



AMERICAN ACADEMY *of* ACTUARIES

October 7, 2003

The Honorable Evan Bayh
463 Russell Senate Office Building
Washington, DC 20510

Re: Multiemployer Legislation

Dear Senator Bayh:

I am writing on behalf of members of the American Academy of Actuaries¹ Multiemployer Plans Task Force to comment on S.1610, the Defined Benefit Pension Plan Reform Act of 2003. We appreciate the opportunity to provide our thoughts on several of the provisions contained in this legislation.

Multiemployer Plan Emergency Investment Loss Rule

This would be welcome relief to most multiemployer plan actuaries and sponsors. Multiemployer defined benefit (DB) plans, in practice, provide an annuity-type benefit based on a defined contribution plan (DC) philosophy because of the typical collective bargaining agreement, which provides for a fixed schedule of contributions during a bargaining cycle – spanning three to five years. Trustees for these plans do not have the options that single employers do for coming up with larger contributions when interest rates or equity markets decrease significantly from one valuation to the next. This relief would allow plans time to resolve the current crisis through a combination of contribution increases (in conjunction with one or more collective bargaining cycles) and benefit level adjustments. The restoration of balance between benefits and the resources to pay for them could then be determined using a long-term analysis. Without this change, for some pension plans the current minimum funding requirements would result in significantly more drastic benefit cuts or contribution increases in the near future.

Mortality Table Adjustment

We believe that the use of separate mortality tables for blue- and white-collar workers, as provided in your legislation, is appropriate for the determination of current liability. We also agree that there should be “consistent use” of the tables (i.e., if an employer opts to recognize mortality differences by collar for one plan, then they should use collar specific mortality tables

¹ The American Academy of Actuaries is the public policy organization for actuaries of all specialties within the United States. In addition to setting qualification standards and standards of actuarial practice, a major purpose of the Academy is to act as the public information organization for the profession. The Academy is nonpartisan and assists the public policy process through the presentation of clear actuarial analysis. The Academy regularly prepares testimony for Congress, provides information to federal and state elected officials, regulators and congressional staff, comments on proposed federal and state regulations and legislation, and works closely with state officials on issues related to insurance. The Academy also develops and upholds actuarial standards of conduct, qualifications and practice, and the Code of Professional Conduct for all actuaries practicing in the United States.

for all other plans, as applicable). The Academy has suggested similar changes in a letter to the Department of Treasury, a copy of which is enclosed.

Modification of Full Funding Limitation for Purposes of Deduction Limits on Employer Pension Plan Contributions

We have three comments:

- Any increase in deductibility limits is welcome. These limits, in large part, contributed to the current funding problem.
- If the intent is to allow contributions to be deductible so long as the contributions do not cause assets to exceed 130 percent of current liability, we suggest that Internal Revenue Code (IRC) Section 404(a)(1)(D) be amended rather than Section 404(a)(1)(A). If the amendment is in 404(a)(1)(A), it will not be as helpful to mature pension plans with reduced workforces. We can suggest alternative language if that would be helpful.
- Oftentimes the determining deductibility limitation for multiemployer plans is the combined plan limit under IRC Section 404(a)(7). The problem may be best illustrated by an example.

Consider a construction industry union whose members receive retirement benefits from both a defined benefit plan and a defined contribution plan. Because of the nature of the industry, participants can work for as many as 20 different employers in any given year and 401(k) plans are not feasible as a vehicle for the defined contribution plan. So, the plan is structured as a money purchase pension plan to which employers contribute \$2.50 per hour, or about \$3,000 per year for the average plan participant. The employers also contribute \$2.50 per hour to a defined benefit pension plan. The journeyman pay rate (taxable wages) is \$20.00 per hour. The plan is in compliance with IRC Section 404(a)(7) since the combined contribution is \$5.00 per hour, which is not more than 25 percent of the participant's compensation.

As a result of the recent market downturn, the defined benefit plan needs an additional \$2.00 per hour to meet ERISA minimum funding standards. The employers would agree to contribute an extra \$1.00 per hour provided the union agrees to make up the difference through benefit reductions.

Even if the parties agree to what would appear to be a responsible and reasonable compromise to deal with the funding problem, Section 404(a)(7), as currently written precludes the employers from deducting the additional \$1.00 per hour contribution since it would cause the 25 percent of pay limit to be exceeded ($\$6.00/\$20.00 = 30$ percent).

We would be happy to discuss with you in detail our specific comments on your legislation. If you or your staff would like to discuss this issue further, please contact Heather Jerbi, the Academy's pension policy analyst (202-785-7869; Jerbi@actuary.org).

Sincerely,

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Chairman, Multiemployer Plans Task Force
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