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SHOULD THE PENSION BENEFIT GUARANTY CORPORATION (PBGC) BE ABOLISHED?

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Panelists: PHYLLIS C. BORZI*
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Recorder: JENNIFER MARY MEBES

- The existence of the PBGC may encourage plan terminations.
- The cost of the program is now several times that of initial expectations.
- Why should the PBGC continue to operate?

MR. VINCENT AMOROSO: We are fortunate to have two panelists who have been influential in shaping the statutory framework for the termination insurance program administered by the Pension Benefit Guaranty Corporation. I assume John Erlenborn needs no introduction but for those of you who have been out of the country for the last dozen years or so let me just summarize the experience of the man that *Pension World* cited recently as man of the year. As a Congressman from Illinois and a member of the House Labor and Education Committee, Representative Erlenborn was in the thick of the ERISA debates from the beginning. With respect to the termination insurance program, he was against it. He chose not to run for re-election in 1984 and now practices law in Washington D.C. In his remarks, John is going to review the costs of the termination insurance program.

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PANEL DISCUSSION

Phyllis Borzi is our other distinguished panelist. Phyllis is the pension counsel for the Subcommittee on Labor-Management Relations which is part of the House Labor and Education Committee. She has been on the House staff for eight years and has been actively involved in virtually all pension legislation considered by Congress during that time. The chairman of Phyllis' subcommittee has been a strong advocate of the termination insurance program. Phyllis is going to talk about the benefits of the termination insurance program.

What we hope to do here is to provoke a discussion about the insurance program covering the plight of the PBGC today and what, if anything, might be done to help resolve some of the Agency's current problems.

Although my views of the insurance program are known to some of you, my role is going to be that of neutral observer. I'm going to start by reviewing some of PBGC's pertinent experience.

At September 30, 1984, PBGC's fiscal year-end, the Corporation's deficit stood at just over $450 million. The deficit is the excess of liabilities over assets. Assets are measured at fair market value and the reserve for future benefits is valued using PBGC rates in effect at fiscal year-end. The fiscal year 1985 deficit stood at $1.3 billion. The agency's most recent estimate puts the figure at $1.7 billion, with assets of approximately $1.3 billion and liabilities of about $3 billion. If LTV Corporation terminates their various underfunded plans the deficit will double.

Including just the two plans that PBGC is currently in court over will increase PBGC's deficit on the order of $500 - $600 million.

The deficit exists because, strangely enough, premium revenues have been inadequate to pay for the underfunding in plan terminations. Since the program began, premiums have been levied on a flat, per-participant basis. At program inception, the premium rate was one dollar per participant per year. It increased to $2.60 in 1978 and increased earlier this year to $8.50. PBGC has said that $8.50 is inadequate to amortize the current existing deficit and pay for new claims as they emerge. Assuming no catastrophic losses, the agency estimates that the premium should be increased immediately to between $14 and $15 per participant per year in order to amortize the deficit of $1.7 billion. If LTV terminates their plans, the required premium would be over $20.

The claim side tells two different stories. There's a handful of big claims that dominate the liabilities and many more predictable smaller claims. From 1974-1985, 90% of all underfunded terminations were for net claims of less than $1 million. This 90% represents 6% of the total of the PBGC net claim experience through fiscal year-end 1985. In contrast, the current estimates for Wheeling-Pittsburgh, that single event, would account for approximately 31% of PBGC's accumulated results to date.

In addition, the eighteen largest claims -- these include Wheeling-Pittsburgh -- are the claims that were for $10 million or more per event. These eighteen claims, which are approximately 2% of the total number of claims, represent 80% of the total volume. The big claims comprise PBGC's growing catalogue of recognizable corporate names. Besides Wheeling-Pittsburgh this group includes White Farm-White Motors, Mesta Machines, Rath Packing, Allis-Chalmers, Braniff Airlines, McLouth Steel and others. LTV would be bigger than all of these claims put together.

The flip side of claims, of course, is beneficiaries. Absent the termination insurance program, approximately 200,000 participants in 1,200 separate plans would have lost more than 60% of their accrued benefits. As with the distribution of claims, the beneficiaries of the termination insurance program also come from the big companies: 19,000 participants from Wheeling-Pittsburgh, 10,000 from White Farm-White Motors, 8,000 from Allis-Chalmers and so on. In their various plans, LTV has approximately 100,000 participants.

I would like to touch on one last point before we get on with John's remarks and that is the number of participants in covered ongoing plans. This comprises the revenue base for PBGC income since premiums are levied on a per-participant basis. The number of participants in covered ongoing plans is an important variable to look at in projecting PBGC's financial health. The total number of participants has been relatively flat since 1983. This could signify a reversal of the trend that existed through 1983 of steady annual growth of approximately 3% per year in the number of covered participants. At the risk of belaboring the obvious, I want to point out that the consequence of a stagnant or declining premium base would put more upward pressure on already inadequate premiums.

That should give you a thumbnail sketch of PBGC's numbers. John Erlenborn will now tell us about the cost of the program. He will be followed by Phyllis.

MR. JOHN N. ERLENBORN: I appreciate the opportunity of participating in this panel discussion today. It gave me an excuse to come back to my home state because I spend most of my time in Washington nowadays.

What is it we're talking about today? It's the Pension Benefit Guaranty Corporation, sometimes known as pension insurance. Let's understand it is not insurance. We're not talking about insurance. It isn't priced like insurance and the premiums aren't set like insurance. The name "insurance" and the use of the word "premium" are meant to make people believe that this is a system that is producing an insurance benefit based on insurance principles and that's quite far from the truth.

Where are we today and how did we get here? I think just a brief look at the history pre-ERISA and at the time ERISA was enacted would be useful. Pension plans began to be somewhat widespread and became an important part of total employee compensation during and immediately following World War II. The growth of pensions continued apace after that.

By the early 1960s, the spread of pensions and the value of them had proceeded to the point where the concern was no longer principally about incentives to have more pension plans and other employee benefit plans created. Concern turned instead toward the security of the promises that were being made. President Kennedy appointed the President's Committee on Corporate Pension Funds and one of its principle charters was to look at this question. Reportedly during the considerations of that committee, the issue of pension insurance was introduced by Walter Reuther, who was then the President of the United Auto Workers and was a member of the committee. In the years immediately preceding that, it was reported in a study that the United Auto Workers had experienced 113 pension terminations, including the well-publicized Studebaker Corporation termination in 1963. The Studebaker Corporation termination got widespread publicity and was used as one of the initial horror stories to warrant doing something about securing the pension promise and was used principally to justify the creation of the PBGC.

It's an interesting case study. I'm no expert in the facts of this but as I understand the facts, the Studebaker Pension Plan was not an old mature plan. It was a plan that had been created, and I presume they gave credit for past service, starting with a large unfunded liability. Before it did mature and before the accruals had been very well funded, additional larger pension benefits were negotiated. Whenever you increase the pension benefits you increase the unfunded past service liabilities. As a result, when Studebaker terminated their plan, they did have large unfunded past service liabilities and nowhere near sufficient funding to meet the level of benefits existing at the time of termination. It's reported that 3,600 participants age 60 and older received their full pension. Four thousand between ages 40 and 59, with 10 years of service or more, received 15 cents on the dollar. The 2,900 remaining received nothing at all. The result was dictated by the asset allocation formula contained in the plan. In those pre-ERISA days, principally the asset allocation was a function of the plan itself specifying that on termination the assets would be used in this particular order.

Another plan that I'm familiar with is a wood pulp mill in the state of Washington. I find the history of this situation, again pre-ERISA and dependent upon the asset allocation formula, to be quite interesting. They had an overfunded pension plan. If they had terminated the plan at that time, everybody would have received every dime that was promised to them and there would have been excess assets which, even under the law in those days, could have reverted to the plan sponsor. There was a strike. Part of the price of settling that strike was a dramatic increase in pension benefits to retirees and to those who were eligible for retirement throughout the entire employee structure. Immediately after the settlement of the strike there was a large unfunded liability in this pension plan and shortly thereafter the company folded.

What happened? The retirees got everything they were entitled to. Those eligible for retirement got everything they were entitled to at the higher benefit level that had just been agreed upon. Those with lesser service got little or nothing at all. This was the kind of example that was used repeatedly to show that the pension promise of the employer was not kept. It was the basis of such things as the NBC white paper, "Pensions, the Broken Promise." Who broke the promise? Was it the employer who failed to fund the promise that he made? Was it the older and wiser heads among the employees who, immediately before the company folded, saw that they had an increased pension that was, under the asset allocation formula, fully funded and it was the poor short termers who, not quite so street-wise, wound up with little or nothing? Whatever the cause, these cases were used as examples, horror stories, the sorts of things that had to be stopped so that people would get what they had been promised.

It's interesting to note that in those days the union plans were the poorly funded plans, although there was an incentive for unions to negotiate for better funding that did give more security. If you look at the low-wage industries, I think you get a pretty good picture. The garment workers wanted no funding at all pre-ERISA. They didn't want ERISA. They didn't want any minimum funding rules beause they had enough difficulty getting a minimum wage for their employees. A pay-as-you-go plan fit their circumstances perfectly.

During the consideration of ERISA, I talked with representatives of the garment workers who were upset about ERISA minimum funding rules and about PBGC and multi-employer insurance. They were not the only ones. Other multi-employer plans had, maybe not as dramatic a reaction or as good a reason to resist ERISA, but they did resist it. Let us understand that during those pre-ERISA days the lobbying for ERISA and the creation of Title IV PBGC came from the AFL-CIO but not from the broad range of all unions. Dissidents were suppressed within the union movement and the AFL-CIO spoke with one voice as they usually do. It was not a voice that represented a total consensus of the constituent unions in the AFL-CIO. I've mentioned horror stories and I'll tell you a fact which I heard over and over again -- although it was never proven because the proof wasn't there -- that Senator Javits, Senator Williams and others would use constantly. They said of those who were participating in pension plans (in the early 1970s) less than 10% would ever get benefits. It wasn't true then and I don't think that the ERISA vesting rules changed it all that much. Today it certainly isn't true, with a very high percentage of those who are participants in pension plans getting benefits. There were some abuses. I'm not saying the situation was totally without abuse. The studies show that there was not a widespread practice of firing people immediately before they became vested or terminating plans to avoid the payment of pensions.

Whatever the factual background when we were considering the abuses that did exist or those that were talked about with or without proof, we had a couple of different ways to see that the pension promise was fulfilled. One would be to see that when the promise was made, the funds were put in the pension fund using tough funding standards and minimum funding standards. The other would be to have minimum funding standards that didn't provide that degree of security, but back that up with the scheme that was represented by Title IV for the creation of PBGC.

In looking at so-called insurance as a model for giving that security, PBGC was not the only model that could have been utilized. You could look at the private insurance sector. In the past, where there were things that we wanted to accomplish, we would require insurance but we would allow the employer either to be self-insured if he was sufficiently well-funded or to seek insurance in the private sector. Workers' compensation is a good example of that. That was something we could have done but we did not. Instead we created PBGC.

If we had gone the private insurance route I think we all know some of the features that would be absolutely necessary to have in that sort of insurance scheme. Private insurance would be risk related. You'd have some underwriting principles utilized deciding who was a good risk and who was not and relating the premium to the amount of exposure that the company writing the policy would have. You could have assigned risk pools for those that were poor risks. We do that with auto insurance. In many states you can't drive unless you have auto insurance. You may not be a good risk and you may not be able to go out in the marketplace to buy it, so legislatures created the assigned risk pool where all of the insurance companies writing insurance in the state underwrite the assigned risk pool so that they share in these exceedingly poor risks.

PBGC by contrast does not have a plan or a company going to seek insurance. It's mandatory. Everyone who has a defined benefit pension plan except some of the very small plans is required to participate in this so-called insurance scheme. "Premium" is a misused word. There are no premiums for PBGC. There's a tax, a per capita, a head tax. A head tax is assessed on an equal basis regardless of risk. Probably the most striking difference between normal insurance and this so-called insurance is that the insurable event was within the control of the insured. The plan sponsor was the one who could determine at what point the insurable event would take place and therefore that the so-called insurance or the underwriting guarantee would be called into play.

Lastly, we'll discuss funding waivers. I talked about having good strong minimum funding rules. Not only did we fail to have those but then a procedure was established for obtaining funding waivers. The least we should have done if we were going to allow funding waivers was to say that if the plan sponsor is unable to pay for the benefits that are accruing at this period of time, there ought not be any accrual of benefits. That would have made it a matter of interest in the union situation as to whether the employer was seeking a funding waiver or not because it would result in adverse consequences to the employees. Instead, what happens in practice is that there is pressure from the union for the company to seek a funding waiver.

I talked to some of the officers at Wheeling-Pittsburgh. The observation was made by one of those officers that they would have been much better off seeking Chapter 11 protection and reorganizing a year or two before they did, but this was stretched out by going and seeking funding waivers. Then they were in worse shape when they went into Chapter 11.

Why would the union be pressuring the company to seek a funding waiver? Because there are no adverse consequences to the members. They are at the guaranteed level. There are insufficient funds to pay at the guaranteed level so they are relying on PBGC, not the funds in the company pension plan. If, through this funding waiver, the company can be kept in business and the plan in operation for a year or two or more, additional guaranteed accrued benefits will inure to the benefit of the employees. You have a combination of the employer desperately seeking to stay in business and pressure from the union to stretch this out and increasing the risk to PBGC. Kathy Utgoff has said that about 60% of the losses of PBGC are associated with funding waivers. Those plans that ultimately do seek the protection of the PBGC have sought and received funding waivers, because they're very easy to get, and have increased the exposure of PBGC.

I had the support of the business community at that time. The predecessor to ERIC, the ERISA Industry Committee, was the Washington Pension Report Group representing some of the very largest of employers: Proctor & Gamble, Ford Motor Company, General Motors -- that level of unionized large companies that had pension plans. They supported the position that Title IV should not be included and that we ought not to have insurance. They felt that meaningful funding standards, vesting and fiduciary standards, and reporting and disclosure all would tend to give more security to the pension promise, and that we ought to try that first before going to this unproven scheme of Title IV, the PBGC.

Shortly before the ERISA bill came out on the floor of the House, I was advised by the Washington Pension Report Group that they would not support my motion to strike Title IV. They cut a deal behind my back. They were ready to support the creation of PBGC. What they got for it in return I can't tell you. Let me say that I will never forgive them because it did lead then to the creation of PBGC.

I offered the amendment anyhow just to make the point. To prove my consistency and constancy in 1980, when we were considering MEPPA on the floor of the House, I offered an amendment to repeal Title IV from the law, with about as good a result as I had back in 1974 trying to keep it from becoming a law. We got it anyhow and we are going to have to live with it.

I mentioned that union-negotiated plans, particularly in the auto and steel industries, are some of the more poorly funded of pension plans. They happen to be in industries that are experiencing adverse business conditions. A combination of poor funding and often the seeking of funding waivers, and being in declining industries has led to a situation where 95% of the payments made by the PBGC since 1975 have gone to union participants. Who's the beneficiary of PBGC? Who's the beneficiary of the guarantee? Ninety-five percent of the participants who got payments were participants in union plans. Sixty-three percent of the participants who got payments were the auto and steel workers, who were the two strongest proponents of the creation of Title IV. I think they understood what they were doing and who would be the beneficiary.

The funding standards that were created in ERISA have not worked very well. Allis-Chalmers is probably an excellent example. When Allis-Chalmers terminated their plan and the PBGC had to take over those obligations, Dave Walker was quoted as saying that, although the plan conformed to the minimum funding standards, funding was sufficient to pay three cents on the dollar when the plan was terminated. They were conforming to the minimum standards of ERISA.

Real funding standards and tougher requirements for funding waivers might help to alleviate the problems that the PBGC faces today. I do know that this year Congress adopted long overdue legislation (and Phyllis knows I supported the same sort of legislation for years before I left the Congress), that changes the insurable event. A distress termination is now required for the triggering of the PBGC guarantee although it's still generally in the control of the plan sponsor. PBGC could go into court to seek to take over the plan, but barring that, the plan sponsor still will determine when the plan will be terminated and the guarantee called upon.

Now funding waivers may result in a lien against the assets of the employer. That still doesn't change the interest of the union participants. It doesn't add or subtract to their interests in obtaining a funding waiver and stretching out the existence of the plan to have the accrual of additional benefits paid for from the PBGC guarantee.

I think we have to look at the recent history of the PBGC immediately prior to these changes and I don't think the changes made earlier this year are going to be anywhere near sufficient to solve the problem. In 1981, PBGC had a deficit of $190 million and they started paying in 1975. In six years they'd climbed to $190 million. At that time they began to seek a higher premium so that they could amortize the unfunded liability that PBGC experienced. By fiscal 1986, the PBGC deficit had gone up to $1.7 billion. The premium that had started at a dollar went to $2.60, and then just recently to $8.50, would have to be more than $10 today to amortize that $1.7 billion. The action of the Congress was so delayed that the final increase in premiums was woefully inadequate. As Vince said, with LTV you could more than double the unfunded liabilities of PBGC. It's estimated to be $2 billion or more in several of their plans as opposed to the $1.7 total unfunded liability created from the passage of ERISA to the present time. If that were to happen and you were to get a premium to amortize those unfunded liabilities it would be well over $20 per person. It won't happen. Let's look at the political realities. It was extremely difficult to go from $2.60 to $8.50. It took years and years to get that done. You just don't have people in the Congress who are willing to go back to the well of public opinion, the employers that they have to deal with, and say thanks for the $8.50, it really was needed; but we think we need $25 a head now. It just isn't going to happen.

What's the alternative? I guess the alternative is to move to pay-as-you-go. We'll look at this as we do Social Security and say, well, they have cash. The nature of the pension is that your unfunded liability is something you have to pay out over a long period of time. You have people that are going to be getting pension benefits for 20 to 30 years. You can take the cash today and invest it and help make those payments in the future or you could you use that cash today and go on a pay-as-you-go basis. That will only last for so long and the pay-as-you-go will get to be more and more expensive.

What's the other alternative? This is something I predicted back in 1972 and 1973 before ERISA was passed and we were talking about Title IV. I said that ultimately what would happen is that they would look to the Treasury to underwrite that promise. We are doing a very unusual thing. We're allowing a private person or company to make a promise and we're giving a government guarantee of that promise and we're not even making them pay the cost of that guarantee. We're assessing all of those companies that do fund well, who will make their pension payments as promised. We're in effect taxing the participants in those programs because, let's understand it, if it wasn't used for a premium it could be used to enhance pension benefits. It's all a part of the cost of labor, part of that wage package. We're assessing all of those people so that a relatively small number of companies and a relatively small number of employees will get the benefit of this and it's pretty obvious who they are, principally the steelworkers and the United Auto Workers. It appears to me you are also facing the possibility of the kind of syndrome we saw in the multi-employer insurance scheme.

In 1974 when we created ERISA, we created the multi-employer insurance. I find that there are very few employers who are now subject to contingent withdrawal liability, a real withdrawal liability, who even realized that we'd created it in 1974. That's because we understood in 1974 that we didn't know what we were doing. We didn't know that the scheme would work. As a matter of fact, it was rather patent the scheme would not work. We created the insurance and said that it would not be applicable on a mandatory basis for a few years. Then we extended that period of time that it would not be mandatory. We extended it because every time the period was about to expire we'd look at it and say we don't know any better today than we did in 1974 how to create meaningful, workable multi-employer insurance. I guess the extensions must have been for a couple of years at a time because it was just six years after we passed ERISA, in 1980 when we passed MEPPA, the Multi-Employer Pension Plan Act. MEPPA created the withdrawal liability so that if someone ceased participating in a fund it was either a full withdrawal or a partial withdrawal. If they substantially ceased making contributions they would be subject to withdrawal liability depending upon the funding status of the plan. That was due to the fear of the "last man out" syndrome. If we had put Title IV multi-employer insurance into effect without withdrawal liability, it's obvious what would happen. The employers in underfunded plans would look at it and one by one they'd say: I don't want to get left holding the bag, I'm going to get out of the plan. If it was subject to their ability to do so, and most of that would be a matter of collective bargaining, they'd get out of the plan. One after another they'd get out of the plan and the unfunded liability would stay there until the last participant had all the unfunded liability left. It was that fear of the "last man out" that forced us to create the withdrawal liability. I could see the same thing happening in the single employer insurance scheme.

Looking at the single employer insurance as you would a multi-employer plan, you have a large unfunded liability. You have the capability on the part of employers to terminate their pension plans. Let's say they're overfunded. They can terminate, they can recapture the excess, they can create a defined contribution plan, be free of the premium, and be free of the adverse consequences of that unfunded liability in Title IV single employer insurance. I see the same fear of the "last man out" syndrome working on single employer insurance with PBGC.

What's an alternative? One alternative now being explored by the Pension Benefit Guarantee Corporation Advisory Committee under the auspices of a special task force created by the committee (and I serve as counsel to that task force), is to look at the alternative of private insurance to allow, through the purchase of private insurance, real insurance principles to take effect: underwriting principles, and risk-related premiums. It is an alternative that ought to be explored.

To make that workable you still would have to do something with the unfunded liability of today. Maybe a one-time, before-everybody-gets-out, per capita assessment to wipe out the $1.7 billion dollar unfunded liability, terminate the growth of that liability and turn it over to private industry could be an answer. Certainly I wouldn't say that it is definitely an answer. You still would have the problem of those who would be unable to get insurance. Maybe those who are unable to or unwilling to fund their promise ought not to be maintaining the pension plan. Maybe that's the answer. As a matter of fact, when ERISA was passed there was a spate of terminations of single employer pension plans and I think many of those were companies that were unable or unwilling to pay the cost of funding their promise and thought that some other alternative would be better for them. Maybe in some instances that would be better today than continuing with this Title IV PBGC insurance.

Then, as some have suggested, there's another alternative. You don't want to see everybody pulling out and you want to protect the workers. It's been suggested more than once and over a long period of time that if you have mandatory universal pensions you don't have to worry about employers deciding to terminate their plans. You can just have the Congress pass a law that says:

All employers, as a condition of doing business, must furnish pension benefits to their employees. They could do that in a defined benefit or a defined contribution context. Let me also say that once you get the Treasury underwriting the PBGC insurance and all of the additional regulation that would necessarily flow from that, or once you get a mandatory universal pension system, attaching the word private to pension will be a terrible misnomer.

MS. PHYLLIS C. BORZI: One of the reasons that I was so excited about coming here and talking with you about this issue is because I have known former Congressman Erlenborn for a long time and I have a great deal of respect for him. Unlike the cliche that consistency is the hobgoblins of small minds, former Congressman Erlenborn has been exceptionally stalwart and exceptionally consistent.

You won't be surprised that, notwithstanding the tremendous amount of respect I have for him, we obviously differ on more than a few issues and this is certainly one of the issues that we differ about. I'm going to try and run over some of the same issues and I think you'll see a little different perspective. In some areas, you're going to see a very similar perspective because one of the reasons that this area of law, the employee benefits area and the PBGC issues in particular is so interesting is that there isn't a simple solution. If there was we wouldn't be twelve plus years after the enactment of ERISA still trying to decide 12 years after ERISA's enactment why we did what we did and how we can remedy the problems that are there. There are no perfect solutions to anything and people who think that there are are either hopelessly naive or seriously misinformed.

I think that you got a flavor of why Congress enacted the Pension Benefit Guarantee Corporation, the Title IV provisions of ERISA. There clearly were people who lost benefits and there clearly were some abuses. Whether the magnitude of the people who lost benefits or the abuses that had occurred justified the establishment of a program for termination insurance is obviously an area in which reasonable people can differ.

I consider the establishment of the Pension Benefit Guarantee Corporation one of the main cornerstones of the Pension Reform Act that we know as ERISA.

The real or hypothetical loss of benefits is an issue that politicians of every political stripe can identify with.

A few years ago I was asked to give a speech. It wasn't the usual technical speech where I got to plod through the 27 different things that we did in TEFRA and DEFRA and all the new requirements of REA. The issue that I was asked to discuss was "employee benefits laws, a vehicle for social change." It was a wonderful topic because it allowed me to say something that many people think, and if you think about it, it's true. It's that no matter what your political persuasion is, you view the law as a vehicle of social change. Whether you're a conservative or a liberal is irrelevant. The law is a way that you can shape behavior and the debate that we've had on the tax reform legislation certainly illustrates that wherever you fall in the political spectrum, the law is a vehicle for social change. So too was ERISA.

There are potentially 535 politicians meeting in Congress today and every single one of them has constituents, every single one of them has companies in their district, companies that were in trouble, companies that had pension plans, some that had overfunded plans, and some that had underfunded plans. The loss of retirement benefits, whether real or a hypothetical possibility is something that every single member of Congress can identify with. When you think about why the PBGC looks like it does, where it is now and where it's going in the future, remember that the future of the PBGC is not going to be shaped by you or I, it's going to be shaped by those 535 people that will have to cast votes as to whether the program will exist and what it will look like. That's a very important context. We couldn't debate this issue in the abstract but it comes right down to the politics of it.

The PBGC was created in 1974 because stories were told about people losing benefits. Those stories were real. People did lose benefits and Congress reacts worst to a crisis. Congress usually acts most precipitously in a crisis. But Congress reacts to crises. That is what those of us who work in Washington know our life is all about, working on Capitol Hill. People were losing benefits and something had to be done. Politicians are problem solvers. When there is a problem they want to solve the problem. Everybody may not agree as to how you solve the problem and everyone might not even agree that there is a problem, but the whole purpose of electing people to Congress is to deal with problems and that's what they did in 1974.

John Erlenborn laid out for you some of the issues that were before the Congress in designing a program of termination insurance and he said something that I absolutely agree with. Congress made lots of mistakes in ERISA and probably the biggest one was calling this thing insurance. It never was insurance, it never will be, and the people who run around the country giving speeches saying that we ought to make the PBGC like real insurance have been drinking or smoking illegal substances because the Pension Benefit Guaranty program was never designed to be insurance. It is insurance to the extent that it is a type of social program (and I hate to use this phrase because it really does offend my sensibilities), a safety-net kind of program. It was designed to be there and no one ever anticipated the extent to which people might in subsequent years treat it with such grave seriousness as if it was real insurance. One of the big mistakes they made in ERISA was calling it insurance and calling the money paid to finance it "premiums." All of that reinforced the erroneous notion that this was really insurance.

Once the decision was made to set up the program, the first question asked was "Who is going to pay for this program?" There were only a finite number of characters to pay. The first was the ever popular Federal Government. Back in the glory days of 1974 the Federal Government was actually paying for new programs. Interestingly enough, the notion of general revenue financing for this program was not taken as seriously as general revenue financing for other kinds of programs. They made a conscious decision in 1974 that this would not be subsidized by the taxpayers directly. You heard John talk about general revenue financing as one of the possible ways to deal with the program. I'm going to come back to it in a couple of minutes because I think that's an interesting concept that I don't personally support. I know that this is going to be shocking my image that I don't support general revenue financing.

With the old "who will pay" question, the first answer on everybody's lips is the Feds. That wasn't an option so the Feds were ruled out. The next question is, as between the employees and the employer, who should pay? Jeanne Dixon didn't have to predict what the answer was here. We had the private sector paying for the insurance program. You'll have to excuse me, I keep calling it insurance. I'm just perpetuating this myth that it's insurance. So the private sector was going to pay.

John also told you there were a number of models that can be used. There was the private insurance kind of model. That was specifically rejected and this government corporation was set up. It was somewhat loosely analogous to what we now know as the FDIC. You have to remember that one of the things you heard a moment ago is also absolutely true, and this of course goes to show you that Congress was never thinking that this was real insurance, because the insurable event was an uninsurable. I disagree somewhat that the insurable event was totally in the control of the insured. The insurable event really was our economy. It was the relative success or lack thereof of American business, because the way the program was structured, employers controlled the timing of the plan termination until the recent amendments in the single employer area. I'm going to focus on the single employer area for most of my remarks.

We had employers who were perfectly solvent, not one wit engaged in financial hardship who could voluntarily terminate their plans in an underfunded state and shift the costs onto the rest of the -- again, pardon my terminology -- premium payers. When Congress was thinking about the way this program should be structured, they were always thinking in terms of bailing out companies that were in financial difficulty. Yet that wasn't the way the program was drafted. I don't know whether it was sloppiness or naivete, thinking that companies who were perfectly profitable wouldn't think about shifting their liabilities.

When you look at the way the provisions were drafted in 1974, what you saw was a program designed to underwrite the American economy. That would have been fine if we had had boom times from 1974 to today, but that didn't happen. When the economy began its downturn plummet, you will not be surprised to know that there was quite a curious relationship between the fortunes of the PBGC and the fortunes of the American economy. What we saw was a program that never was designed to be true insurance because the insurable event was the economy. Lloyds of London wouldn't even insure a program like that. What we saw, if you follow the line of PBGC experience, was that problems occurred because industries were in decline.

Unfortunately, we do not appear to have any other national program that's now being required because there is no other set of federal programs to deal with worker dislocation, to deal with the issue of industries in decline, or to pick up the slack. No one could do something like that. What you saw was a distortion of the original premise of the PBGC, but it was not a distortion that any student of history would not have been able to anticipate. We know that businesses run in cycles and that our economy runs in cycles. Just like every other program, whether it's instituted on the federal level, on the state level, on the local level or, in corporate boardrooms, we often see that programs that are designed to be narrow in scope wind up having to deal with a whole host of other issues. This happened to the PBGC. There were a lot of mistakes.

The first mistake was we called it insurance, the second was we charged a premium, and the third was that we had our economy as an insurable event. Have there been any benefits from the PBGC? Of course there have. Those 200,000 participants who today get benefits and wouldn't have received them without the existence of the PBGC are the most demonstrable benefit of the PBGC program. Beyond that there is, and I hate to use this term, the symbolic benefit security, the existence of the PBGC which you heard John describe as the incentive that people have to underfund their plans. The mere existence of the PBGC means you don't have to worry about funding your plans.

The other side of that coin is that the existence of the PBGC permits participants and beneficiaries to understand that if their company does get into financial difficulty due to circumstances beyond the company's control that they will not lose their pension benefits. There's a value to that. It's very hard to value that but there's an economic value, a value from society's point of view to having that guarantee there.

This was the first time I had heard the statistics about the relationship between members of unions and the beneficiaries of the PBGC. It's not a surprising statistic, because remember where pension plans started. They started as outgrowths of the collective bargaining relationship and so even though current union membership is somewhere in the neighborhood of 20%, not greater than 20%, when you look at the time that many of these pension plans were formed, the numbers of collectively-bargained workers were much higher and most of the pension benefits in this country, if you trace back historically, came out of the collective bargaining relationship.

Where are these companies whose plans have terminated? They're in the heavy industry areas and those, if you look at our American economy, are the areas in which there's been the greatest decline overall in terms of the problems with foreign trade, in terms of making a go as a business. It isn't surprising to me and certainly I don't consider it to be damning evidence that the only people who benefit from the PBGC are the unions. I think it's important to know that people do benefit and in the future we may not have that percentage of union members that benefit, but if we do, one of the things you ought to think about is why some of these so-called union plans, the collectively bargained plans, are underfunded.

John talked a little bit about one of the reasons, which is they promise flat dollar benefits, so every time when a collective bargaining agreement comes up, the benefits are improved and that results, whether or not you give past service credit, in a big jump of the unfunded liability. Can we today under the minimum funding rules advance fund for that even though we have an unbroken stream of fifty years of benefit improvements? No, we can't. So that's not a flaw in the collective bargaining system, it's a flaw in the minimum funding rules. It's a flaw we ought to pay attention to because to the extent that the PBGC's experience has been based on plans that can advance fund, I don't think we should automatically assume that the failure to permit people to advance fund is that they don't have a willingness to advance fund. I think that the issue is that they ought to be able to advance fund and thus relieve some of the pressure from the PBGC.

I want to talk a little bit about this whole concept of one voice. One of the ideas I had when I was young and foolish, before I came to Capitol Hill where I became old and foolish, was that there was this homogenous unit. It was like here are employers, here is organized labor, and one of the great revelations to me was that people don't think alike and there are varying and competing interests. I used to think that the only distinction in the business community was "big" versus "small" business but that's not true. What really opened my eyes was the five years of experience we had with the single employer legislation.

We started with some unanimity: organized labor, the business community -- particularly big business -- said, "There are problems in this PBGC area, we need to work together." I thought that was wonderful. We need to work together and here came the rhetoric. The rhetoric was, "There are loopholes in the current law and we need to close those loopholes and strengthen the system." Sounds great, right? O.K., here's the trick. What are the loopholes? For everybody you talked to you got a different definition of what the loopholes were. Six different companies had six different versions of loopholes. It was really peculiar. The things that they felt would help them in the system were not loopholes. We couldn't have complicated transfer rules, we might have to buy and sell companies. Even though most of PBGC's liabilities could be attributable to either transfers or things related to transfers, we can't possibly have complicated transfer rules. We can't possibly inhibit normal business transactions. What we saw was very curious. This was an area in which the unions were incredibly consistent and the employers were all over the mat. What was one person's loophole was the other person's almost constitutional right to keep normal business practices. It's not surprising that for five years people squabbled and fought and changed positions and changed hats. It got to be so confusing that after a while you couldn't tell the players without a score card.

Ultimately we got a piece of legislation and we think it will help the PBGC program somewhat. It's very unlikely that any group of people can ever speak with one voice, not on the union side and not on the employer side because your interests are so different. When we get into some of the ways of changing the program, you're going to see how dramatically clear it becomes that there is no uniformity or consistency or unanimity of interests. Like there will always be an England, there will always be a PBGC. Like I think there will always be a Social Security system, I think there will always be a PBGC. The question is not, "Should the PBGC be abolished?" The question is, "What should the PBGC look like?" No responsible person, and I'm certainly not going to do it, can stand here and defend every aspect of the current law affecting the PBGC program. There are clearly problems. There are clearly areas in which we need to make some changes and the question is twofold. What are the changes that need to be made to make the system stronger and do we have the political will to make the changes? I think those are two very different questions and I think we ought to look at them separately.

The first question is, "What are the problems and what are some things that need to be done?" John pointed out some of the areas and I agree with him in some of the areas in terms of the broad areas.

We do know that the same minimum funding standards that brought you Allis-Chalmers brought you Phillips Petroleum, and Exxon . . . overfunded plans. We know that the same minimum funding standards yield both underfunded and overfunded plans and the question is, "Why?" What do we need to do to the funding standards to make them more likely to provide an acceptable level of funding and not yield underfunding? I want to just do a diversion here on the Allis-Chalmers question. John is right. Dave Walker and everybody else at the PBGC has pointed to Allis-Chalmers as an example of the minimum funding standards not working but, and I think it's particularly appropriate in this group to point out that the reason that Allis-Chalmers went from meeting the minimum funding standards on an ongoing basis to hopelessly underfunding on a termination basis had to do, at least in part, with changes in actuarial assumptions. I'm not going to say anything more.

I think Congress does need to re-examine the minimum funding standards but you have to understand there's a lot of tension there. You heard about the way the issue developed when ERISA was enacted and we have the same issues come up thanks to former Congressman Erlenborn's amendments at the subcommittee and full committee level on the multi-employer act. The question was whether or not the minimum funding standards ought to be strengthened, toughened. How you come down on the question depends on, as a business matter, where your company stands. If you're a strong company then you can afford to make larger contributions on an ongoing basis. If you're a marginal company, you're looking to cut costs everywhere and so you are not going to willingly embrace an acceleration of your funding obligations under your pension plan if you don't need to. The question about tightening the minimum funding standards is going to fall into that second category about whether or not we have the political will to do it. I also have to tell you that on the question of whether to tighten minimum funding standards, you've got unions all over the place and you've got employers all over the place and it's absolutely a function of what their financial status is at the time you make the change and what they think their financial status is going to be over the long run. There are questions about underfunding. As I said before, one of the issues we ought to address is the ability of companies to advance fund flat dollar plans because we do know that PBGC has taken some hits in that area with plans with that type of a benefit formula. I don't think we should assume that it's a lack of will to advance fund. I think we should assume that if the law were changed to require or permit advanced funding, we'd probably see improvement in the funding status of those plans and less jeopardy for the PBGC.

What's another problem? All too often the pension plan is looked to as the lender of first resort when the company gets in trouble. It's an easy source of cheap credit and the changes that were made in the single employer bill will help minimize that somewhat. We'll have to wait until the movie comes out in a couple of years to figure out whether the changes that were made in the single employer bill will really help.

A couple of changes that were made are, specifying the interest rate that you have to use when you repay the amortization, and the whole idea that the Secretary of the Treasury was given the authority to require security. Whether that happens and the extent to which that helps to stem some of the losses that PBGC has experienced because of funding waivers, we'll have to see. The funding waiver issue was a very difficult issue to deal with. I haven't heard numbers as high as John quoted as far as the PBGC's experience in the funding waiver area and their losses. It's very easy to look at the plans that terminated and say, of these plans that terminated X amount of dollars of PBGC loss came because of funding waivers. It is not so easy to say, of X number of plans requesting funding waivers, how many actually terminated. Those numbers were not available and so people who lobbied and agitated for tighter controls on the funding waivers were faced with not having the data. It may be the funding waivers were used as a transition method to deal with a temporary cash flow problem and maybe the plans, after they got one funding waiver or two funding waivers or whatever, maybe really did wind up being fully funded. We don't know because those numbers weren't kept. I would hope that from this year forward they would keep those kinds of numbers so the policy makers could make intelligent decisions in those areas. It's clear that the funding waiver area has been a problem. We need to look at the funding waiver area again. We need to revisit it, if need be, in a couple of years when we see what the experience has been.

The third problem is a problem that transcends the PBGC. There are industries in this country that are in trouble. Industries in trouble need to cut the cost across the board and pension costs are part of it. Underfunded pension plans, to the extent that they're part and parcel of an industry that's in trouble, need to be looked at to see how we can deal with those industries. We need to look at these issues on a more global basis and maybe what we need to do is look at issues that transcend the PBGC.

Obviously a vibrant economy with companies that compete in a world market is less likely to yield a pension system with severely underfunded pension plans, all other things being equal, than a country that's on the ropes in many of its major industries because of the problems of foreign competition. There are a whole host and we don't even know what the tax bill is going to do to exacerbate that. There are people who say that it will make it even worse. It's very easy to look at these problems of underfunded pension plans in our very narrow focus but I'm suggesting to you that this is just a tiny little piece in the broad fabric of our American economy that we need to look at. There are problems of industries in trouble and maybe we need some special sets of rules for certain industries. Maybe we need some sort of industry-specific program, a transition program. That certainly is something that Congress can look at.

I guess one other idea that I want to talk about is this general overarching concept that I see running through the theory of people who would like to junk the PBGC or significantly change it. John said that the federal government shouldn't be in the business of insuring private promises, that maybe the answer is that people shouldn't make the promises. If the federal government should not be in the business of subsidizing private promises, then all of you should be absolutely ecstatic if we repealed every tax incentive for employee benefit plans. What we're doing in our tax incentive system, though we're cutting them back thanks to tax reform, is providing broad based subsidies for plans which benefit less than everybody. That is exactly what is happening on the PBGC level in microcosm. To the extent that the federal government encourages employers to make pension promises because they hold out tax incentives for employers who make those promises, I think there is a concomitant responsibility of the federal government to make sure that the promises are kept. Part of the way that you make sure that the promises are kept is the PBGC system which permits the PBGC to go after companies who don't completely fulfill their responsibilities, while not leaving in jeopardy participants in those plans who have no responsibility, in fact, over whether or not the company has adequately funded the benefits.

What is the alternative? We've all heard the Kathy Utgoff speeches. We read all the stuff in the pension press about alternative plans to PBGC. I think they're all kind of crazy myself. Let me start with the top of the list as the craziest and that is privatization of the PBGC. It's really sort of amusing to me that the folks who brought you new federalism, which is the euphemism for cost shifting to the state and local governments, are now talking about privatizing the PBGC as if that were some god at whose altar we must worship.

What we're really talking here is cost shifting, except that the direct beneficiaries of the cost shifting are the insurance companies. For those of you familiar with plan trustees who are finding it very difficult to purchase fiduciary insurance, let me just suggest to you that a scheme of privatization which in effect says, "If you can't buy insurance on the private market you shouldn't have a pension plan," is not necessarily the way I think either we ought to run as a matter of national policy nor a very popular alternative for those 535 men and women who are sitting in Washington grappling with the great issues of our life. It costs a fortune. If you think that privatization will mean lower premiums for anybody, think again. I have done a totally unscientific survey on privatization.

The survey consists of any insurance company lobbyist who wanders into my office to talk about any issue. Before they get to talk about their issue, I get to ask them whether their company would take over the PBGC. After they stop guffawing, they say, "Sure, but we're not charging any $8.50, even for the overfunded plans." They're talking in terms of triple digit, my friends, for the sure things, the absolute sure things. There is no such sure thing in our lives. I think if you asked International Harvester whether they ever thought they would fall on hard times they would say, "What, are you kidding?" I think if you ever asked Johns Manville if they ever were going to have to file bankruptcy they'd say, "What, are you kidding?" I could go on and on. The fact is that there is no sure thing in this life except the fact that you're going to die. In the health insurance area we talk about the problems of uninsurables and how we all need these national problems. We need risk pools. We need to do all this stuff to deal with uninsurables. What we're talking about when we establish a privatization system is corporate uninsurables. First, who's going to decide who are the corporate uninsurables? Second, who's going to pay for corporate uninsurables? There's only one likely payer and that's you and I, ladies and gentlemen, as taxpayers. We're talking general revenue, and we're talking general revenue from the same people who brought you new federalism from the same administration that talked about shrinking the role of the federal government. There is no privatization system. Read carefully what Kathy Utgoff says. Listen carefully to the speeches that she makes. There is no privatization system that will not have a component of general revenue financing. What we have here is a system that may need some fine tuning but which by and large has served us well, which has provided benefits to people who wouldn't otherwise get benefits.

Let's just flip over to the last issue that I mentioned before. Assuming we could figure out what to do to fine tune this program, even assuming we could get consensus as to what the problems are and what the solutions are, the question is, "Who has the political will to do what needs to be done to bring the system into line?" If you think about all the changes that have been suggested, both the ones John suggested, the ones I suggested, the ones you read about in the papers whenever Kathy Utgoff takes to the street, every single one of the changes is designed to make PBGC look like an insurance system and that is not going to work because PBGC is not an insurance system. We can do some of the things and we can talk in great rhetoric about some of the things that need to be done to improve the system but until there is the political will to do them, we're not going to get anywhere. I can tell you that the number one action for which there is no political will to do is privatization. A close second is the whole question of risk-related premiums. It's very good for us to talk in the abstract about how there ought to be a correlation between the unfunded liability or the relative risk to the system of the pension plans covered under the system and the premium you should pay. If we were talking about a premium that was $2,000, it might be worth the candle to devise such a system. I agree that we're not going to get much beyond $8.50. We're never going to get to the $30 or $50 whatever you hear people bandy about. The people who make those claims are people who never spent one second working in the political process.

If we're still talking about a premium that's about the price of a hamburger in this hotel, per participant, I don't think it's worth the candle and it's not worth the political will. I don't think we're going to get members of Congress to vote for risk-related premiums or any of these other things as long as the premium is still within manageable levels. Now if we come to some future time where the premium is $1,000 or $100, then I think people will think about it, but as long as you can still get lunch cheaper than you can get "pension insurance" I don't think we're going to see major changes in the pension insurance program and I sure don't think that we're going to see the PBGC abolished. Does that mean that I think that the program is perfect? Not by any means, but I think it serves the function and I think that there is no credible alternative to providing that function. I don't think Congress is going to repeal it. If we're lucky they won't put welfare benefits under the PBGC. I think the greater danger is that they would expand it. With that I'm going to conclude.

MR. AMOROSO: I would just like to point out that even at a $20 figure -- and the things that I read imply that Congress isn't going to be very interested in revisiting the premium question again so soon -- the PBGC premium would represent something under 2% of the average pension contributions going into a private pension plan.

The one-time charge that John alluded to would amount to about $60 a head. That $60 a head would fully fund the existing deficit and you double it to $120 if LTV comes in. One quibble that I would make with Phyllis' characterization of what PBGC is all about is that the insurable event is the economy. I disagree. The insurable event is a subset of the economy. Penn Central and W. T. Grant were two noticeable companies that went belly up and they didn't have underfunded plans. As Phyllis says, the vast majority of PBGC experience is of companies that fall on hard times. Those companies that give rise to claims are those that haven't funded their plans. The insurable event is companies that have trouble that haven't funded their plans.

One thing to think about is correcting PBGC's plight. I think the mere fact that the program has a substantial deficit that is likely to become even larger is a serious problem. It is endangering the health of the private pension system because I think at some point $8.50 will be palpably small with the result that the agency will run out of money. At that point premiums will have to increase extraordinarily quickly in order to just make current benefits.

The staggering magnitude of the numbers that I reviewed in the beginning of the session suggest an emergency to me. If there's agreement that there is a problem, what if anything might we do to suggest solutions?

MR. ROBERT MURPHY: I will make the estimate but I would like to ask if anybody has a feel for about how much it will cost to administer this plan termination program and process the various forms. Ten years ago, there was a list of thirty questions that used to take me five or six hours just to answer in a relatively straightforward plan. In the last six months or so they went to the enrolled actuaries certification. It seems to me they're saying to enrolled actuaries, we can't do it, you've got to do it, with all kinds of provisos.

MS. BORZI: Actually the single employer legislation put in statutory form the enrolled actuary's program. That was the purpose of it, so that PBGC wouldn't spend scarce administrative resources dealing with 95% of the plans that were actually sufficient and instead relying on the enrolled actuary to make those kinds of judgments.

MR. MURPHY: Again, I did say it was an improvement but this has only been in the last six months where we've been told we have to do it. About a year ago we could do it. About six months ago it came down we had to do it.

About twelve years ago, before the PBGC started, they did go to the private insurance industry and say, "Look, we want to get this guarantee in, can you underwrite it?" I was working at the Metropolitan at the time. We had a task force look into it and the answer was no."

MS. BORZI: Lloyds of London wouldn't even touch it back in 1978 when the Sealy committee was looking at it.

MR. MURPHY: I don't foresee the private industry coming in to save the PBGC from their $2 billion dollar deficit even if they make it clear first and then go out with the same sort of guarantees, because it is a noninsurable event. I usually make two points when I hear these terms. One is an overfunded pension plan. I've been in the business for 20 years. When I first started, a senior actuary told me "Mr. Murphy, there is no such thing as an overfunded pension plan. You just wait six months to a year. They'll do something to take care of the excess by increasing benefits." The second point was we're using taxpayers' dollars to fund these qualified pension plans. In theory every dollar that goes into the pension plan will one day be payable to a retiree or to the spouse of the retiree and it will be taxed within a hundred years, we hope.

MR. HOWARD YOUNG: I'm with the United Auto Workers Union, so nobody will be surprised to find out that I think PBGC is a good idea. I wouldn't bother to say a lot because I think that Phyllis Borzi has done a great job of defending it, but this is taped and on the record and several things have been said about the history of UAW's involvement in the effort to get insurance. I personally was involved as far back as the legislation that Senator Hartgey introduced in the early 1960s. There's a couple of points that ought to be made. Walter Reuther did advocate these kinds of programs and we did end up developing a proposal which in fact involved the premium structure that looked at the unfunded liabilities and looked at the assets because everybody seems to act as if a plan that's funded has no risk but assets can deteriorate. There was a premium structure and it was along those lines.

It was when the legislation was enacted by the Congress that people decided it really would be simpler to just go to some flat amount like a dollar per head. I don't think we'll take any responsibility for how that came out.

MR. AMOROSO: As a matter of fact, in the labor-passed bill in 1973, the premium was assessed as a percentage of the unfunded vested liability and it was the Finance Committee bill that used a flat tax basis.

MR. YOUNG: Just to prove that I don't suffer from the hobgoblin consistency, that's not to say that I would like that result today. In any event we ought to look at it. Phyllis Borzi's comparison of a $20 premium with a hamburger in this hotel is good. I think it's important that Vince Amoroso pointed out that you are talking about a very small percentage of the amount of pension cost, though he ended up saying they're staggering numbers. They're staggering numbers because they're nationwide numbers on a per capita basis.

MR. AMOROSO: That's right.

MR. YOUNG: They're not staggering numbers. I'd like to make a couple of other specific comments. I think the biggest problem not foreseen was that pension plans would terminate as an independent event. I think that the discussion in all the years in the 1960s and the advocacies from the UAW and others was the assumption that the pension plan would terminate because the company went out of bus'ness, because it closed its facility or something of that nature. We never anticipated or intended to deal with the situation where a company, simply to shift liabilities, terminated a pension plan. In fact, when we ran up against the first one of those four or five years ago where a company proposed doing that, we resisted it as a union and ended up having a big fight about it. Finally, on the question of pension waivers, Chrysler had a number of pension waivers that was part of the arrangement under which they got the loan guarantees and it seems to me that it's an open question whether in the absence of those pension waivers we might not have had a termination of the Chrysler pension plan, which would have shifted even more liabilities onto PBGC. While I'm not a major advocate of pension waivers, as Phyllis pointed out, they're not necessarily all a detriment.

MR. ERLENBORN: Howard is right that there are unintended consequences, and you'll find that in many areas of the law people find ways to utilize legislative provisions that were never contemplated. This is so often true of the tax law. I remember in DEFRA the change in the ability to pre-fund for welfare benefits. I think that was clearly the result of an abuse of VEBAs, the creation of ZEBRAs and that sort of thing that were creating a large drain on the Treasury. It was never contemplated when that ability to pre-fund welfare benefits was put in the law. Abuses do creep up. I think what happened in the PBGC was probably an unintended consequence, so we've now turned this into corporate welfare. You have the companies who will go into Chapter 11, who will terminate their pension plan. They will no longer have the necessity of paying for the unfunded liability in their plan or the accrual of current pension benefits. They negotiate, in addition to that, a decrease in the actual wages that the employees are getting. Now they have part of the employee cost represented by the pension gone, they have lower wages and who's paying for it? For Wheeling-Pittsburgh it's USX and the other employers. You have their competitors at a competitive disadvantage paying for the unmet cost of the Wheeling-Pittsburghs of the world and you have corporate welfare. That was certainly never intended. Now that the system has been gamed in that way, I think we ought to put an end to it.

In a defined benefit plan, if the employer is unable to make the contribution it would in effect be made for him through a public scheme. Where in the defined contribution plan if the employer can't pay it, he can't pay it. Nobody ponies up for him. Why is there that difference? I think in the future what's going to happen, you have the "last man out" syndrome, you'll have switching to defined contribution plans and then when an employer is unable financially to meet the obligations to the pension fund there will be immediate losses. Why should you allow an employer to give accrual of benefits when they're unable to pay for the current costs of benefits much less amortize large unfunded costs they already have created?

MR. AMOROSO: While I was at PBGC, we were aware and concerned about the transfer issue that has largely been unresolved by the single employer legislation. Some of us were worried most about companies stripping themselves of unprofitable units and spinning off those units to the shareholders. For example, there is a company known for its former airline operations and the airline's former parent no longer flies planes. Perhaps one of the reasons is that the airline's pension plan is woefully underfunded. What they did was spin the airline off to shareholders.

MS. BORZI: One of the big weaknesses in the single employer legislation that we just passed was exactly the area that John identified. In the Chapter 11 area we knew that the new hemorrhages for the PBGC, the new set of liabilities, the new source of deficits for PBGC would be companies using the Chapter 11 route. It was impossible for us to close off that loophole. A political decision was then made to move forward with the things that we could do rather than wait until we could deal with that issue. The ink was barely dry and we knew that that would be an area in which potential abuse of the PBGC could still exist. Part of it was that it is so easy now for a company to go into a Chapter 11 proceeding and strip itself of all of its debts. I think in a few years we're going to have to revisit that issue because I think we'll be able to very clearly see that PBGC losses in the future can be directly traced to companies that use the Chapter 11 proceeding as a way to shed their pension obligations.

MR. AMOROSO: There is one unequivocal problem that the PBGC faces. Underfunded pension plans terminate. There are two primary approaches to solving that problem. I believe that we don't have the will to solve it because technically it's soluble by stiffening the funding standards. The funding standards could be changed to require that underfunded plans step up their contribution so as to minimize PBGC's claims experience.

Another possible solution is to move the collapse upstream. I agree that there are quite a few examples where that would have been folly. Lockheed came back and Chrysler has come back and there are quite a few other examples of companies that have come back from the brink of financial disaster. But, that would be another possible solution to PBGC's problem: clamp the company down when it still has assets to pay for the underfunding or place liens on corporate assets. The problem is we have underfunded plans being maintained by weak companies. The solution is to find ways to minimize those companies' ability to be able to walk away. We need to minimize the ability of those companies to transfer unfunded liabilities to PBGC which in turn sends the bills to the strong companies that maintain private pension plans.