BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Assessment Of Special Rules Exempting Employers Withdrawing From Multiemployer Pension Plans From ~~Withdrawal~~ Liability

The Multiemployer Pension Plan Amendments Act of 1980 generally made employers withdrawing from plans liable for their portion of the plans' unfunded vested benefits, which is the excess of benefits earned by all plan participants over the plans' assets. However, special rules apply to employers contributing to construction and entertainment industry plans which generally exempt them from the withdrawal liability. A limited exemption is also available to qualified trucking industry plans.

The Congress established the construction industry special withdrawal liability rules in the belief that a withdrawal from a construction plan would not typically harm the plan's contribution base unless the withdrawn employer continues to do similar work in the same area. GAO believes that the special withdrawal liability rules were working in a manner envisioned by the Congress. The plans' generally adequate funding levels provide reasonable protection to the plans and the Pension Benefit Guaranty Corporation, a government corporation, which insures the plans' benefits.

GAO also believes the limitation on the exemption for the trucking industry is appropriate because trucking plans are not as sound financially as construction plans. GAO sample data were not sufficient to reach a conclusion on special rules for entertainment plans.

The act requires GAO to study the effects of its provisions on employers, participants, and others. This report assesses the effect of the special rules.

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MAY 14, 1984

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D C 20548

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

This is the second in a series of reports in response to the requirement in the Multiemployer Pension Plan Amendments Act of 1980 that GAO study the effect of the act on employers, participants, and others. It assesses the effect of special rules applied to employers withdrawing from multiemployer pension plans in the construction, trucking, and entertainment industries.

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

Milton J. Socolar

Acting Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

ASSESSMENT OF SPECIAL RULES EXEMPTING EMPLOYERS WITHDRAWING FROM MULTIEMPLOYER PENSION PLANS FROM WITHDRAWAL LIABILITY

D I G E S T

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

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

MPPAA made a significant change in contributing employers' relationships to multiemployer pension plans which are established pursuant to collective-bargaining agreements between employee representatives and more than one employer. Prior to MPPAA, employers were required only to contribute to the plans according to their collective-bargaining agreements and could withdraw from the plans without any continuing obligation so long as the plan did not terminate within 5 years of the withdrawal.

MPPAA now generally requires withdrawn employers to pay for their allocated portion of the plan's unfunded vested benefits--hereafter referred to as withdrawal liability. (See pp. 1 and 2.)

However, special withdrawal liability rules apply to employers contributing to construction and entertainment industry plans, and these rules generally exempt them from withdrawal liability. A limited exemption from withdrawal liability is also available to qualified trucking industry plans. Plans in these three industries account for about 56 percent of the 1,924 multiemployer plans and about 49 percent of the 8.3 million participants in multiemployer plans. (See pp. 3 to 5 and 8.)

The Congress included exemptions for plans in construction and entertainment industries based on the premise that a withdrawal from a plan in these industries would not harm a plan's contribution base unless the withdrawn employer continued to do similar work in the same area. The Congress believed that employees of employers withdrawing from a plan would normally obtain work with another employer in the same geographic area who would also contribute to the plan. Thus, the plan's contribution base would not be weakened.

MPPAA provided more stringent special withdrawal liability rules for employers withdrawing from trucking plans. The Congress required that withdrawing employers furnish a bond or escrow for 50 percent of their liability. If PBGC determines within 60 months of the withdrawal that the employer's withdrawal resulted in substantial damage to the plan's contribution base, the bond or escrow is forfeitable and the employer can be held liable for the remaining 50 percent of his/her liability. Also, to qualify for application of the special rules, "substantially all" of the contributions required under the plan must be by employers in the trucking industry.

Because other industries also requested special withdrawal liability exemptions, the Congress included a provision allowing PBGC to extend the special rule provisions to multiemployer plans in other industries. (See pp. 5 and 6.)

MPPAA requires GAO to study the effect of its provisions on employers, participants, and others. This report is the second in a series of reports GAO will be issuing on multiemployer plans. It assesses the effect of special withdrawal liability rules on construction, entertainment, and trucking industry plans in GAO's sample and PBGC's criteria for granting or denying requests for special withdrawal liability exemptions to plans in other industries. It also assesses the financial condition of the construction, entertainment, and trucking plans in GAO's sample. It is based on analyses of data obtained from March 1982 through February 1983 from 54 construction, 9 trucking, and 3 entertainment industry plans. The 66 plans represent 6.1 percent of the 1,084 construction, entertainment, and trucking plans nationwide and 36.2 percent of the 4 million participants in those plans. These plans were part of a GAO sample of 149 multiemployer plans analyzed to carry out all parts of the required study of MPPAA. (See pp. 6 to 10.)

RESULTS OF GAO REVIEW AT THE SAMPLED PLANS

Construction industry plans

The special withdrawal liability exemption was having little effect at 45 of the 54 sampled construction plans because the plans either were fully funded for vested benefits or had not identified any withdrawn employers. At the remaining nine construction plans, 604 of the 613 withdrawn employers had no withdrawal liability. (See pp. 13 to 18.)

Employers, plan officials, and union officials GAO interviewed had mixed views on MPPAA's ultimate effect on construction plans. Despite the special rules, some believed that withdrawal liability will discourage new employers from joining multiemployer plans. Others believed that withdrawal liability will have little effect on construction plans because of the construction exemption and the fact that most plans are well funded. (See pp. 19 to 21.)

Trucking industry plans

The special withdrawal liability exemption for the trucking industry was having little effect at the plans GAO sampled. Only one of the nine plans qualified for exemption.

The other eight plans could not use the special trucking exemption because they did not meet the MPPAA criteria which limits its use to multiemployer plans in which "substantially all" contributions are made by employers in the trucking industry. MPPAA's legislative history indicates that "substantially all" means at least 85 percent. As a result, employers in five of the nine plans have been assessed withdrawal liability. Officials at two of the plans were attempting to reduce their unfunded vested benefits to minimize the effect of withdrawal liability, which they believe will discourage new employers from joining the plans. (See pp. 23 to 28.)

Entertainment industry plans

The exemption was having little effect at two of the three sampled entertainment plans because they were fully funded. The third plan had not identified any withdrawn employers, and therefore, the exemption had no effect. However, to minimize contributing employers' exposure to withdrawal liability, the plan's trustees discontinued further benefit accruals under the sampled plan and established a separate individual account pension plan (a defined contribution plan) which is not subject to withdrawal liability under MPPAA. The new plan provides pension benefits for employees' service subsequent to the freezing of benefits under the sampled plan. The trustees were concerned that, if they did not take this action to limit withdrawal liability, new employers would have refused to join the plan. (See pp. 29 and 30.)

FINANCIAL CONDITION OF SAMPLED PLANS

GAO actuaries assessed the financial condition of the sampled plans by using four ratios of plan characteristics that GAO believes provide measures of a plan's financial health. The ratios were (1) assets to vested benefits, (2) income to expenses, (3) assets to benefit payout, and (4) active participants to retirees and beneficiaries.

GAO's analysis of sampled plans showed that the 54 sampled construction plans were in relatively good financial condition. In plan year 1981, 44.9 percent of the sampled construction plans for which data were available were fully funded. The nine sampled trucking plans were not in as good financial condition as the sampled construction plans. In plan year 1981, only 14.3 percent of the sampled trucking plans for which data were available were fully funded. Two of the three entertainment plans in GAO's sample were fully funded. (See pp. 12, 13, 24, and 31.)

EXEMPTION FROM WITHDRAWAL LIABILITY HAS BEEN EXTENDED TO TWO PLANS IN OTHER INDUSTRIES

In lieu of special withdrawal liability exemptions for other industries requesting them, MPPAA gave PBGC the authority to extend them to plans in other industries on a plan-by-plan basis. PBGC has received eight requests for withdrawal liability exemptions and has approved two. As of January 30, 1984, the remaining applications were being reviewed by PBGC to determine if the plans meet MPPAA's criteria for special exemption. The criteria require that each plan be in an industry whose characteristics are such that withdrawals would not normally have an adverse effect and that special rules must not pose a significant risk to the PBGC insurance fund, which was established to insure participants' benefits. (See pp. 32 to 36.)

CONCLUSIONS

At the conclusion of GAO's fieldwork in February 1983, MPPAA's special withdrawal liability rules generally had little effect on the 58 construction, trucking, and entertainment plans in the GAO sample that qualified for exemption.

The Congress established the special withdrawal liability rules in the belief that a withdrawal from a construction industry plan would not typically harm the plan's contribution base unless the withdrawn employer continues to do similar work in the same area. GAO believes that the special withdrawal liability rules were working in a manner envisioned by the Congress. The construction plans' generally adequate funding levels provide reasonable protection to the plans and the PBGC insurance fund.

There were mixed views expressed on the withdrawal liability provision's long-term effect on employers' willingness to join or continue to participate in multiemployer plans. However, not enough time has elapsed since the enactment of MPPAA to accumulate sufficient experience to determine what the employers' attitudes will be in the future.

GAO recognizes that in the future economic and demographic conditions in the construction industry can change which could cause a decline in employment of workers for whom contributions to a plan are made. Such a decline in employment could result in the decline in a plan's contribution base and adversely affect the financial condition of modestly funded plans which, in turn, could pose a risk to the PBGC insurance fund.

Providing more stringent special withdrawal liability rules for the trucking industry was appropriate because plans in that industry are not as sound financially as plans in the construction industry. GAO's entertainment industry sample was not sufficient for GAO to reach a conclusion as to the relative financial condition of entertainment plans, or the appropriateness of special withdrawal liability rules for that industry. (See pp. 21, 22, 28, and 31.)

PBGC had extended special withdrawal liability exemptions to only two plans in other industries and, therefore, it was too early to assess the effect of the special withdrawal liability exemptions on plans in other industries. However, it appears the plan-by-plan evaluation of exemption applications should minimize risk to the PBGC insurance fund. The small number of applications should allow PBGC to fully evaluate the industry characteristics as well as the financial condition of the plans applying. (See p. 36.)

AGENCY COMMENTS

PBGC provided comments for technical clarification of this report (see app. V). GAO discussed each comment with PBGC and reached agreement on changes needed to strengthen the technical accuracy of the report. The Department of Labor stated that it had no objections to the GAO conclusions (see app. VI). The Internal Revenue Service advised GAO that it had no comments on the report. (See p. 37.)

Contents

ABBREVIATIONS

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

CHAPTER 1

INTRODUCTION

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), Public Law 96-364, was enacted on September 26, 1980, to amend portions of the Employee Retirement Income Security Act of 1974 (ERISA). Title II of ERISA amended the tax laws relating to private pension plans and established the first comprehensive federal legislation regulating the private pension system. One of ERISA's major features was the establishment of an insurance program for guaranteeing the payment of certain benefits to participants of defined benefit pension plans[1] if a plan terminates without sufficient assets to provide vested benefits.[2] A government corporation, the Pension Benefit Guaranty Corporation (PBGC), was established to administer the insurance program.

MPPAA was a comprehensive modification of ERISA and Internal Revenue Code provisions relating to multiemployer defined benefit pension plans (hereafter referred to as multiemployer plans).[3] Its purpose was to protect the interests of participants and beneficiaries in financially troubled multiemployer plans and to encourage the growth and maintenance of such plans. There are about 8.3 million participants in such plans nationwide.

MPPAA made a significant change in an employer's relationship to a multiemployer plan. Prior to MPPAA an employer could withdraw from a multiemployer plan without any obligation to

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

[2]Plans provide that a participant will, after meeting certain requirements, retain a right to the benefits earned, or some portion of them, even though services with the employer may terminate before retirement. A participant who has met such requirements is said to have a vested benefit.

[3]The PBGC insurance program covers both defined benefit pension plans which are sponsored by single employers and those which are established and maintained through collective bargaining between employee representatives and more than one employer (hereafter referred to as multiemployer plans). The matters discussed in this report involve only multiemployer plans.

continue financial support of the plan so long as the plan did not terminate within 5 years of the withdrawal. MPPAA now requires an employer who either totally or partially withdraws from a multiemployer plan after April 28, 1980, to continue to be liable for and to pay its allocated portion of the plan's unfunded vested benefits[4] (hereafter referred to as the employer's withdrawal liability).

MPPAA requires GAO to study the effect of its provisions on employers, participants, and others. This report assesses the effects of MPPAA's special withdrawal liability rules on the construction; entertainment; and trucking, household moving, and public warehousing industries (referred to collectively in this report as the trucking industry), the financial condition of the sample plans in those industries, and PBGC's discretionary authority to extend the special withdrawal liability rules to qualified plans in other industries.

RATIONALE FOR MPPAA'S PASSAGE

ERISA initially gave PBGC discretionary authority to guarantee benefits for multiemployer plans, with mandatory coverage to begin after December 31, 1977. At that time, however, there was considerable public and congressional concern over the magnitude of the multiemployer plans' unfunded vested benefits and their potential effect on PBGC's termination insurance program.

Public Law 95-214 amended ERISA to extend the December 31, 1977, date to July 1, 1979, and mandated that PBGC analyze the multiemployer plan termination insurance program established by ERISA and submit a report to the Congress by July 1, 1978. In response to the congressional mandate, a PBGC report dated July 1, 1978, stated that about 10 percent of the multiemployer plans, covering 15 percent of total multiemployer plan participants (1.3 million workers), were experiencing financial difficulties that could result in plan terminations over the next 10 years. If all of these plans were to terminate, the cost to PBGC under the then current termination insurance program--after deduction of estimated employer liability--was estimated to be about $4.8 billion. To fund such a liability, PBGC reported that all multiemployer plans would have to pay an annual PBGC premium of about $80 per participant as compared to the 50 cent premium per participant then authorized by ERISA.

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[4]The excess of the value of the vested benefits of all participants in a plan over the plan's assets is referred to as unfunded vested benefits. The value of vested benefits is computed actuarially using assumptions about the timing of expected commencement of benefit payments, mortality, and investment return.

PBGC pointed out that pension portability[5] and protection of an employee's benefits even though his or her employer leaves the plan are multiemployer plan characteristics which provide participants with greater benefit security than single employer plans. These features, however, resulted in some multiemployer plans having high unfunded liabilities for benefits of participants whose employers ceased contributing to the plans. PBGC stated that withdrawing employers in a plan with a declining industry, trade, or craft can cause a multiemployer plan's "sharing of liability" feature to weaken it. This weakness is caused by an increased funding burden on remaining employers because there are no new entering employers (or too few) to replace withdrawing employers.

To prevent employers from being able to withdraw from a plan with unfunded liabilities and avoid the additional burdens on remaining employers created by withdrawals, PBGC proposed statutory changes requiring any employer withdrawing from a multiemployer plan to complete funding its share of the plan's unfunded vested benefits. The proposed withdrawal liability provisions would reduce the funding burden on employers continuing to contribute to the ongoing plan.

In response to PBGC's report and its legislative proposals, the Congress enacted MPPAA.

SPECIAL WITHDRAWAL LIABILITY RULES FOR THE CONSTRUCTION, ENTERTAINMENT, AND TRUCKING INDUSTRIES

In enacting MPPAA, the Congress established special withdrawal liability rules that provide exemptions from withdrawal liability for the construction and entertainment industry plans. A limited exemption was also established for plans in which substantially all the contributions are made by trucking industry employers.

The joint explanation of the proposed MPPAA legislation, by the Senate Committees on Finance and Labor and Human Resources, stated that the special rules for the construction industry plans were warranted because industry characteristics provide substantial protection for those plans. It stated that a plan's contribution base would only be reduced if withdrawing employers continue to do work for which contributions had been made in the same geographic area without an obligation to contribute to the

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[5]The privilege of counting service with a previous employer in the determination of a pension benefit.

plan. It was believed that employees of withdrawing employers would normally obtain work with another employer in the same geographic area who would also contribute to the plan. Thus, the plan's contribution base would not be weakened. Other industry characteristics which persuaded the Committees to adopt special rules were the mobility of both employers and employees and the intermittent nature of employment.

The Committees' joint explanation also recognized that certain segments of the entertainment industry had characteristics similar to the construction industry. Much of that industry's work is also performed on a project basis with little continuity of employment or employers, such as in theatrical production companies. It was not intended, however, that the construction exemption apply to segments of the entertainment industry which do not have construction industry characteristics.

Construction industry special withdrawal liability rules

The construction industry exemption generally allows an employer to withdraw from a multiemployer plan without incurring a liability. The special rules, however, only apply to an employer contributing to a plan if substantially all of the employees for whom the employer has an obligation to contribute perform work in the building and construction industry. In addition, the plan must (1) cover primarily employees in the building and construction industry or (2) be amended to provide that the special construction industry rules apply to employers with an obligation to contribute for work performed in the building and construction industry. (See app. I for nonconstruction plans with construction employers.)

A withdrawal from a construction plan generally takes place only if an employer who ceases contributions to the plan

(1) continues to perform work in the jurisdiction of the collective-bargaining agreement of the type for which contributions were previously required, or

(2) resumes such work in the jurisdiction within 5 years after the date the employer's obligation to contribute under the plan ceased, without renewing the obligation.[6]

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[6]Three years is substituted for the 5 years when a multiemployer plan terminates as a result of the withdrawal of every employer from the plan or the cessation of the obligation of all employers to contribute under the plan.

Entertainment industry special withdrawal liability rules

The special withdrawal liability rules for the entertainment industry apply to employers who are required to contribute to plans for entertainment industry work primarily on a temporary or project-by-project basis and if the plan primarily covers entertainment industry employees. Major studios and other employers which do not operate on a temporary or project-by-project basis would not be eligible for special withdrawal liability rules. The term "entertainment industry" means theater, motion picture, radio, television, sound or visual recording, music, dance, and any other entertainment activities that PBGC may determine to be appropriate. However, an employer, who stays in the plan's jurisdiction and continues to work or resume work without continuing or resuming contributions to the plan, would be subject to withdrawal liability.

Trucking industry special withdrawal liability rules

MPPAA also provides special withdrawal liability rules for employers in plans in which "substantially all" contributions are made by employers in the trucking industry. MPPAA's legislative history indicates that "substantially all" means 85 percent. Thus, only plans with 85 percent of their contributions coming from employers primarily engaged in trucking activities can use the trucking industry exemption.

MPPAA provides that an employer who ceases to perform work in the jurisdiction of a trucking plan covered by special rules is not necessarily relieved of withdrawal liability. The withdrawing employer must furnish a bond or escrow guaranteeing payment of 50 percent of its withdrawal liability. If within 5 years after the employer's withdrawal from the plan PBGC determines the plan has suffered substantial damage to its contribution base as a result of the employer's withdrawal, the bond or escrow is paid to the plan. The employer will also be liable to the plan for the remaining 50 percent of its withdrawal liability. If PBGC fails to make a determination within 60 months of the employer's withdrawal, or determines that the plan's contribution base has not suffered substantial damage, the bond is canceled or escrow refunded.

PLANS IN OTHER INDUSTRIES CAN APPLY FOR SPECIAL EXEMPTION FROM WITHDRAWAL LIABILITY

Other industries requested that the special construction and entertainment rules be extended to their plans during the Congress' deliberations on MPPAA. However, there were questions concerning the risks special rules might impose on the plans and the PBGC insurance system. There were also uncertainties as to the precise rule that should apply in other industries.

Therefore, MPPAA authorized PBGC to develop regulations under which individual multiemployer plans in other industries can apply for coverage under special rules similar to the construction and entertainment rules. MPPAA provides that such regulations shall permit use of special rules only when industry characteristics clearly show such rules are appropriate. Also, PBGC must make a determination that use of special rules by the individual multiemployer plans will not pose a significant risk to the PBGC insurance system. (See ch. 5 for a discussion of PBGC's administration of applications for special coverage.)

OBJECTIVES, SCOPE, AND METHODOLOGY

MPPAA requires GAO to (1) conduct a study of the effects of its provisions on participants, beneficiaries, employers, employee organizations, and other parties and (2) report the results of the study to the Congress by June 30, 1985.

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

Because of the work's magnitude and the complexities of the issues involved, we separated the study into segments and plan to issue a series of reports on multiemployer plans. This report is the second in that series of reports.[7] Others in the series will include analyses of the effects (1) of withdrawal liability on plans not subject to special rules, (2) on benefits to participants and beneficiaries of all multiemployer plans, (3) of accelerated funding on plans' financial condition, and (4) of incomplete participant data on the reliability of actuarial valuations. To have a common frame of reference for these analyses, we selected a sample of 149 multiemployer plans which was used as the primary data source for each segment of our study.

GAO selected its sample of 149 plans from the 1,924 which had 100 or more participants or beneficiaries and were recorded by PBGC in July 1981 as having paid premiums for plan year 1979. The 149 plans had about 3.5 million participants and were being administered at locations within 14 states and the District of Columbia. The following chart presents a comparison of

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[7]Multiemployer Pension Plan Data Are Inaccurate and Incomplete (GAO/HRD-83-7, Oct. 25, 1982).

the GAO sample as it relates to all multiemployer plans with 100 or more participants and those in the 14 states and the District of Columbia with 100 or more participants.

GAO sample as it relates to all multiemployer plans and those in the 14 states and the District of Columbia with 100 or more participants

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

We did not review any of the 212 plans with fewer than 100 participants within the geographic areas covered by our review. Many of them were incorrectly listed as multiemployer plans. They also represented only a small number of the total participants reported by plans listed as multiemployer plans--7,129 of the 6.2 million participants (less than one-tenth of 1 percent).

Our sample of 149 plans was made up of (1) a judgmental sample of 69 plans, including 30 plans identified as financially weak by GAO actuaries and 10 other plans with large numbers of participants and (2) a sample of 80 of the remaining plans stratified by participant size.

To determine if the 149 were representative of our universe, we compared the sample plans, stratified by size and primary industry, with the similarly stratified total of 1,276 plans with 100 or more participants administered within the geographic area covered by our review. For purposes of classifying the sampled plans by industry, we used the classification designated by the plans, unless we had evidence that such classification was erroneous. Based on this comparison, we have no reason to doubt that the 149 plans reasonably represent the sizes and industries of the multiemployer plans in the geographic area.

There were 66 plans in our sample in industries covered by special withdrawal liability rules: 54 construction, 3 entertainment, and 9 trucking industry plans. However, as discussed in chapter 3, eight of the trucking plans in our sample did not qualify for special withdrawal liability rules. Plans in the construction, trucking, and entertainment industries account for 56.4 percent of all multiemployer plans nationwide and 49.5 percent of all multiemployer plan participants. The following charts present a comparison of the construction, entertainment, and trucking plans with 100 or more participants to all multiemployer plans with 100 or more participants, and how those types of plans in our sample relate to all plans and those in the 14 states and the District of Columbia.

Comparison of all construction, trucking, and entertainment plans with 100 or more participants to all multiemployer plans with 100 or more participants

	Plans	Participants	Industries as a percentage of total	
			Plans	Participants
Nationwide	1,924	8,337,000	-	-
Construction	1,001	2,556,000	52.0	30.7
Trucking	55	1,404,810	2.9	16.9
Entertainment	28	154,859	1.5	1.9

GAO sample of construction, entertainment, and trucking plans as they relate to all plans and those in the 14 states and the District of Columbia in those categories with 100 or more participants

Plan category	Number of Plans	Number of Participants	GAO sample as a percentage of Plans	GAO sample as a percentage of Participants
Construction plans:				
In GAO sample	54	719,076	-	-
In 14 states and the District of Columbia	599	1,820,000	9.0	39.5
Nationwide	1,001	2,556,000	5.4	28.1
Entertainment plans:				
In GAO sample	3	99,358	-	-
In 14 states and the District of Columbia	20	153,215	15.0	64.8
Nationwide	28	154,859	10.7	64.2
Trucking plans:				
In GAO sample[a]	9	671,175	-	-
In 14 states and the District of Columbia	46	759,071	19.6	88.4
Nationwide	55	1,404,810	16.4	47.8

[a]Although there were nine trucking plans in our sample, only one was eligible to use the special withdrawal liability rule for the trucking industry. (See ch. 3 for a discussion of the trucking rule.)

We interviewed plan administrators, attorneys, and actuaries; labor and management representatives on plans' boards of trustees; and employers contributing to the plans. We also interviewed officials of employer associations and unions. We obtained and analyzed each plan's financial and actuarial reports for plan years 1977-81. We also examined actuarial valuations; certified public accountant reports; and other books, documents, and records of the plans which we deemed necessary to carry out our study. Our fieldwork was performed from March 1982 through February 1983.

At PBGC, we interviewed officials and reviewed regulations and requests from plans for special rules. We did not review the reasonableness of the applications or PBGC's evaluations of them because the process was ongoing at the time of our review.

Our review was performed in accordance with generally accepted government audit standards.

CHAPTER 2

WITHDRAWAL LIABILITY PROVISIONS HAVE LITTLE EFFECT ON SAMPLED CONSTRUCTION PLANS

MPPAA's withdrawal liability provisions have had little effect on the construction plans in our sample. The plans had little or no unfunded vested benefits, or the employers who ceased contributions to the plans were exempt under the special withdrawal liability construction rules. When not exempt under these rules, their liability was eliminated or reduced by MPPAA's de minimis rule.[1] As a result, only 3 of the 54 plans in our sample had actually assessed withdrawal liability.

MPPAA provides that an employer who withdraws from a construction plan will be liable for withdrawal liability if that employer resumes the same work in the jurisdiction of the collective bargaining area within 5 years without resuming contributions to the plan. Officials from nine plans said it would be difficult to identify a withdrawn employer who resumes work within that 5-year period, especially if there were a business name change or merger.

There were 34 plans that were not concerned about this provision because they had no unfunded vested benefits or believed they would have little trouble identifying employers who resumed work as noncontributors. However, plans with unfunded vested

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[1]The mandatory de minimis rule reduces an employer's withdrawal liability by the lesser of (1) $50,000 or (2) three-fourths of 1 percent of the plan's unfunded vested benefits at the close of the plan year ending before the withdrawal date. When an employer's withdrawal liability exceeds $100,000, however, the de minimus amount is reduced dollar-for-dollar by the amount of the excess. For example, if the withdrawal liability is $115,000, the de minimus amount allowed would be reduced from $50,000 to $35,000. The exemption completely phases out when the calculated withdrawal liability reaches $150,000. The discretionary de minimus rule can be used if the plan elects to do so. It allows a reduction in an employer's liability equal to the greater of (1) the amount of the reduction determined under the mandatory de minimis rule or (2) the lesser of (a) three-fourths of 1 percent of the plan's unfunded vested benefits determined as of the close of the plan year ending before the date of withdrawal or (b) $100,000. The discretionary de minimis is phased out dollar-for-dollar, to the extent the withdrawal liability exceeds $150,000.

benefits could be affected by their inability to identify and therefore collect withdrawal liability from employers who cease contributions to these plans and restart their operations within 5 years in the same area without contributing to the plan.

Although the withdrawal liability provision is having little effect on most multiemployer plans in our sample, some employers and employer associations had a negative attitude toward withdrawal liability. They believed withdrawal liability could discourage employers from joining multiemployer plans in the future, provide an incentive for employers to get out of multiemployer plans, and impair employers' bonding and credit capabilities.

CONSTRUCTION PLANS IN OUR SAMPLE ARE IN RELATIVELY GOOD FINANCIAL CONDITION

Our analysis of the 54 sampled construction plans showed them to be in relatively good financial condition. We assessed the financial condition of the sampled construction plans by using four ratios of plan characteristics which our actuaries believe provide measures of a plan's financial health. Although no measure for a single year provides a satisfactory assessment of the overall financial condition of a plan, our actuaries believe the four ratios over several years show the plans' major strengths and weaknesses. The ratios of plan characteristics selected for analysis were:

--Assets to vested benefits.

--Income to expenses.

--Assets to benefit payout.

--Actives (participants) to other participants (retirees, beneficiaries, and separated vested participants).

The assets to vested benefits ratio indicates the percentage of vested benefits covered by assets. The portion not covered, the unfunded vested benefits amount, is an important indicator of a multiemployer plan's financial condition. It measures benefits already promised and earned, but not yet funded and indicates a plan's ability to provide all benefits to vested participants if the plan were to terminate. If a plan has no unfunded vested benefits, or a small amount, there is a good chance participants will receive their vested benefits.

Our analyses of the assets to vested benefits ratio showed that 22, or 44.9 percent, of the 49 sampled construction plans for which data were available in plan year 1981 were fully funded, with assets equal to or more than vested benefits. Also, 34 of the 49 plans, or 69.4 percent, were at least 80 percent funded. Moreover, the plans' combined assets covered 82 percent of their total vested benefits. The assets to vested benefit ratio improved steadily over the 1977-81 plan years reviewed, indicating a continuing improvement in the funding of the sampled construction plans.

Overall, three of the four ratios indicated improvement in construction plans' performance in the 5-year period reviewed, with only the actives to other participants ratio showing a decline. The number of plans with a ratio of at least four active participants to one other participant decreased from 53.2 percent of the plans (25 of 47) in plan year 1977 to 26.5 percent of the plans (13 of 49) in plan year 1981. The number of plans with a low ratio of actives to other participants, less than 2 to 1, increased from 25.5 percent (12 of 47) to 30.6 percent (15 of 49) in plan years 1977 and 1981, respectively. (See app. II for a description of actuarial ratios used and detailed data on the results of our actuarial analyses of the sampled construction plans.)

There were two studies completed by industry groups, one in 1982, the second in 1983, and a third study published by an actuarial firm in 1983, which also indicate construction plans are relatively well funded. In analyzing 419 and 210 construction plans, respectively, the industry groups' studies showed that in the first case 48 percent, and in the second case, 62 percent of the plans were fully funded for vested benefits. The actuarial firm's study of 272 construction plans showed that almost 74 percent of the plans were fully funded. (See app. IV for details on these studies.)

WITHDRAWAL LIABILITY HAS BEEN ASSESSED AT ONLY THREE SAMPLED CONSTRUCTION PLANS

There were only three construction plans in our sample that had assessed withdrawal liability. The remaining plans either had no unfunded vested benefits for withdrawal liability purposes, had no withdrawals, or the employers ceasing contributions to the plans were exempted from withdrawal liability by the construction rule or the de minimis rule. The following chart summarizes the status of withdrawal liability activity at the plans in our sample.

Summary of withdrawal liability activity at the 54 sampled construction plans

Category	Plans	
Plans with no withdrawals:		
Plans with no unfunded vested benefits for withdrawal liability purposes	25	
Plans with no withdrawn employers	20	
Subtotal		45
Plans identifying withdrawn employers:		
Plans that have computed and assessed withdrawal liability	3	
Plans that have computed but not assessed withdrawal liability	1	
Plans in which all employers ceasing contributions are exempted by de minimis or construction rule	5	
Subtotal		9
Total		54

Most sampled plans have no unfunded vested benefits or no employers have withdrawn

There were 45 construction plans in our sample that had not applied MPPAA's withdrawal liability provision. The withdrawal liability provision generally requires that an employer who withdraws from a multiemployer plan continue to fund a portion of the plan's unfunded vested benefits. There were 25 plans in our sample that had no unfunded vested benefits for withdrawal liability purposes and, therefore, employers withdrawing from those plans would not be liable for withdrawal liability. Also, there were 20 plans that had not had an employer withdraw.

Special relief provisions eliminate most withdrawal liability for plans identifying withdrawn employers

At the nine sample plans that identified employers ceasing contributions, the de minimis rule and the construction exemption eliminated most of the withdrawal liability. There were 613 employers who ceased contributions to the nine plans, and of the approximately $14 million withdrawal liability computed, about $3.8 million was exempted by the de minimus rule and about $8.0 million by the construction exemption.

The following chart summarizes the impact of the de minimis rule and the construction exemption at the nine plans. For 201 of the 613 withdrawing employers, the plans did not even calculate the withdrawal liability amounts. They determined that the employers were exempt by either the de minimis rule or the construction exemption.

Summary of effect of de minimis rule and construction exemption at construction plans identifying employers ceasing contributions to their plans

Plan number	Withdrawal liability computed		De minimis reduction		Construction exemption		Net withdrawal liability	
	Employers	Amount	Employers	Amount	Employers	Amount	Employers	Amount
1	2	$ 10,043	2	$ 10,043	-	$ -	-	-
2	2	(a)	2	(a)	-	-	-	-
3	6[b]	758,950	4[c]	100,000	-	-	4[b]	$ 658,950
4	6	212,926	6	75,610	3	135,887	1	1,429
5	399	12,955,720	380	3,571,449	44	7,895,916	3	1,488,355
6	4	(a)	4	(a)	-	-	-	-
7	31[d]	91,501	31	50,000	-	-	1	41,501
8	33	(a)	-	-	33	(a)	-	-
9	130	(a)	-	(a)	130	-	-	-
Total	613[e]	$14,029,140	429	$3,807,102	210	$8,031,803	9	$2,190,235

[a]For 201 of the 613 withdrawing employers, plans did not compute the amounts of withdrawal liability, but determined that the amounts would be below de minimis or the employers would be exempt under the construction rule.

[b]The amount includes a $300,000 withdrawal liability estimate for one employer.

[c]The de minimis reduction is for two employers. Plan did not compute withdrawal liability for other two employers, but determined that amount was de minimis.

[d]The amount of withdrawal liability shown applies to only one employer. Withdrawal liability not computed for 30 employers, but determined that amount was de minimis.

[e]Some employers receiving de minimis reduction were also exempted by the construction rule; therefore, the total number of employers receiving de minimis reduction and exempted by the construction rule will exceed the total number of employers for which withdrawal liability was computed.

Few sampled plans have assessed withdrawal liability: most not collected

After applying the de minimis rule and the construction exemption, 4 of the 54 plans in our sample had computed withdrawal liability, $2.2 million allocated to nine employers. Three plans had assessed five employers $1.5 million and collected $3,320 from one. The remaining $659,000 allocated to four employers at one plan had not been assessed at the completion of our field work. The following chart summarizes the withdrawal liability assessed and collected by the four plans.

Summary of withdrawal liability collected at construction plans in our sample

Plan	Employers' withdrawal liability					
	Computed		Assessed		Collected	
number	Number	Amount	Number	Amount	Number	Amount
1	3	$1,488,355	3	$1,488,355	1	$3,320
2	1	41,501	1	41,501	-	-
3	4	658,950	-	-	-	-
4	1	1,429	1	1,429	-	-

At plan number 1, one employer assessed $3,320 paid the withdrawal assessment in full. The remaining $1,485,035 was assessed against two employers who are challenging the retroactive application of MPPAA in their cases.[2] Both employers withdrew from the plan before MPPAA was signed into law but after the date of the withdrawal liability provisions. A U.S. district court upheld the employers' challenge when it ruled the retroactive application of MPPAA violates constitutional due process.[3] The plan at the completion of our field work was appealing the ruling.

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[2]MPPAA was signed on September 26, 1980. However, the act imposes withdrawal liability on employers that withdraw from multiemployer plans after April 28, 1980.

[3]Federal circuit courts have ruled differently on the constitutionality question.

At plan number 2, the one employer assessed withdrawal liability was bankrupt. At the conclusion of our review, the plan filed a claim in bankruptcy court for the amount of the liability.

At plan number 3, plan officials had not assessed the withdrawn employers for several reasons. The plan was involved in litigation over delinquent contributions with one of the employers liable for a major withdrawal liability. The plan was not going to assess withdrawal liability until the delinquent contribution matter was resolved. Plan officials feared that it might complicate the proceedings and lessen their chances to collect the delinquencies, which were more substantial than the withdrawal liability. Also, the plan was delaying assessing the employers until court cases challenging MPPAA's constitutionality were resolved, and it wanted to avoid lawsuits which could occur if employers were assessed.

In the case of plan number 4, at the conclusion of our review, the employer had been assessed but had not responded to the plan.

CONTINGENT LIABILITY PROVISIONS DIFFICULT TO ADMINISTER

MPPAA provides that a construction employer is liable for withdrawal liability after its obligation to contribute to a multiemployer plan ceases. This occurs if the employer continues to perform work in the jurisdiction of the collective-bargaining agreement of the type for which contributions were previously required, or if within 5 years, the employer resumes the same work in the collective-bargaining agreement's jurisdiction without renewing the obligation to contribute to the plan (3 years in the case of a plan terminated by mass withdrawal).

Officials from nine plans said it would be difficult to determine when an employer resumes operation as a noncontributor if the employer changes its business name or merges with another employer. One official from a large regional plan said the union would have to stumble across the withdrawn employer in order for the plan to become aware that the employer had resumed operating as a noncontributing employer. An official from a large national plan said the contingent liability provision is not practical. A representative from the National Coordinating Committee for Multiemployer Plans said that the provision would be nearly impossible for plans with large jurisdictions to effectively administer.

However, officials from 35 of the 54 construction plans in our sample were not concerned about the provision. Thirteen plans were fully funded and withdrawal liability did not apply. Seven plans had very few contributing employers or small jurisdictions, and plan officials believed they would have no problems determining if a former contributor resumes work in the area. Fifteen other construction plans in our sample will rely on the unions to monitor employers ceasing contributions with several commenting they were in strong union areas and believed it was unlikely that former contributors would resume work in the area as noncontributors.

COMMENTS OF PLAN OFFICIALS, PARTICIPATING EMPLOYERS, AND OTHERS

Officials and employers at 27 of the 54 construction plans in our sample and representatives from three national employer associations said that construction employers are having a negative reaction toward the withdrawal liability concept. They said that historically construction employers have viewed their obligation to multiemployer pension plans as being limited to the negotiated pension contribution in their collective-bargaining agreements. The imposition of a potential withdrawal liability in addition to the negotiated pension contribution is viewed as unfair, especially in cases where employers have little control over plans' benefit policies, such as employers who come into an area and contribute to the plan for the duration of only one project. They believe it will discourage new employers from joining and create an incentive for contributing employers to leave multiemployer plans. It is also seen as a potential threat to construction employers' bonding and credit capabilities.

Officials and employers at 15 construction plans in our sample and a representative from the National Coordinating Committee for Multiemployer Plans, however, did not believe that MPPAA withdrawal liability provisions would negatively impact construction plans because most are well funded and because of MPPAA's relief provisions.

Comments on negative aspects of withdrawal liability provisions

A contractor association representative said employers would like to see MPPAA repealed because they have little control over the benefit policies of plans to which they contribute. Several officials contacted believe benefits will not be increased as they had in the past because management trustees want no increases in withdrawal liability.

Several plan officials and contributing employers believe withdrawal liability will discourage employers from joining multiemployer plans, while an actuary for another plan said withdrawal liability unfairly burdens employers and will discourage growth and maintenance of multiemployer plans. Officials representing the Associated Specialty Contractors, Inc.; the Associated General Contractors of America; and the National Constructors Association also believe withdrawal liability will cause new employers to avoid joining multiemployer plans.

Employer representatives perceive several other problems caused by MPPAA's withdrawal liability provision. One of these problems occurs when contributing employers compete with non-union contractors, whose costs may be lower. An official from one employer association explained that, unless the union agrees to contract modifications making contributing employers competitive, a contributing employer who bids on a contract against nonunion competition will probably lose the bid. In such situations, the contributing employer can either pass up the work or bid as a nonunion contractor. If the contributing employer wins the bid as a nonunion contractor, however, the employer would be considered withdrawn from the plan and liable for withdrawal liability.

Another problem faced by employers is their concern that the Financial Accounting Standards Board will require them to show potential withdrawal liability on their financial statements.[4] Employers believe that if this happens, it will be a detriment to their credit and bonding capabilities.

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[4]The Financial Accounting Standards Board issued a discussion memorandum on April 19, 1983, on additional issues related to employers' accounting for pensions and other postemployment benefits. It raises two issues concerning multiemployer plans:

--Does an employer participating in a multiemployer plan that provides defined benefits have a recognizable liability for (1) a share of the plan's unfunded obligation for benefits promised to participants under the terms of the plan, (2) contributions due and unpaid plus the balance of the potential withdrawal liability (if any), or (3) only contributions due and unpaid?

--What disclosures should be required in the financial reports of an employer participating in a multiemployer plan?

Comments on positive aspects of withdrawal liability provisions

Officials at other plans did not believe MPPAA, more specifically the withdrawal liability provisions, would negatively affect construction plans. For example, one union trustee believed MPPAA is good because it protects participants and is forcing all concerned to take an interest in the plan. Another plan official stated MPPAA will not affect the plan because, as a construction plan, it is not generally subject to withdrawal liability and the plan is also fully funded. An employer in the same plan agreed. He believed MPPAA was designed to keep employers from going nonunion and was not worried since the plan's jurisdiction was strongly union anyway.

An official from the National Coordinating Committee for Multiemployer Plans said plans represented by that organization were not experiencing significant problems in dealing with MPPAA. He said there had been an emotional response from employers who oppose withdrawal liability. However, he believed the opposition was unfounded because of the relief provisions that exempt construction employers from withdrawal liability in most cases. Also, the fact that most multiemployer plans are well funded should ease the reaction to withdrawal liability. This official believed that construction employers' reactions to withdrawal liability will be tempered as they better understand MPPAA and its relief provisions. He said the withdrawal liability provision should have a negative effect on only the construction employer who, by ceasing contributions to a plan and continuing to do business in the same area as a noncontributing employer, is decreasing the plan's contribution base.

CONCLUSIONS

The Congress established the special withdrawal liability rules in the belief that a withdrawal from a construction industry plan would not typically harm the plan's contribution base unless the withdrawn employer continues to do similar work in the same area.

At the conclusion of our fieldwork in February 1983, MPPAA had little effect on most construction plans in our sample. The plans generally had not had to assess or collect withdrawal liability because of the special withdrawal liability rules, the plans' generally adequate funding, and the de minimis reduction.

We believe that the special withdrawal liability rules were working in a manner envisioned by the Congress. The construction plans' generally adequate funding levels provide reasonable protection for the plans and the PBGC insurance fund.

There are mixed views on how MPPAA's withdrawal liability provisions will affect employers' willingness to join and stay in multiemployer plans, and how this will affect the construction plans. However, not enough time has elapsed since the enactment of MPPAA in 1980 to accumulate sufficient experience to determine what the employers' attitudes will be in the future.

We recognize that in the future, economic and other demographic conditions in the industry can change, which could cause a decline in employment of workers for whom contributions to a plan are made. Such a decline in employment could result in the decline in a plan's contribution base and adversely affect the financial condition of modestly funded plans which, in turn, could pose a risk to the PBGC insurance fund.

CHAPTER 3

MOST SAMPLED TRUCKING PLANS ARE

SUBJECT TO WITHDRAWAL LIABILITY

MPPAA's special rules exempting trucking plans from withdrawal liability are having little effect because most trucking plans in our sample are not eligible to use them. Of the nine trucking plans in our sample, only one met the criteria established by MPPAA for use of the rule, while the other eight are subject to the general withdrawal liability rules. The nine trucking plans in our sample represented about 16 percent of all trucking plans and about 48 percent of the participants in those plans.

Some trucking industry and plan officials are concerned that withdrawal liability will discourage employers from participating in plans with large unfunded vested benefits. Some trucking plans are taking actions to reduce their unfunded vested benefits to reduce the potential effects of withdrawal liability on their contributing employers.

The special withdrawal liability rule for the trucking industry generally provides that a qualified employer withdrawing from a qualified trucking plan is exempt from withdrawal liability unless (1) PBGC determines that the withdrawal substantially damages the plan's contribution base or (2) the employer, as required by the special rules, fails to furnish a bond or escrow guaranteeing payment of 50 percent of its withdrawal liability. PBGC has 60 months from the withdrawal date to determine whether the plan has been substantially damaged. If PBGC makes such a determination, the bond or escrow is paid to the plan, and the employer owes the remaining 50 percent of its liability. If PBGC fails to make a determination within 60 months, or it determines that the plan's contribution base has not suffered substantial damage, the bond is canceled or escrow refunded and the employer has no further withdrawal liability.

Both the plan and its individual employers must meet the criteria established by MPPAA to be eligible to use the trucking rule. For a plan to qualify for the rule, substantially all of the contributions required under the plan must be made by trucking employers. This is unlike the construction rule which requires only that substantially all contributions be made for work in the construction industry. This means, for example, that a plan that receives contributions solely for trucking work, but primarily from nontrucking employers (e.g., retail store employers contributing for their trucking employees) would not qualify for the trucking rule. In addition, individual employers must have an obligation to contribute to the plan primarily for trucking work. This means that, even if the plan qualifies, employers contributing to qualified trucking plans primarily for nontrucking work are still subject to the general withdrawal liability rules.

SAMPLED TRUCKING PLANS ARE IN POORER FINANCIAL CONDITION THAN SAMPLED CONSTRUCTION PLANS

Our analysis of the 9 sampled trucking plans showed that they were not in as good financial condition as the 54 sampled construction plans. We used the same ratios of plan characteristics to assess trucking plans as were used for the construction plans.

The ratio of assets to vested benefits showed that 33 percent (3 of 9) of the sampled trucking plans were less than 50 percent funded in plan year 1980, compared to only 9 percent of the construction plans. In plan year 1981, the same ratio showed that 57 percent (4 of 7) were less than 60 percent funded compared to 12 percent of the construction plans.

The combined assets of the 9 trucking plans covered only 59 percent of their total vested benefits in 1980, compared to 78 percent for the 54 sampled construction plans. Two of the other three ratios also indicated the poorer financial conditions of the sampled trucking plans. In plan year 1981, 25 percent (2 of 8) of the trucking plans had an asset to benefit payout ratio below 6 to 1, compared to only 10 percent for the construction plans. Also, in plan year 1981, 86 percent (6 of 7) had an active to other participant ratio of less than 3 to 1, compared to 49 percent of the sampled construction plans. (See app. III for a description of the ratios used and the results of our analyses of the sampled trucking plans.)

MOST SAMPLED TRUCKING PLANS DO NOT QUALIFY FOR THE SPECIAL TRUCKING RULE

Only one of the nine trucking plans in our sample was eligible to use the special trucking rule because MPPAA limits its use to plans in which substantially all contributions are made by employers in the trucking industry. The phrase "substantially all" was not defined by MPPAA; however, the legislative history indicates that "substantially all" means at least 85 percent of the contributions are made by employers in the trucking industry.

According to PBGC and American Trucking Associations officials, this interpretation has in effect negated the trucking rule at most trucking plans. Of the nine trucking plans in our sample, only one has determined that 85 percent of its contributing employers are in the trucking industry. This plan, however, is fully funded for vested benefits and therefore withdrawal liability would not be applicable. The plan is also relatively small, with fewer than 400 participants and 15 contributing employers.

The remaining eight plans are subject to the general withdrawal liability rules, and employers withdrawing from these plans are being or will be assessed withdrawal liability. PBGC and trucking industry officials believe that few trucking plans qualify for the trucking rule because of the number of nontrucking industry employers contributing to them.

EMPLOYERS IN SAMPLED TRUCKING PLANS ASSESSED WITHDRAWAL LIABILITY

Five of the nine sampled plans had assessed withdrawal liability of about $24.8 million to 88 withdrawing employers. The remaining four plans were either fully funded, had no withdrawals, or had not yet assessed withdrawn employers.

Because of litigation, arbitration, or insufficient employer assets, collections from most withdrawing employers are being delayed or may be uncollectible. For example, in one plan there are a series of court cases challenging the constitutionality of MPPAA's withdrawal liability provisions. Cases in arbitration involve such issues as whether a withdrawal actually occurred, the official date of withdrawal, and the actuarial assumptions used to compute the liability. According to plan officials, bankruptcies of contributing employers with insufficient assets to pay withdrawal liability are perhaps the most serious impediment to collection. For example, in one plan well over half the amount of assessments due are attributable to bankrupt employers.

As shown by the following table, at the conclusion of our review, 73 of the 88 employers who had been assessed withdrawal liability on which the first payment was due had not made payments. Only 15 of the 88 employers, who account for less than 7 percent of the amount in payment status, were making payments or had paid in full.

Payment status of withdrawal liability
assessments due in sampled trucking plans

Plan number	Withdrawal liability in payment status		Withdrawal liability in payment status for which payments Have been made		Have not been made	
	Employers	Amount	Employers	Amount	Employers	Amount
1	26	$11,459,031	3	$ 400,571	23	$11,058,460
2	48	5,286,057	8	157,191	40	5,128,866
3	4	3,245,658	2	771,806	2	2,473,852
4	7	3,820,352	2	214,991	5	3,605,361
5	3	965,469	0	0	3	965,469
Total	88	$24,776,567	15	$1,544,559	73	$23,232,008

We could draw no conclusion on the collectibility of the $24,776,567 because the payment schedule can be spread over as long as 20 years. The outcome of litigation, arbitration, and bankruptcy proceedings will affect collectibility.

CONCERNS AND ACTIONS OF PLAN OFFICIALS, PARTICIPATING EMPLOYERS, AND OTHERS

Reactions to withdrawal liability varied among the trucking plans in our sample. In some cases there was little concern because the plans either were fully funded or had not had any withdrawals. However, other plans with large amounts of unfunded vested benefits had taken or were planning actions to lower their unfunded vested benefits levels, thereby reducing employer exposure to potential withdrawal liability assessments. For example, in one plan increases in pension contributions are being specifically earmarked for reducing the plan's unfunded vested benefits.

Another plan has eliminated a large part of its unfunded vested benefits with a technique it referred to as "immunization of assets." This was done by investing a portion of the plan's assets in fixed income securities and using those assets to offset a portion of unfunded vested benefits. Immunization benefited this plan because the rate of return on the fixed income assets is higher than the rate of return used to value the plan's other assets.[1]

Officials at the same plan have also discussed freezing benefits under the existing defined benefit plan and establishing a defined contribution plan. A defined contribution plan provides for an individual account for each participant and for benefits based solely on the amount contributed to each participant's account. It would not be covered by PBGC's insurance program and there would be no employer withdrawal liability. The plan is also considering a proposal under which new employee vesting rights to past service be withheld until retirement age, replacing its current policy of full vesting of past service after 10 years. Later vesting of past service liability means a lower amount of unfunded vested benefits and less employer exposure to withdrawal liability.

Officials representing the American Trucking Associations, the International Brotherhood of Teamsters, and two large transportation industry multiemployer plans believed that withdrawal liability in its present form is harmful to multiemployer plans and their contributing employers. A major concern is that withdrawal liability will discourage participation in plans with large unfunded vested benefits. Industry officials also believe that problems caused by withdrawal liability are worsened by the

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[1]Actuaries, in computing a plan's unfunded vested benefits, make an assumption as to the future rate of investment return on the plan's assets. This actuarially assumed rate cannot merely reflect the current earnings rate because the actuary must consider the probable fluctuations in investment earnings that will occur over the next 50 or 60 years. Actuaries tend to assume relatively conservative investment earnings rates because of such variables as anticipated rate of inflation and investment risk. When current investment returns are greater than the actuarially assumed rate, it is possible for a plan to invest a portion of its assets in long-term fixed income securities at rates of return higher than the actuarially assumed rate and dedicate those assets and related income to a portion of vested benefits such as those for retired plan participants. This action eliminates the unfunded vested benefits for the dedicated portion of the plan's participants and thereby reduces the plan's overall unfunded vested benefits. However, it also limits the plan's flexibility in managing its assets.

recessionary economy and the Motor Carrier Act of 1980, which deregulated the trucking industry.[2]

Industry officials are also concerned about the effect of withdrawal liability on contributing trucking employers. On March 21, 1983, the Vice Chairman of the American Trucking Associations' board of directors--in testimony before the Senate Subcommittee on Labor of the Committee on Labor and Human Resources--said that withdrawal liability affects every major business decision in the trucking industry, including buying, selling, consolidating, or merging companies; borrowing money; and moving to a new location or going out of business. He believes these major business decisions can potentially lead to (1) an increase in liability which can occur when one company buys or merges with another; (2) increased operating costs, such as for a business loan, which may cost more because of the additional risk; or (3) actual withdrawal liability assessment caused by the sale of a business, or a withdrawal due to a move outside the plan's jurisdiction.

CONCLUSIONS

At the conclusion of our fieldwork in February 1983, MPPAA's special withdrawal liability rules for the trucking industry had little effect on trucking plans in our sample because they generally cannot use them. Only one of the nine trucking plans in our sample was able to meet the criteria requiring that 85 percent of the plans' contributions must be made by employers in the trucking industry in order to use the special rules.

Although some trucking industry representatives and plan officials are concerned that applying MPPAA's general withdrawal liability rules could discourage employer participation in trucking plans, not enough time has elapsed since MPPAA's passage to determine whether this will occur.

We believe that the special withdrawal liability rules for the trucking industry have worked in a manner envisioned by the Congress, and in that sense are appropriate. Because of the trucking plans' generally poorer (than the construction industry) financial condition, the MPPAA requirement that PBGC make a determination that a withdrawal has not substantially damaged a plan's contribution base before a withdrawn trucking employer is exempted from withdrawal liability is particularly important.

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[2]The Motor Carrier Act substantially reduced government control of trucking and was designed to make it easier for new firms to enter the trucking business.

CHAPTER 4

EFFECT OF WITHDRAWAL LIABILITY ON

SAMPLED ENTERTAINMENT PLANS

MPPAA's special withdrawal liability rules for entertainment industry plans have had little effect on the three entertainment plans in our sample. Two of the plans have no unfunded vested benefits, and the third has not identified any withdrawn employers. The three sample plans accounted for about 11 percent of all entertainment plans and about 64 percent of their participant population.

However, the withdrawal liability provision caused one plan to alter its benefit structure. Officials at the plan were concerned about the potential negative effects of the withdrawal liability provisions on the plan. The trustees have established a separate individual account plan (a defined contribution plan) which will have no unfunded liability, and they have agreed not to increase the defined benefit plan's unfunded vested benefits, thereby limiting employers' exposure to withdrawal liability.

MPPAA authorizes PBGC to issue regulations concerning the entertainment rule. PBGC officials, however, believe there is no need for regulations at this time and they have no plans to issue them.

MPPAA's special withdrawal liability rules for the entertainment industry are similar to those in the construction industry. A withdrawal occurs if an employer's obligation to contribute to the plan under a collective bargaining agreement ceases and the employer continues similar work in the plan's jurisdiction or the employer resumes such work within 5 years of withdrawal.

To qualify for the entertainment rule, a plan must primarily cover employees in the entertainment industry. Additionally, individual employers' work must be performed in the entertainment industry and primarily on a temporary or project-by-project basis.

MPPAA defines the "entertainment industry" as theater, motion picture, radio, television, sound or visual recording, music, dance, and any other entertainment activity PBGC finds appropriate. PBGC may exclude by regulation a group or class of employers from the special rule if it determines such an exclusion is necessary to protect plan participants or to prevent a significant risk to the PBGC insurance system. Also, a plan may be amended to exclude a group or class of employers from the entertainment rule.

NO WITHDRAWAL LIABILITY HAS BEEN ASSESSED AT THE ENTERTAINMENT PLANS IN OUR SAMPLE

No withdrawal liability has been computed or assessed at the three entertainment plans in our sample. Two of the plans were fully funded, and the third had not identified any withdrawn employers who were liable for withdrawal liability.

Benefit structure changed at one entertainment plan because of withdrawal liability

Plan officials at one entertainment plan in our sample were taking actions to minimize the impact of withdrawal liability on contributing employers. Concern over withdrawal liability resulted in the establishment of an individual account plan, which will operate concurrently with the existing defined benefit plan. The individual account plan is a defined contribution plan and is by definition fully funded. Therefore, the plan does not expose contributing employers to any additional withdrawal liability. Employers contributing to this plan had twice refused to grant any benefit improvements in the defined benefit plan that would have increased their exposure to a withdrawal liability assessment.

Plan trustees believed that if they did not find a way to limit withdrawal liability, new employers would refuse to join the plan. Larger contributors who had no intention of withdrawing were also concerned about having to assume the liability of smaller employers who could have no withdrawal liability under the entertainment rule and other MPPAA provisions, such as the de minimis rule.

Both labor and management trustees pointed out that they would not have taken any action to establish an individual account plan if it were not for the threat of withdrawal liability. They believe their defined benefit plan, though not fully funded, is well funded and would have continued to be so. Employer withdrawals had not adversely affected the plan prior to MPPAA, and no major withdrawals had occurred subsequent to MPPAA's passage, nor were any expected. Both labor and management trustees believe MPPAA's withdrawal liability provision was unnecessary for their plan and had created unnecessary conflict among plan trustees.

PBGC AUTHORIZED TO ISSUE REGULATIONS CONCERNING THE ENTERTAINMENT PROVISIONS

MPPAA authorizes PBGC to prescribe rules governing the entertainment industry withdrawal liability exception. PBGC may issue specific regulations governing withdrawals from motion picture industry plans, and it may prescribe other regulations governing partial withdrawal liability for entertainment plans. In addition, PBGC may extend the entertainment rule to cover additional entertainment activities, and it may exclude a group or class of employers from the rule. PBGC has taken no action on any of these authorizations. A PBGC official explained that there has been no apparent need for regulations because officials of few plans consider their plans qualified for the entertainment exemption, and MPPAA itself is explicit on the entertainment exemption. On the basis of our limited sample, we have no basis for disagreement with this position.

CONCLUSIONS

MPPAA's withdrawal liability provision has affected the benefit structure of one of the entertainment plans in our sample. At this plan, the perceived threat to contributing employers from withdrawal liability has resulted in the plan essentially freezing its defined benefit plan and starting a concurrent individual account plan.

Our sample of entertainment plans was not large enough for us to make a judgment on the appropriateness of the entertainment rule or the financial condition of entertainment industry plans.

CHAPTER 5

PBGC HAS EXEMPTED TWO PLANS IN OTHER INDUSTRIES FROM WITHDRAWAL LIABILITY

MPPAA provides PBGC with discretionary authority to extend special withdrawal liability rules similar to those used by construction and entertainment industry plans to plans in other industries on a plan-by-plan basis. However, for a nonconstruction or nonentertainment industry plan to qualify for a special rule extension, PBGC must determine that (1) the plan's industry characteristics are appropriate for use of such rules and (2) the use of special rules by the plan would not pose a significant risk to the PBGC insurance fund.

Eight plans from diverse industries had applied for extensions of MPPAA's special rules at the time of our review--two had been approved. As of January 30, 1984, the other six were being evaluated by PBGC.

PBGC has issued procedural regulations under which it will review applications, as required by MPPAA, on a case-by-case basis. As determinations are made and precedents developed, PBGC officials said they may issue further regulations if warranted. PBGC officials advised us that this will allow PBGC flexibility in dealing with the varied circumstances which could be reflected in special rule extension applications, while assisting plans to determine if they qualify and how to apply.

SPECIAL WITHDRAWAL LIABILITY RULES HAVE BEEN EXTENDED TO TWO PLANS IN OTHER INDUSTRIES

PBGC has approved use of special withdrawal liability rules for the Division 1181 Amalgamated Transit Union-New York Employees Pension Fund and Plan and the International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan.

The Division 1181 Amalgamated Transit Union-New York Employees Pension Fund and Plan is a bus drivers' plan whose contributing employers provide contract services to a school district. It applied for the special withdrawal liability rules based on their determination that an employer ceasing contributions to the plan has no effect on the plan's contribution base. If one employer ceases contributions, the employer picking up the work is required by a court-sanctioned agreement to give hiring preference to the former employees. In this way, contributions continue without harming the plan.

On June 21, 1983, PBGC approved the use of special withdrawal liability rules for this plan. PBGC found the plan to be financially stable, with about $35 million in assets and about $4 million in unfunded vested benefits. Therefore, PBGC determined that use of the special rules by this plan would not pose a significant threat to the PBGC insurance fund. PBGC also determined that the plan's characteristics were such that withdrawals would not normally have an adverse effect on the plan's contribution base.

The International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan applied for special withdrawal liability rules based, in part, on the statement that all cargo loaded and unloaded in its jurisdiction would result in contributions to the plan. The jurisdiction is the entire West Coast, and because all longshore work is unionized, any employer doing work in the area is obligated to contribute to the plan.

On January 30, 1984, PBGC approved the use of special rules for this plan. In the "Notice of Approval," PBGC concluded that, in the short term, the condition of the plan and of the covered industry is such that use of special rules would not pose a significant risk to the PBGC insurance fund. However, long-term considerations led PBGC to have reservations concerning the effect of special rules for the plan. The plan had large unfunded liabilities, a comparatively low ratio of assets to liabilities, and a past history of benefit increases that had not been matched by increases in contributions. The most recent actuarial report, as of December 31, 1981, indicated that the plan had unfunded vested benefits of $391.4 million and assets of $178.8 million.

In response to PBGC's concerns, the plan revised its proposed special rules to provide specific funding objectives. Specifically, a special annual contribution would be required at a level needed to raise the plan's vested benefit funding ratio to 50 percent after 10 years and 80 percent after 20 years. PBGC believes that meeting these objectives will place the plan on a sound long-term financial basis. If the special funding objectives are not met, the special rules will automatically be canceled. PBGC concluded that, in the context of the plan and the nature of the industry it covers, the use of the special rules, as revised, will not pose a significant risk to the PBGC insurance system.

PLANS APPLYING FOR SPECIAL RULES MUST HAVE APPROPRIATE INDUSTRY CHARACTERISTICS

The special withdrawal liability rules for the construction and entertainment industries are based largely on the premise that a withdrawal from those plans typically does not harm a plan's contribution base unless the withdrawn employer continues to do similar work in the same area. The Congress believed that employees of employers withdrawing from a plan would normally obtain work with another employer in the same geographic area who would also contribute to the plan. Thus, the plan's contribution base would not be weakened.

In determining the appropriateness of special rules for other industries, a primary factor reviewed by PBGC is the effect withdrawals have on the plan's contribution base. If a plan can show that an industry's characteristics are such that withdrawals do not normally have an adverse effect, use of a special rule could be determined appropriate.

The legislative history indicates that these industry characteristics include: the project-by-project nature of work, the mobility of employees, the intermittent nature of employment, extreme fluctuations in the level of work, the existence of a consistent pattern of employer entry and withdrawal, and the local nature of work.

PBGC does not require that an industry conform to all or even most of these characteristics. Rather, it will use the characteristics as a guide. A plan may, in fact, display additional characteristics which show that withdrawals should not normally harm the plan.

For example, according to one of the extension requests, which PBGC has approved, new employers are obligated by a court-sanctioned agreement to give hiring priority to employees of withdrawn employers, thus plan contributions will continue. The other extension request PBGC approved states that because the entire industry is unionized within the plan's jurisdiction, a new employer has no choice except to become a contributor. In both cases, plan officials believe employer withdrawals will not harm the plans' contribution bases.

EXTENSION OF SPECIAL WITHDRAWAL LIABILITY RULES TO PLANS MUST NOT POSE A SIGNIFICANT RISK TO PBGC

An extension of special withdrawal rules granted by PBGC to an individual plan must not pose a significant risk to the PBGC insurance fund. This is unlike the construction and entertainment special rules, which apply industry-wide regardless of the potential risk to the PBGC insurance fund by individual construction or entertainment plans.

MPPAA requires PBGC to evaluate each plan's extension request individually. The evaluation includes a review of the plan's actuarial characteristics and risk factors related to the industry. Actuarial risk characteristics considered include such factors as the plan's ratios of active to retired participants, assets to vested benefits, income to expenses, and assets to benefit payout. When these and other factors are compared to past experience, PBGC officials can get an idea of whether the plan's financial condition is improving or deteriorating. Risk evaluation also includes an assessment of the industry covered by the plan, a primary consideration being the industry's viability. An industry which is growing would probably be a better risk than a stagnant or declining industry.

PBGC is also developing a simulation model to attempt to project a plan's future actuarial condition. The model will use such factors as the plan's current population, contribution, and benefit characteristics, along with certain assumptions to predict how these characteristics will change over time. Since the model's data base will include information on most multiemployer plans, it is anticipated that the model will be able to compare an individual plan to a typical plan.

If PBGC officials determine that approval of a special rule for a plan could present a risk to the insurance fund, conditions can be imposed on the approval as was done in approving special rules for the International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan. For this plan approval was conditioned on a certain level of plan funding and, if that level of funding is not maintained, the special rule can no longer be used by the plan. PBGC officials told us by including such conditions, it could avoid the burden of monitoring individual plans and making periodic redeterminations on the special rule. After approval, a plan may not modify its special rule unless PBGC consents.

PLANS IN DIVERSE INDUSTRIES ARE APPLYING FOR USE OF SPECIAL WITHDRAWAL LIABILITY RULES

The eight plans that have applied to PBGC for extension of special withdrawal liability rules are from diverse industries. In addition to the Division 1181 Amalgamated Transit Union-New York Employees Pension Fund and Plan and the International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan, for which special rules have been approved, the applications are from plans involved in clothing, farm labor, thoroughbred racing, and construction supply activities.

The International Ladies Garment Workers Union National Retirement Fund is applying for special rules based on the intermittent nature of the work done by most plan participants. Because the output of a specific manufacturer or jobber may fluctuate in response to the success or failure of current designs or changing fashions, the contractor may close down for part of the year. However, the plan has stated that the level of work in the industry is fairly constant regardless of the periodical closing of some contractors.

The Western Growers Pension Trust-Pension Plan A applied for the exemption based on the stability in the region of the industry, basically harvesting melons and lettuce and other vegetables. Even though some employers cease operations, the application states their employees are able to find gainful employment with either new or existing companies doing work in the same area.

The Maryland Race Track Employees Pension Fund in its application for exemption explained that contributions to the plan are based on a percentage, set by Maryland law, of the amounts bet at the thoroughbred tracks in Maryland. Also, the annual total number of days of racing are set by Maryland law and allocated among the tracks participating in the pension plan. The plan's application states that, if a track should cease operating, its racing dates would be awarded to the other tracks and there would not be any substantial reduction in the plan's contribution base.

The Southern California Rock Products and Ready Mixed Concrete Industries Operating Engineer Employees, Teamster Employees, and Machinist and Laborer Employees plans jointly applied for the exemption based on their close ties to the construction industry. The three plans' application stated there is a significant degree of employee mobility, employment is intermittent, and their work is on a project-by-project basis because they supply materials to ongoing construction projects.

CONCLUSIONS

PBGC has taken final action to extend the construction and entertainment special withdrawal liability rules to only two plans in other industries, and therefore, it is too early to assess the effect of the provision. However, it appears PBGC's plan-by-plan review of extension applications should help protect the PBGC insurance fund. The small number of applications submitted to date should allow PBGC to fully evaluate the industry characteristics as well as the financial condition of the plans applying.

CHAPTER 6

AGENCY COMMENTS AND OUR EVALUATION

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

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

By letter dated January 9, 1984 (see app. V), PBGC provided general technical comments on our draft report. PBGC also returned a copy of our draft report with additional technical comments annotated. We discussed each comment with PBGC and reached agreement for all comments on changes needed to strengthen the technical accuracy of the report.

IRS orally advised us that its appropriate divisions had reviewed the draft report and IRS had no comments.

By letter dated January 10, 1984 (see app. VI), Labor stated it had no objections to the conclusions in our report. However, Labor also stated that it understood the conclusions in this report are necessarily quite preliminary in light of the small number of plans impacted to date and the brief time MPPAA has been in effect.

We concur with Labor that the conclusions in this report regarding entertainment plans and the extension of special withdrawal liability rules to plans in other industries are preliminary. However, we believe that adequate data were available from our sample and enough time has lapsed to provide the basis for our conclusions that the special withdrawal liability rules were working in a manner envisioned by the Congress.

NONCONSTRUCTION PLANS WITH CONSTRUCTION EMPLOYERS

MPPAA provides that nonconstruction plans can be amended to provide that the special withdrawal liability rules apply to construction employers contributing to those plans. There were 7 nonconstruction plans in our overall sample of 149 plans with construction employers contributing to them. Three of the seven had been amended to apply special withdrawal liability rules to construction employers. At two plans there was apparently little controversy surrounding the decision. However, officials for the third plan initially did not adopt the special withdrawal liability rules for construction employers because they wanted to treat all contributing employers in the same manner.

As a result, the plan's construction employers commissioned a study by an actuary which concluded that the plan was not dependent on its ability to assess withdrawal liability against construction employers. The study pointed out that construction employers would be reluctant to engage in construction projects which obligated them to contribute to defined benefit plans and new employers would seek to operate on a nonunion basis. Further, a large construction employer association pointed out that construction employers contributing to the plan were concerned about the withdrawal liability rules and the negative perceptions they were forming could only harm the plan.

At one of the four plans not amended to provide for special withdrawal liability rules, an employer association contended its participation in the plan had not created any unfunded vested benefits. Also, they claimed that withdrawal liability was inequitable. They explained that if one employer withdraws and moves from the area, its employees may remain in the industry by going to work for another contributing construction employer. If this was the case and the withdrawn employer was assessed withdrawal liability, the plan would receive a windfall. Officials at this plan said they are studying a proposal to segregate the assets and liabilities attributable to construction employers. This would in effect result in the construction employers having a very small withdrawal liability.

At one of the remaining plans, an official told us that none of the plan's construction employers have asked for coverage; therefore, it does not plan to adopt the special rules. At the two remaining plans, special withdrawal liability rules had not been adopted for construction employers.

SUMMARY OF SELECTED ACTUARIAL RATIOS FOR CONSTRUCTION PLANS IN OUR SAMPLE

The financial health of a multiemployer pension plan is both difficult to measure and complicated to project. We assessed the financial condition of the sampled plans by using four ratios of plan characteristics which our actuaries believe provide measures of a plan's financial health. Although no one measure for a single year necessarily provides a complete and satisfactory assessment of the overall financial condition of a plan, our actuaries believe that this set of four ratios over several years indicates the relative financial strength of the plans.

--Assets to vested benefits.

--Income to expenses.

--Assets to benefit payout.

--Actives (participants) to other participants (retirees, beneficiaries, and separated vested participants).

Trends over time are as important for most of the ratios as the values themselves. Favorable trends show that a plan is improving its financial condition. Reasons that our actuaries selected these ratios include

--the availability of public information to calculate the ratios,

--their reflection of different aspects of financial conditions (cash flow, funding progress, participant characteristics),

--their stability over time,

--their relative insensitivity to changing actuarial methods and assumptions, and

--the ability to compare different plans.

A plan with low values of two or more ratios may be experiencing financial distress. Overcoming this difficulty could prove impossible, with or without MPPAA remedies.

The conditions that the ratios identify can be briefly summarized as

--poor or modest funding progress, indicated by a low value of assets to vested benefits;

--negative or marginal cash flow, indicated by a low value of income to expenses;

--a current population mix necessitating possibly burdensome contribution rates, indicated by a low value of actives to other participants; and

--a limited ability to continue benefit payments under adverse contingencies, indicated by a low value of assets to benefit payout.

A technical discussion of each of the four ratios follows.

ASSETS TO VESTED BENEFIT RATIO

This ratio measures a plan's funding status or progress to date and is frequently used by accountants, actuaries, and other users of financial data. When calculated using ongoing plan assumptions and the actuarial value of plan assets, this ratio shows the extent to which assets cover nonforfeitable benefits or benefits earned to date by vested participants. It provides a reasonable estimate of the level of funding attained when a plan terminates. As such, it gives a measure of the potential net claim that a plan's demise might cause against PBGC's insurance program.

Our actuaries selected a value of assets to vested benefits of less than 0.5 to identify plans with poor or modest funding. The following chart presents a summary of the assets to vested benefits ratio for the sample construction plans for the years of available data (vested benefits were not required to be reported until 1978 or later for most plans). The data were used as reported by the plans except in cases where the vested benefits were valued on a termination basis. In these cases, the vested benefits were adjusted to reflect the plans' ongoing assumptions.

Summary of vested benefits funding ratio
at the construction plans in our sample

Ratio of assets to vested benefits	Number of plans[a] 1977	1978	1979	1980	1981
100%	12	14	19	20	22
80-99%	7	7	10	11	12
60-79%	7	7	12	13	9
50-59%	1	3	6	5	4
Less than 50%	9	8	7	5	2
Total	36	39	54	54	49

[a]In 1977, 1978, and 1981, data were not available for all sample plans.

In 1981, the two plans below the 50-percent level had vested benefits ratios of 48 and 49 percent, respectively.

ASSETS TO BENEFIT PAYOUT RATIO

This ratio identifies plans with low assets relative to retiree liability as measured by current annual payments to beneficiaries. Such plans may have a limited ability to continue to make benefit payments should adverse contingencies arise.

In its 1978 study, "Multiemployer Study Required by P.L. 95-214," PBGC used this ratio as one of its measures for identifying plans with a high likelihood of termination. To project insurance costs, PBGC tried to identify plans that might terminate within 10 years. PBGC used 5.6 and 5.0 as minimum values in different screens.

The following chart summarizes asset to benefit payout ratio values for the sample construction plans in the plan years covered by our review. The data used were as reported by the plans.

Summary of assets to benefit payout ratio
for construction plans in our sample

Ratio of assets to benefit payouts	Number of plans[a] 1977	1978	1979	1980	1981
10.00 and above	42	42	43	42	39
8.00-9.99	2	1	1	4	2
6.00-7.99	4	5	5	4	2
Below 6.00	6	6	5	4	5
Total	54	54	54	54	48

[a]In 1981, data were not available for all sample plans.

In 1981, of the five plans below the asset to benefit payout ratio of 6.00, three were within the 5.00 to 6.00 range, one was at 4.30, and another was at 1.46. This last plan routinely purchases annuities for participants as they retire and as such is in a much stronger financial condition than its ratio value suggests.

INCOME TO EXPENSES RATIO

This ratio is a cash flow test which identifies plans whose excess of income over expenses is insufficient to provide asset growth that allows the plan to weather future contingencies. For example, should either benefit levels or the number of beneficiaries increase, current income levels may not be sufficient to avoid asset reduction. Unless a plan is both well funded and has a stable population, assets should be growing annually from the excess of income over outgo. Income includes contributions and investment earnings, while expenses include benefit payout and administrative expenses.

In its 1977 and 1978 studies "Potential Multiemployer Plan Liabilities Under Title IV of ERISA" and "Multiemployer Study Required by P.L. 95-214," respectively, PBGC used a similar ratio of cash flow (income minus expenses) to assets as one of its screens for identifying plans likely to terminate within 10 years. In the two studies, plans with a cash flow to assets ratio below 0.026 in one screen, or 0.10 in another were identified as "plans with potential financial hardship."

Our actuaries selected a value for income to expenses below 1.75 to identify plans whose current excess of income over expenses leaves an insufficient margin for contingencies. This threshold value was set to identify approximately the same proportion of sample plans as the other ratios. The following chart summarizes the income to expense ratio at the construction plans in our sample. The data used were as reported by the plans.

Summary of income to expenses ratio for construction plans in our sample

Ratio of income to expenses	Number of plans[a]				
	1977	1978	1979	1980	1981
3.00 and above	24	32	35	32	27
2.00-2.99	14	10	12	15	12
1.75-1.99	7	5	3	1	3
Less than 1.75	9	7	4	6	6
Total	54	54	54	54	48

[a]In 1981, data were not available for all sample plans.

In 1981, of the six plans with an income to expense ratio of less than 1.75, two were below 1.00, while the other four were at 1.10, 1.37, 1.53, and 1.65.

ACTIVES TO OTHER PARTICIPANTS RATIO

This ratio identifies plans with relatively low levels of active participants to retirees, beneficiaries, and separated vested participants. Most defined benefit plans base their contributions on the active participants to fund not only the active participants' benefits but also a portion of the retirees' benefits. Unless a plan is well funded, a low ratio value indicates a small contribution base of active workers over which to fund the plan.

In the aforementioned 1977 and 1978 studies, PBGC used an index similar to the actives to other participants ratio. In the two studies, plans with ratios of retired and separated vested participants to total participants that were greater than 0.34 in one screen, and 0.50 in another screen, were selected as high termination risks. This demographic ratio contains no financial information about the past funding of a plan, but is valuable in combination with other indices. PBGC's 0.34 ratio is generally equivalent to a value of 2 for our actives to other participants ratio.

Our actuaries selected values for actives to other participants below 2.00 to identify plans whose current mix of participants may lead to burdensome contributions per active employee. The following chart summarizes the actives to other participant ratio at the construction plans in our sample. The figures used were as reported by the plans.

Summary of active participants to other participants for construction plans in our sample

Ratio of actives to other participants	Number of plans[a]				
	1977	1978	1979	1980	1981
4.00 and above	25	27	22	20	13
3.00-3.99	6	9	11	11	12
2.00-2.99	4	4	8	11	9
Less than 2.00	12	13	13	12	15
Total	47	53	54	54	49

[a]In 1977, 1978, and 1981, data were not available from all sample plans.

In 1981, of the 15 plans with an active participants to other participants ratio of less than 2.00, five were below 1.00, four were between 1.20 and 1.40, three were between 1.70 and 1.80, and the remaining three were between 1.90 and 2.00.

SUMMARY OF SELECTED ACTUARIAL RATIOS FOR TRUCKING PLANS IN OUR SAMPLE

We reviewed the financial health of the trucking plans in our sample using four ratios selected by GAO actuaries to identify plans in possible financial difficulty. The ratios are more fully described and explained in appendix II.

ASSETS TO VESTED BENEFIT RATIO

Our actuaries selected a value of assets to vested benefits of less than 0.5 to identify plans with poor or modest funding. The following chart presents a summary of the assets to vested benefits ratio at the sample trucking plans for the years of available data (vested benefits were not required to be reported until 1978 or later for most plans). The data were used as reported by the plans except in cases where the vested benefits were valued on a termination basis. In these cases, the vested benefits were adjusted to reflect the plans' ongoing assumptions.

Summary of vested benefits funding ratio at the trucking plans in our sample

Ratio of assets to vested benefits	Number of plans[a]				
	1977	1978	1979	1980	1981
100%	0	0	1	1	1
80-99%	0	0	0	1	1
60-79%	1	1	3	3	1
50-59%	1	2	2	1	3
Less than 50%	2	2	3	3	1
Total	4	5	9	9	7

[a]In 1977, 1978, and 1981, data were not available for all sample plans.

In 1981, the one plan below the 50-percent level had an assets to vested benefits ratio of 31.7 percent.

ASSETS TO BENEFIT PAYOUT RATIO

Our actuaries selected a value of assets to benefit payout of less than 6.0 to identify plans that may have trouble meeting benefit payments to current retirees should any disruption of contributions or increase in payout occur. The following chart summarizes asset to benefit payout ratio values at the sample trucking plans for the plan years covered by our review. The data used were as reported by the plans.

Summary of assets to benefits payout ratio for trucking plans in our sample

Ratio of assets to benefit payouts	Number of plans[a]				
	1977	1978	1979	1980	1981
10.00 and above	5	4	4	5	5
8.00-9.99	1	1	1	0	1
6.00-7.99	1	1	2	2	0
Below 6.00	2	3	2	2	2
Total	9	9	9	9	8

[a] In 1981, data were not available for all sample plans.

In 1981, the two plans below 6.00 had assets to benefits payout ratios of 3.42 and 4.51, respectively.

INCOME TO EXPENSES RATIO

Our actuaries selected a value for income to expenses below 1.75 to identify plans whose current excess of income over expenses is insufficient to provide desired asset growth. This minimum value was set to identify approximately the same proportion of sample plans as do the other ratios. The following chart summarizes the income to expense ratio at the trucking plans in our sample. The data used were as reported by the plans.

Summary of income to expenses ratio for trucking plans in our sample

Ratio of income to expenses	Number of plans[a]				
	1977	1978	1979	1980	1981
3.00 and above	1	1	1	1	1
2.00-2.99	5	5	4	5	5
1.75-1.99	0	0	2	0	1
Less than 1.75	3	3	2	3	1
Total	9	9	9	9	8

[a]In 1981, data were not available for all sample plans.

In 1981, the one plan with an income to expenses ratio less than 1.75 had a ratio of 1.17.

ACTIVES TO OTHER PARTICIPANTS RATIO

Our actuaries selected values for actives to other participants below 2.00 to identify plans whose current population mix may cause burdensome contributions per active employee. The following chart summarizes the actives to other participant ratio at the trucking plans in our sample. The figures used were as reported by the plans.

Summary of active participants to other participants for trucking plans in our sample

Ratio of actives to other participants	Number of plans[a]				
	1977	1978	1979	1980	1981
4.00 and above	3	0	1	1	1
3.00-3.99	1	4	3	2	0
2.00-2.99	1	2	1	4	4
Less than 2.00	1	1	1	2	2
Total	6	7	6	9	7

[a]In 1977, 1978, 1979, and 1981, data were not available for all sample plans.

In 1981, the two plans with actives to other participants ratios less than 2.00 were at 1.53 and 1.91, respectively.

OTHER STUDIES OF FINANCIAL CHARACTERISTICS OF CONSTRUCTION PLANS

There were three recent studies of construction plans which also indicated that these plans were relatively well funded. One study was published by the Associated General Contractors of America,[1] another by the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada,[2] and the third by the Martin E. Segal Company.[3]

The Associated General Contractors study showed the ratio of plan assets to vested benefits for 419 construction plans. The study showed that 204 plans, or 48.7 percent of its universe, had no unfunded vested liability. It was also noted that much of the data were from plan years 1978 and 1979 and plans may now be even better funded. The study reported that management trustees have become more active in plan administration, and many plans have gone to great lengths to improve funding.

The following chart presents the results of the Associated General Contractors study of the vested benefits funding ratio at the 419 construction plans from which they obtained information.

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[1]Inventory of Construction Industry Multiemployer Pension Plans, February 1983.

[2]Survey of Withdrawal Liability Under the ERISA Multiemployer Pension Plan Amendments Act, 1982.

[3]A Survey of the Funded Position of Multiemployer Defined Benefit Plans, 1983.

Associated General Contractors study of vested benefits funding ratio at 419 construction plans

Ratio of assets to vested benefits	Plans	
	Number	Percentage of total
100%	204	48.70
70-99%	98	23.33
50-69%	75	17.97
Less than 50%	42	10.00
Total	419	100.00

The study published by the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada covered 210 plans in the plumbing, pipe fitting, and sprinkler industries. Of the 210 plans surveyed, 130 (or 61.9 percent) had no unfunded vested benefits. The following chart presents the vested benefits funding ratio at the 210 plans included in the study.

Summary of vested benefits funding ratio at 210 plumbing, pipe fitting, and sprinkler industry plans

Ratio of assets to vested benefits	Plans	
	Number	Percentage of total
100%	130	61.90
70-99%	49	23.33
50-69%	24	11.43
Less than 50%	7	3.33
Total	210	99.99

The study published by the Martin E. Segal Company covered 272 construction plans for which it provided actuarial services. In calculating the assets to vested benefits ratio, the figures used represented the value of vested benefits as calculated by the actuary for withdrawal liability purposes. This figure was used in comparison with the plans' assets at market values.

This study showed that 73.9 percent (201) of the 272 construction plans covered were fully funded, and only 3.3 percent were less than 50 percent funded. The following chart presents the results of the company's study of construction plans.

Martin E. Segal Company's study of vested benefits funding ratio at 272 construction plans

Ratio of assets to vested benefits	Plans	
	Number	Percentage of total
100%	201	73.90
80-99%	32	11.76
50-79%	30	11.03
Less than 50%	9	3.31
Total	272	100.00

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

January 9, 1984

Mr. Richard L. Fogel
Director
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

Thank you for the opportunity to comment on the draft proposed GAO report to the Congress entitled, "Assessment of Special Rules Exempting Multiemployer Pension Plans in the Construction, Trucking and Entertainment Industries from Withdrawal Liability." First, I want to compliment you on the good quality of the report. As one of the first efforts to obtain factual information on the impact of the Multiemployer Pension Plan Amendments Act (the "Act"), I think it is a commendable piece of work.

I am enclosing with this letter a copy of the draft report which contains various marginal comments for your consideration. In addition, we have the following more general comments.

1. In several places in the report, the statement is made that "employers contributing to construction and entertainment plans are generally exempt from withdrawal liability" (Digest, p. ii). This statement is too broad. No industry is "exempt from withdrawal liability" under the Act. The sentence would more accurately read: Certain industries are not subject to withdrawal liability, except under specified circumstances which are set forth in the statute.

2. At various points, the report states that withdrawal liability was not assessed against certain withdrawing employers because the plan was "fully funded for vested benefits" (Digest, p. iii). Without further explanation, it is not clear whether the non-assessment of withdrawal liability by the plan was in accordance with the Act. Under the presumptive method for determining liability, which must be used by all construction plans, an employer may still be assessed withdrawal liability even though the plan is fully funded. That is so, because an employer's withdrawal liability is based on its share of the unfunded vested benefits for the last plan year ending before April 29, 1980 and annual changes in unfunded vested benefits thereafter. Thus, if a plan

previously had unfunded vested benefits allocable to the employer, the employer may still be liable for withdrawal liability even though the plan is fully funded when the employer withdraws.

3. How are plans determined to be "trucking plans" for the purposes of the report? There is a statutory definition for that term in section 4203(d)(2). Since only one out of nine of the sampled trucking plans qualified under that definition, it is not clear on what basis and why the other eight are included in a "sample", upon which conclusions are to be drawn concerning the impact of the rule on plans described in section 4203(d)(2).

4. On page 31, the draft report states that, when the Act was under consideration in Congress, PBGC officials "believed that application of the construction rule to trucking plans could expose the trucking plans and PBGC's insurance system to a large risk." This statement only partially explains why Congress established different special rules for the trucking and construction industries. Reference should also be made to the fact that certain trucking industry representatives wanted a different rule. As indicated by a letter to Senator Eagleton, dated June 4, 1981, from Robert E. Nagle, former PBGC Executive Director --

> "Another reason why the trucking rule is different from the construction rule is that representatives of several large Teamsters plans concluded that the construction rule was not appropriate for their situation. The resulting trucking rule was a compromise worked out by the various interested groups."

5. On p. 44, the draft report states that the Act "authorizes but does not require PBGC to issue regulations [under section 4203(f)]...PBGC has not issued and has no plans to issue such regulations." Since PBGC has issued a regulation, though it is procedural in nature, (29 CFR, Part 2645) pursuant to which it is considering the requests for special rules, the report should be revised to reflect that action. In addition, as PBGC gains experience in these issues from deciding specific cases, we may decide to promulgate a substantive regulation in this area.

6. On p. 48, the draft report quotes "PBGC officials" concerning two policy statements on how PBGC will evaluate requests for special rules under section 4203(f), i.e. "a plan with a strong union which requires contributions may be a better risk than a plan in an area which provides alternatives to plan participation", and PBGC will "also consider what could happen to the plan if special rules are not extended." Neither of the quoted statements reflects PBGC policy and should be deleted.

APPENDIX V

We would be pleased to meet with you or members of your staff to further discuss this matter. Should you feel that would be helpful, please contact Vincent Cicconi at (254-6138).

Sincerely yours,

Edwin M. Jones
Executive Director

Enclosure

APPENDIX VI

U.S. Department of Labor

Assistant Secretary for
Labor-Management Relations
Washington, D C 20210

10 JAN 1984

Mr. Richard L. Fogel
Director, Human Resources Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

This is in response to your request that the Department of Labor review the draft report, "Assessment of Special Rules Exempting Multiemployer Pension Plans in the Construction, Trucking and Entertainment Industries from Withdrawal Liability." We understand that this draft report is part of GAO's overall study of the impact of the Multiemployer Pension Plan Amendments Act (MPPAA) pursuant to section 413 of MPPAA.

The draft report draws certain conclusions with respect to the impact of MPPAA's withdrawal liability provisions on plans in the construction, entertainment and trucking industries. MPPAA contains different, special rules for each of these industries. In general, the draft report concludes that the special withdrawal liability rules have had little effect on all industries because, of the 58 plans examined, 28 were fully funded and 21 had not identified any withdrawn employers. The draft report does find that the special rules are appropriate for construction and trucking (data was insufficient in the entertainment industry) and that it was too early to evaluate the effect of PBGC's special exemption authority.

The draft report has no recommendations on which to comment; the Department did, however, review the draft report and its conclusions. We understand that the conclusions are necessarily quite preliminary in light of the small number of plans impacted to date and the brief time the law has been in effect, and we have no objections to those conclusions.

Sincerely,

Ronald J. St. Cyr
Deputy Assistant Secretary
for Labor-Management Relations

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