

A BASIC GUIDE TO MULTIEMPLOYER PLANS



Presented by:

The National Coordinating Committee for Multiemployer Plans

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The National Coordinating Committee for Multiemployer Plans (NCCMP) is a non-profit, tax-exempt organization of multiemployer pension, health, and welfare plans and their labor-management sponsors. The NCCMP was established in 1975 to represent the legislative, regulatory, and legal interests of the multiemployer plan community - a community composed of thousands of plans, tens of thousands of labor-management sponsors, and more than ten million American workers and their families.

The national, regional, and local benefit plans affiliated with the NCCMP cover workers in industries that cut across the entire economy including: building and construction, trucking and transportation, mining, steel, communications, retail sales, food and commercial services, clothing, textiles, bakery and confectionery, building services and entertainment.

Since the enactment of the Employee Retirement Income Security Act of 1974 (ERISA), the NCCMP has served as an impartial, objective source of information about multiemployer plans, their participants and their operations and, in that capacity, has provided guidance to Congress, the Labor Department, the Internal Revenue Service, the Pension Benefit Guaranty Corporation, other government agencies, and the courts on a wide variety of legislative, regulatory and judicial issues of concern to the multiemployer plan community.

The retirement, health care, and income security of millions of Americans depend upon the continued existence and well-being of multiemployer plans. This booklet describes the unique nature of multiemployer pension, health, and welfare plans, with the aim of explaining why employee benefits legislation and regulation must take special account of the needs of multiemployer plans and must not assume that the needs of these plans are the same as those of single employer plans.

Edward C. Sullivan, Chairman

National Coordinating Committee for Multiemployer Plans

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CONGRESSIONAL FINDINGS ON THE IMPORTANCE OF MULTIEMPLOYER PENSION PLANS

"The Congress finds that –

- (1) multiemployer pension plans have a substantial impact on interstate commerce and are affected with a national public interest;
- (2) multiemployer pension plans have accounted for a substantial portion of the increase in private pension plan coverage over the past three decades; and
- (3) the continued well-being and security of millions of employees, retirees, and their dependents are directly affected by multiemployer pension plans..."

[Multiemployer Pension Plan Amendments Act of 1980, Public Law 96-364, Section 3(a)]

WHAT IS A MULTIEMPLOYER PLAN?

Under federal law, a multiemployer plan is an employee pension, health or welfare benefit plan:

- to which more than one employer is required to contribute, and
- which is maintained pursuant to one or more collective bargaining agreements between one or more labor organizations and more than one employer? ¹

Multiemployer plans are often the sole vehicle by which small employers can provide defined benefit pension and comprehensive health coverage to their employees in a cost effective manner. Providing these benefits helps the small employers recruit and retain good employees.

WHY ARE MULTIEMPLOYER PLANS SOMETIMES REFERRED TO AS “UNION FUNDS,” “TAFT-HARTLEY PLANS” OR “LABOR-MANAGEMENT” TRUST FUNDS?

The term “Union Funds” is a misnomer and has been since the structure of multiemployer plans was changed by the passage of the Labor Management Relations (“Taft-Hartley”) Act of 1947, Section 302², which predated ERISA by more than 25 years. In fact, that Section of the Act made it illegal for employers or their agents to “pay, lend or deliver, any money or any other thing of value” to labor representatives or unions, except through bona fide, jointly-sponsored trust funds that must be used for the “*sole and exclusive benefit*” of the participants and beneficiaries of the trust. It further requires that any jointly-sponsored benefit plan financed by employer contributions:

- * provide for equal representation of employees and employers in the trust fund's administration (*i.e.*, a joint labor-management board of trustees must govern the plan);
- * be maintained as a trust fund, legally distinct from both the union and the employers, for the sole and exclusive benefit of the employees and their families;
- * provide for only certain types of pension, health, and welfare benefits;
- * be maintained pursuant to a detailed written agreement with the employers specifying the basis for contributions;
- * provide for arbitration of deadlocks within the plans' board of trustees; and

- * provide for an annual audit of the trust fund and disclosure of the audit results to interested parties.³

Violations of the Taft-Hartley Act's structural requirements may be punishable as criminal offenses.⁴

HOW ARE MULTIEMPLOYER PLANS CREATED AND MAINTAINED?

Through collective bargaining, a labor union and employers whose employees are represented by the union agree to establish a multiemployer plan to provide pension, health, and/or welfare benefit coverage for employees and their families. The union, the employers, and the designated trustees enter into an "agreement and declaration of trust" or "trust agreement," which creates the trust fund and defines the authority and responsibilities of the labor-management trustees. The employers agree in their collective bargaining agreements with the union to contribute to the trust fund at certain rates that are typically based upon hours worked by the covered employees.

Over the years that follow, the employers and union periodically renew their collective bargaining agreements requiring employer contributions to the trust fund. Additional employers may be negotiated into the multiemployer plan-trust fund by the union under the same or different collective bargaining agreements requiring employer contributions and binding the employers to the trust agreement.

In some cases, more than one union representing workers in the same industry will jointly establish a multiemployer plan with a group of employers.

WHAT KINDS OF EMPLOYEE BENEFITS ARE PROVIDED THROUGH MULTIEMPLOYER PLANS?

Defined benefit pensions, defined contribution pensions, health, medical, sickness, disability and death benefits, vacation benefits, apprenticeship and training programs, prepaid legal services, severance benefits, dependent care, educational assistance, and housing assistance are among the benefits provided through multiemployer pension, health and welfare plans in general.

Of course, no one multiemployer plan offers all of these benefits; indeed, the Taft-Hartley Act requires separate trusts for pension and welfare plans. Typically, a union and a group of employers, through collective bargaining, will create a series of related but separate multiemployer plan-trust funds to provide various benefits. So, for example, the same union and group of employers may sponsor a multiemployer pension plan, a multiemployer health and welfare plan (providing a range of health-related, death and disability benefits), a multiemployer apprenticeship or training plan, and one or more additional multiemployer plans to provide other benefits.

These various related multiemployer plans may have the same or different labor-management trustees.

— **IN WHAT INDUSTRIES ARE MULTIEMPLOYER PLANS PREVALENT?**

While the majority of defined benefit pension plans are in the construction industry, construction industry participants represent only about one-third of all participants in such plans. In fact, multiemployer plans are prevalent throughout the economy, especially in industries characterized by mobile workforces. They are especially common in the building and construction, clothing and textiles, food and commercial, bakery and confectionary, trucking, maritime, hotel and restaurant, entertainment, light manufacturing, mining, service, longshore, healthcare, graphics design, news service, manufacturing, retail sales and communications industries.

— **WHY ARE MULTIEMPLOYER PLANS ESTABLISHED INSTEAD OF SEPARATE, SINGLE EMPLOYER PLANS FOR EACH EMPLOYER OF THE UNION- REPRESENTED EMPLOYEES?**

Multiemployer plans are the only practical means for providing employee benefits in industries characterized by large numbers of small employers whose employees work for a variety of different employers over the course of their working careers. For example, in the building and construction industry, it is common for a worker to be employed by scores of different contractors during his or her working life. A construction worker's employment with a particular contractor may last only a day, a week, a month, or a year or more, depending upon the duration of the project and other considerations. The worker may be employed by the same contractor(s) for several different periods.

Absent central trust funds to which the worker's various employers must contribute on his or her behalf and through which he or she can accumulate benefit credit for all of his or her covered employment, many such mobile workers would never qualify for pension, health and welfare benefits.

In addition, all participating employers, as well as the plan participants and beneficiaries, benefit from the economies-of-scale cost savings realized through central administration and pooling of resources. Less money spent on administration is more money for benefits and less pressure for increased employer contributions.

— **ARE MULTIEMPLOYER PLANS EFFECTIVE FOR SMALL EMPLOYERS?**

Actually, multiemployer plans are most effective for small businesses, especially in those industries that are characterized by large numbers of small employers that cannot afford to create individual employee benefit plans solely for their own employees. The average number of employees of a contributing employer in many such industries, including construction, is fewer than twenty. Participation in a multiemployer plan enables these employers to provide benefit coverage to their employees by doing little more than contributing to the multiemployer plans. The plans administer the benefit programs, thereby relieving the employers of the burden of doing so.

— **HOW MANY MULTIEMPLOYER PLANS ARE IN EXISTENCE?**

Based upon the PBGC's most recent figures, there are about 1,700 multiemployer defined benefit pension plans. The Department of Labor statistics show there are more than 2200 collectively bargained, multiemployer health benefit plans. In addition there are hundreds of other plans that provide defined contribution pension benefits, training and apprenticeship programs, vacation, legal assistance, housing assistance and a variety of other benefit plans through this vehicle.

— **HOW MANY WORKERS ARE COVERED BY MULTIEMPLOYER PLANS?**

PBGC states that, in 2003, 9.7 million participants were covered in its multiemployer defined benefit plan guaranty program. This includes workers, retirees and their survivors who are receiving benefits. Also, as many as 26 million workers, retirees and their dependents receive health coverage under these plans.

— **WHAT ARE THE ASSETS OF MULTIEMPLOYER PLANS?**

Based upon recent PBGC figures for 2000, multiemployer defined benefit pension plans collectively hold more than \$330 billion in assets. Multiemployer defined contribution pension (including multiemployer 401(k) and “annuity” plans), health and welfare plans collectively hold billions more.

Individual pension plan holdings range from a few million dollars to more than \$20 billion. Health and welfare plan holdings are less because of the nature of the benefits they provide. That is, because they tend to pay benefits throughout a worker's life and not just upon retirement, these plans do not accumulate large reserves.

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HOW MANY EMPLOYERS MAY PARTICIPATE IN A MULTIEMPLOYER PLAN?

Multiemployer plans range in size from plans with only a few contributing employers to plans with several thousand contributing employers.

Each contributing employer may have a separate collective bargaining agreement requiring contributions to the plan. Or, a group of employers may be signatory to a single, master agreement. A single employer may have more than one agreement requiring contributions for various plants or projects and may contribute to funds sponsored by several trades.

Many multiemployer plans receive contributions pursuant to scores or even hundreds of different collective bargaining agreements with varying durations and termination renegotiation dates.

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WHAT GEOGRAPHICAL REGIONS ARE COVERED BY MULTIEMPLOYER PLANS?

There are many national multiemployer plans that are designed to cover workers employed by contributing employers in all or nearly all 50 States and the District of Columbia. There are also many regional multiemployer plans covering workers in multiple states, as well as state-wide plans. And, there are local multiemployer plans covering workers employed in areas within a state.

The multi-state coverage of national and regional multiemployer plans was an important consideration in Congress' decision in enacting ERISA to establish a uniform, Federal regulatory scheme for employee benefit plans and to preempt state regulation of plans. Multiple, inconsistent regulation imposes an unbearable burden on plans, to the detriment of the covered workers.

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IN ADDITION TO WORKERS COVERED BY COLLECTIVE BARGAINING AGREEMENTS, SOME NON-BARGAINING UNIT WORKERS ARE INCLUDED AS PARTICIPANTS IN MANY MULTIEMPLOYER PLANS. WHY?

It is customarily that staff employees of the multiemployer plan itself and of the sponsoring union are covered by the plan. Some plans also permit participation by non-bargaining unit (unrepresented) employees of employers which contribute to the plans on behalf of their bargaining unit (union-represented) employees pursuant to collective bargaining agreements. Contributions are made to the plan by the employer on behalf of both employee groups. Coverage of such non-bargaining unit employees is often due to the employers' concern that cost-effective pension or health plan coverage would not be available for these unrepresented employees if they are separated from the union-represented groups. Other employees who may

have moved from union covered employment to non-bargaining positions (commonly referred to as bargaining unit “alumni”) may also continue to be covered under participation agreements that require contributions to the plans as a means of recruiting qualified employees to move into such a non-bargaining position.

Of course, multiemployer pension and health plans also include retirees as participants. Retirees are, by definition, not bargaining unit employees inasmuch as they are no longer actively employed. And, some plans permit participants who become unemployed and members of the sponsoring union to participate in multiemployer health plans on a self-pay basis.

ARE MULTIEMPLOYER PLANS SUBJECT TO ERISA?

Yes. By definition, a multiemployer plan is an ERISA covered employee benefit plan. Multiemployer pension plans are subject generally to the reporting and disclosure provisions, the minimum participation, vesting and funding standards, the fiduciary responsibility provisions, the enforcement provisions, and (for defined benefit plans) the benefit guaranty provisions administered by the Pension Benefit Guaranty Corporation (PBGC).

Multiemployer health and welfare plans are subject to the same ERISA provisions as all other employee welfare benefit plans, including the "COBRA" health coverage continuation requirements, with certain exceptions for some types of benefit programs.

ARE MULTIEMPLOYER PLANS SUBJECT TO THE INTERNAL REVENUE CODE?

Yes. Multiemployer pension plans are tax-qualified plans which meet the qualification standards and related requirements of the Tax Code. Multiemployer health and welfare plans are generally subject to other Tax Code provisions such as Sections 501 (c) (9) (regarding voluntary employees beneficiary associations or "VEBAs"), 501(c)(5) (regarding labor organizations), and 120 and 501(c)(20) (regarding group legal services plans).

The Code contains several special multiemployer plan provisions, reflecting the distinct nature of these plans as compared with single employer plans that are unilaterally controlled by their employer-sponsors.

BEYOND ERISA, THE TAFT-HARTLEY ACT, AND THE INTERNAL REVENUE CODE, ARE MULTIEMPLOYER PLANS AFFECTED BY ANY OTHER FEDERAL LAWS?

Yes. Virtually every Federal law and regulation concerning employee benefit plans affects multiemployer plans, including laws and regulations relating to equal

employment opportunity, veterans' rights, labor- management relations, and labor standards.

HOW DO MULTIEMPLOYER HEALTH BENEFIT PLANS DIFFER FROM “MULTIPLE EMPLOYER WELFARE ARRANGEMENTS” OR “MEWAs”?

As described earlier, multiemployer plans are established and maintained pursuant to collective bargaining agreements as trust funds administered by labor-management boards of trustees and otherwise in accordance with Taft-Hartley Act Section 302(c) and ERISA. In contrast, MEWAs are typically created, owned, and operated by entrepreneurs as for-profit businesses. They usually are not employee benefit plans covered by ERISA, but merely vehicles for funding or insuring the individual health plans of the various unrelated employers that pay premiums to the MEWA's operators.

In the 1983 ERISA amendments concerning the regulation of MEWAs, Congress included statutory language intended to exempt multiemployer plans from treatment as a MEWA.

HOW DO “MULTIEMPLOYER” PENSION PLANS DIFFER FROM “MULTIPLE EMPLOYER” PENSION PLANS?

As noted above, multiemployer pension plans are the creation of collective bargaining and are subject to specific requirements of the law including collective responsibility for funding the plans and withdrawal liability for employers who cease to contribute or cease to have an obligation to contribute to the plan at a time when it has unfunded vested liabilities. Multiemployer plans are also subject to a separate guarantee fund administered by the Pension Benefit Guaranty Fund with lower premiums and lower guarantee levels.

“Multiple employer plans” are a collection of single employer plans that are subject to the single employer funding rules and which participate in the single employer guarantee fund administered by the PBGC.

HOW ARE MULTIEMPLOYER PLANS FUNDED OR FINANCED?

Multiemployer plans have only two sources of funding: collectively bargained employer contributions and income from investment of the plan's assets. The employers' contributions are generally the product of two factors: the contribution rate (e.g., dollars and cents per covered hour worked) set in the collective bargaining agreements, and the amount of covered work performed. The contribution rates are typically set for the duration of the collective bargaining agreements and are not increased or decreased easily, if at all, during the terms of the agreements. In any event, it is the collective bargaining parties - the union and the employers, not the plan trustees who must renegotiate the contribution rates. Inasmuch as the collective bargaining agreement is their agreement; the pension, health and welfare plans are merely third-party beneficiaries of the agreement. Plans which receive contributions pursuant to several agreements with different durations and termination-

renegotiation dates may have to wait for two or more years before all of the bargaining agreements are renegotiated by the collective bargaining parties to increase contribution rates.

Many plans offer multiple levels of contribution rates and benefits so that the bargaining parties can select a specific benefit package at a cost that fits their financial circumstances. As for the "hours-worked" factor, multiemployer plans generally receive contributions only for covered work performed by covered workers. So, the contribution income of a plan fluctuates according to how much covered work is being performed by the covered workers. If covered work declines, so too does the contribution income of a plan (unless offset by an increase in the contribution rates). For example, if a laborer covered by the plan is unable to find work or takes uncovered employment, no employer contributions will be made on his or her behalf to the plan. Contributions can be made only if he or she is employed in covered work.

— **IS A MULTIEMPLOYER PLAN ABLE TO REQUIRE AN EMPLOYER TO CONTRIBUTE MORE MONEY IN THE EVENT THAT THE PLAN RUNS SHORT IN A PARTICULAR YEAR?**

Generally, no. A single employer plan - sponsored by one company for its employees - may be able to call on the sponsor-company's assets to meet its funding needs. But, a multiemployer plan is generally limited to the contribution income generated by the covered employment at the collectively-bargained contribution rates. The one exception to that rule occurs when the plan incurs a minimum funding deficiency under ERISA. When that happens, contributing employers are subject to excise taxes and are required to make up the shortfall.

— **ARE MULTIEMPLOYER PENSION PLANS GENERALLY WELL-FUNDED?**

Yes. Despite the dramatic investment losses suffered by the U.S. equity markets that affected virtually all institutional investors at the beginning of the decade, The Segal Company's 2003 "*Survey of the Funded Position of Multiemployer Plans*" found that the average ratio of plan assets to vested benefits for all the surveyed multiemployer defined benefit pension plans was 87% for 2003, down eight percentage points from the previous year. It also found that 31% of surveyed multiemployer plans were fully funded for their vested benefit obligations to covered workers, down from a high of 83% in 2001. This decline is directly related to the decline in the market value of assets caused by the unprecedented three consecutive year decline in U.S. equity markets that occurred between 2000 and 2003, and a decline in interest rates used by the PBGC for determining plan funding status from 6.1% in 2001 to 5.3% in 2002. For comparative purposes, this compares with a reduction from 55% in 2002 to 25% in 2003 as the number of single employer plans that were fully funded, according to the *Fidelity/PLANSPPONSOR Optimizing Plan Funding study*, cited with permission in The Segal Company survey.⁵

Of course, the mere fact that a plan is less than fully funded does not mean that the plan is in financial trouble. It is not unusual for a multiemployer plan to carry unfunded benefit liabilities, particularly because these plans often provide credit for employment with a contributing employer before the employer joined the plan ("past service credit"). This is analogous to a home mortgage. A family is not generally considered to be in financial trouble merely because it has a mortgage on its home. Funding, like making mortgage payments, is merely an ongoing responsibility that is regulated by ERISA.

— **ARE MULTIEMPLOYER PLANS A THREAT TO THE ERISA PENSION BENEFIT GUARANTY PROGRAM OPERATED BY THE PENSION BENEFIT GUARANTY CORPORATION (PBGC)?**

No. Unlike single employer plans, the structure of multiemployer plans actually provides a level of protection to the PBGC. If a contributing employer to a single employer plan fails, the PBGC becomes the insurer of first resort. But if a contributing employer to a multiemployer plan fails, the remaining employers provide the safety net for plan participants by continuing to fund the plan and the PBGC only becomes involved if all the employers leave the plan and all of its assets are depleted.

Multiemployer pension plans' benefits are guaranteed through a completely separate and distinct PBGC guarantee program from the single employer guarantee fund. It provides much lower benefit guarantees than the single employer fund and is funded by an entirely different and much lower premium structure, reflective of the lower risk to the agency. During the period 1980-2003, only 33 multiemployer plans ever received assistance from the PBGC. Furthermore, the PBGC's Data and Trends showed that from 1982 through 2002, the PBGC multiemployer plan fund had a surplus during each year in that period. In 2003, the multiemployer plan guarantee program experienced its first deficiency since the creation of the fund, largely as a result of the decline in interest rates used in determining funding liabilities. The total amount of that projected deficiency represented less than 1% of the deficiency in the PBGC's single employer guarantee program.

The public and Congressional concerns about the PBGC's financial condition should relate only to the single employer plan benefit guaranty program and fund; not to the multiemployer plan program or fund.

— **WHY ARE MULTIEMPLOYER PLANS SOMETIMES REFERRED TO AS "POOLS OF WORKERS' MONEY"?**

The collectively-bargained "employer-contributions" are actually a portion of each covered worker's compensation package for performing covered work. In addition to a per-hour wage or salary, a contribution is made to the pension plan, the health and welfare plan, and/or other benefit plans on behalf of the worker.

In many collective bargaining negotiations, the employer offers a per-hour total compensation amount and leaves it to the union, on behalf of the workers, to decide how to allocate that compensation among cash wages, pension, health and welfare, and

other benefits. The collective bargaining agreement is written to reflect the union's decision.

All of the employer contributions are pooled in the multiemployer plan-trust fund and are available to pay benefits to all eligible workers and their beneficiaries, to pay the costs of administering the plan, and to be invested for the common good.

An exception is defined contribution plans (sometimes called "annuity plans") which maintain an individual account for each covered worker. These plans pool the contributions for investment purposes and charge each worker's account for plan administration. But, each worker's benefits depend upon the balance in his or her individual account. Accordingly, all payments from a multiemployer plan - for benefits, for administration, and for all other costs - come out of the workers' collective pockets.

Nevertheless, because this aspect of workers' compensation is paid in the form of contributions to benefit trusts, it is not taxable to the worker, it is not subject to the other payroll taxes, and the employer receives a full tax deduction for the contribution.

ARE EMPLOYERS OR THE UNION ABLE TO REVERT OR RECAPTURE ASSETS FROM A MULTIEMPLOYER PLAN?

No. Multiemployer plan trust agreements generally bar reversions or refunds of plan assets to contributing employers and the union under all circumstances, except perhaps in the case of mistaken contributions (as permitted by ERISA). This bar reflects the fact that "employer contributions" to a multiemployer plan are the covered workers' money; an aspect of their compensation package agreed to through collective bargaining. Also, the Taft-Hartley Act requires that all plan assets be used for the sole and exclusive benefit of the plan's participants and beneficiaries. ERISA does not allow reversions of plan assets to employers upon termination of multiemployer plans; in contrast, single employer plans are permitted by ERISA to revert plan assets to the sponsoring employer upon termination under certain circumstances.

This bar on employer reversions, and other multiemployer plan characteristics, removes any motivation for the employer tax abuse that may exist with respect to a single employer plan whose employer-sponsor usually controls all aspects of plan creation, operation, funding, and termination.

HOW ARE EMPLOYER CONTRIBUTIONS COLLECTED?

The plan's administrative office is responsible for billing-employers and for receiving the contributions related reports. Each plan has procedures for collecting delinquent contributions, which culminate in lawsuits if necessary or appropriate.

Delinquency collection is critically important for multiemployer plans, particularly pension plans which are legally mandated to grant participants credit for covered employment even if their employer fails to make its required contributions, as noted by Congress in enacting the 1980 multiemployer amendments to ERISA. Plan fiduciaries

are obligated under ERISA to actively pursue the collection of delinquent contributions from employers and aggressively do so.

Delinquent contributions detract from the ability of plans to formulate or meet funding standards and adversely affect the financial health of plans. Participants and beneficiaries as well as employers who honor their obligations to contribute in a timely fashion bear the heavy cost of delinquencies in the form of lower benefits and higher contribution rates.⁶

HOW ARE MULTIEMPLOYER PLANS ADMINISTERED?

The plan's board of trustees has the exclusive right and responsibility to manage the plan's operations. The trustees typically delegate the authority and responsibility for day-to-day administration to an "administrator." The administrator may be an employee of the plan; that is, an in-house administrator. Or, the administrator may be a business organization; that is, a "third-party administrator" or a "contract administrator." The administrator usually is responsible, in the first instance, for the contribution collection procedures, reporting and disclosure compliance, determining benefit eligibility, paying benefits and plan expenses, and record-keeping. In performing these functions, the administrator is subject to the board of trustees' supervision.

In addition, to assist with plan management and legal compliance, boards of trustees typically employ accountants, actuaries, attorneys, consultants, investment advisors, and other professional advisors.

WHAT ROLE, IF ANY, DOES A CONTRIBUTING EMPLOYER OR SPONSORING UNION HAVE IN THE ADMINISTRATION OF A MULTIEMPLOYER PLAN?

A multiemployer plan is a legal entity that must, by law, be separate from the contributing employers and sponsoring union. Because of this legally-required separateness, multiemployer plans do not have access to employee personnel information beyond that needed to verify contributions, in most cases. Plans do not customarily have access to, for example, information about the terms and conditions of employment of uncovered employees.

Typically, unless an employer serves as a fund trustee, the only involvement by a contributing employer in the administration of a plan is to submit the required periodic contributions to the plan along with such reports as the plan requires in order to verify the accuracy of the contributions. Similarly, the sponsoring union is not involved in plan administration other than through exercising its responsibility to appoint labor trustees. Its role is to collectively bargain with the employers over contributions to the plan.

HOW DO THE COVERED WORKERS INFLUENCE THE ADMINISTRATION OF MULTIEMPLOYER PLANS?

By law, under the Taft-Hartley Act, labor and management must have an equal voice in the administration of all multiemployer plans; that is, on the plans' boards of trustees. Labor trustees (also sometimes called "union trustees" or "employee representatives") are commonly elected; union officials or appointees of elected union officials. These trustees are responsive to the concerns and needs of the union's members. Dissatisfaction with plan operations among the membership is often expressed at the ballot box for union officer elections. Management trustees are often appointed by the employer association with whom the unions bargain to obtain the collective bargaining agreement.

In addition, union members may influence a multiemployer plan through the collective bargaining process. They may direct the union's negotiators to increase or decrease plan contribution rates, to negotiate an employer in or out of a plan, or to make other bargaining agreement changes that may affect a plan.

ARE THE COSTS OF ADMINISTERING A MULTIEMPLOYER PLAN PAID BY THE EMPLOYERS OR BY THE WORKERS?

By the workers. All costs of administration are paid from plan assets. And, as explained above, all plan assets are derived from covered workers' compensation in the form of collectively-bargained "employer contributions." In contrast, the administrative costs of many single employer plans are paid by the company sponsoring the plan for its employees. In the case of a multiemployer plan, an increase in administrative costs (e.g., due to new government regulation) necessarily reduces the amount of plan assets available to pay benefits to eligible participants and beneficiaries and/ or requires an increase in "employer contribution rates at the expense of the workers' cash wages or other benefits. Multiemployer plans have no customers or clients onto whom they can shift increased costs in the form of higher prices for goods and services. The plan assets are the only source of money.

ARE MULTIEMPLOYER PLAN TRUSTEES PAID FOR THEIR SERVICE TO THEIR PLAN?

No. With rare exceptions, most multiemployer plan trustees - labor and management trustees alike - are unpaid, part-time volunteers. Indeed, ERISA prohibits the use of plan assets to compensate trustees who are full time employees of the union or employers sponsoring the plan. Only their reasonable expenses, incurred in the performance of their plan-related duties, can be paid by the plan. While trustees who are not employed by either settlor can serve as paid or "professional" trustees, such appointments are extremely rare.

This lack of compensation often makes it difficult for a plan to obtain and maintain qualified trustees, particularly in consideration of the personal liability risk that exists

under ERISA's fiduciary responsibility standards. And, of course, a multiemployer plan cannot legally exist without equal labor and management representation on the plan's board of trustees. The availability of fiduciary liability insurance is essential to attracting and retaining competent trustees.

WHO IS RESPONSIBLE FOR DESIGNING THE BENEFIT PROGRAMS THAT A MULTIEMPLOYER PLAN WILL OFFER?

The plan's board of trustees are, in most cases. Usually, the plan's trust agreement authorizes the trustees to decide what kinds and levels of benefits will be provided and the rules of eligibility for such benefits. Professional advice and assistance is generally obtained by the trustees. In designing and re-designing the benefit programs, the labor-management trustees take into consideration the needs and wishes of the covered workers, the plan's financial condition and prospects, industry conditions, claims experience, plan costs, employment patterns, and a host of other factors. The trustees are often called upon to balance and decide among competing needs and wants for benefits, among participants, recognizing that the plan is, in effect, a "fixed economic pie." Key to the success of multiemployer plans has been the flexibility of plan trustees to adapt to changing conditions. In a few cases, the bargaining parties, rather than the plan trustees, negotiate the design of the benefit program for the plans.

WHY ARE MULTIEMPLOYER PLANS REFERRED TO AS "PORTABLE" PLANS?

Portability is a fundamental feature of multiemployer plans. In essence, all contributing employers in a plan are treated as a single employer for purposes of crediting a covered worker's employment. All of a worker's covered employment with all contributing employers is centralized. The worker can change employment from one contributing employer to another contributing employer within the industry without losing his or her accumulated benefit credit. When the worker applies for benefits from the plan, all of his or her covered employment with all contributing employers is counted, subject to break-in-service rules.

This internal portability means that a worker's benefits are not dependent upon the economic fate of one employer, in contrast to the single employer plan situation. Moreover, portability promotes the mobility of workers within a trade or occupation, and better enables contributing employers to attract and retain trained, competent workers.

In addition to this internal portability, many multiemployer plans maintain reciprocal arrangements with other plans covering members of the same trade. The terms of these arrangements vary, but generally there are two types of reciprocal arrangements covering workers who work under two or more plans during their careers. One type of arrangement provides for the benefit to be based upon the total of a worker's credit under all participating plans, with each plan paying a pro-rata portion of the worker's total benefit. The other type of arrangement provides for the forwarding of all employer contributions on the worker's behalf to a single "home" plan. However, not all multiemployer plans are able to adopt reciprocal arrangements for financial reasons.

In contrast, single employer plan participants typically lose all plan benefits once they permanently leave the employ of the plan's lone employer-sponsor, unless vested. And, even if the worker is vested, his or her credits are not transferred or combined into his or her new employer's plan.

— **DO MULTIEMPLOYER PLANS GIVE WORKERS CREDIT FOR EMPLOYMENT BEFORE THEIR EMPLOYER BEGAN CONTRIBUTING TO THE PLAN?**

Many multiemployer pension plans provide for covered workers to receive credit for employment with their employers before the employers first agreed to contribute to the plan. This pre-contributory service credit is known as "past service credit." Past service credit enables the older employees of a newly contributing employer to qualify for a pension sooner than if they were given credit only for their service after the employer began to participate in the plan. The cost of this past service credit is covered by the employer's contributions to the plan over time.

— **ARE MULTIEMPLOYER HEALTH PLANS INSURED OR SELF-FUNDED?**

Many multiemployer health plans purchase insurance policies from commercial insurers to cover all or some of the benefits provided by the plans. The insurance premiums are paid from plan assets. Many other multiemployer health plans, particularly the larger plans, self-fund ("self-insure") their benefits. That is, they pay benefits due directly from the plan's assets; no insurance company is generally involved. However, many self-funded plans carry some form of "stop-loss insurance" under which an insurance company assumes the benefit liability above a certain amount to protect the plan against unforeseen catastrophic claims.

— **HOW ARE MULTIEMPLOYER PLAN ASSETS INVESTED?**

The board of trustees has the authority and duty under the plan's trust agreement to invest the plan's assets for the benefit of the plan and its participants and beneficiaries. Virtually all boards of trustees, in accordance with ERISA, delegate all or most of this investment authority and responsibility to one or more investment manager or managers. These professionals can invest their client-plans' assets in a wide range of investment vehicles (stocks, bonds, real estate, insurance contracts, certificates of deposit, government obligations), subject to the investment objectives and guidelines set by the boards of trustees and to ERISA's standards of fiduciary conduct.

— **ARE THE INVESTMENT PRACTICES OF MULTIEMPLOYER PLANS SOUND?**

Yes. The sound investment practices of multiemployer pension plans as a whole are a major reason for the high funding levels of these plans.

In fact, multiemployer pension plan investment practices are generally more conservative and less risky than the investment practices of single employer plans, as reported by various sources to Congressional committees during 1990 hearings on proposals to require single employer plans to provide for labor-management administration.

WHY DO SOME MULTIEMPLOYER PLANS INCLUDE "JOB CREATING" INVESTMENTS IN THEIR INVESTMENT PORTFOLIOS?

Multiemployer plans depend upon collectively-bargained employer contributions for the funding of benefits for current and future retirees. Plans cannot exist without this funding. Employer contributions are generated only by covered workers performing covered work. So, for example, if union laborers lack work for which their employers are required to contribute to the laborers' plan, the plan will not receive employer contributions.

In addition, covered worker-participants earn eligibility and benefit credits only by working in covered employment, generally speaking. So, if the covered worker-participants lack covered work, they will not earn credits they need to qualify for pension, health and welfare benefits.

Plan investments that create covered jobs benefit the plan and its covered worker-participants by generating employer contributions and by enabling the worker-participants to earn credits needed to qualify for plan benefits fulfill the very purpose of the plan.

In 1976, the Labor Department recognized the appropriateness of prudent job-creating investments by multiemployer pension plans, particularly those in the building and construction industry. In a published prohibited transaction class exemption, the Department stated that multiemployer plans, "including those covering employees in the building and construction trades, have traditionally invested a percentage of their assets in construction loans as an appropriate investment in the interests of such plans and of their participants and beneficiaries and as a means of providing work opportunities for plan participants."⁷

More recently, the Labor Department has confirmed that job-creating investments are permissible under ERISA if certain prudent procedures are followed in selecting the investments and the investments are financially prudent.

WHAT IS WITHDRAWAL LIABILITY?

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) amended ERISA in various ways to protect the financial stability of multiemployer pension plans and to encourage the growth of these plans. Among Congress' concerns was the withdrawal of employers from multiemployer defined benefit pension plans before paying their fair share of the plans' unfunded vested benefit liabilities. Such withdrawals were seen as weakening the plans and creating a risk of a plan termination. If an under-funded plan were to terminate, the financial burden would fall on the Pension Benefit Guaranty Corporation's (PBGC) benefit guaranty program.

Congress' response to this concern was to include in MPPAA a general requirement that multiemployer defined benefit pension plans with significant unfunded vested liabilities assess withdrawal liability on employers that cease to have an obligation to contribute to the plan. Under certain circumstances ERISA, as amended by MPPAA, contains rules on when and how to assess withdrawal liability, on how to calculate the liability, and on the resolution of disputes.

Withdrawal liability remains an important protection for multiemployer plans and the PBGC's benefit guaranty program.

1. See, Section 3(37) of the Employee Retirement Income Security Act (ERISA), 29 V.S.C. §1002(37), and Section 414(f) of the Internal Revenue Code, 26 U.S.C. §414(f).

2. 29 V.S.C. §186(c).

3. Some of these structural requirements were later incorporated into ERISA for most employee benefit plans, including multiemployer plans.

4. 29 V.S.C. §186(d).

5. See *"The Funded Position of Multiemployer Pension Plans Remains Relatively Solid Despite Further Erosion"* Spring 2004, The Segal Group, Inc., New York, NY.

6. Staff of Senate Committee on Labor & Human Resources, S. 1706: The Multiemployer Pension Plan Amendments Act of 1980, 96th Cong., 2d Sess. 233-34 (unnumbered committee print, April 1980).

7. PTE-C-76-1 , March 23,1976.