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UPDATE ON RECENT PENSION REGULATIONS AND LEGISLATION

Moderator: PAUL H. JACKSON. Panelists: SUSAN J. VELLEMAN, MICHAEL J. MAHONEY, CHARLOTTE LANE

MR. PAUL H. JACKSON: This is a Concurrent Session of the Society of Actuaries Meeting and if you are attending the Plumbers' Convention here you are in the wrong room. This is a panel discussion. Our general plan is to have each of our three panelists make a presentation. This will be followed by discussion and questions from the floor. The session will be tape recorded. The speakers when they rise to raise questions from the floor should identify themselves and their company affiliation and discussions from the floor will be included in the records if we are able to transcribe the remarks from the tape with the speaker properly identified. If time permits with the editing deadline, each speaker will be sent a copy of the remarks for editing. As a matter of general information, the pink cards to verify attendance to this session are available on the chairs and the box up here is where they should be placed as you leave. You will need them for income tax qualification. At the end of the Session the Society has asked that the people attending these sessions complete an evaluation form. The forms are found in the center of the program booklet and they should be returned to the Society's registration desk.

The list of recent regulations affecting pensions in the United States is vast indeed. The Pension Benefit Guaranty Corporation (PBGC) has issued final regulations on reporting for reportable events. The Internal Revenue Service (IRS) has issued revenue procedures, a whole series of them, for obtaining rulings and letters. Treasury has issued proposed rulings on provision of periodic actuarial reports. The IRS has provided technical advice on participation and vesting on multi-employer plans. The IRS has issued proposed rules, after an 11-year wait, on 501(c)(9) trusts and held a hearing last week. They have issued proposed rules on the exclusion of certain disability payments for income tax purposes, and on exemption from minimum funding standards for insured plans, 411(d)(1) regulations on vesting requirements, and limitations on benefits and contributions. The PBGC has changed its rules for determining interest rates and factors for valuation of termination liability. The Treasury has issued proposed rules, fairly confusing ones, on merger and consolidations of pension plans about a year ago. The IRS has issued final regulations on the elapsed time method for keeping track of service. The Department of Labor has proposed regulations on reporting and recordkeeping for single employer plans. The IRS has issued final 5500C and 5500R triennial reporting forms. The Department of Labor has issued reporting disclosure and minimum standards for multi-employer plans. The IRS has proposed regulations on reasonable funding methods and asset valuation methods which were issued a year ago, and it was possible that both of those could have been out in final form this October, but they are due momentarily. The IRS has Revenue Ruling 79-90 which will require the inclusion of option factors in private retirement plans and Revenue Ruling 80-229 affecting assets at plan termination. The PBGC has proposed regulations on participant counting which would require the counting of a participant under each plan. And finally the

Equal Employment Opportunity Commission (EEOC) has indicated thay they are going to change the requirements issued by the Department of Labor so that pension accruals and contributions will be required after normal retirement age. You can see that there are many, many regulations and I have not even touched on the recommendations, opinions, interpretations of opinions or opinions of interpretations which the American Academy of Actuaries issues under the widely accepted principle that if actuaries don't set out some rules for actuaries to follow perhaps someone else will do so.

Recent legislation includes HR3904 the multiple-employer termination insurance bill. There is proposed legislation on single-employer termination insurance. An ERISA Bill for public employee plans. Legislation extending Social Security to public groups. A bill that would exempt foreign plans from the effect of ERISA, that is HR7263 which would exempt plans primarily for the benefit of persons substantially all of whom are non-resident aliens. Last week at a 501(c)(9) hearing, Paul Berger, who is an attorney with the firm of Arnold and Porter in Washington and quite a tax expert stated before the IRS in the hearing, and there was no exception taken to his remark, that in tax matters substantially all means 15% or more. Finally there are all sorts of bills in the hopper that would permit deductions on employee retirement savings contributions. Congressman Pickle has introduced a bill, The Employer Retirement Savings Act of 1980, which is expected to receive important bipartisan support and is considered superior in its provisions to the Senate Finance Committee Tax Cut Bill. There is growing support in the House for a provision allowing some sort of tax benefit for retirement savings by plan participants. Congressman Gibbons has introduced a bill, Congressman Moore, Congressman Carter, Congressman Fisher. In addition, earlier proposals by Congressmen Ullman, Corman, Conable and Vander Jagt and Brodhead would also expand IRAs or allow deductions for contributions to qualified plans and most of these Congressmen are members of the Ways and Means Committee. In addition to all of this, in October the Council on Wage Price Stability issued a series of questions and answers which extend some exemptions in the area of flat-benefit pension plans which have historically been amended to provide the benefits as a reasonable approximation of final pay so that such amendments will not be counted against the pay standard. The panelists on the program today are Susan Velleman, who is a Fellow of the Society of Actuaries, Vice-President of William Mercer's Boston office. Susan is going to start first, she will be followed by Michael Mahoney a Fellow of the Society of Actuaries and Managing Principal of Milliman and Robertson's New York office. Both of these actuaries are actively working with self-administered retirement plans, the trusteed plan area, mainly large plans, and will discuss regulations from the standpoint of those programs. Charlotte Lane is the third panelist and I will introduce her following Michael Mahoney's remarks. She will address the regulations from the standpoint of smaller plans and those that are insured. Susan would you please take over the first portion.

MS. SUSAN VELLEMAN: Paul, it's too late to give me a choice now. Just one comment about our lack of formality this morning. You can blame it on me. Paul came in this morning and said, do you want to speak while you are seated or do you want to get up to the podium and, since at my height people usually can't tell the difference, I suggested that we might as well be comfortable. It's somewhat unfortunate that in this morning's session we will be starting out with and probably expending a good deal of time not

on ongoing plans but on plan termination. I'd like to say a little bit about Revenue Ruling 80-229 which was issued by the Internal Revenue Service on August 29. It provides guidelines for determining whether or not the allocation of assets on a plan termination is considered discriminatory and the ruling essentially breaks down into covering two separate categories. One is when the assets exceed the present value of accrued benefits under a plan and the second portion is when the present value of accrued benefits exceeds the assets. In the first situation when the assets exceed the present value of accrued benefits (and this regulation primarily deals with the situation where excess assets do not revert to the plan's sponsor, but must be distributed to participants under the plan), the basic rule is that the distribution of excess assets must be under a benefit structure that would not have produced discrimination if the benefit structure had been in the plan when the plan was ongoing. I will attempt to translate that. You cannot distribute assets in the situation of a plan termination for example, if the resulting benefit formula would have violated the integration rules under the plan. As an example, if you have a plan that is fully integrated with Social Security under Revenue Ruling 71-446 and your assets exceed the present value of accrued benefits on plan termination, you cannot just prorate the excess assets in proportion to the present value of accrued benefits. The effect of that would be to produce a benefit structure in total that would not have satisfied the integration requirements while the plan was ongoing. You could distribute those excess assets in such a way that it would have the effect of providing benefits in a non-integrated fashion, that is as a flat percentage of pay. The other situation where the present value of accrued benefits exceeds the assets under the plan seems to me to be somewhat of a Robin Hood type of approach to distribution of assets. Assets first of all are distributed in accordance with the 4044 allocation classes 1 through 4A. That essentially covers both voluntary and mandatory employee contributions under the plan and also covers other benefits that are guaranteed by the Pension Benefit Guaranty Corporation. After you have done that allocation, according to this Revenue Ruling then to the extent possible the rest of your allocation should be done such that at least the same percentage of the present value of accrued benefits is provided to rank and file employees under the plan as to the highly compensated and that seems to be required regardless of vesting provisions or other provisions in the plan. The way that you can do that is by allocating assets to benefits that would otherwise not be guaranteed because of the maximum limitation (that $750 limitation that was in ERISA that has been increased a couple of times), or by reallocating assets from your higher paid people that are due to plan amendments that have not yet been phased-in under the guarantees, over to the accrued benefits that are not vested. Those can be allocated not in proportion to the normal classes at all but such that it brings the present value of accrued benefits that is covered for your rank and file up to the level that you are providing for other people. There are a couple of examples in that Revenue Ruling that show completely the way they allow you to shift assets among those groups of people.

Shortly after that Revenue Ruling was issued on October 2, the PBGC issued proposed regulations dealing with the allocation of assets on plan termination. For your information, if you have any comments on those proposed regulations we are in the comment period now and the PBGC will accept comments in written form within 60 days after September 29 which is the actual issue date, that will bring us to November 28. The purpose of these

proposed regulations again is similar to the IRS's purpose in the Revenue Ruling, namely to provide guidance to plan administrators on the distribution of assets remaining after all plan benefits have been paid. This PBGC regulation is really dealing with the issues of having to distribute assets when the assets exceed the present value of accrued benefits under the plan. First of all those proposed regulations provide the circumstances under which residual assets, those are those excess assets, can revert back to an employer, and that can happen only if three conditions are met. One is that all liabilities for benefits to participants and beneficiaries have been satisfied. Secondly that the distribution isn't contrary to any other law, and third the plan must provide for their reversion. These proposed regulations also split the issue in two. One is the situation where the plan is contributory and the plan allows for reversion to the employer and the other is the situation where there are employee contributions but there is no reversion to the employer. In the latter case, where there is no reversion to the employer, all of the pension assets must be distributed to the participants. If the plan is not contributory the basic rule is that the excess assets must be distributed in proportion to the present value of accrued benefits under the plan. So that there is no conflict with the IRS's Revenue Ruling, there is a caveat that the allocation is subject to any reallocation required by the Secretary of the Treasury. If the plan is contributory and there is a reversion to the employer these proposed regulations would require that the residual assets be split first between those that are attributable to employee contributions and those that are attributable to employer contributions. This causes a little bit of a problem to me in that in many contributory plans that I dealt with the benefits under the plan are defined, the employee contributions under the plan are defined and, thus it is the employers responsibility to make up the difference, make up any excess cost. The thrust of these proposed regulations are somewhat different from that. The regulations seem to take the position that any residual assets are basically caused by excess investment returns on the contributions that have been made, and of course that may not necessarily be the case. If there is a reversion to the employer and there are employee contributions, the way the split is done is by taking the residual assets and multiplying this by the ratio of the category 2 benefits to the total of the 4044 allocation categories. Category 2 to refresh your memories relates to the mandatory employee contributions, so the ratio is the value of benefits payable under that category divided by the present value of accrued benefits under all of the allocation categories. The proposed regulations allow a plan administrator to choose another way of making that split between employee and employer residual assets provided that it's reasonable. They do give an example of another approach that they would consider reasonable and that is by taking the total assets that are to be distributed, not just the residual assets, and multiplying that by the ratio of all the employee contributions that have been made under the plan historically with interest added to those contributions based on the assumed rate of return used in funding the plan divided by all contributions made to the plan historically carried forward with interest. After that total assets are split between employer and employee using that percentage. Those allocated to employee contributions are then reduced by the category 2 benefits and the result should be the residual assets that are based on employee contributions. Those residual assets then get distributed in proportion to the category 2 benefits.

Another regulation that I was going to review with you, came out so long ago that I needed to really refresh my memory on it and I am going to just refer to it briefly to lead into a more recent one. There were proposed regulations in January of 1980 relating to the 415 limits, that is the maximum limits on contributions and benefits under the law. Much of that regulation repeats what was in the law and I will not bother going through that. There are some interesting points in it which I will come back to if we have time at the end. I mention this because it does lead into a more recent ruling that some of you may have not seen, Revenue Ruling 80-253 which was published in Commerce Clearing House on September 26. That ruling defines the actuarial equivalent factors that are to be applied for determining maximum benefit limitations under Section 415 when your benefits are not in the straight life annuity or qualified joint and survivor form. Basically the Revenue Ruling says that you need to use factors that reflect reasonable assumptions. Reasonable assumptions include, in the case of early retirement, the factors that are used in Revenue Ruling 71-446 (the integration ruling) the 5/9 and 5/18 that are used for reducing Social Security benefits. Also acceptable will be the factors used in Revenue Ruling 76-47 which provided the actuarial equivalent factors to be used in converting benefits in order to determine the split between benefits provided by employee contributions and benefits provided by employer contributions. Now that Revenue Ruling gives specific factors for different types of benefit conversion and it also goes on to say that for any factors that are not specified in the ruling the basis that you should use is the UP84 Table with 5% interest factor. Revenue Ruling 80-253 also refers to factors that were published in announcement 78-96 and that announcement essentially notified us that there was a proposed revenue ruling dealing with actuarial equivalent factors (I do not know whether or not that has been finalized, I guess it has not) and that announcement refers to the factors that are to be used for adjusting non-basic benefits in determining whether or not non-basic benefits exceed maximums. The basis for factors in that ruling was the 1971 Group Annuity Mortality table at 6% interest. So those are at least the acceptable or safer choices that you seem to have under this ruling.

Since Mike has not kicked me yet I am going on to one more, I know he is thinking about it from his reaction. Paul mentioned the 501(c)(9) trusts proposed regulations. They were issued on July 17, 1980 and as Paul mentioned they replaced proposed regulations that were only 11 years old. The proposed regulations that they replaced were issued on January 23, 1969. Section 501(c)(9) of the Internal Revenue Code defines and provides for voluntary employees beneficiary associations. Those are associations which exist to provide benefits for life, sickness, accident or other benefits to its members, dependents and beneficiaries. The proposed regulations required several things. One is that it requires that the 501(c)(9) organization exist independent of the member employees or of their employer. It provides that a 501(c)(9) trust must be controlled by its membership or independent trustees or trustees at least some of whom are designated by or on behalf of the membership. It is that point that seems to have gotten the most attention and most adverse comment in that it would seem to require that if you provide group benefits through an insured contract the employer could do that uniterally but if those same benefits are provided through 501(c)(9) trusts there needs to be employee representation or employee control over the management of that trust. The 501(c)(9) Trust participation must be voluntary under the proposed regulations and there must be no

potential detriment to the employee such as his having to assume some of the cost of benefits under the trust. For example, you cannot provide contributory benefits and provide as a condition of employment that the employee must participate unless that is in conjunction with the bargaining agreement. Another section of the proposed regulations that I think has caused quite a bit of concern is that the regulations provide that on liquidation of the 501(c)(9) trust there can be no reversion of excess assets to the contributing employers. This seems to require that any residual assets would have to be distributed to the members of the association, that is the covered employees. The proposed regulations are effective for tax years beginning after December 31, 1954, so you may have a little bit of catching up to do. To the extent that the 1980 regulations are more stringent **than** the 1969 proposed regulations, however, those provisions are not effective until years beginning after 1980. Another requirement that came out in these proposed regulations is essentially a non-discrimination requirement similar to the non-discrimination requirements that we lived with in pension plans in the past. That is, the eligibility under the 501(c)(9) trusts cannot discriminate in favor of the prohibited group of officers, shareholders or highly compensated. As far as benefits go there is a provision that disproportionate benefits cannot be provided to the prohibited group. These regulations also defined what benefits can be covered under a trust like this. Basically these are life, sick, accident or other similar benefits and benefits are similar if they are intended to safeguard or improve the health of the members or their dependents or protect against any contingencies that impair a member's earning power. That seems to preclude using the 501(c)(9) trust to fund dependent life insurance for example. Also, this definition of benefits seems to prohibit using the trust to provide benefits that are similar to a thrift plan or savings plan and one area where that does cause some concern is whether or not that would prohibit using the 501(c)(9) trust to provide the bank account type of benefits that are provided as a cost containment measure under medical plans, that is where an amount of money is set aside and if during the year an employee's medical cost is less than the amount of money set aside, then the employee gets the difference. That type of benefit apparently could not be provided under a 501(c)(9) trust under these proposed regulations. Mike why don't you take over now and if we have time I have few comments on the reasonable funding methods or at least if anyone has questions on the regulations on reasonable funding methods I will be glad to try to answer them.

MR. MICHAEL MAHONEY: Thanks Sue. I am going to take a first crack at the Multi-Employer Act of 1980. Because of the Act's complexity and its recent enactment and our limited time, this is not intended to be a comprehensive summary. Rather it will just be a brief outline that hopefully will highlight some of the more important provisions relating to the guaranteed benefits and the withdrawal liability. Before enactment if an employer withdrew from a multi-employer plan there was not any liability unless the plan terminated within 5 years with insufficient assets to meet the PBGC guaranteed benefits and this liability was limited to 30% of net worth. Under the new law a withdrawing employer must pay his share of the plan's unfunded vested liability by continuing payments to the plan.

Guaranteed Benefits. Guarantees apply to 100% of the first $5 per month of the accrual rate plus 75% of the next $15. If certain funding standards are not met the 75% is changed to 65%. The guarantee applies only to nonforfeitable benefits and excludes those benefits that would have become

non-forfeitable strictly because of the termination. Under the new law then the PBGC will only pay the guaranteed benefits of an insolvent multi-employer plan. The Act specifically defines two particular cases, complete withdrawal and partial withdrawal. Complete withdrawal is when an employer permanently ceases to have an obligation to contribute or an employer permanently ceases all covered operations under the plan. There are special rules applying to the building and construction industry, entertainment and trucking. Partial withdrawal is when an employer does not completely end his obligation to contribute or permanently ceases covered operations. More specifically the contribution rate must decline 70% or there must be a partial cessation of the employer's contribution obligation. There is a 70% decline for any year if during each year in a 3-year testing period the employer's contribution base units do not exceed 30% of the employer's contribution base units for the high base year. The 3-year testing period is the current plan year plus the 2 preceding plan years. When we talk about the contribution base units for the high base year, that is the average number of units for the two plan years for which the employer's contribution base units were the highest within the 5 years immediately preceding the 3-year testing period. There is a special rule for the retail food industry which substitutes 35% for the 70% decline. The rule for providing a partial withdrawal on account of the 70% decline in employer contribution rate does not apply for plan years beginning before 4/29/82.

The computation of the liability. The Act specifically provides for a basic or presumptive method and for three alternative methods, and again the alternatives **or the exception** does not apply to the building and construction industry. They are limited to the presumptive method. Under the presumptive method the employer's withdrawal liability is equal to the sum of the following: (1) the proportional share of the plan's unamortized, unfunded vested benefits at the end of the plan year ending before 4/29/80, reduced by 5% for each succeeding year up to the year preceding withdrawal plus (2) the proportional share of unamortized amounts of the change in the plan's unfunded vested benefits for plan years beginning after 4/28/80 with each such change reduced by 5% for each succeeding year and plus (3) the proportional share of unamortized amounts of any reallocated, unfunded vested benefits also reduced by 5% for each succeeding year. (These latter amounts arise from amounts deemed uncollectable by the plan sponsor and amounts that were deducted from an employer's liability because of the de minimus provisions or to the 20-year cap). The actuarial assumptions used to determine these liabilities may be those that were in the plan in the last valuation if they are reasonable in the **aggregate or they may also use** actuarial assumptions promulgated by the Pension Benefit Guaranty Corporation.

Now for the employer's liability. There is a de minimus rule that is mandatory and a de minimus rule that is discretionary. Under the mandatory rule, the allocable amount of the unfunded vested benefits is reduced to the smaller of 3/4% of the plan's unfunded vested obligation or $50,000. This reduction is phased out dollar for dollar to the extent that the liabilities exceed $100,000. The alternative rule provides that the reduction would be the greater of that determined under the mandatory rule which was just cited or the lesser of 3/4% of the plan's unfunded vested obligation or $100,000. If this alternative rule is chosen then the reduction will be phased out dollar for dollar to the extent that the liabilities exceeded $150,000. These rules do not apply to an employer who withdraws in a year when substantially all the other employers also withdraw.

The mandatory rule favors employers who continue in the plan so it may not be too likely that plans would be amended to put in the alternative provision. The liability can also be limited based on a sale of assets rule. If certain tests are met the employer liability after the de minimus rule could be limited to the unfunded vested benefits attributable to the employees of that particular employer or, if greater a portion of the employer's liquidation value after sale and, they have a schedule that starts out with 30% of the value if it does not exceed 2 million and grades on up to 80% of any value over 10 million dollars.

Another limitation is the 20-year cap. Withdrawing employers would only have to make payments for 20 years and the level of that payment would be based on the average of the contribution units for the highest 3 years during the preceding 10 years times the highest contribution rate during that 10 years. Thus according to the plan's assumptions if that rate was insufficient to fund the liability over a 20 year period then that is all the employer would be liable for.

Revenue Ruling 79-90. As most of you know Revenue Ruling 79-90 requires that the basis for determining actuarial equivalence of optional benefits must be set forth in the plan document by 1984 for plans that were in effect and immediately for new plans. This requirement can be met by specifying the actuarial assumptions or by including the appropriate adjustment factors. Related to this ruling are the ERISA cutback provisions and the possible mandated use of unisex factors. The requirements prohibiting a decrease of accrued benefits are contained in 411(d)(6) of the Code and in Regulation 1.411(d)(3)b. With respect to the use of unisex factors I think that it is almost a certainty that the EEOC will come out with regulations prohibiting the continuance of sex segregated mortality tables for option factors. The major area of concern in 79-90 seems to center on the interest assumption and especially that needed for the determination of the actuarial equivalent lump sum. The plan's interest used in the actuarial valuation would not necessarily be appropriate, because that is based on a long-term consideration. Alternatives would be an outside reference such as specified rates from a particular bank or specified rates from a particular insurer. Even if any of these are used you can probably have a situation where the interest rate used in the determination of the lump sum is not necessarily reflective of the fund's current investment philosophy. The interest rate of course impacts on the joint and survivor options and early retirement factors but in opposite directions. If the interest rate goes up the J&S factors will go up and the early retirement factors down. However, the early retirement factors may not present a major problem as most corporate plans have a stated percentage reduction such as 5% or 6% per year and are not necessarily related to the plan's assumptions.

Multi-Employer Benefit Statements. Recently some proposed regulations came out on benefit statements for multi-employer plans. The effective date for a collective bargaining plan for these regulations will be 9 months after the bargaining agreement that is in effect on the publication date but in no event later than 45 months after these regulations are adopted. Statements are to be provided at the request of the employee upon termination of service or the current civil one year service break in service. If they are furnished on request the plan can establish certain procedures which must be met before they are furnished but in that event they have to be furnished 60 days after the request but within 120 days after the end of

the preceding plan year. The statement will have to show the accrued benefit, the vested percentage and the amount of the vested accrued benefit. The accrued benefit and the amount of the vested accrued benefit may be expressed as a single life annuity at the normal retirement age or in the plan's normal form. You can show the projected benefit based on an assumption of continuance of work, however, on any presentation of benefits along these lines you have to be careful that they are not misleading. We have seen a few that are.

MR. JACKSON: The Multi-Employer Bill has an important impact on actuarial practice in the United States. Up to this time actuarial work on multi-employer funds has developed next year's contribution. The effect of varying actuarial assumptions and funding methods has been watered down by the spreading of cost over future service or some future amortization period. Actuaries have not paid too much attention or placed too much importance on unfunded vested benefits even though the accountants have been pressing for numbers along those lines. Now the unfunded vested will determine a large single sum liability which a withdrawing employer will have to pay either in cash or in 20 equal installments showing the same present value. For the actuary who has data that is vague and soft, this creates some very serious problems. Of course a second aspect is that this may well start a trend to using PBGC assumptions just because it is easier to avoid the arguments as to how you calculated the withdrawal liability. However, that may lead to greater pressure at a later day to use those assumptions for plan funding. Before introducing our final panelist, I would just observe that our panel is an all U.S. panel. This is not due to the fact that there are six actuaries in the U.S. to each actuary in Canada, it was due to the fact that there are 60 regulations in the U.S. to each regulation in Canada. On June 8 the Canadian Institute Pension Standards Committee issued final regulations for valuation of pension plans on a one year trial basis and perhaps after the closing panelist speaks we can have some summary comments from the floor on this or on other developments in Canada. We would certainly welcome them.

Our final panelist is Charlotte Lane, who is a Pension Research Consultant for National Life Insurance of Vermont. Mrs. Lane has responsibility for research, interpretation and advice on the application of Federal laws regarding pension plans. She is an Enrolled Actuary and a Fellow of the Life Management Institute. Prior to joining the National Life, Mrs. Lane worked in the reinsurance area of Connecticut General's Home Office and as an estate planning technician for a Northwest Mutual General Agency. Before entering the insurance business, Mrs. Lane was an engineering assistant at Grumman Aircraft where she worked on the design of an experimental jet fighter plane. A native of Connecticut she attended Syracuse University and the University of Vermont and she is a member of the American Academy of Actuaries and a member of the Task Force on Funding of the Pension Committee of the American Council of Life Insurance. Mrs. Lane.

MRS. CHARLOTTE LANE: As to that experimental airplane the SX2M1, I can tell you because at this late date it is not confidential any more, that the tangent of the leading edge of the vertical tail surface was .523182545 and I will have that number with me for the rest of my life. But that is the last you are going to hear about airplanes from me. Because of the thrust of ERISA towards the protection of employee benefits and the duty of keeping employees informed, I think that I should spend most of my time on

individual benefit reporting. In many ways the regulation which has come out on individual benefit reporting for single employer plans has similar provisions to those that Mike spoke of for multi-employer plans. Originally there was one proposed regulation in February of 1979 but that was withdrawn in August of this year and now they have separate sections for the two types of plans. The proposed regulations are considerably easier to comply with than were those originally proposed, starting with the fact that they become effective 120 days after finally being adopted instead of the original 30 days. Any plan administrator of single as well as multi-employer plans has an obligation to furnish an individual benefit statement to any participant or beneficiary who inquire about their entitlement to benefits in writing, except that the plan administrator need not provide a statement to the following: (1) participants and beneficiaries who are currently receiving benefits under the plan, (2) those whose full benefits are guaranteed by an insurance company under a contract on which no further premiums are payable and which has been distributed to the participant or beneficiary (3) participants or beneficiaries who have received all the benefits to which they are entitled, (4) the beneficiaries of participants who themselves are entitled to request a benefit statement and (5) participants with deferred vested benefits who have received benefit statements at termination or after incurring a 1-year break in service and who have not returned to the service of any employer maintaining the plan and the beneficiaries of such participant.

First let me say that in a single employer plan it may sound a little strange to say any employer maintaining the plan but that is because single employers are defined for this purpose as employers who are members of a controlled group which maintains a plan. That last exclusion seems pretty harsh to me in case of a participant entitled to deferred vested benefits under an individual account plan because the current value would be affected by the plan's investment results. Apparently if he has not returned to work he can wonder "How much is it worth now" and not be able to get an answer. As Mike said a plan administrator can establish a simple procedure for requesting statements and he has to communicate that procedure to the participants and the beneficiaries. He might do it by including it in the summary plan description and then he need not comply with any request that is made in any other form. Except that first he has to explain why the different request does not comply and then he has to explain how it could be made to comply and so it does not seem worth the trouble I would think. The only information that a plan administrator can require of a participant as a condition to receiving a benefit statement is the name, the address, the date of birth, social security number and if it is relevant to the benefit information the marital status and the spouse's date of birth. Once a request has been made, the benefit statement as in multi-employer plans has to be produced not later than the later of 60 days after the request or 120 days after the end of the plan year which immediately precedes the plan year in which the request is made. That is quite a long period. For instance, if a participant requests early in the plan year, say in the first month, he could have to wait until 120 days after the end of the plan year before he gets an answer. But then the benefits shall be reported as of the date not earlier than the end of plan year preceding the plan year in which the request was made. So, although meeting these requirements is simpler in most respects than under the 1979 proposal, I expect the administrators of most small plans would still consider it easier to take advantage of the annual benefit statement alternative whereby the

requirement that they furnish a benefit statement upon request does not apply if, within a year before the request, the plan administrator has furnished a benefit annual statement as of the end of the preceding plan year and within 180 days after the end of that plan year. By automatically furnishing annual statements the plan administrator also complies with the requirement that statements be furnished to participants who terminated their service or who have incurred a 1-year break in service. Incidentally, where a statement was furnished when an employee terminated and a participant later incurred a break in service or where the statement was furnished following a 1-year break in service and the employee later terminated, the plan administrator need not provide a second statement if the information will be the same as that on the first. The only real constraints on the furnishing of the annual benefit statement, aside from the necessity of producing it within 180 days after the end of the plan year (which can be more generous than the time for answering a request) is that like statements furnished on request they must be personally delivered or sent by first class mail to the last known address and you have to give a duplicate copy to anybody who says "I did not get mine."

Well, what information must the individual benefit statements contain? For a non-vested participant it is possible to just give them a statement that says "You have no non-forfeitable benefits under the plan", except that when you do that you must also explain that a statement may be requested which would show the accrued benefit if there is any and the earliest date on which any benefits may become non-forfeitable. Thus, it may be simpler in the long run to give an annual benefit statement even to non-vested participants. There are special rules for different types of plans. Under defined benefit plans information can be given as to the amount of either a straight life annuity or the normal form of benefit provided by the plan. That is a welcome change because the first time around the proposed regulations would have required figures on a straight life annuity unless the plan did not permit a straight life annuity or unless the participant had elected some special method of payment and then the report had to be shown in that form. Under defined benefit plans with mandatory employee contributions in addition to the total accrued benefit there must be shown either the amount of the accrued benefit derived from employee contributions or the percentage of the total derived from employer and employee contributions. Under any contributory plan there must a statement to the effect that the accrued benefit derived from the participant's contributions is non-forfeitable. Under Social Security offset plans a <u>net</u> accrued benefit must be shown but the amount of the offset may be determined on the basis of assumptions as to the participant's earnings from service not covered by the plan if it is stated that the benefits were approximate, except that statements furnished after termination or after a break in service must show the actual benefits. Under individual policy pension trust plans this information now can be reported as of the last day of the plan year rather than as of the termination date. If there is no portion of the participant's benefit that is non-forfeitable the statement must show the earliest date on which any benefits may become non-forfeitable. If less than 100% of the benefits are non-forfeitable there must be shown the earliest date on which 100% of the benefits may become non-forfeitable and this too is an improvement over the 1979 version under which you had to show the earliest date upon which the participant might attain each level of non-forfeitable benefit under a plan with a graduated vesting schedule. So, I would assume that those plans with which I am familiar will continue to provide rather complete statements to everyone automatically.

The next thing I thought I might mention was the triennial reporting requirements which were finally finalized after more than a year of waiting. They take effect for small plans for plan years beginning after January 1, 1980. The system is going to apply to all plans that previously filed either 5500C or 5500K, that is plans with 100 or fewer participants. Hereafter these plans are going to file a short registration form 5500R in two out of three years and this really reduces the reporting burden on small plans. On the other hand, the 5500 form which must be filed every third year has been significantly expanded, particularly 5500C which now requires more detailed information on some aspects of a small plan that does the regular 5500 form that is used for plans for more than 100 participants. When schedules A, B or SSA are applicable they have to be filed every year. The new system is going to be phased in over a 3-year period depending on the last digit of the employer's identification number. For instance if the last digit of the employer identification number is 4567890 a 5500R should be filed for plan years beginning in 1980 and in three years all of them should be phased in. A plan administrator can vary the cycle by choosing to file a form 5500 C or K before the year for which one is due and this would establish a new cycle. The registration form cannot be used either for a plan's first year or the year when a final report is due. When the plan has between 80 and a 120 participants at the beginning of a plan year it has the right to file the same category of form either 5500 or forms 5500 C, K or R as was filed for the previous year. Despite many comments which were submitted, the new "compliance oriented" versions of 5500C and 5500K still ask many questions whose answers are available from other sources such as "what is the vesting schedule?" "Is this an integrated plan?" "Has an IRS determination letter been received?" All this presumably is in other government files but we will have to tell them again. At least though the complexity of the question regarding vesting provisions has been reduced from that originally suggested, partially by burying a portion of it in the instructions which require that calculations be made on the instruction sheet before you enter the answer on the form itself. This reduces the question on the form quite a lot.

The IRS has issued announcement 80-112 on the subject of simplified employee pensions, if you are interested in simplified employee pensions. Until regulations are issued the IRS says that employers who contribute to an SEP can rely on the following guidelines. An employer must contribute on behalf of each employee who has attained age 25 and has worked for the employer during at least 3 out of the most recent 5 calendar years. The law said that all along, even if the employee is no longer employed, which I think we all realized, and even if the employee is now dead (and that may not have occurred to us all). The only exception is that no contribution need be made on behalf of an employee who earned less than $200 in the current calendar year and that I thought was quite a concession. Fortunately, because a contribution does have to be made for those employees who are no longer living, if the employee has not established an IRA or has closed out a previously established IRA the employer can fulfill its responsibilities by establishing an IRA on the employee's behalf and then notice of the employer's contribution must be given in person to the employee or mail to the last known address of the former employee. The employer must maintain a record of the payments made to the employee and the name and address of the institution where the employee's account is maintained and this will satisfy the requirements of Internal Revenue Code Section 408 (even though it does not quite meet the wording if the employer establishes the account rather than the employee). Another interesting point, the SEP need not be

established until the contribution is made for a particular calendar year so that it need not be established by the last day of that calendar year. If by any chance an employer neglected to make a contribution required for an employee who did not happen to be there at the end of the employer's taxable year, perhaps because he died, the employer can still make a contribution which will be considered timely if he gets it in by December 31, 1980.

As our Moderator mentioned, the chances are reasonably good for some form of legislation that would permit tax deductible employee contributions to qualified plans. Most of these are coupled with an increase in the IRA limits. The latest numbers in HR8283 would make the limit for each $2,000 or 100% of income and that there is some sort of a provision that non-employed spouses can consider $500 of the employed spouse's income as their own. This Bill would also require financial institutions to disclose any other investment options which they offer when they set up individual retirement accounts. Banks apparently are being suspected of offering regular pass book savings accounts for IRAs instead of more desirable alternatives. This Bill also addresses the abuses **exemplified** by the Kidde and Garland decisions but only when practiced by professional service organizations which are, as you know, being singled out for more restrictive treatment in various areas. The Senate Finance Committee has reported out a bill, the Miscellaneous Revenue Act of 1980, which I think is HR7956 which also singles out professional service organizations for restrictive treatment to remedy Kidde-Garland situations and also in that bill they would give small corporations more flexibility by increasing permissible accumulated earnings from $150,000 to $250,000 but not to professional service corporations. This bill also provides for tax deductible employee contributions to qualified plans but here the deduction would not be available to proprietors, to owner employees, and partnerships or even to 10% or greater stockholders in regular corporations.

MR. JACKSON: Thank you, Charlotte. Unless any of you believe that the Department of Labor regulations on individual benefit reporting and record-keeping for single employer plans falls primarily or largely on the small employers I was given at one point an estimate of the record retention impact on a typical employer with 100 employees. It was assumed that they were paid weekly. Time records, time cards at 100 per week amounted to 5,200 a year, pay adjustment forms advances, illnesses and so on amounted to 1,300 a year, vacation records 400, workers compensation files with an average of 40 pieces each, 2-1/2 claims 100, pay increase forms 150 weekly, accounting summaries 2,080, annual accounting summaries 40, leave of absence, miscellaneous personnel file forms 400, for total documents each year of 9,670 and these must be retained for a minimum of 40 years giving you 386,800 records. That is for 100 employees. You are fortunately allowed to put this on microfilm or else you have to rent larger and larger quarters just to maintain the forms.

Before getting on with the discussion, I been asked to make one special announcement. The Society of Actuaries Committee on Pensions has just released a draft paper entitled Integration of Private Pension Plans with Social Security. If you would like to receive a copy of this paper and comment on it, give your name to one of the Society staff such as Linda **Delgadillo** or John O'Connor. Your comments would be welcome,I am told. If you prefer you can give me your business card after this session and I will

see that you get one. At this point I would like to open the Proceedings to anyone from the floor from our host country of Canada who has any remarks to make whatever on the scene in Canada. Apparently it was recognized that our panel was all U.S. and this would be totally uninteresting so they must be elsewhere, I guess. Do you have any questions for the panel?

MR. JAMES MCKEOGH: I have a question concerning the multi-employer bill. My name is Jim McKeogh from The Wyatt Company. The question has to do with the calculation of the unfunded value of vested benefits to determine their withdrawing employers liability. Do I understand correctly that assuming no changes in benefits which would create an increase in the unfunded, you would take the unfunded as it exists on April 29, 1980 and reduce that by 5% a year on the assumption that is being amortized at that rate.

MR. MAHONEY: Yes.

MR. MCKEOUGH: I have a couple of comments, one is that if you have an April 29, 1980 valuation date that might be convenient but

MR. MAHONEY: Instead of plan year I should have said the plan year ending preceding that, if that was not clear, if I confused you, I apologize.

MR. MCKEOUGH: My other comment is that the 5% reduction is peculiar, the unfunded value of vested benefits does not behave as nicely as maybe an unfunded value of accrued benefits and if you take an extreme case of an employer with 100% of its employees with 9 years of service on a valuation date with 10 year vesting he would be assumed to have that zero present value of unfunded vested benefits reduced by 5% which is presumably still zero but the following year he would have a very large present value of unfunded benefits to stick a plan with should he terminate.

MR. MAHONEY: He gets a proportional share of the plan's total unfunded vested, not just his own. I think you are talking about a particular employer. The one where you get back to the unfunded vested benefits of the employer's particular employees. As far as that grading down in the proportion of 5% per year, that limitation may or may not come in, I do not know, but there would be some limitation anyway. Basically each employer's withdrawal liability is a proportional share of the total based on past contributions.

MR. JACKSON: One of the interesting aspects of this is that the maximum limitation on how much an employer is going to owe is not based on the biggest amount that employer ever put into the fund in one year in the past. In fact it is based on a bigger amount than that. The employer who has been paying on a varying number of employee units, such as hours worked, which have cycled up and down, has to go back and pick the three biggest years for the hours worked and the highest cost rate is applied to the average of them. That could very easily be twice what he has been paying into the fund each year and of course when he drops out he has to pay that but not for more than 20 years, because Congress cares.

MR. DONALD GRUBBS: Don Grubbs at George Buck. The multi-employer bill gives us many alternatives about many things, in determining the unfunded vested benefits, both alternatives in determining using actuarial assumptions

to determine the liability side, alternatives on the assets side, all of these choices between different methods of allocating these between the various employers, options as to what we do in de minimus rules and some other options and it creates great conflicts of interest between the interest of participants, the interest of an employer who might think he is withdrawing early as opposed to an employer who thinks he is going to hang in there for 20 years. How does the actuary meet his responsibilities, who is he for? The employer who is going out early, the employer who is hanging in there, the participants, how does he decide which way to go?

MR. JACKSON: You decide it very, very carefully. Seriously, you have not even touched upon my major problem, the client that I have has somewhere between 12,000 and 18,000 contributing employers. Each 2,000 or 3,000 go out of business or change their names which is why nobody is too sure of the number of employers. They have records on 295,000 employees of which annually 25,000 are thrown out as being Social Security records where the identifying number has had some digits interchanged but there is an estimated 50,000 still in there so, we do not have even an accurate head count on the number of employees who are covered by the plan. This sort of lack of reasonable data base is not much of a problem when you are dealing with an annual contribution that is based on payroll and where you have an accurate record of how many dollars were contributed last year. When you have to go to one specific withdrawing employer however, on the basis of that sort of data, and say "You owe $186,457.19", I am not sure that I want to put my name at the bottom of the form but I have to. To answer your specific question, I assume that the overriding consideration under ERISA is that the actuary basically has a responsibility first, to the plan participants. This is not too different than the obligation he has always had in any institution in which he is associated. The payment of benefits is paramount. Secondly, of course, he has some sort of an obligation to the plan itself and one of the very serious questions I think, is, what happens if that actuary who is working for the plan is asked by one of the contributing employers, "How much would it cost me to provide the same benefits myself?" For a typical multi-employer plan, you would expect to find those calculations developing the fact that half of the employers are paying more than the cost of their own employees benefits and half are paying less. Now when you load in past service liabilities for employers who have gone out of business you end up with more than half who could provide more on their own. Does the actuary simply supply the number? Has he an obligation to assure the ongoing funding of the liability of the plan? Or, if he feels that he has such an obligation, does somebody come along and say he is merely a shill for a bunch of employers and he is trying to peddle a bad product? There can be some very serious conflict of interest questions. Finally, one peculiar aspect is that the de minimus rules operate in a rather strange way. An employer whose withdrawal liability falls below $50,000 has no withdrawal liability--it's forgiven and this gets phased out above $100,000. However, the de minimus rule is really two rules $50,000 or 3/4% of the unfunded vested liabilities of the plan whichever is less. The actuary can find himself in the peculiar position here, I believe, that on the basis of his assumptions he can develop valuations that require higher contributions from the participating employers but also require higher withdrawal liabilities for those employers under the de minimus rule. There are some fairly responsible and experienced benefit practitioners and plan administrators going around the country warning employer participants in multi-employer plans about their withdrawal liability.

Sometimes withdrawal is involuntary. For example, one of our clients was faced with an NLRB election were the employees voted one union out and another union in and that situation was brought to the attention of the legislators before the law was passed so that at least that employer did not get stuck with a million dollars of withdrawal liability for doing absolutely nothing. These problems, I am afraid, are going to take a long time to resolve and the actuary is going to have some very real headaches and perhaps some very real liabilities arising out of law suits brought by disgruntled employers who get out. The problem with these plan administrators is that they are focusing on the employers who are not yet in these plans. They are addressing groups of employers in industries and telling them when you are faced with an organizing demand from some union and the union demands that you participate in the multi-employer fund, say no, and offer instead as a counter-offer an agreement to contribute the same number of cents per hour into a collection **of** IRAs for the employees. This avoids the withdrawal liability, and it also has the effect that **if** it's widespread it will convert every multi-employer plan into a declining industry fund and this can be a real potential disaster.

MR. GREGG SKALINDER. Daskais & Walls. I'd like to say I am also on the Program Committee of the Society and contrary to the published proposed program for the Spring meetings we are going to try to get a concurrent session with follow up workshops on the multiple-employer bill and try to have people talk about what is really going on, how people are responding to it, we may have some information by the Spring meetings as to what the response from plan sponsors has been. I'd also like to return to Don Grubbs issue of conflict of interest. I think the Act has made it **much more** clear that there is a distinct conflict of interest between being the actuary for the fund, namely hired by the trustees and representing interests of any employers and I think that some employers that are now in multi-employer plans are going to be turning to their regular actuary for much more advice and much more input on their liability under this. Also the law pretty clearly says that. Without specifying a time limit it's one of those things that the plan sponsor has to do but the law does not say when. If an individual employer requests information, the plan sponsor, presumably meaning the trustees, must provide data necessary for that individual employer to calculate liability. I will be interested to hear how the fund that you are talking about provides that information to 2,000 requesting employers if they drop out. I would also say that the ads that I have seen from George Buck in fact contemplate this possibility, their cartoon ad, that employees will be turning to the regular actuaries for much more advice on the subject.

MR. JACKSON: In answer to your specific question the fund that I work with is in the construction industry, so the only withdrawing employers who have a liability are those employers who withdraw and continue to work in the same industry on a non-union basis. The union trustees of the fund do not view that with a great deal of sympathy and I suspect that this may well give me some encouragement to use more conservative actuarial assumptions in order to nail them for all we can get from them to support the benefits. There is however one other aspect of this which has not been touched upon. Of course the assumption was that this is going to help these plans get into better shape so that if one or more of them do terminate the financial impact of the Pension Benefit Guaranty Corporation will not be such as to just do that organization in completely. The old 50¢ per head contribution,

when you are dealing with an unknown number of heads like somewhere between 220,000 and 300,000, you know, you can add 1,000 here and 1,000 there and the next thing you know you are talking about real money. But I am afraid some of the trustees in their meetings are going to call the actuary in and they are going to say "Well now, we have been running this fund in the past and providing a given level of benefits. We have been collecting only 30¢ an hour from the contributing employers but now we have a new source of revenue. Withdrawing employers henceforth are going to be putting additional sums of money into the fund. Please tell us how much in the way of additional benefits we can provide with that."

MR. JOSEPH MACAULAY. John Hancock. I have been hit with a different question from some of the multi-employer plan sponsors I have been working with, and that is what to put in their plan for the method of determining withdrawing employer liabilities beyond the presumptive one in the law. Hopefully with a homogeneous plan the law's presumptive method is fine but I was wondering what type of advice some of you may have been asked and given in this area. If you have not, you are going to be seeing a lot of these questions, I think, from plans that have various timing of people joining the plan, etc.

MR. JACKSON. I think it also going to depend on the records that are available. Some of the multi-employers plans operate in effect almost as a collection of single employer plans and I think those plans are likely to try to use as refined a set of alternatives as they can.

MR. MACAULAY: It puts the employee trustees in an interesting position depending on the relative position of their company's possible liability and depending on the requirements. So far as the plan that has asked the question, I have provided the liability for unfunded vested for the whole plan and broken it down among a couple of the larger participating employers. The alternatives provide dramatically different withdrawal liabilities if the largest participating employer leaves. One alternative is about 3 times another, which I think is on the outer limits of the distribution.

MS. VELLEMAN. I have a question on this multi-employer bill, the withdrawal liability--is that a balance sheet liability for the employer that withdraws from the plan?

MR. JACKSON: I would assume, Susan, that it would almost have to be because it represents the equivalent of an obligation to pay a fixed sum of money for a fixed period of time. A further question is after it becomes a liability for all the **employers** who withdrew and is on enough of those books, does the potential withdrawal liability for who have not withdrawn get put in their books? I think that there is going to be a lot more attention paid to the unfunded vested under these plans and the variation between plans is quite extreme. Just as a rough way of looking at it, the unfunded vested benefits on the construction plan I work for **is something on** the order of magnitude of $2,000 per active worker. There are some of the trucking industry funds that I know of where the figure will be more in the order of $40,000 or $50,000 per active worker. One of the companies that testified before Congress last February when the bill was in the hopper with an August 1979 effective date, said that they had a paper mill in Montana which they closed down for lack of profit and they were contributing something in the order of magnitude of $100,000 a year into a paper workers'

multi-employer fund. Their withdrawal liability retroactive would have been something on the order of magnitude of one and one-half million dollars.

MR. DAVID KASS. Kass, Germain & Co. I am intrigued with Don's question as to the range of new decisions and obligations placed on 3 lots of people as well as consulting actuaries. That is to say, many of the intricate decisions that have to be made, I think you should recognize, have to be made by the plan sponsor. However, the actuary as a consultant to the plan has a very important obligation to advise the client as to what the alternatives are. Alternative A might favor withdrawing employers whereas alternative B might under certain circumstances favor continuing employers. The decision as to which alternative to adopt in this and other areas is essentially one for the plan sponsor. However, there is to my way of thinking an important potential conflict of interest that the consulting actuary should point out, that is, that there might be a different degree of actuarial work called for under alternatives A, B and C and hopefully he can get that message through to the client that there might be possibly an important differential in consulting fees depending on which alternative goes which might set up a different priority amongst them than the equities between continuing and withdrawing employers. Also on the matter of the obligation, the balance sheet obligation that participating employers have, it is my understanding FASB 35 and 36 that the accounting profession has painted itself into a box and taking the language literally (I believe that FASB 36 is pertinent here) that each participating employer must show on his balance sheet his year by year potential termination obligation. I appreciate any reaction that other people had had to that which was presented to me by the chap in charge of the so-called pension industry as the accounting profession now styles it for one of the big eight firms. If Mr. Mahoney has some reaction I would appreciate it.

MR. MAHONEY: I did know that that was an annual requirement. You are saying annually you state that liability?

MR. KASS: It's a requirement in the accounting profession.

MR. JACKSON: I am not sure the entire accounting profession takes that position. I can see how an individual practitioner could but I have never run into that in my own practice.

MR. GAIL JOHNSON. Bayer Barber Inc. I have a question on the allocation of the unfunded liability. That seems to be based on contributions in the last 5 years. Did I miss that, or is that about what you said?

MR. JACKSON: Largely.

MR. MAHONEY: Largely.

MR. JOHNSON: Does that do away with the old rule? It seems like when they talked about the withdrawal of substantial employers they were talking about first calculating the liability then allocating the assets in proportion to what their contributions were in the last 5 years.

MR. MAHONEY: You mean one of the proposals other than these.

MR. JOHNSON: That is actually in ERISA. They talk about allocating assets on the basis of contributions.

MR. JACKSON: Of course, under ERISA the liability arose only on termination of the multi-employer plan within 5 years of the withdrawal of the substantial employer and at that date you were having an allocation of assets under the ERISA termination rules, in theory.

MR. JOHNSON: Okay, this is something different, then.

MR. MAHONEY: This is on a withdrawal and the plan may not be terminating.

MR. JOHNSON: Well I am trying to set up my systems, you know, to show each employer each year what is possible--what the liability will be.

MR. MAHONEY: Also, that would not necessarily work if all of them withdrew that same year. Some of those rules and some of those limitations that might have otherwise provided reductions in those liabilities will not necessarily apply if substantially all the employers pull out in a particular year. So you will have to qualify your estimate. In other words, if you gave him that number and everybody withdrew right after you gave him the number probably some of those reductions and limitations may not apply then because more than one firm pulled out. I just want to say that you have to put a qualification in it.

MR. JOHNSON: Okay, I have one other question about terminating plans when you have excess assets. Susan was talking about allocating the assets in proportion to accrued benefits, are we only talking about active participants at the time the plan terminates, we are not talking about the terminated vested participants or the retirees already receiving benefits or are we?

MS. VELLEMAN: No, I think we are talking about anyone that has accrued benefits under the plan at the time of the termination. So if you have retirees that are still receiving benefits or if you have terminated vested people with deferred benefits they would be included in the allocation.

MR. JOHNSON: Everybody gets a little bit of those excess assets.

MS. VELLEMAN: Probably, except for your most highly compensated people because we have to make sure we do not treat them too well.

MR. JOHNSON: Thank you.

MR. OWEN REED. Sun Life. I must apologize for arriving a little late. Did I understand you were requesting some comments on Canadian recommendations?

MR. JACKSON: Yes, we have done our best to cover regulations and legislation from our home area which is, in the case of all four of us, the United States. We had hoped that some representative of the Canadian Institute or someone familiar with the Canadian scene might fill in the gaps in the tapestry so to speak.

MR. REED: Was it recommendations or our regulations, then.

MR. JACKSON: Well specifically I was thinking of the CIA's one year trial basis rules on actuarial valuations and the changes that will require. I am not familiar with any potential legislative changes in Canada. It seems to me that your country's legislative system operates with far fewer starts and stops than ours. We have bills that are floating around for 5 years before they are passed whereas your government I believe suggests something and the next thing you know it is law.

MR. REED: Sometimes. I can make some comments about the CIA's recommendations since I was a member of the committee that worked on them. Essentially it was a case of getting our house in order, much the same as what prompted the Academy recommendations, I guess. Essentially the accent is on increased disclosure by the actuary, in calling on him to be professional in the way in which he develops his report. The report is supposed to be understandable to one of his peers and is supposed to disclose enough information so that one of his peers can take a report and make some sort of reasonable, or at least preliminary, assessment of what is being done. It starts out by saying that the recommendations apply to all types of pension plans including municipal type plans etc., stresses the importance of the work of the pension actuary because of the importance of the benefits to the plan participants. In various items like actuarial assumptions and methods the recommendation states that they should be chosen bearing in mind the purpose of the particular valuation. It does not discuss any specific methods, that is left for another publication, such as a pension handbook or pension guide book. There was a lot of dissension about whether or not minimum funding standards should be put into these recommendations and it came out quite strong that if a valuation was being used for costing purposes, that is, accounting purposes, then the valuation method should amortize the cost of the plan over the working lifetime of the employees but it did not come out to the same extent on funding methods. This was watered down somewhat but if an actuary has a final pay type pension plan then he should bear in mind the importance of ensuring the payment of benefits to the employees. There was one other interesting aspect, disclosure of contingency margins or contingency reserves and finally the question of employee data. Under ERISA as I understand it, the heat is taken off the actuary because he can rely on the plan administrator. It is not quite that way in Canada. You have to state that the data is sufficient and reliable and if you cannot state that you have to state why you cannot state it.

MR. JACKSON: Thank you. Could I just ask your comment on one aspect of the recommendations that puzzles me. There is a list of sorts of assumptions that are appropriate for use in the valuation and the very last one listed under "other assumptions" refers to future new entrants to the plan. The traditional valuation methods, of course, do not contemplate future new entrants other than by a very general process of allocating cost between the normal plan costs which are appropriate to such future new entrants and additional past service cost. Does this contemplate different series of valuation methods that would be developed?

MR. REED: Well, I would have to rely on my memory here, I am afraid. I believe that there were two considerations. One was the relatively simple one of the entry age normal method where under the British system you concentrate more on the level of funding appropriate to the age of the entrants that you expect to come in during the next few years. But the recommendations do not require the use of future entrants in cost valuations if that is what you are getting at.

MR. HARRY GROSS: Kwasha Lipton, New York. I have recently been involved in a session of a local actuaries club on the multi-employer law. We had a representative from the accounting profession there and one of the things we discussed was the required disclosure that might come out of the financial statements as a result of the particular employer share of the withdrawal liability that will at some point in the future theoretically become available. The only guidelines that we had to go on up to now was FASB 36. There is a specific paragraph dealing with multi-employer plans that says, in line with the general requirement of disclosing the unfunded vested liabilities in the footnotes to corporate financial statements, the characteristics of multi-employer plans are generally such that now this type of information is not readily available and therefore it indicates that nothing is necessary other than perhaps just mentioning that such a plan exists. In line with that, the feeling is that now that the calculations for such withdrawal liability will be available then it would be required to be included as a footnote. It is our understanding that the FASB is currently preparing a Discussion Memorandum dealing with the topic that will probably give some indication on that.

MR. JACKSON: Was that specifically as a footnote item, though? Certainly, not as liability.

MR. GROSS: Not as a direct balance sheet item.

MR. MAHONEY: It may be for the future.

MR. GROSS: Well the whole FASB 36 just deals with statements beginning in 1980. I would imagine in the future, in line with the wording that was there, only to the extent that such liability figures will be available. Then again this Discussion Memorandum will come out and clear this up. As a second item, many decisions are to be made by multi-employer plans and the employers and employee representatives have to come to some agreement as to the choice to be made. For example there is the method for calculating withdrawal liability. The particular de minimus rule to be used, or the various other elections available. I think what we are going to see now is a much greater involvement of the various sponsoring employers in these decisions. They will be taking their trustee responsibilities probably a lot more seriously and they are being encouraged to do so to make sure that decisions being made will be to their best interests. Various employers will be affected very differently by the various alternatives being around and depending on what their bargaining position is, or the strength of their particular position within the whole team set up is, it probably will be well worthwhile to look at the alternatives, trying to gauge what is their best interest. That is when they will come in and use their own particular actuary and then start taking these to the Board of Trustees meetings and try to translate this into some decision. Thank you.

MR. JACKSON: This is not entirely simple sort of split in interest by the way between the employer trustees and the union trustees. In back of the entire decision of the level of charges to withdrawing employers is the fact that the withdrawing employers are going to make known their discontent with the large withdrawing liability. To the extent that they more discontent perhaps there are fewer new employers who can be talked into joining the group. Secondly while I think it is true that employer trustees will pay much more attention than has been the case in the past, I am not sure how much more. If you take a fund that everybody has heard about, the

United Mine Workers Fund for example, it was started in the late 1940's and they had three trustees. They had a public trustee, Josephine Roach, former Under-Secretary of Labor, I believe, John L. Lewis was the Union Trustee and then at 2 or 3 year intervals there was a management trustee. Now the management trustee was on the financial staff of some coal company and this duty of serving as management trustee on the Mine Workers' Fund was viewed with all the joy of having a can tied to one's tail. At the very least, it was diversion away from the individual's main career and the mainstream of developments within the company that he worked for and at worse, if something went wrong with the fund he would get blamed for it. So, the result was in that case that over a 30-year period there were at least ten different management trustees. Of course, the first meeting they would attend they would know nothing, but by the time they were sort of up to speed and understood what was going on they had learned enough to know how to get off the Board of Trustees. It seems to me that this fundamental problem is still with us. For the single employer plans that we work on, somebody on the financial staff of the company is really concerned about the pension fund and is concerned about it for several reasons, not the least of which is that his own pension is going to come from the fund and his own retirement security depends upon it. Another aspect is that the source of the management trustees of these funds is largely going to have to come from the large employers. They are the only people with experts. If you get into one of these funds with a lot of employers with two and three workers, it is not going to help very much to have representation from them on the Board of Trustees because they cannot afford to expend any time at all on this and even if they do they don't understand anything. Now the large company is a stable company, likely to be in the business for an extended period of time. It is likely to be able to plan its withdrawal from a fund of this sort, or at least take into account the financial consequences of it. The higher the withdrawal liability the more favorably the large employer would view the plan at least so long as the item is not on his balance sheet as a direct liability. So you have a conflict in interest between the large employers who are going to dominate the Board of Trustees of these funds and the small companies who are the ones that are coming in and out of the industry. In fact during the passage of the legislation while the draft bill on the House side was effectively closed to any discussion and any change at all by what was referred to as a very delicate coalition between business and labor by the time the bill got to the Senate side the people complaining about what they thought were harsh requirements and so on that were going to harm these plans were given a hearing and the bill was changed substantially and in that is interesting that the larger employer groups, the Chamber of Commerce, the NAN, the ERIC group in Washington all suppported the multi-employer legislation as it was put in the House, with the small business associations opposed to it. Also while there was a coalition between labor and business, that coalition was between the National Coordinating Committee for multi-employer funds and several employer associations in the construction industry and while they did reach agreement that the unions would permit some cutback in benefits upon reorganization of a plan in exchange for business giving up some of its rights and being stuck with withdrawal liability, it is also true that the business representatives who were part of that bargain managed to stick the withdrawal liability on everybody else because the construction industry was exempted. Are there any other comments from the Panel?

MR. MAHONEY: Somebody was saying that they are thinking of taking something similar to the multi-employer law and applying to single employer plans and

do away with the 30% liability. If they do that we are really going to have a lot of work.

MR. JACKSON: Well, we are thinking of getting rid of the 30% but not by eliminating it but rather by raising the 30% to 100%. This is a very meaningful distinction because if you do not have a limit of 100% of net worth then you have a liability that is a fixed liability and an accountant would say that liability belongs on an employer's balance sheet. If a liability is limited to some percentage of an employer's net worth, that liability stands in line after all of the other lenders. When you have a case like Chrysler, for example which is trying to borrow a billion dollars if the Chrysler pension fund has two billion unfunded vested and that is added to the liabilities, they are bankrupt already. If the Chrysler pension fund has a claim only on net worth then Chrysler is not bankrupt. There is a very real distinction there.

Well it is now **12:44** and the session is hereby ended. Lets thank all of our panelists for their careful preparation and fine presentation.