

## AMENDING TITLE IV, EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

NOVEMBER 1 (legislative day, OCTOBER 29), 1977.—Ordered to be printed

Mr. WILLIAMS, from the Committee on Human Resources, and for the  
Committee on Finance, submitted the following

### REPORT

together with

### ADDITIONAL VIEWS

[To accompany S. 2125]

The Committee on Human Resources and the Committee on Finance, to which was referred jointly the bill (S. 2125), to amend title IV of the Employee Retirement Income Security Act of 1974 to authorize the Pension Benefit Guaranty Corporation to extend, for not more than eighteen months, the date on which the corporation first begins paying benefits under terminated multiemployer plans, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

### SUMMARY

The Committee on Human Resources and the Committee on Finance, to which the Senate referred the bill (S. 2125), to amend title IV of the Employee Retirement Income Security Act of 1974 (ERISA) to authorize the Pension Benefit Guaranty Corporation (PBGC) to extend, for not more than 18 months, the date on which the Corporation first begins paying benefits under terminated multiemployer plans, having considered the same, reports favorably thereon with amendment and recommends that the bill as amended do pass.

### PURPOSE AND BACKGROUND

The purpose of S. 2125 is to defer for 18 months the date on which pension plan termination insurance becomes mandatory for multi-

employer plans under title IV of ERISA. Existing law provides that during the period from ERISA's enactment (Sept. 2, 1974) through December 30, 1977, plan termination insurance benefits under title IV of ERISA will be available for multiemployer plans only through an exercise of PBGC discretion, subject to certain statutory criteria. Existing law also provides that commencing on January 1, 1978, insurance benefits coverage for multiemployer plans will become mandatory.<sup>1</sup>

The period of discretionary coverage was created when ERISA was enacted in 1974 due to existing uncertainties regarding the incidence of multiemployer plan terminations and the impact of title IV's provisions on such plans. In essence, the Congress provided a trial period during which insurance benefits could be made available in the discretion of PBGC and during which PBGC, the multiemployer plan community and the Congress could, through observation of experience in the discretionary period, assess the suitability of title IV's provisions as they relate to multiemployer plans.

S. 2125, as amended by the committees, mandates a deferral for 18 months—until July 1, 1979—of the date on which mandatory insurance coverage will begin. The bill also provides that by not later than July 1, 1978, PBGC will submit to the Congress a comprehensive report analyzing the foreseeable effects of mandatory coverage on PBGC's financial condition, alternatives available to the corporation to ensure proper financing of PBGC's multiemployer plan program and proper coverage for such plans, and PBGC's recommendations for any title IV amendments it believes necessary respecting multiemployer plans.

During recent hearings on S. 2125, conducted separately by the Subcommittee on Labor of the Committee on Human Resources and the Subcommittee on Private Pension Plans and Employee Fringe Benefits of the Committee on Finance, testimony was received on present and anticipated difficulties relating to multiemployer plans under title IV of ERISA.

Matthew Lind, Acting Director of PBGC, presented a PBGC study<sup>2</sup> which found that 12 percent of all multiemployer pension plans, covering one-fifth of all multiemployer pension plan participants, are experiencing extreme or significant financial hardship which may result in plan termination.<sup>3</sup> Two percent of all multiemployer plans, with a total unfunded, vested liability of more than \$350 million, were found to be experiencing extreme financial hardship and to have a high potential for termination. The remaining

<sup>1</sup> That is, payment of benefits will no longer be discretionary and PBGC will be required to pay insurance benefits in accordance with the coverage and guaranteed benefits provisions of sections 4021 and 4022 of ERISA.

<sup>2</sup> "Potential Multiemployer Plan Liabilities Under Title IV of ERISA." Sept. 29, 1977.

<sup>3</sup> The plans were categorized on the basis of the following three characteristics: (1) the proportion of retired and terminated vested participants to total participants; the proportion was considered high if it exceeded the average for multiemployer plans (16.7 percent); (2) the level of plan assets relative to benefit payout requirements (a level of assets sufficient to pay benefits for 15 years was considered safe); and (3) the net cash inflow (or outflow) relative to total plan assets over several years.

Plans which did not have a high proportion of retired and terminated vested participants and which had a safe asset level were not considered to be potential terminations. Plans with a former participant/current participant ratio greater than 50 percent, plan assets adequate to pay benefits for less than 5 years, and a cash flow of less than 10 percent of assets were considered to have a significant potential for termination. Plans with characteristics indicating the highest potential for termination were considered to be experiencing extreme financial hardship.

10 percent were deemed to have a significant potential for termination, with a total unfunded vested liability of \$3.5 billion.

Although PBGC's study, which placed special emphasis on identifying plans in what were termed industries, was confined to potential terminations due to financial hardship, PBGC emphasized that terminations for other reasons could also be significant, in terms of both number and amount of unfunded, vested liabilities.

Among the other reasons that might cause multiemployer plan terminations are the provisions of title IV itself. PBGC's study points out that, with regard to multiemployer plans, the contingent employer liability provisions may impose heavy burdens not only on employers who contribute to terminating plans, but also on employers contributing to weak ongoing plans. The study states:

The most severe adverse impact on employers probably will occur in poorly funded plans in declining industries, because unfunded guaranteed benefits typically would be allocated among fewer employers as a result of previous withdrawals and reductions in the entry of new employers. Many of the remaining employers in such situations are likely to be financially weak, so that the imposition of liability will be extremely burdensome.

\* \* \* \* \*

Potential employer liability may be an incentive to early withdrawal from plans and may be an inducement to termination of an otherwise viable plan. Early withdrawal or termination may be advantageous where continuation of the plan would result in increases in employer liability. Such increases may occur because of higher vested benefits, phase-in of guarantees of benefit increases, or a reduction in the plan contribution base as a result of declining employment or withdrawal of employers.

Potential employer liability also may act as a barrier to entry into existing plans and establishment of new covered plans. Employers seeking to avoid participation in a covered multiemployer plan may decide to provide alternative benefit arrangements (that is, a profit-sharing plan), or may even decide to operate a nonunion shop. Withdrawals, terminations and failure of employers to enter or establish a covered plan deprive workers of the opportunity to enhance their retirement income security through participation in such a plan. Moreover, these results may have the effect of reducing the contribution base for the plan, even where an industry decline is not involved.

PBGC's study concludes:

Thus, because of the magnitude of the potential liabilities of terminating multiemployer plans and its impact on the current insurance program and employers, and because of the potentially adverse impact of title IV on the growth and continuance of multiemployer plans, it is essential that a serious and immediate reexamination be undertaken of the provisions of title IV applicable to these plans.

In his testimony, Mr. Lind emphasized that the foreseeable difficulties regarding title IV, particularly the title IV provisions on employer withdrawals from participation in plans and the contingent employer liability provisions, will operate to increase the likelihood of multiemployer plan terminations even in the absence of economic hardship. Mr. Lind stated that for these and other reasons the PBGC supports a deferral of mandatory coverage for multiemployer plans where the deferral is linked with concerted and immediate efforts to address the problems. Finally, Lind stressed that during the deferral period, PBGC would exercise its discretionary authority to cover terminating multiemployer plans to the fullest extent where there is no alternative to termination.

Other witnesses testifying before the Subcommittee on Labor commented favorably on S. 2125. Significantly, representatives of two organizations most closely involved with multiemployer plan interests, the National Coordinating Committee for Multiemployer Plans and the Council of Construction Employers, commented favorably. Only one organization, the Pension Rights Center, is known to have questioned the bill, suggesting that instead of deferring the date for mandatory coverage, the Congress should directly address the underlying difficulties in title IV as it relates to multiemployer plans.

The purpose of deferring mandatory coverage and requiring PBGC to report to the Congress by July 1, 1978 is to ensure that the Congress has the results of PBGC's assessment and its recommendations regarding amendments, as well as the views of other interested persons, before moving to amend title IV of ERISA. In view of the shortness of time remaining before mandatory coverage is due to begin, the committees are of the view that continuance of discretionary PBGC coverage of such plans is the best course to follow at this time.

In this regard, the committees expect that PBGC will exercise its discretion to the fullest extent where there is no reasonable alternative to termination. The committees are mindful of PBGC's assertion that it could provide discretionary coverage for a large number of plans without jeopardizing its ability to make current benefit payments.

Further, the committees favor continuance, during the 18-month deferral period, of PBGC's present policy of applying funds collected to the discretionary payment of guaranteed benefits under multiemployer plans terminating before the commencement of mandatory coverage. The money available for discretionary payments consists of premiums paid by multiemployer plans during the discretionary period, the assets of the multiemployer plans that terminate during that period, employer liability collections attributable to such plans, as well as income on those amounts. In effect, these funds constitute a reserve that can and should be used to provide discretionary guarantees on a cash-flow basis.

#### ESTIMATE OF COSTS

In accordance with the requirements of section 252(a) of the Legislative Reorganization Act of 1970, the committees provide the following estimate of the costs of this bill.

No government agency has submitted to the committees any cost estimate by which a comparison can be made with the committees' estimate of the cost of this legislation. The committees believe that there will be no consequential additional costs incurred by any Federal agency as a result of enactment of this bill.

#### REGULATORY AND PAPERWORK IMPACT

Pursuant to the requirement of section 5 of rule XXIX of the Standing Rules of the Senate, the committees estimate that roughly 7.7 million participants in collectively bargained multiemployer pension plans are subject to the termination insurance provisions of title IV of ERISA.

Because the bill essentially provides for a continuance of the status quo, the committees determine that this legislation will have no substantial economic impact on the individuals, pension plans, employers and labor organizations affected; and it will not affect the personal privacy of any person or significantly increase the amount of paperwork under title IV.

#### SECTION-BY-SECTION ANALYSIS

*Section 1.* Subsection (a) amends section 4082 of the Employee Retirement Income Security Act of 1974 by deferring for 18 months the date on and after which the Pension Benefit Guaranty Corporation must pay benefits in terminations of covered multiemployer pension plans.

Subsection (b) requires PBGC to report to the Committees on Human Resources and Finance of the Senate and the Committee on Education and Labor of the House by not later than July 1, 1978, addressing the anticipated financial condition of the termination insurance program relating to mandatory coverage of multiemployer plans, including the possibilities of serious financial difficulty for PBGC after insurance for multiemployer plans becomes mandatory, the courses of action available to PBGC to insure proper coverage of multiemployer plans and proper financing of the PBGC multiemployer plan program, and making recommendations for legislative change deemed necessary by PBGC.

#### CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

#### EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

##### AN ACT To provide for pension reform

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,*

\* \* \* \* \*

**TITLE IV—PLAN TERMINATION INSURANCE**

\* \* \* \* \*

**SUBTITLE E—AMENDMENTS TO INTERNAL REVENUE CODE OF 1954;  
EFFECTIVE DATES**

\* \* \* \* \*

**SEC. 4082.** (a) The provisions of this title take effect on the date of enactment of this Act.

\* \* \* \* \*

(c) (1) Except as provided in paragraphs (2), (3), and (4), the corporation shall not pay benefits guaranteed under this title with respect to a multiemployer plan which terminates before **[January 1, 1978]** *July 1, 1979*. Whenever the corporation exercises the authority granted under paragraph (2) or (3), the corporation shall notify the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives, and the Committee on Human Resources and the Committee on Finance of the Senate.

(2) The corporation may, in its discretion, pay benefits guaranteed under this title with respect to a multiemployer plan which terminates after the date of enactment of this Act and before **[January 1, 1978]** *July 1, 1979*, if—

(A) the plan was maintained during the 60 months immediately preceding the date on which the plan terminates, and

(B) the corporation determines that the payment by the corporation of benefits guaranteed under this title with respect to that plan will not jeopardize the payments the corporation anticipates it may be required to make in connection with benefits guaranteed under this title with respect to multiemployer plans which terminate after **[December 31, 1977]** *June 30, 1979*.

(3) Notwithstanding any provision of section 4021 or 4022 which would prevent such payments, the corporation, in carrying out its authority under paragraph (2), may pay benefits guaranteed under this title with respect to a multiemployer plan described in paragraph (2) in any case in which those benefits would otherwise not be payable if—

(A) the plan has been in effect for at least five years,

(B) the plan has been in substantial compliance with the funding requirements for a qualified plan with respect to the employees and former employees in those employment units on the basis of which the participating employers have contributed to the plan for the preceding five years, and

(C) the participating employers and employee organization or organizations had no reasonable recourse other than termination.

(4) If the corporation determines, under paragraph (2) or (3), that it will pay benefits guaranteed under this title with respect to a multiemployer plan which terminates before **[January 1, 1978]** *July 1, 1979*, the corporation—

(A) may establish requirements for the continuation of payments which commenced before January 2, 1974, with respect to retired participants under the plan.

(B) may not, notwithstanding any other provision of this title, make payments with respect to any participant under such a plan who, on January 1, 1974, was receiving payment of retirement benefits, in excess of the amounts and rates payable with respect to such participant on that date,

(C) may not make any payments with respect to benefits guaranteed under this title in connection with such a plan which are derived, directly or indirectly, from amounts borrowed under section 4005(c), and

(D) shall review from time-to-time payments made under the authority granted to it by paragraphs (2) and (3), and reduce or terminate such payments to the extent necessary to avoid jeopardizing the ability of the corporation to make payments of benefits guaranteed under this title in connection with multi-employer plans which terminate after **[December 31, 1977]** *June 30, 1979*, without increasing premium rates for such plans.

*(d) The corporation shall present to the Committee on Education and Labor of the House of Representatives and the Committee on Human Resources and the Committee on Finance of the Senate a report which comprehensively addresses the anticipated financial condition of the program relating to mandatory coverage of multiemployer plans, including possible events which might cause the corporation to experience serious financial difficulty after July 1, 1979. Such report shall include an explanation of any alternative courses of action which might be taken by the corporation to insure proper coverage of multiemployer plans and the proper financing of the program relating to such plans. If the report contains recommendations for amendments to this title, such recommendations shall be fully explained, and shall be accompanied by explanations of other options for legislative change considered and rejected by the corporation. The report shall be presented by July 1, 1978.*

## ADDITIONAL VIEWS OF JACOB K. JAVITS, REPUBLICAN OF NEW YORK

On August 4 of this year when I introduced legislation (S. 2019) to defer mandatory termination insurance coverage of multiemployer plans, some doubted whether we were facing an immediate and potentially catastrophic problem of plan terminations that would overwhelm the insurance program. Indeed, one of my principal reasons for introducing S. 2019 was to provide a vehicle for the marshalling of facts and ideas on the subject.

Since August, a consensus has developed that the problem of multiemployer plan terminations is extremely serious and that the Congress and the Pension Benefit Guaranty Corporation need more time to develop permanent solutions. The PBGC has reported that of the 2,000 multiemployer plans covered by title IV of the Employee Retirement Income Security Act of 1974, about 2 percent of such plans, covering approximately 5 percent of such plan participants, are experiencing extreme financial hardship, indicating a high potential for termination within the next 5 years. The aggregate unfunded vested liabilities in these plans in 1977 exceed \$350 million.

Another 10 percent of such plans, with about 1.2 million participants, are experiencing significant financial hardship which may result in termination within the next 5 years or longer. These plans have aggregate unfunded vested liabilities in 1977 of about \$3.5 billion.

The bill which Senator Williams and I have agreed upon, and which both the Human Resources Committee and the Finance Committee have reported favorably, provides for a delay of mandatory insurance coverage by the PBGC from January 1, 1978 to July 1, 1979. In addition, the PBGC will be required to report to the Congress no later than July 1, 1978, on its proposals for permanently solving the multiemployer plan termination problem.

It is my understanding and expectation that the PBGC will exercise its discretionary authority to the extent practicable where there is no reasonable alternative to termination. The PBGC has represented, and I am relying on its statement, that the Corporation has the capability to provide significant coverage of terminations during the extended discretionary period.