RECORD OF SOCIETY OF ACTUARIES
1981 VOL. 7 NO. 1

RESPONSE TO THE MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980

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1. Plan sponsors

    a. General reaction
    b. Election under the Act
    c. Withdrawal experience
    d. Termination experience
    e. Expected participation and supplemental guaranteed benefit programs
    f. Effects on plan design

2. Employers

    a. General reaction
    b. Perception of liability
    c. Willingness to participate in new plans
    d. Placing limitations on plan sponsors

3. Actuaries

    a. General reaction
    b. Structure of market demand for services
    c. Calculations of liability
    d. Impact on business
    e. Actuarial assumptions used

4. Pension Benefit Guaranty Corporation

    a. Administrative action
    b. Regulations and interpretations
    c. Statistics on withdrawals and terminations under the Act

MR. VINCENT CICCONI: The Multiemployer Pension Plan Amendments Act of 1980 was signed into law on September 26, 1980, and it represents the culmination of four years of effort on the part of our agency in developing an administration proposal on changes in the multiemployer termination insurance program. The reaction of the Pension Benefit Guaranty Corporation is one of caution, at this point, because the Act sets forth a great deal of work for our agency in drafting regulations. Our agency's role under the Act is primarily to provide guidance, through regulations, to plan sponsors, actuaries, etc., in fulfilling their responsibilities under the law. Our view, and the view of Congress, was that the provisions of the law are to be administered in the private sector. Our agency will have very limited involvement in the actual administration of the law. Our role now is to

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issue regulations, rulings, etc., which resolve some of the ambiguities of the law--the law is not as clear as it could be.

In many cases we see strict application of the law imposing tremendous administrative burdens and costs on the private pension system. We hope, through our regulations, to ease some of these problems. Any simplification, however, has to be weighted against the potential for risk to participants and to the termination insurance program.

The Act had some 60 specific regulation areas for the PBGC. Some of these are called mandatory implementing regulations--these are regulations that are required under the Act to enable a sponsor to take action. These regulations have the highest priority, and we will need to issue them as soon as possible to provide the necessary guidance.

There are other regulations that are mandated regulations. Congress has told our agency that we must do something by a particular date. The two most prominent of these are the Withdrawal Liability Payment Fund and the Supplemental Guaranty Fund. The first of these is due in Spring, 1982, while the second is not due until 1983.

A third area of regulation includes the permissive-type regulations--those which may make the law simpler to administer. The law permits variation, by regulation, from its requirements, in some instances.

To date we have issued two substantive regulations - one on multiemployer premiums, dealing with the partial year payment for the legislated increase, and the second dealing with the alternate withdrawal liability computation method. The latter was issued in January 1981 and has two components. One part sets forth certain presumptive modifications that plans can make to any of the four statutory allocation methods without requiring PBGC approval. The second part sets forth procedures and standards under which plans can receive approval of an allocation method.

To date we have received ten requests for approval of alternate methods. These have ranged from simple adjustments to a statutory rule, to a very complex rule that would isolate benefit increases attributable to each employer and assign those pieces of the increase separately. We have not approved any method yet, but we are in the process of making determinations. We will shortly be issuing determinations on those requests we have received.

The regulations that are currently in process are at various stages of development.

We are well along on regulations on variance for sale of assets under Section 4204(c). The Act says that a sale will not constitute a withdrawal if certain conditions are met. The purchaser must post a bond equal to the amount the seller contributed in a recent period prior to the sale, and the contract of sale must include a provision that the seller will be secondarily liable in the event the purchaser withdraws within a five year period and does not pay its withdrawal liability. One of the problems with this provision is the retroactive imposition of withdrawal liability. If a sale were entered into between the effective date of the Act and its enactment date, the seller could be liable because the conditions had not been fulfilled. We would like, at least, to have the contract of sale provision waived in this instance.

In addition, it appears that no surety companies are issuing bonds in this situation. If such bond were available, it would likely be prohibitively expensive. The Act contains a procedure by which the PBGC may grant variances for the purchaser's bond and the contract of sale. The procedure is very cumbersome; we have to publish notice in the Federal Register, provide for a comment period, and so on. We hope, in our regulations, to set forth standards under which the bond could be waived automatically.

Another regulation fairly well along is on mergers and transfers under Section 4231. The Act sets forth standards for mergers and transfers among multiemployer plans, and also gives the PBGC the authority to waive certain prohibited transactions if the merger or transfer meets four conditions. These include a notice requirement, prohibition of loss or reduction of accrued benefits to any participant, neither plan can face insolvency as a result of the transaction, and an actuarial valuation must have been performed in the year prior to the effective date of the transaction.

Our current thinking is that the actuarial valuation requirement seems unnecessary, that the I.R.S. standard under Section 412 of the Code should be acceptable as long as it is brought forward to reflect any material modifications. There is a need for a current actuarial valuation in case of a spinoff into several smaller plans, or where a large transfer is involved. If a merger will result in a stronger plan, any standards in the regulation should not require us to become involved in reviewing voluminous reports, checking certifications, etc. We think that the accrual of benefits test should be satisfied by the mere inclusion, in the resulting plan, of a provision that no accrued benefits of a participant brought in by the merger shall be reduced.

Another area that is very important is the resolution of disputes under Section 4221. That section gives employers and sponsors the mandatory right to arbitration, in accordance with the procedures established by the PBGC. Our agency does not have the capability to involve ourselves in these disputes. There should be rules in the plan or in the participation agreement which specify how an arbitrator will be selected.

One area that seems to be of great concern is actuarial assumptions for computing withdrawal liability. The Act says that the assumptions must be reasonable in the aggregate, but it gives PBGC the authority to specify assumptions plans might use. There seems to be a great deal of interest now in having PBGC tell people what they should do in this area, and we are currently looking into various approaches.

One approach that is being considered is the use of PBGC termination assumptions. We have not come to any conclusion. There appears to be problems with the interest rate PBGC uses in the single employer program. That particular rate is based on the plan paying off its total liability in a lump sum. The withdrawal liability payments would be payable over a period of years, probably about ten years for an average employer. There is some question as to whether the current rate, which is about 9-3/4%, would be suitable for payments over a period of years.

Another approach that is being looked at is to use the PBGC close-out assumptions for determining the extent to which the plan would be funded if it

would be terminated at that point and then to use the on-going funding assumptions for determining the portion of the unfunded that would be coming in through future contributions.

We hope over the next month or two to be able to come up with some recommendations. We would like to avoid using a schedule of rates. The most desirable thing might be to come up with a single interest rate that plans could use. I'd like to point out that the use of the PBGC rate would not necessarily protect anyone from the reasonableness requirement. If we do come out with something, the actuary should determine if it is reasonable in that particular situation. If not, the Act would require him to use another assumption. The PBGC rate might help in the event of arbitration with a government agency.

Another area that is very important is the extension of the construction industry withdrawal definition to other industries. As many of you know, the Act has a special rule for the construction and entertainment industries that narrowly defines the events for which withdrawal will occur. During deliberations on the Act, there was some thought of extending this rule to other industries that have mobile labor forces or where the employers come and go. Such industries would be stevedoring, for example, where employees go from employer to employer often on a daily basis and agricultural industries, where the employees generally move from grower to grower. Under current law if an employer does cease to operate in an area it would be a withdrawal. It may be appropriate in that situation to extend the construction rule. We're looking at various industries to see to what extent the extension would be appropriate.

I'd like to go over some of our administrative actions to date.

So far as withdrawals are concerned, there is no provision in the Act requiring clients to notify us of withdrawals. We may by regulation require notice of withdrawals that result in a significant reduction in contributions. We do not at this point intend to be involved in monitoring withdrawals, getting reports on withdrawals, insuring that the withdrawal liability is being calculated properly.

I think we had one termination during the brief period of mandatory coverage between August 1 and September 26. We have one case in house that appears to be that way. As far as terminations after September 26, there are some letters that have been filed. Most of these appear to be pre-enactment terminations or situations in which there is a continuing obligation to contribute, which would mean there would not be a termination. I would say there may not have been any terminations since the enactment or if there have been they are very few, at least what we're aware of at this point.

That concludes my remarks on PBGC's activities.

MR. ALLEN EHRHARDT: I'm going to be speaking on MEPPA from the standpoint of the plan sponsor. As you are aware, the plan sponsor of a multi-employer plan is a joint board of trustees. That is, the plan is administered by a board consisting of an equal number of employer and employee representatives. These are, generally speaking, individuals who work full time on other matters. Usually, the employer representatives are actively running the business at which

the employees work and the employee representatives are actively performing union chores such as organizing, bargaining, settling grievances, etc. Therefore the "plan sponsor" is a group of individuals with conflicting interests, occupied for the most part by other matters. They have not been sitting around analyzing a succession of proposals. This is not to say that the executive boards of the international unions and various employer associations were not intimately involved in the actual drafting of the Act. However when you get down to the average board of trustees of the average multi-employer plan you are not dealing with people who have followed the deliberations which occurred in drafting the Act.

I think that the initial reactions of the trustees to this Act have been tempered by their experience with ERISA and its aftermath. As you are all aware, when ERISA was issued, its possible implications and complications were widely discussed, seminars were held, and trustees scheduled rush meetings. Much of this early scurrying proved fruitless. The trustees soon realized that their rush to action was hampered by regulations which were slow in comming and they were confronted with government forms which seem to change daily. But despite this, they also came to realize that daily living with ERISA proved somewhat less difficult than many thought. Therefore, it comes as no surprise, that generally the reactions of the trustees to this Act have been: "Let's wait and see," How bad can it be?" and "You can't hold back the inevitable." All in all, the responses to this Act have been much calmer than most people have anticipated and much of the potential conflict which could arise on a joint board due to employer and employee trustees who have opposing interests has not yet materialized.

From my experience, it appears that the employer side has come to represent continuing employers and that the attitudes of the employer side of a joint board of trustees, therefore, are not necessarily the same as that, say, of an association of employers. Neither is their reaction at a trustee meeting necessarily the same as might be expected at a general meeting of employers contributing to the plan. The employer side may often view a withdrawing employer with something less than sympathy. They are fully aware that prior to the Act a withdrawing employer burdened those businesses continuing in operation with his share of the liabilities.

In many instances, boards of trustees are made up of representatives of smaller employers more concerned with the effect of constantly increasing contribution rates on the success of their businesses. Many large employers, in the past, have viewed their obligations to multi-employer plans, perhaps too much, as only an additional segment of wages. I think this will change and large employers will start exerting more pressure to have representatives on boards of trustees administering the plans to which they contribute.

The union side may also have different attitudes depending on the trade involved. Those with very meager prospects of organizing new employers or with shrinking membership may consider the Act a "god-send" in that it puts at their disposal the legal clout to collect liabilities and to preserve the funding of their plans from further deterioration. On the other hand, those involved with expanding industries may look at the Act as an insurmountable obstacle to attracting new employers.

The general reaction will also vary somewhat depending on the industry involved. For example, reaction from boards involved in building trade funds can be expected to be somewhat slow in coming since the building trades seem to have been exempted for the most part from most of the shocks, at least initial shocks of the Act. Reactions of boards involved in some of the other trades such as the retail trade where there is a constant change of ownership will depend to some extent on the capabilities of the fund's administrative staff and the trust the board has in them.

I should emphasize, that for a law of its complexity very little time has elapsed since passage for reaction to occur. Again, like ERISA, we would expect reactions to occur as lived with events occur. That is, many funds will not know how to react unless events occur which force them to react.

However, despite the short time span, I do feel that certain concerns are now being expressed. Some of the typical questions arising are: "How much will it cost?", "What do the attorneys, accountants, and actuaries have to say?", and "What businesses are going under?".

"How much will it cost?" is a primary concern. Rising administrative costs decrease the amount of money available to provide plan benefits. There is always pressure on the union trustees to provide improvements in the benefits available to the membership. The increase in the PBGC premiums is only one of the additional costs which will have to be absorbed. Trustees will also be faced with the increasing costs associated with providing employers with required information and to some extent these costs will depend on the actuarial methods used for determining liabilities.

As you know, ERISA created regulations for auditing delinquent employer contributions. Most funds have gone on a full program of auditing and collecting such delinquencies and these programs have been successful in that they have brought in more money than the costs of administration. These audits have been difficult in the past. However, this Act has provisions strengthening the fund's position. But, a new wrinkle has been added - that is - the determination of when an employer withdraws. There are many funds, often covering hundreds of employers where the trustees will now have to monitor a situation where often it is not readily apparent when one employer has closed down and a new employer has taken over. This is an area where additional costs incurred by the trustees may be quite substantial.

"What do the attorneys, accountants, and actuaries have to say?" The board of trustees relies on the professionals hired by the fund to provide them with the information necessary to make a reasonable decision. It is the responsibility of these professionals to focus on the provisions of the Act which need immediate attention, to present the alternatives available to the trustees, and to take into consideration the specific situation of the fund itself and board composition in making their recommendations. The fund professionals have an obligation to communicate both among themselves and with the trustees so that in developing a recommended course of action they properly reflect the concerns of the board of trustees. I believe that because of the complexity of the Act, there will be an increased reliance on fund professionals which will also result in additional cost.

"What businesses are going under?" The trustees are taking a hard look at which employers are most apt to go under and they want to know the impact that such an event will have on the fund. It is not uncommon for the trustees to

want to know, in particular, the impact that the withdrawal of a major contributing employer will have on the operations of the fund. Questions such as this demonstrate that most boards of trustees are taking the time to assimilate the information provided by the fund professionals prior to deciding on a particular course of action and that while they are not rushing to take immediate action they are fully aware that certain decisions will have to be made.

So, trustees of multi-employer plans must sooner or later make a number of decisions. The most important feature of the new law is the creation of withdrawal liability on employers who withdraw from the plan. In general, a complete withdrawal occurs when an employer has permanently ceased all covered operations under the plan or has permanently ceased to have an obligation to contribute under the plan. Special rules provide limited exemptions from withdrawal liability for plans in the building and construction or entertainment industries, as well as the trucking, moving, and warehousing industries. Under the Act, the withdrawing employer is generally liable for a portion of the plan's unfunded vested benefits. The plan trustees determine that liability and a payment schedule. It is primarily in this regard that the trustees must make a number of decisions.

The first consideration is obviously the actual amount of unfunded vested liability. This will ordinarily be the province of the fund actuary, and I think that most often the plan trustees, with very little discussion, will accept the recommendation which the fund actuary is inclined to make. There will be, at this point, some discussion as to the avoidance of a set of assumptions which may lead to arbitration. I think, however, that most boards will not long deliberate on this point. I know that various groups of trustees have heard recommendations by their fund actuaries of such possibilities in determining the unfunded vested liability as using: (1) on-going plan assumptions; (2) PBGC plan termination assumptions; (3) (soon to be released) PBGC assumptions on an on-going plan basis; (4) a higher interest rate than that used for the plan's valuation; and (5) a combination of PBGC termination assumptions and on-going plan assumptions.

I think that possible arbitration can occur on the subject of "proper actuarial assumptions." The divergent opinions which may arise can lead to a whole new industry for retired actuaries as arbitrators. The first real decision for trustees in the determination of withdrawal liability begins with the adoption of a computation method. Here again the actual facts of the plan circumstances, including board make-up, will affect the decision.

I do not see, under prevailing circumstances, a great rush away from the Presumptive Method. To the extent of the sophistication of potential new employers or, at least, to the extent that the employee side of the board of trustees feels that this sophistication exists, I believe that the trustees will stick with either the Presumptive Method or the First Alternative Method. Those with a larger number of employers will choose the First Alternative Method due to the simplicity of administration.

Though Alternative II, the "rolling 5" method may seem attractive to certain employer trustee groups, I think that the employee side would hold strong enough to reject this approach since, this method, would be extremely disadvantageous to the attraction of new employers.

A bonus should be given to any actuary who could talk his client into the election of Alternative III. The additional revenues this would generate should be quite impressive.

In order to determine the employer's share of unfunded vested liability under either the Presumptive Method or First Alternative Method a fraction, which relates the employer's contribution over a 5 or 10 year period to total contributions over that 5 or 10 year period, is used. Prior to the trustees making a decision as to the use of either the 5 or 10 year period, they will wish to consider the fluctuations of contributions over those periods. They will select the method which will even out fluctuations in contributions best for the greatest number of employers, and not necessarily only the first withdrawing employer. Adoption of a 10 year base may result in much greater liability for an employer whose base has been shrinking over a long period.

The Act provides for a deductible (DeMinimus rule). The trustees may increase the dollar deductible from $50,000 to $100,000. At first glance, it would seem that any board of trustees should not increase this amount and that they, in fact, would have hoped that there was no deductible at all in the Act. However, many trusteed funds, after careful consideration will adopt the $100,000 deductible. This will greatly reduce the administrative burden in attempting to collect from those employers who represent a minor portion of the total liability but who are most likely to transfer ownership or go under. For example, a fund may well adopt the $100,000 deductible if it is found that this deductible would affect employers accounting for less than 4% of total contributions.

The next key consideration: the trustees must decide on a payment schedule. The choice of the statutory over the main alternative method can have dramatic effects on the speed with which the total refund is made. A declining employer could well be saddled with a payment schedule which would require annual contributions twice as large as were ever paid by him over his contribution period. This is true since in most funds the contribution rates have soared over the last ten years. The rate in effect at the time of his withdrawal could easily be 2 or 3 times as great as what he may have paid 10 years ago per unit. My experience so far, though limited to the span of the last couple of months has been that the trustees choose the method which would return the money the quickest. This decision is prompted by the recognition by the trustees of their fiduciary responsibilities and the recognition that the greater the time span after the date that an employer first withdraws the less likely the future payment.

After determination of the withdrawing employer's liability and payment schedule, notification is the next responsibility of the board of trustees. This responsibility will most likely be delegated to the fund's actuary and attorney for drafting a suitable and complete notice. The employer must begin to make payments within 60 days after the demand is made. Disputes are certain to occur and arbitration will be the main remedy. The arbitrator, however, must act under the assumption that the plan's determination is correct unless clearly proven to be unreasonable or erroneous.

As to real situations which have occurred to this time, there seems to have been a certain rush of withdrawals during the last part of December, caused, I believe, by the misinterpretation by some employers that the Act was effective January 1, 1981. These actions, however, created a great deal of work during January for actuaries and attorneys in that Trustees wished to make any necessary amendments by January 31. This way all withdrawing employers both before and after that date would be treated the same. Also this simplified future notification requirements that would otherwise be in effect. Up to this point then, though there have been a number of calculations made and even some

demand payment notices sent out and some greatly shocked employers and their attorneys when these notices were received, there probably have not been many first payments made or arbitration proceedings started. Should the payments not be made when due, the trustees may determine that the employer is in default and accelerate the payment schedule.

So, the trustees, primarily with the assistance of the fund's attorney, will have to decide on collectibility standards for withdrawal liabilities; and decide what will constitute default by an employer -- in the event an employer is delinquent, but not in default, they may also wish to provide a procedure for determining liquidated damages.

I have only touched on some major items of trustee concern. Obviously, in the future, the trustees will have to grapple with partial cessations, partial withdrawals, abatement rules, changes in funding periods, mergers and transfers of assets, etc. Super trust possibilities are still in the study stage.

There are a couple of other items which some trust funds are working on now. These might be described as involving elements of plan design.

The six year free look. I thought, at first, that the union trustees would be pushing for the addition of this provision since it seems that it would greatly facilitate the easing of fears of potential new employers. However, the mandatory past service cancellation part along with the fact that potential new employers understand the problems of bargaining their way out-once in - makes me feel now that adoption of this provision may not be very wide spread. On the other hand, discussion of cancellation of past service granted for service with withdrawn employers relieved of liability under DeMinimus rules will be taking place at many funds. Long standing objections to the effects of these cancellations on membership will probably prevent this from being adopted by funds not already providing any past service cancellation provision.

Importantly, resistance to benefit increases where a benefit unit applies to all service has already begun. Greater interest will be shown for future service only increases. And, there is a real possibility that benefit discussions will begin at the bargaining table in the future.

Finally, it remains to be seen what effect this Act will have on funds that have traditionally provided ad hoc cost-of-living adjustments to the retired group on a regular basis.

In summary then, the board of trustees will be or is already involved in:

- Convening special meetings with the fund's professionals to discuss the Act's specific provisions;

- Deciding on the several choices they must make with regard to the implementation of the employer withdrawal liability sections of the Act;

- Deciding on which plan amendments can be delayed until regulations are issued;

- Deciding on and implementing the necessary administrative procedures involved with calculation, notification and collection of employer liability.

Although the Act will be implemented through some 60 regulations that are yet to be issued, the trustees have already begun their journey through MEPPA--but it will be long and they will need all the assistance we can give.

MR. RAY PINCZKOWSKI, JR.: I've been asked to make some remarks about the response of employers and actuaries to the multiemployer pension plan amendment act of 1980 which I'll be referring to as the MEPPA.

I would like to make three statements before I do that. I promised confidentiality to all my sources. I will, therefore, resist mightily if you attempt to have me identify specific plans, employers, or actuaries. Secondly, your measure of how remarkable my comments may be should consider my sources. They have been primarily actuaries and trustees. Third, I would like to use the privilege of having the microphone to ask the first question of Vince so he will have a chance to prepare an appropriate response. I think I heard him say that one of the alternatives the PBGC was investigating on actuarial assumptions for computing withdrawal liability was some sort of single interest rate. And for all of those out there who are playing with graduated interest rates or have seen interest rates change in the last few years, I'd want to know what single interest they would propose to use.

First, the responses of employers. In general, I think they weren't even aware of the Act or their potential liability for several months and that they now have mixed reactions. On the one extreme, several employers are trying to avoid withdrawal liability altogether. On the other extreme, many employers are making concerned reviews of the alternative results of withdrawal liability calculations. In other words, many employers are actually digging into the details of our actuarial calculations. In between, though, I think most employers are really disturbed and feel that they have been ripped-off. These employers are disappointed that what they perceived to be defined contribution plan have been turned into defined benefit plans. In short, the MEPPA presents employers with potential liabilities they did not previously encounter and withdrawal from their multiemployer pension plan is considerably more complicated now than it was prior to the new law.

The frequent response from employers who are not represented on boards of trustees is that the trustees select UVB--UVB being the Unfunded Vested Benefits--methodology in assumptions that favor the employers who are represented by the boards of trustees. I'll give you an example. In one large plan situation where the direct attribution method, even if we use actuarial valuation assumptions, would assign no UVB to many of the employers who are not represented on the board of trustees, in that case the board selected the "rolling 5" method that actually distributes some UVB liability to all of the contributing employers.

Multiple employer plans, that group of plans uniquely described on the reporting forms as "Other", of course have the option to elect treatment as multiemployer plans and I've heard uniform opinions that they are expected not to so elect.

In general, we have a state of confusion which can be resolved only in those happy cases where UVB is equal to zero.

Larger employers who expect to never withdraw from these plans don't want the smaller employers to be able to withdraw without any liabilities and therefore these larger employers want low interest assumptions and maximum

UVBs. The smaller employers, however, want high interest assumptions. They want to minimize the withdrawal liability amounts so that they be able to sell their businesses some day.

How do the employers perceive this liability? As I indicated, many employers are unaware of it at all and are also unaware of the term UVB. Many employers and trustees are unaware of the MEPPA's addition to Section 4221 of ERISA that says if the employer asks in writing of the board of trustees, the plan sponsor shall furnish without charge information necessary for the employer to compute his withdrawal liability with respect to the plan. Section 4221 also says that the plan can charge an employer requesting it to make an estimate of the employer's liability. The amount of that charge, of course, is not specified.

The typical perception is that it is all "mumbo jumbo". How can a real liability, if it really exists after all, simply disappear by changing the interest assumption? Many employers initially looked at their actuarial valuation reports and thought that the UAL was the UVB and the UAL generally, of course, is much larger than the UVB. The UAL is that ancient terminology that was in vogue very briefly many years ago that meant the Unfunded Accrued Liability and is frequently determined on an entry age normal basis. Therefore, you can see that it's typically much larger than UVB.

Are employers willing to participate in new plans? The universal answer is "No". I have not yet talked to anybody who has seen an employer willing to participate in a new plan.

The MEPPA places certain limits on plan sponsors. For example, in the construction industry employers typically need a bond and a cash flow in order to start work on a new project. Employers are concerned that if this UVB ever gets on their balance sheet, it will inhibit their borrowing power. Of course, the future actions that accountants might take regarding UVB in corporate balance sheets is unknown.

I have observed that trustees are not interested in protecting currently withdrawing employers. In other words, continuing employers want low interest assumptions, high UVB's and definite liabilities for those employers who are going to leave them. Employer trustees want to limit benefit increases so that UVB never exceeds zero. Employer trustees, are also very cautious about increases in past service benefits, again, with the motivation of keeping the UVB at zero.

MEPPA limits the ability to sell small businesses. For example, in the restaurant industry many of these individuals own a number of restaurants so that they are large enough to be covered by the Act. They have relatively small numbers of plan participants but they may have potentially large withdrawal liabilities that will influence the sale of a business. Therefore, these small employers want high interest rates and low UVB.

The MEPPA has caused a trend towards denial of past service benefits if a new employer unit applies to join the plan and also for denial of past service elements of general benefit improvements. For example, one situation had a current continuing contribution rate of $1.20 per hour and another $.10 per hour was achieved through collective bargaining. The actuary for that fund had said prior to the passage of MEPPA, that a $.10 additional contribution would buy either of A or B. A was $1.50 per month per year of service for all years of service; B was $3.25 per month for future years of service only. The board, meeting after MEPPA had been passed, adopted B very quickly.

In another example in the construction industry, negotiations resulted in an increase in employer contributions to the pension plan of about $.40 per hour. The trustees selected a benefit increase that had been priced at $.10 per hour by the plan actuary; the remaining $.30 per hour would go to simply reduce the UVB.

What about the responses of actuaries? First, I believe that their general reaction is that the direct attribution method is equitable but that it is pretty expensive to administer. There has been some talk of amending the DeMinimus rule out of the law entirely. There has been talk that we should now do annual actuarial valuations in order to be fair rather than our typical practice of valuations every three, four or five years. Actuaries may raise their valuation interest assumptions a little bit if doing so will eliminate UVB. Otherwise, the consensus seems to be that we will leave our valuation interest rates where they are, we will have a higher UVB and withdrawing employers will have to fund their share of the UVB on the same basis as the continuing employers. This leads to the much discussed moral question among actuaries: should the actuaries favor A or B? Where:

A has the actuary become an advocate of higher interest assumptions in order to permit higher current benefit levels to retirees and participants (and remember under ERISA that we are supposed to work on the behalf of the participants), or,

B has the actuary become an advocate of low interest assumptions in order to sock the employer or to improve the funded benefits ratio, which might be described as the ratio of assets to UVB.

Can the actuary ever avoid responsibility for the interest assumption? If not, can the actuary avoid being sued by one side or the other on this interest assumption question. Also, note that the law's use of last or most recent actuarial valuation report in several critical areas has an interesting effect on UVB if the actuary's current best estimate interest assumption is higher than it was at the time he prepared the most recent AVR. If the actuary's current best estimate of interest rates is higher, he would then have a lower UVB today if he were put on the stand to describe his best estimate thereof than would actually be utilized under law.

The structure of demand for services of actuaries has been impacted by this law. For example, I've had several people tell me that plan administrators are now actually asking for actuarial help in order to ascertain what records they need to keep in order to be able to have the information needed to provide the numbers required under the Act. And two single employers of ours who have also participated in multiemployer plans where the multiemployer plan uses another actuary are seeking second opinions of actuaries and asking them to review and look into the calculation of withdrawal liabilities. We've seen practically no new requests for proposals, indicative I think of plans concerned with the Act rather than changing actuaries. Multiemployer plan actuaries report that they are very busy but that not all of the time spent is currently billable to clients. And in general they report a significant increase in business but expect it may last only a year or so.

In the area of actually calculating these liabilities, one example was reported to me where the notices to pay UVB had actually been sent out to employers who had not signed the most recent bargaining agreement. The employers' attorneys have been responding so far with citations of earlier lawsuits that claim that

I have a couple of factual items I'd like to bring into discussion. One, Mr. Cicconi said that the average pay-out period might be ten years. I think the average pay-out period would more than likely be one or two years. We looked at our worst case, a relatively notorious fund in Southern California which adopted very high benefits in the early seventies and has recently adopted appropriate contribution rates. In this worst case, the average payment period looks like it will be about seven years. In a more typical case it will be much shorter than that.

I'd like to point out a giant loophole in the law with respect to construction industry employers which hasn't been mentioned. A construction industry employer is viewed to have withdrawn from a plan if he continues to do non-covered work in the same area and of the same type in the jurisdiction of the plan. He can duck this liability by selling his assets and then he's gone. The rules for construction industry don't seem to provide anything that you can do about it.

Another matter, again for construction industry employers, since you don't have any relief from the statutory rule, (The 20-pool method or 40-pool method when you take in roll overs), you can easily have withdrawal liability for an employer in a fund which has no unfunded vested benefits. Because you multiply each pool by a fraction representing the employer's contribution over a different period, depending on how that fraction works out, it's very easy to cook up an example where an employer would have a withdrawal liability in a fund which has no unfunded vested benefits.

There was also a statement that a typical valuation is done every three, four and five years, that certainly isn't my experience in this industry. Of course ERISA requires one every three years. All of our plans except for the very smallest have annual valuations and the rest have semi-annual valuations.

My question is with respect to the actuarial assumption. The portion of the bill on actuarial assumptions describes the best estimate assumptions in essentially the same words that are in ERISA. This seems to imply that you must use the valuation assumptions or use the assumptions consistent with regulations to be prescribed by the PBGC. My specific question is: Section 405 of the Act says that the absence of regulations, you can do anything reasonable; could we use that to cover any other set of assumptions other than the valuation assumptions? If not, it seems to me that, in absence of regulations, you would have to use the valuation assumptions because that seems to be what's described in the collection of words describing your best estimate, which is exactly the same as required by ERISA.

MS. MITCHELL: Vince, do you think we have a safe harbor?

MR. CICCONI: This is just my opinion. My reading and the reading of others at the agency is that if you use the funding standard assumptions, you are okay, but the statute does not prohibit the use of other assumptions as long as it is felt that those assumptions are reasonable. Others I've talked to don't think the statute requires one to use the funding standard assumptions.

With respect to your question on Section 405, it is the preliminary view of the agency that 405 will only free a sponsor where a regulation is required to implement. Since the Act says you have to use assumptions that are reasonable or if PBGC issues regulations you can use those, it seems that this would not be covered by 405. In other words, I think you have leeway within the

these plans are in fact defined contribution plans. I think somebody may be in for a large surprise.

Of course one can get extreme differences in an individual employer's UVB result if he uses alternative methods, especially if the results are compared to those obtained if the actuary uses the direct attribution method. There is sentiment to annually recalculating UVB for purposes of equity among participating employers because liabilities change and because asset values fluctuate fairly materially. The biggest question in the calculation seems to be the interest assumption and the second biggest question seems to be the valuation of assets, should they be valued at market values or at the actuarial value utilized in the valuation report.

The law's impact on business in general: as I mentioned earlier, an impact is thought to be possible for construction contractors and an impact has already been reported on the salability of small enterprises, particularly restaurants.

Regarding actuarial assumptions being utilized for the calculation of UVB I've had described a comfort range for the actuary selecting his interest assumption. That comfort range would extend from the current valuation assumption, typically a conservative interest assumption, up to the PBGC assumption for single employer plans, at least until they're replaced by what may be PBGC assumptions for multiemployer plans. Your answers to this assumption question depend on which side you are on. But I think that the trustees have the ultimate responsibility to select actuaries and therefore to select assumptions.

Two main areas of argument are interest rates and asset valuation. From my conversations with actuaries it appears that most actuaries favor valuation interest rate assumptions on the theory that withdrawing employers are not entitled to a windfall from using market value interest rates and that withdrawing employers should pay for their UVB's on the same basis as the contributing employers. Secondly, I think most actuaries favor market valuation for assets. Third, I think most actuaries foresee generally increasing interest assumptions in subsequent valuations.

Finally, a helpful interim rule of thumb I found the other day that may be of interest. That is to have the actuary estimate a plan's UVB, also estimate the total employer contributions to the fund in the five previous years and then divide. In other words, the estimated UVB divided by the estimated total contribution in the five years before MEPPA is a ratio. For example, if the UVB were $30,000,000 and the estimated total contribution were also $30,000,000, the ratio would be 1. And this could be utilized to tell the participating employers that in effect each dollar of contribution that they made in the five years before the law results in a current UVB of $1 or whatever the ratio is.

MR. MAREL BATES: I'd like to emphasize that my remarks are my own, not necessarily shared by my company.

I think that this bill and its antecedents in Title IV of ERISA are a solution to a nonexistent problem. They have imposed a great expense and have harmed the current pensioners because there are not going to be many pension increases to current pensioners until the vested liabilities are reduced to zero.

withdrawal assumption without looking to 405.

This whole area of the assumptions for withdrawal liability will be open to a great deal of dispute. I don't think there are any clear answers. Our view and the view of many is that actuaries should use reasonable assumptions. Ray discussed having the withdrawing employer be put on the same footing as the current employers. I think the Act seems to reflect the thesis that you must continue to pay what you would have paid if you stayed in. But that is implicit and I don't think that actuaries necessarily have to go that way.

I think the concern on the assumptions is to avoid results that would throw out a plan's withdrawal liability claim. For example, suppose the plan is fairly close to being funded for vested benefits. If you use some slightly higher rate it would turn out that the employer would have zero liability. There is a great deal of concern that that might be inequitable on the part of that employer, or that it may result in the plan's claim being denied in arbitration.

MR. ERIC C. RULIFFSON: I have a question for any one of the panel members who might like to answer it. There has been some discussion since FASB 35 came out about the appropriateness of a different interest rate for determining the liabilities for disclosure. My question is: what impact do you think that has on this whole question of assumptions for purposes of withdrawal liability? I see it as a separate issue from the funding assumption.

MR. PINCZKOWSKI: I think the impact has yet to be seen. Discussions I have heard are all over the lot as to what different actuaries and different accountants think that interest rate ought to be. I agree it is a separate question.

MR. JOHN H. BARATKA: I have a question on pending regulations. I realize you can't tell me what the regulations might say, but there are two specific items I'd like to know if you feel will be covered by regulations. The first one deals with plans which already have provisions for cancellation of past service. As I look at the law, there is no relief for an employer who has withdrawn and is being asked to continue to pay for past service but it could be cancelled. Second, if you have a transfer of assets and liabilities, is it possible that you might be able to use assets to reduce the withdrawal liability rather than have them transferred?

MR. CICCONI: With respect to your first question, I don't see us getting involved in a regulation that would say that any past service cancelled must be applied to an employer's withdrawal liability. The problem under the statute is that the withdrawal liability is based on the unfunded vested liability as of the year prior to withdrawal, so any cancellation would not be reflected. That can be done now by using an alternate withdrawal liability method if a plan were to willing elect. I don't see a need for the agency to be involved at this point.

I'm not sure that I understand the second question. The Act provides for reducing the withdrawal liability by an unfunded transfer. Are you talking about assets left behind in the plan?

MR. BARATKA: All I'm saying is that if you have an acceptance of liability on the part of an individual plan, that the unfunded withdrawal liability would be reduced by the unfunded amount that the plan assumes.

MR. CICCONI: I said that.

MR. BARATKA: Right, rather than do that, could you accept a lower amount of assets in exchange for a lower withdrawal liability.

MR. CICCONI: Yes.