AMERICAN ACADEMY of ACTUARIES

March 7, 2005

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5669
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attn: PFEA '04 Project

RE: Comments on proposed regulations regarding annual funding notice for multiemployer defined benefit pension plans

Dear Sir or Madam:

The American Academy of Actuaries'[1] Multiemployer Plans Task Force appreciates the opportunity to respond to your request for comments regarding proposed regulations on the annual funding notice for multiemployer defined benefit pension plans, as required by Sec. 101(f) of the Employee Retirement Income Security Act (ERISA) and Sec. 103 of the Pension Funding Equity Act of 2004 (PFEA).

The Academy's task force recently published an issue brief, *Principles of Pension Funding Reform for Multiemployer Plans,* pertaining to multiemployer pension plans. One of the principles discussed in that brief was the need to encourage transparency regarding the funded status of multiemployer plans for participants and contributing employers. We commend the Employee Benefits Security Administration (EBSA) for addressing this issue through the proposed funding notice regulations that were published in the *Federal Register* on February 4, 2005. The comments below specifically address the contents of the model notice.

The section of that notice entitled *Plan's Financial Information* would disclose the market value of the plan's assets, the benefit payments made for the plan year in question, and the ratio of plan assets to benefit payments, as required by proposed regulation paragraph 2520.101-4(b)(6) and ERISA Sec. 103. The model notice goes on to state, "this ratio suggests that the plan's assets could provide for approximately [enter amount calculated above] years of benefit payments in annual amounts equal to what was paid out in the plan year. However, the ratio does not take into account future changes in total benefit payments or plan assets."

Members of the task force are concerned about the implications of the comments made in the notice regarding the assets to benefit payments ratio. The assumptions made in calculating the ratio reflect a "snap-shot" of the plan's assets as of the valuation date. However, they do not include the effect of future employer contributions mandated by collective bargaining agreements, which can occur even when there are no future benefit accruals being earned under the plan. Also, where one or more employers withdraw from a plan, there may be a continuing obligation for future contributions from those employers under the plan's withdrawal liability provisions. These factors are not mentioned in the qualifying remarks about the ratio ignoring future changes in

[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.

benefit payments or plan assets. The net effect could be misleading as to the length of time that existing benefits could be paid from plan assets without reduction.

We realize that the ratio of assets to benefit payments is a required disclosure under the law. We recognize that some interpretation of the statutory ratio needs to be provided to participants and other interested parties. Our concern is how participants would interpret and use this ratio. We anticipate that many plans will want to use the model disclosure language.

We recommend that the sentence following the disclosure of the ratio of assets to benefit payments be replaced by one of the following:

(1) "This ratio suggests that the plan's assets could provide for approximately [enter amount calculated above] years of benefit payments in annual amounts equal to what was paid out in the plan year. However, the ratio does not take into account the effects of ongoing contractual employer contributions, withdrawal liability payments by former contributing employers, earnings on plan assets, changes in benefit payments, or additional benefits earned by active plan participants, all of which may have a significant effect on the ratio from year to year. In addition, this ratio is only one simple measure of the financial status of the plan and is not by itself a reliable indicator of the plan sponsors' ability to maintain the minimum funding standards of ERISA and pay promised benefits in the future."

OR

(2) "This ratio is an indicator of the plan's ability to pay benefits in the short-term. In general, the higher the ratio, the better able a plan is to continue paying benefits from current assets. The ratio does not include ongoing contractual employer contributions, withdrawal liability payments by former contributing employers, future changes in total benefit payments, or earnings on plan assets. These additional factors may also have a significant effect on the ratio from year to year. In addition, this ratio is only one simple measure of the financial status of the plan and is not by itself a reliable indicator of the plan sponsors' ability to maintain the minimum funding standards of ERISA and pay promised benefits in the future."

Members of the task force appreciate this opportunity to share our thoughts on the proposed regulations regarding disclosures by multiemployer defined benefit pension plans. We would be interested in meeting with you to answer any questions or discuss any of the concerns expressed in this letter. Please contact Heather Jerbi, the Academy's senior pension policy analyst (202.785.7869; Jerbi@actuary.org), if you have any questions or would like additional information.

Sincerely,

James J. McKeogh, MAAA, EA, FCA, FSA
Chairperson, Multiemployer Plans Task Force
American Academy of Actuaries