

June 22, 2003

Pension Reserve: What's Enough?

By MARY WILLIAMS WALSH

ACCOUNTING is a dismal science, pension accounting even more so. But it is increasingly important to penetrate the fog today, when companies are using complex and sometimes hidden tactics to change the way they pay for their pension plans. For the roughly one in five workers in the private sector whose employers have established pension plans, those changes could significantly affect the way they live in retirement.

One business that is having trouble funding its pensions is [Greyhound Lines](#), the bus company, which has gone through years of labor strife and bankruptcy. Several years ago, it quietly managed to get permission from Congress to stop putting more money into its drivers' pension fund. In essence, the Greyhound provision lets the company act as if its pension plan is fully funded, when in fact it is not. Greyhound argued that it had special circumstances, and that if it obeyed the funding rules it would end up with far too much money locked away in the pension trust. Its drivers' union agreed.

No other company has anything like Greyhound's exemption — yet. But as pension deficits widen and big contributions come due, Greyhound's little-known exemption is just the kind of solution that many employers lust after.

Companies in several industries say that rules requiring big contributions to underfunded pension plans must be changed. The shortfall for [General Motors](#) is so daunting that on Friday it said it will have to sell \$13 billion in bonds, with most of the proceeds going to reduce deficits in its American pension plans.

In Washington, varying relief mechanisms are being sought, but all would have the same effect: to reduce the amounts that employers set aside today for benefits due in the future.

The long-term effects of that could be harmful. Federal officials have spent the last quarter-century prodding companies to fully fund their pension plans; they say that ballooning pension deficits show a need for more contributions, not exemptions.

In their quest for pension relief, the major airlines have hired Richard A. Grafmeyer, the same lobbyist

whom Greyhound used to secure its break in 1997. Mr. Grafmeyer is also a former deputy staff director of the Senate Finance Committee and a former deputy chief of staff of the Joint Committee on Taxation. He has declined to discuss the matter.

Greyhound, meanwhile, is seeking to expand its own break and to make it permanent, because the original exemption is set to expire in 2010. Now, as in 1997, Greyhound says special treatment is necessary because its plan covers an unusually old group of workers, whose life expectancies are shorter than national norms for all pension participants. Workers who won't live long enough to cash many pension checks don't require very big pension contributions.

Other business and labor groups are calling for pension measures that would bring relief by adjusting mortality tables, allowing pension plans more time to account for investment losses, reducing pension-insurance premiums and changing the interest rate that is used in computing pension liabilities.

MILLIONS of dollars are at issue, but teasing out the details is difficult because current, specific data on individual pension plans was made secret by an act of Congress in 1994.

The absence of facts has not chilled the debate. Proponents of pension relief say the economic recovery itself may be at stake.

"Companies cannot commit to building new plants, launching new research projects or hiring new employees if that cash is needed to fund pensions," wrote Glen A. Barton, the chairman and chief executive of [Caterpillar](#) and a member of the Business Roundtable — an elite group of corporate chief executives — in a recent letter to each member of Congress. Treasury Secretary John W. Snow is a former chairman of the Roundtable.

But from the other side come warnings that the funding rules need to be tightened, not relaxed. Giving one company a break can "give other financially distressed companies a blueprint for how to 'borrow' from their pension plans," said Steven A. Kandarian, executive director of the federal agency that insures pensions, in Senate testimony in January.

In the worst case, the United States Treasury — in other words, the taxpayers — would have to step in, because traditional pensions are guaranteed by the federal government, and the pension insurance agency is itself in poor shape and unable to absorb large claims indefinitely.

Weakening funding rules increases the risk to the government's insurance program, pension analysts say. The rules were enacted by Congress in 1974 and tightened in 1987 and 1994.

"The reason these funding rules were put into place was to protect the government insurance program, so the premiums wouldn't be too high and so the taxpayer wouldn't have to bail this out," said Richard A. Ippolito, a former chief economist of the Pension Benefit [Guaranty Corporation](#), the agency that insures

pensions.

For Greyhound, as for many other companies, the pension troubles began with deregulation. When the intercity bus business was opened to competition in 1982, Greyhound suddenly found itself going head to head with low-cost rivals that had no pension benefits to cover.

Greyhound demanded concessions in 1983; the drivers went on strike. A contract agreement settling the strike, which lasted seven weeks, freed Greyhound from ever having to make any more pension contributions. The drivers themselves made the next year's contribution. Greyhound was also allowed to close the plan to new drivers.

"There was no funding of the plan from that point forward," said Greg Herbold, the president of Amalgamated Transit Union local 1700. "But everybody kept accruing benefits."

In traditional pension plans, workers accrue, or build up, bigger pensions with each year of service, amassing the largest portion just before they retire. Greyhound's drivers earned their maximum pension after 30 years of service.

In 1990, there was another, much longer strike. Greyhound, threatening to end the pension plan entirely, won another concession from the drivers when the strike ended in 1993: if the pension plan needed money, the workers would pay, in effect, by allowing their accruals to stop. Benefits would be frozen, no matter how many years drivers stayed behind the wheel.

For Mr. Herbold and the other drivers in the plan, the threat of a pension freeze set a clock ticking. Drivers with less than 30 years of service could only hope that they would achieve their maximum benefits and retire before the plan became underfunded and accruals were frozen. They did not know when that might happen. Once a worker has earned pension benefits, an employer cannot legally take them away.

For a few years, stock-market gains kept the plan adequately funded, and it appeared that all drivers would qualify for full benefits.

But in 1994, Congress changed the rules for pensions. Regulators had found that some companies were making assumptions of very high mortality rates for their workers. By assuming that employees would not live long enough to cash many pension checks, the companies could shrink their mandatory contributions, saving money.

Congress cracked down, requiring all companies to use a standard mortality table. For Greyhound, the effect was "shocking," said Randy Hardock, a lawyer at the Washington firm Davis & Harman who succeeded Mr. Grafmeyer as Greyhound's lobbyist in 2000. Using the standard mortality table required Greyhound to fund its pension plan as if it were funding the benefits of new, young employees, he said, when in fact the only drivers in the plan were those hired before 1983.

THESE are very old people in this plan, and they've been dying, in fact, 30 percent faster than the mortality table is saying," Mr. Hardock said. "If you have to fund your plan as if people are going to live for 15 or 20 years, and in fact they're only living 10 or 11 years, you just end up with too much money" in the pension fund.

When Mr. Grafmeyer was Greyhound's lobbyist, he helped to secure the sponsorship of Representative Charles B. Rangel, Democrat of New York, for a provision letting Greyhound treat its pension plan as 90 percent funded, even if its assets fell to just 85 percent of future obligations.

Normally, a pension plan that dips below 90 percent for an extended time is considered underfunded, and the company must make special, accelerated contributions.

Janice A. Mays, chief counsel for the Democrats on the Ways and Means Committee, said Mr. Rangel had sponsored the measure because he believed that the participants would be poorly served without it. "By helping this plan, you are not causing any risk to the participants," she said. "You're actually helping the plan to survive."

Greyhound's exemption was inserted into a broad 1997 tax bill, written without mentioning Greyhound or pensions directly. Asked why the measure was drafted that way, Mr. Hardock acknowledged that it helped to prevent a "me too" problem, in which other companies with underfunded pensions might spot Greyhound's exemption and clamor for the same thing.

Indeed, many businesses and unions are saying this year that the standard mortality table is behind many pension problems, and are calling for permission to adjust it.

But Greyhound's pension plan administrator, Paul Owsley, a former driver who is an employee of the pension trust, was skeptical of contentions about the mortality rate of Greyhound's bus drivers and a lessened need for contributions.

"Our oldest participant now is 102 years old," he said. "The average age is well over 80. These longer life expectancies have put the plan in jeopardy, because they draw money out of the plan." Currently, the Greyhound plan pays about \$75 million a year to pensioners, he said.

In any case, the 1997 exemption did not bring enough relief. When stock prices started to tumble in 2000, the gains that had kept the plan afloat since 1983 began to evaporate.

Unless Greyhound made a contribution, the plan's actuary warned two years ago, it would be noncompliant by 2003. But Greyhound still had a labor agreement saying that it did not have to make contributions.

Complicating matters, Greyhound by that point had been acquired by [Laidlaw Inc.](#) of Canada. Laidlaw has its own problems; it sought bankruptcy court protection from its creditors in 2001, two years after the takeover, and plans to emerge from its court-supervised reorganization on Monday. Laidlaw's filings with the Securities and Exchange Commission warn that any pension contributions "could have a materially adverse effect on the financial condition of Greyhound."

To slow the pension fund's deterioration, Greyhound froze accruals in 2002. By that time, a vast majority of the drivers — about 14,000 — had beaten the clock, fulfilling their 30 years and retiring with maximum benefits. Only about 800 drivers covered by the plan were on the road, striving for their 30 years, too.

One of them is Mr. Herbold, a 27-year Greyhound veteran. For him, the freeze halted his benefit growth three years shy of qualifying for the maximum benefits — just as he was about to earn the biggest part.

Not surprisingly, Mr. Herbold has strong feelings about this, and about pension policy in general. Enforce the funding rules too rigorously, he said, and the country will end up with weak companies that default on their pension promises and stronger companies that refuse to offer pensions.

"We're going to create this whole class of people 30 years from now that's going to be dependent on the government, because corporate America has decided that it's not their responsibility. It's going to be a big, huge problem," he said.

For the remaining drivers to get their maximum benefits, Greyhound would have to lift the freeze. But Greyhound's labor contract says that this cannot be done unless the pension plan climbs back up to 115 percent funding. That is extremely unlikely — unless the rules change.

Laidlaw's government filings say Greyhound and the union are trying "to negotiate a method for avoiding contributions." A pension bill already passed by the House contains a provision to let Greyhound deem its pension plan to be 90 percent funded in perpetuity, no matter how low the real percentage falls. It would also exempt Greyhound from the standard mortality table.

When told about this, Mr. Owsley, the plan administrator, expressed surprise. "They don't tell us anything, so I don't know what they're driving at," he said.

Such a measure, Mr. Owsley said, could ruin the pension fund. "With a flat stock market," he said, "when you're not taking anything in and you're paying out \$75 million a year, it doesn't take too many years before you're in trouble."

Mr. Hardock disagreed, saying he was "very confident" that the expanded relief measure would not jeopardize the pension plan.

SOULD it really be so bad to bend the pension rules for just one troubled company, long enough to let 800 bus drivers earn the pensions they expected?

Even if the plan failed, the government would step in and start issuing the 14,000 pension checks. The pension agency's coverage has limits, but the drivers' benefits are not extravagant — the top annual payment is around \$20,000 — so all would get their benefits if the federal agency took over the plan. The pension plan has a deficit of about \$42 million, according to Laidlaw's most recent filings — hardly enough to swamp the pension insurance agency.

What scares federal regulators is not the Greyhound case, but the likelihood that larger companies will use it as a precedent.

As airlines run up enormous losses, the Air Line Pilots Association, as well as several airlines, are advocating industrywide pension relief. So far, they have won sympathy from some lawmakers, but no sponsors for an airline pension relief bill. The failure of any pilots' pension plan would add hundreds of millions of dollars to the government's obligations; together, America's passenger airlines had a pension shortfall totaling \$26 billion at the end of 2002.

Already, the pension agency is working with \$7.1 billion in pension debt that it took on from bankrupt steel companies last year. The steel pensions alone nearly wiped out the agency's entire surplus. The agency has operated with a deficit before, but if the problem grows, it will have to find new sources of revenue.

Always on the minds of pension policy makers is General Motors, whose \$25 billion worldwide pension deficit is larger than its market capitalization of \$21.8 billion. G.M. is participating in the push for pension relief but says that it can handle all of its pension obligations.

"It's like a gamble," said Mr. Ippolito, the pension insurance agency's former chief economist, of pension relief. If favorable market conditions return, everybody — companies, workers and taxpayers — will win. If not, everybody loses.

"Constituents want relief right now, and it's tempting for Congress to give out all these benefits," Mr. Ippolito said. "But if you tell all these people they don't have to put money into these plans, the problem is, down the road, somebody else is going to be asked to pay for it."