptcy, contested the plan's determination, or not yet made any payments.

Those employers owing less than $100,000 either had their initially allocated liabilities reduced by the de minimis deductible or had withdrawn from plans in which the de minimis rule was not required or did not apply. Those plans for which MPPAA did not make the de minimis rule mandatory had not yet decided whether to adopt their own deductible provision.

SIGNIFICANCE OF LIABILITY RELATED TO EMPLOYERS' PAST CONTRIBUTIONS

The size of the liability, in itself, did not necessarily indicate its significance to the employer in terms of the number of years of continuing contributions for which it was obligated.

[1]The data provided by some plans only covered the period through June or December 1981 because they had not yet calculated liabilities for withdrawals occurring after those dates. For a few plans, the calculated liabilities included withdrawals through the end of 1982.

Liabilities were equivalent to less than 1 year's contributions for some employers, but as much as 10 or more years for others.

The following are examples of withdrawals from three different plans showing the amount of liability and its equivalent in years of contributions.

Employer	Amount of liability	Equivalent years of annual contributions[a]
	(000 omitted)	
A	$1,905	3.0
B	1,357	11.7
C	1,284	4.2
D	192	5.9
E	167	10.4

[a]Our computations based on the highest amount of contributions made by the employer in any one year during the 5 to 7 years before withdrawal.

Although employer E's liability, for example, was less than 10 percent of employer A's, its liability was considerably greater in terms of the number of years of contributions for which it was obligated--10.4 versus 3.0. The plan from which employer E withdrew had been declining in recent years and was considerably less well funded for vested benefits than employer A's plan.

Comprehensive analysis of the equivalent years of contributions represented by liabilities would require detailed documentation for each withdrawal. Lacking such data, the payment period can be substituted as an approximate indicator of the significance of the amount of liability to the withdrawing employer. The payment period is based on the computed amount of the employer's annual payment. The annual payment will often be greater, but seldom less than contributions made in any prior year by the employer. This is because the annual payment reflects an employer's peak activity in past years at the highest contribution rate, which would usually be the rate in effect when it withdraws from the plan.

The following compares payment periods with equivalent annual contributions for the same five employers discussed earlier in this section.

Employer	Computed annual payments	Annual contributions[a]	Withdrawal liability: Payment period[b] (number of years)	Withdrawal liability: Equivalent years of contributions
	------(000	omitted)-----		
A	$678	$640	3.2	3.0
B	159	116	12.1	11.7
C	326	303	4.5	4.2
D	65	33	3.3	5.9
E	30	16	6.6	10.4

[a]Highest amount of contributions in any one year during the 5 to 7 years prior to withdrawal.

[b]Includes payment of interest on liability.

Based on available data, the payment period will often closely correspond to equivalent years of contributions. However, in some cases, such as employers D and E, above, it is a less accurate indicator and understates the years of past contributions represented by the liability. Payment periods for withdrawing employers are summarized and discussed under the 20-year payment cap section which follows.

20-YEAR PAYMENT CAP

The 20-year payment cap, one of several employer relief provisions in MPPAA, was not triggered for most withdrawing employers. Liability payment periods were available for 1,117 employers withdrawing from 59 plans in our sample. Only two of these employers' liabilities were calculated to exceed 20 years and thus received some relief from liability under the 20-year payment cap. Most liabilities, 87.2 percent, were payable in 10 years or less, and those payable over 11 to 20 years were concentrated in a small number of plans.

The 20-year payment cap limits an employer's liability to 20 annual payments. The employer is generally required to make level annual payments (discussed in ch. 7) for the number of years it would take to pay out the assessed liability. If the above calculation resulted in a payment period of more than 20 years, the employer's liability would be limited to 20 annual payments thereby reducing the amount of liability. This provision does not apply to mass withdrawals, to plan years for which plans used the alternative method for calculating annual payments, or to those mining plans exempted by MPPAA.

Data on payment periods, available for 1,117 of the 1,216 liabilities, showed that 1,115 (99.8 percent) were payable in less than 20 years. Further analysis of payment periods for the 59 plans disclosed the following:

Payment period	Number of liabilities	Percent of total
5 years or less	732	65.6
6-10 years	242	21.7
11-15 years	104	9.3
16-20 years	37	3.3
Over 20 years	2	0.2
Total	1,117	100.0

DOLLAR LIMITATIONS ON LIABILITY

In addition to the de minimis and 20-year cap provisions, MPPAA provides relief to employers by limiting the dollar amount of their liabilities in the following circumstances: (1) employer insolvency, (2) individual employers, and (3) asset sales to unrelated parties. These limitations are applied to withdrawal liability determined after application of the de minimis rule, the pro rata reduction of liability in the case of a partial withdrawal, and the 20-year payment cap.

An insolvent employer undergoing liquidation or dissolution is, at a minimum, liable for the first 50 percent of its withdrawal liability. The plan's claim for any additional liability amounts may be limited depending on the employer's liquidation value determined at the beginning of the liquidation. For example, in the case of an insolvent employer with a liquidation value of $2 million, the plan's claim would be limited to (1) $2 million if the liability were $4 million or less, or (2) 50 percent of the liability if it exceeded $4 million. This provision, when applicable, benefits other general creditors of the insolvent employer.

In the case of an individual employer (sole proprietor or partner) withdrawing from a multiemployer pension plan, any personal assets that would be exempt under bankruptcy law would also be protected from withdrawal liability claims.

Dollar limitations also apply where all or substantially all the assets of an employer are sold in a bona-fide, arm's length transaction to an unrelated party. The employer's liability is limited to the greater of (1) a percentage of its liquidation or dissolution value, or (2) the unfunded vested benefits attributable to the employer's employees.[2] The percentage limitation is 30 percent for liquidations up to $2 million, and gradually increases to 80 percent for amounts exceeding $10 million. The effects of this provision are discussed in the following section.

Dollar limitations provided substantial relief to some employers

Dollar limitations on asset sales to unrelated parties resulted in substantial reductions to the liabilities of those employers to which it was applied. The effects of this limitation on withdrawing employers are shown below.

	Amount of liability		Reduction of liability	
Employer	Initially assessed	Final assessment/ dollar limitation	Amount	Percent
	(thousands)			
A	$ 955.3	$359.5	$ 595.8	62.4
B	519.6	247.0	272.6	52.5
C	438.4	223.0	215.4	49.1
D	71.8	56.0	15.8	22.0
E	7.2	5.4	1.8	25.0
Total	$1,992.3	$890.9	$1,101.4	55.3

Employer C, for example, dissolved his business and was assessed withdrawal liability of $438,000. It was subsequently determined that the employer qualified under the subject dollar limitation provision. The liability initially assessed this employer was equivalent to about 60 percent of his net assets; the final liability was equal to 30 percent.

Employer E, on the other hand, withdrew from two multiemployer plans. Where withdrawals from several plans occur, MPPAA requires the limitation to be apportioned among the plans. The employer's combined liability was reduced to 30 percent of its net assets, prorated among the two plans. The total reduction in liability amounted to about $86,000, of which the $1,800, shown above, applied to the one plan in our sample.

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[2]The schedule of rates (i.e., percentages) applies if the plan does not or cannot make this determination. (PBGC Opinion Letter 82-008, dated March 25, 1982.)

MINIMAL EFFECT ON EMPLOYERS IN WELL-FUNDED PLANS

Withdrawal liability has had minimal effect on employers withdrawing from "well-funded" plans, i.e., those that had at least 75 percent of their vested benefits funded. Employers withdrawing from fully funded plans generally have no liability. Most employers withdrawing from plans at least 75 percent but not fully funded also had no liability, and the few with liability owed relatively small amounts.

Fully funded plans have no unfunded vested benefits, and employers can generally withdraw from these plans with no further obligations. In some cases, however, the withdrawing employer may have a liability even though the plan itself is fully funded. (See discussion of allocation methods in ch. 5.)

Of the 17 plans that were 75 to 99 percent funded, 2 had no unfunded vested benefits for withdrawal liability purposes, and 2 had no withdrawals since MPPAA became effective. Two other plans had identified withdrawals but had not yet calculated the amount of liability.

Only 15 of 303 employers withdrawing from the 11 remaining plans had any liability. (The other 288 had no liability because of the de minimis rule.) All 15 who were assessed had their liabilities reduced by de minimis. The average liability for the 15 employers was less than $30,000, with none above $100,000. All of the liabilities were payable within 2 years.

MAJOR LIABILITIES TO EMPLOYERS IN LESS WELL-FUNDED PLANS

Employers in less well-funded plans, i.e., less than 75 percent funded, were subject to larger amounts of liability. Analysis of withdrawals from seven plans, accounting for about half of the liabilities, disclosed an average liability of $259,000 for 597 employers. About 1,200 contributing employers had withdrawn from these plans with no liability because of de minimis offsets.

The seven plans analyzed were in the manufacturing and transportation industries. They accounted for 49 percent of the number of liabilities, 60 percent of the dollar value of the liabilities, and 42 percent of unfunded vested benefits for all plans sampled. Funding of vested benefits for these plans ranged from 13 to 70 percent.

The following chart shows, for each plan, the number of liabilities, the average liability, and the required payment periods.

Plan	Number of liabilities	Average liability per employer (000 omitted)	Payment periods in number of years: Median	Payment periods in number of years: Highest
A	26	$442	3	6
B	42	421	10	18
C	84	346	10	18
D	225	296	9	20
E	43	209	3	5
F	71	154	2	5
G	106	94	2	5
Total	597	$259		

Half the employers in plan D, for example, had liabilities requiring payments over periods ranging from 9 to 20 years. Most of the employers with shorter payment periods, 1 to 9 years, were paying less than their full liability because of de minimis offsets. The three plans with the longest payment periods were the lowest funded (all less than 50 percent of vested benefits funded) of the seven plans.

CONCLUSIONS

Liabilities of employers withdrawing from relatively less well-funded or declining plans can be substantial in relation to their past annual contributions to the plans. Those employers that did not qualify for de minimis or other relief provisions, including the dollar limitations on liability, were assessed the full amount of their allocated liabilities and were obligated to pay the liabilities for periods up to 20 years.

Only about 13 percent of the withdrawing employers, however, had liability payment periods in excess of 10 years and only 2 of the 1,117 withdrawing employers in our sample had liabilities computed for periods exceeding 20 years.

CHAPTER 9

CIRCUMSTANCES UNDER WHICH EMPLOYERS MAY NOT BE SUBJECT TO WITHDRAWAL LIABILITY

Employers who completely withdraw from a multiemployer plan--other than those qualifying for special withdrawal liability rules--are subject to withdrawal liability, except under specific circumstances set forth in MPPAA. This chapter primarily discusses those exemptions from withdrawal liability that may be provided to (1) employers withdrawing within the first 6 years of their participation in a plan, referred to as "free look rule," and (2) employers selling their businesses.

Other circumstances in which employers may be exempted from withdrawal liability include when an employer ceases to exist because of a change in form or structure (e.g., a merger or consolidation) if required contributions to the plan continue to be made by the successor employer. Also, a withdrawal is not considered to take place solely because an employer suspends making plan contributions during a labor dispute which involves its employees. In addition, nonconstruction plans may amend their plans to apply special withdrawal liability rules to employers contributing for work in the building and construction industry. This subject is discussed in our report on special withdrawal liability rules.[1]

FREE LOOK RULE FOR NEW EMPLOYERS

MPPAA authorizes nonconstruction plans to adopt an amendment allowing new employers to withdraw within 6 years after joining the plan without incurring liability. The intent of this rule was to encourage employers to join multiemployer plans by giving them a "free look" and thereby neutralize disincentives resulting from the act's withdrawal liability provisions.

The free look rule may only be used by plans that have an assets to benefit payments ratio of at least 8 to 1 in the plan year preceding the first year for which the employer was required to contribute. In addition, the plan must provide that benefits of employees accrued based on service with that employer before contributions were required may not be payable if it ceases contributions.

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[1]Assessment of Special Rules Exempting Employers Withdrawing from Multiemployer Pension Plans from Withdrawal Liability (GAO/HRD-84-1, May 14, 1984) pp. 29 and 30.

The free look rule applies to new employers for up to 6 years, or, if less, the number of years required for vesting under the plan. To be eligible, an employer's contributions to the plan would have to be less than 2 percent of total contributions to the plan in each year, and the employer could not have previously used this exception.

Plan officials generally rejected the free look rule. They either opposed the concept or saw no need for adopting such a rule. As shown in the following table, only 11 of the plans in our sample (12.4 percent) adopted the free look rule. Of the 11 plans, 3 were not eligible to grant new employers exemption from withdrawal liability at the time of our review because their asset to benefit ratio was less than 8 to 1.

Adoption of Free Look Rule by Plans

	Ratio of assets to benefits payments					
	8:1 or better		Less than 8:1		Total	
Free Look Rule	Plans	Percent	Plans	Percent	Plans	Percent
Adopted	8	14.0	3	9.4	11	12.4
Not adopted	49	86.0	29	90.6	78	87.6
Total	57	100.0	32	100.0	89[a]	100.0

[a]The two terminated plans in our sample were not included in this analysis.

Four of the 11 plans adopting the rule chose free look periods of less than 6 years. Reasons for selecting shorter periods were that it

--corresponded with plan provisions to take away past service credit if an employer contributed for less than 5 years and

--corresponded to plan rule requiring contributions for at least 4 years to assure no reduction in past service credits.

Officials in plans adopting the free look rule cited the following reasons for their decision:

--Incentive to encourage new employers to join plan.

--To counteract effects of withdrawal liability on potential new employers.

--Plan could not be hurt because it would receive up to 6 years of "free" contributions with no vesting of employer's employees.

--Gives employer chance to see that the plan is stable and realize it would be cheaper to continue participating in the plan rather than set up a separate plan.

They were generally of the opinion that it was still too soon to determine how effective the free look rule will be as an inducement for employers to join the plan.

Reasons cited by officials in other plans for not adopting the free look rule included the following:

--Rule would not be effective as an inducement for attracting new employers.

--Not fair to employees who could lose up to 6 years of credits for contributions made on their behalf if their employer withdrew.

--All employers should be responsible for their share of unfunded vested benefits.

--Requirement that past service benefits be waived if employer withdrawal was unacceptable to trustees.

--Free look rule would not help plan because of 2-percent limitation on contributions.

--Rule not needed because plan was healthy, had little or no unfunded vested benefits, or did not expect any new employers to join.

EXEMPTION FOR SALE OF BUSINESS

MPPAA states that a bona-fide, arm's-length sale of assets is not considered to be a withdrawal from a multiemployer pension plan for purposes of assessing withdrawal liability if certain conditions are met. These conditions are that

--the buyer (who must be an unrelated party) is required to contribute to the plan for substantially the same number of contribution base units (e.g., hours worked) for which the seller was required to contribute;

--the buyer must provide a 5-year bond or escrow, payable to the plan if the buyer withdraws or fails to make a contribution when due during the first 5 plan years; and

--the sales contract must provide that the seller is secondarily liable if the buyer withdraws during the first 5 plan years and fails to pay the liability due.

The above rules were intended to exempt sales of businesses from withdrawal liability where the buyer stepped into the seller's shoes with no harm to the plan's contribution base, but to protect plans from a financially weak buyer by requiring security from the buyer and assigning secondary liability to the seller. However, withdrawing employers, who liquidate or sell all or substantially all of their assets and are not entitled to exemption under the above rules, have a limited liability (such withdrawals are discussed in ch. 8 of this report under the section on "dollar limitations provide substantial relief to some employers").

MPPAA gave PBGC authority to vary the sales rules by regulations if PBGC determined that they were necessary to protect plans or that lesser safeguards were adequate. In addition, MPPAA gave PBGC the authority to grant individual or class exemptions from the sales rules for the period before it issued such regulations.

The following summarizes the types of experiences of multiemployer pension plans in our sample with respect to employers selling their businesses:

--Conditions of MPPAA, resulting in no liability assessment or abatement of the liability initially assessed.

--Plan assessed withdrawal liability pending compliance with bonding and other requirements.

--PBGC granted exemptions to buyers requesting waiver of MPPAA's bonding requirements.

--Employer (seller) agreed to pay withdrawal liability because the buyer even though continuing to contribute to the plan did not comply with the bonding requirements.

--Employer sold business operations to noncontributing employer, did not qualify for the above exemption, and was assessed withdrawal liability.

In August 1982, PBGC issued a class exemption from the bond/escrow and sale-contract requirements for all sales of assets consummated before January 1, 1981. Application of the exemption is conditioned on each of the parties providing written notification to the affected plan of the party's intention to have the transaction governed by the transfer of assets rules. Under these rules, the buyer assumes the seller's contribution history for the 5 plan years preceding the date of the sale for the purpose of calculating the buyer's liability upon its subsequent withdrawal. The seller is secondarily liable if, within 5 years of the sale, the buyer fails to make a withdrawal liability payment when due.

On May 31, 1984, PBGC issued a regulation prescribing variances from the sales contract and bonding/escrow requirements. To qualify for a variance under this proposed regulation, the parties of a sale would have to inform the plan in writing of their intention to be covered by the act's provisions in addition to meeting one of three criteria. First, a variance would be granted if the amount of the bond did not exceed the lesser of $250,000 or 2 percent of the average total contributions paid to the plan in the 3 plan years preceding the sale. The other criteria are an income test to determine a purchaser's ability to pay required contributions to the plan and an asset test to determine a purchaser's ability to pay its liability should it withdraw from the plan.

CONCLUSIONS

The exception from withdrawal liability for new employers--the free look rule--has not been a significant factor in encouraging employers to join multiemployer plans. Most plans have not adopted the rule or do not qualify for the exception. Also, PBGC regulations prescribing variances from the statutory sale of assets requirements, in our opinion, should ease the effects on withdrawing employers while retaining adequate safeguards for the plans.

GENERAL DESCRIPTION OF METHODS FOR ALLOCATING LIABILITY TO EMPLOYERS WITHDRAWING FROM MULTIEMPLOYER PENSION PLANS

A plan's unfunded vested benefits are allocated to withdrawing employers through specific formulas. MPPAA sets forth a basic allocation method, which is referred to as the presumptive method, and three alternative methods for allocating unfunded vested benefits. The allocated amount is the employer's liability before applying offsets for de minimis or limitations on liability.

All plans, except those that primarily cover employers in the building and construction industry, may adopt any of the allocation methods in the act, but must obtain PBGC approval if they decide to use a different method.

The allocation methods authorized by MPPAA are

--the basic or presumptive method, which applies unless the plan adopts an alternative method;

--alternative number one referred to as the modified presumptive method;

--alternative number two commonly known as the rolling-five method; and

--alternative number three--the attribution method.

Employers withdrawing from fully funded plans would generally have no liability. However, the mechanics of computing the allocation under the presumptive, modified presumptive, and attribution methods can result in liabilities to some employers withdrawing from fully funded plans. In our sample of 91 plans, we found one example in which a withdrawing employer had a $124,000 liability under the attribution method adopted by a fully funded plan.

Following is a general description of the mechanics for allocating liability to withdrawing employers under the four statutory methods.

Presumptive method

The presumptive method segregates a plan's liabilities into what is referred to as separate pools for withdrawal liability determinations. The plan's cumulative unfunded vested benefits as of the end of the plan year ended before September 26, 1980, are computed and considered a single pool. Changes in unfunded vested benefits for each subsequent plan year are considered separate pools. In addition, reallocation of unfunded vested benefits that were uncollectible from or unassessable to withdrawing employers for each plan year ending before an employer's withdrawal, but after plan year 1980, are computed and considered separate pools. The amount in each pool is reduced by 5 percent a year until it is fully eliminated. An employer's share of each pool is based on the ratio of its contributions to total contributions over a specified 5-year period. (A plan may be amended to provide for the use of a period of more than 5 but not more than 10 years.)

The pool for unfunded vested benefits for plan years before September 26, 1980, is allocated only to employers that contributed to the plan in those years and that had not withdrawn as of that date. However, employers that begin contributing to the plan in plan years ended after September 26, 1980, are allocated a portion of that initial liability as the pool is reduced by 5 percent each subsequent year and the amounts shifted to pools for those subsequent years.

An employer withdrawing from a plan using this allocation method may be allocated withdrawal liability in some cases where the plan is fully funded for vested benefits. This could occur for example, over a period of time during which the plan goes from having an unfunded liability to being fully funded, while over the same period of time a withdrawing employer has a declining contribution base. In this situation, because the allocations are based on the ratio of the employer's contributions to the total plan contributions for the year of allocation to each pool and the four preceding years, the employer's allocated share of the pools in which there were unfunded vested benefits would be larger than the allocated share of the pools in which there were reductions in unfunded vested benefits.

Modified presumptive method

The modified presumptive method--also referred to as alternative number one method or two-pool allocation method--is similar to the presumptive method in that it segregates the employer's liabilities for plan years before and after September 26, 1980. In this method, however, changes to unfunded vested benefits after the act are accumulated in a single pool instead of separate pools for each year as under the presumptive method. Unfunded vested benefits as of the end of the last plan year ended before September 26, 1980, are amortized over a 15-year period. For post-MPPAA liabilities, the plan's unfunded vested benefits as of the end of the plan year preceding the year of withdrawal are reduced by (1) the unamortized amount of unfunded vested benefits for plan years before September 26, 1980, allocable to employers that have not withdrawn and (2) the value of outstanding collectible claims for liability from employers that withdrew. An employer's share of unfunded vested benefits for each of the above pools is based on the percentage of its contributions to total contributions over the applicable 5-year period, or by plan amendment for up to 10 years.

Similar to the presumptive method, under the modified presumptive method the pre-September 26, 1980, pool is allocated only to employers who contributed to the plan in those years. However, newer employers are allocated a portion of that initial liability each year as that pool is reduced and the amounts shifted to future periods.

Also similar to the presumptive method, an employer withdrawing from a plan using this allocation method may be allocated withdrawal liability in some cases where the plan is fully funded for vested benefits.

Rolling-five method

The rolling-five method--also referred to as alternative number two method or the one-pool method--is the simplest and least precise of the four statutory methods. No distinction is made between pre- and post-MPPAA liabilities. Unfunded vested benefits as of the end of the plan year before withdrawal, less the value of outstanding collectible claims for withdrawal liability, are allocated to withdrawing employers based on contributions in the 5 plan years before withdrawal, or by plan amendment for up to 10 years. Under this method, new as well as old employers share directly in the pre-MPPAA liabilities.

The rolling-five method is the required method for certain mining plans, unless they amend their plan to adopt an alternative.

Under this method, an employer withdrawing from a fully funded plan cannot be held liable for withdrawal liability.

Attribution method

The attribution method--also referred to as alternative number three method--differs markedly from the other statutory methods. Vested benefits are assigned to a withdrawing employer based on service of plan participants attributable to service with the employers, and assets are allocated to employers to determine their attributable share of the plan's unfunded vested benefits. A portion of the plan's unfunded vested benefits not attributable to the withdrawing employer are also allocated to the employer. The unattributable unfunded vested benefits are those that cannot be assigned to any of the plan's contributing employers, such as for benefits accrued by employees for service with employers that withdrew from the plan before September 26, 1980. An employer's withdrawal liability is its allocated share of the total of the plan's attributable and unattributable unfunded vested benefits. This method requires detailed plan records and specific rules for assigning vested benefits and allocating assets.

Vested benefits attributable to the withdrawing employer are attainable from the plan records. The assets attributable to the withdrawing employer may be computed by the plan by multiplying the value of the plan's assets allocated to total attributable unfunded vested benefits by any of the following three ratios.

$$\frac{\text{Vested benefits attributable to withdrawing employer}}{\text{Vested benefits attributable to all contributing employers}}$$

$$\frac{\text{All contributions by withdrawing employer}}{\text{All contributions by all contributing employers}}$$

$$\frac{\text{All contributions by withdrawing employer less benefits paid on behalf of employer's employees}}{\text{All contributions by all employers less all benefit payments}}$$

Nonattributable vested benefits are obtained by subtracting the attributable vested benefits from the total of the plan's vested benefits. This amount is further reduced by value of (1) plan assets allocated to the attributable vested benefits and (2) outstanding claims for withdrawal liability which can reasonably be expected to be collected with respect to employers withdrawing before the year preceding the plan year in which the employer withdraws. The withdrawing employer's share of the unattributable unfunded vested benefits thus computed are allocated in proportion to attributable unfunded vested benefits.

Pension Benefit Guaranty Corporation
2020 K Street, N.W., Washington, D.C. 20006

OCT 31 1984

General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Attention: Richard L. Fogel

Gentlemen:

This letter transmits comments of the Pension Benefit Guaranty Corporation (the "PBGC") on a draft report of the General Accounting Office entitled Study of Effects on Liabilities Assessed Employers Withdrawing from Multiemployer Pension Plans. The body of the letter deals with substantive issues related to the study's methodology, conclusions and recommendations. An attachment contains various comments on technical points.

In general, the report provides a large body of valuable information on the impact of withdrawal liability. Its data and analyses will be of great use to the PBGC in carrying out our responsibilities under the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"). There are, however, three areas where we believe that additional comments may be helpful to users of the report.

1. Selection of sample plans and reporting of unfunded vested benefits.

The draft report and the GAO's earlier report on the impact of special withdrawal liability rules were based on a sample of 149 multiemployer pension plans with 100 or more participants. The report states that "random selection techniques" were used to select these plans [p. 4], but it is not clear that the sample can in fact be used as a basis for generalization about all multiemployer plans. We are told that the sample "included 30 plans identified as financially weak by our actuaries" [id.], implying that a preliminary screen was applied to the multiemployer plans universe in order to ensure a large representation of financially weak plans. This inference is supported by the schedule of sampled plans' unfunded vested benefits [p. 9], which shows a significantly higher percentage of poorly funded plans than other studies have discovered.

Attached is a memorandum summarizing the results of a PBGC study of multiemployer plan funding levels. This study used earlier data than the GAO report, but it is unlikely that the overall position of multiemployer plans changed for the worse during the interim. Martin E. Segal Co. has also issued reports on the funding levels of its multiemployer plan clients. Its findings are similar to those of the PBGC study and are significant in view of the fact that Segal is the consulting actuary for about one-quarter of all multiemployer plans. 1/

The report's figures for unfunded vested benefits suffer from a second possible weakness. They are based upon the amounts reported in the plans' Form 5500 annual reports, without adjustment for the varying actuarial assumptions underlying the calculation of liabilities [p. 8, fn. 1]. As the report notes in a different context, changes in actuarial assumptions can have a major impact on the amount of a plan's unfunded vested liabilities [p. 29]. Because the assumptions used for plan funding calculations tend to err on the side of conservatism, these calculations may overstate unfunded vested liabilities. In any case, the unadjusted Form 5500 liability numbers are not comparable from plan to plan and should not be aggregated without drawing attention to this fact.

If the sample is biased, or if unfunded vested liabilities are overstated, these facts may not affect materially the report's findings concerning the impact of withdrawal liability rules on the day-to-day operations of multiemployer plans. Readers should, however, be cautioned against drawing conclusions concerning the extent to which unfunded liabilities pose a problem for the multiemployer pension system as a whole.

2. <u>Conclusions concerning the need for withdrawal liability</u>.

The report concludes that "the liability imposed by MPPAA on employers withdrawing from multiemployer plans is generally necessary to protect plans' financial conditions and the PBGC insurance fund" [p. 8]. Although this view may well be valid, the text of the report does not support it with any substantial argument or analysis. Because the principal criticisms of withdrawal liability are not answered, critics of MPPAA may infer that they are unanswerable.

1/ The report compared its sample against a larger universe and determined that the two had similar stratifications by size [p. 8], but it does not follow that the sample accurately reflects the universe's financial characteristics.

The evidence advanced by the report to show the need for withdrawal liability can be concisely summarized:

(a) The 91 plans in the pertinent portion of the GAO sample had aggregate unfunded vested liabilities of $10 billion.

(b) Sixty-two percent of that liability was attributable to 24 of the 91 plans.

(c) Those 24 plans have low ratios of assets to vested liabilities and of assets to benefit payments, thus indicating a high potential for eventual insolvency.

From these facts, one might legitimately infer that some plans need increased financial protection, perhaps in the form of employer withdrawal liability. It is, however, something of a leap to conclude, as the report does, that withdrawal liability "is generally necessary to protect plans' financial conditions and the PBGC insurance fund" [emphasis added].

The report's analysis does not address the major objections that have been raised against withdrawal liability. Critics have contended *inter alia* that withdrawal liability (i) weakens troubled plans by discouraging the entry of new contributing employers, (ii) distributes burdens irrationally, without regard to a withdrawing employer's actual role in the growth of unfunded vested benefits, (iii) is unreasonably costly, particularly for small employers, and (iv) provides little financial cushion for plans, since a high proportion of assessed liability is uncollectible. The PBGC does not endorse these criticisms but believes that the report should address them in order to provide a full picture of the arguments for and against withdrawal liability.

3. Legislative recommendations.

The report includes two recommendations for legislative action: first, that MPPAA be amended to eliminate any withdrawal liability on the part of an employer that withdraws from a fully funded plan; second, that all plans be permitted to adopt a 35 percent test for a partial withdrawal due to a substantial contribution decline, in lieu of the generally applicable 70 percent test.

With regard to the first recommendation, the PBGC agrees that Congress probably did not intend for an employer to be assessed liability upon withdrawal from a fully funded plan, and it is not clear to us that the law in fact permits assessment in such cases.

On the other hand, the report's arguments for changing the law governing partial withdrawals are not compelling. The proposed amendment would represent a substantial change in the policy underlying MPPAA and might have only marginal benefits.

MPPAA included provisions for partial withdrawal liability following a substantial contribution decline in order to preclude an employer from avoiding complete withdrawal liability by continuing to contribute for an insubstantial number of contribution base units. There was no intention that shrinkage in an employer's work be, in and of itself, an occasion for liability. Plans in the retail food industry were, however, allowed to adopt more stringent partial withdrawal rules to reflect the structure of that industry, in which the bulk of a plan's contributions often come from a few employers.

It is true that a lower threshold for partial withdrawal liability would be "more protective" of plans, but it would also complicate plan administration and impose liability for contribution declines resulting from normal business fluctuations. The potential risks cited in the report are hypothetical and do not appear significant enough to justify what would be perceived as a considerable expansion of the scope of withdrawal liability.

Thank you for giving us the opportunity to review this important study. If you have any questions concerning our comments, please call Thomas Veal, Director, Corporate Policy and Regulations Department (254-4833).

Sincerely,

for Acting Executive Director
C. C. Tharp
Executive Director

Enclosure

CPRD/TV/dth

GAO note: Page references in this appendix have been changed to correspond to page numbers in the final report.

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