

The major disadvantage would be the exclusion of plans operating on a pay-as-you-go basis, unless such plans were forced to convert to a funded basis. There would be other disadvantages, such as the employer's authority to create additional liabilities for the PGF, without any recourse against his own corporate assets, and the risks associated with speculative investment policies.

The viability of the modified approach is clearly dependent upon the enforcement of minimum standards of funding. There should be sanctions other than suspension or cancellation of coverage since these actions would penalize only the plan participants for whose protection the program was established in the first place. One possible sanction that would be effective, assuming availability of assets, would be to make the employer financially responsible for any defaults on scheduled funding payments. The sanction might take the form of a tax penalty, possibly equal to the funding deficit, that could be diverted to the PGF to offset its increased liability. The tax payment could be refunded, at least in part, if the employer later made restitution to the plan.

A more comprehensive remedy, that could be applied with or without a funding requirement, would be to make the employer primarily responsible for any deficiency in plan assets, with the guaranty fund being only contingently liable. Procedurally, the PGF would assume full and direct responsibility for the fulfillment of benefit expectations, but would have right of action against the employer to recover any asset deficiency. The PGF would be regarded at law as a creditor of the employer and could be given an appropriate preference in an insolvency or bankruptcy proceeding. Making the employer legally responsible for the payment of accrued benefits would encourage conservatism in the granting of benefits and in the financing of the benefits. It would eliminate most of the possibilities of abuse (or selection against the fund) and make it possible for the PGF rules to be far less restrictive as to coverage, benefits, and funding. On the other hand, it could discourage the voluntary establishment of qualified plans. For constitutional reasons, it might be necessary to limit the employer's legal liability to benefits accruing after enactment of the pertinent legislation.

*Completion of the Employer's Funding Commitment.*—The second basic approach would be to limit the liability of the PGF to the completion of the employer's funding program for covered benefits, without regard to the sufficiency of the projected contributions. In other words, the guaranty would attach to the *funding* commitment rather than to the *benefit* commitment. In theory, this approach could be followed without any standards of funding other than those imposed by the IRS as a condition for continued qualification but for all practical purposes it would have to be grounded on minimum standards comparable in nature and scope to those suggested in the preceding section. The initial accrued liability for covered benefits could be increased by benefit liberalizations, subject to necessary safeguards, but a recomputation on the basis of revised actuarial assumptions could be permitted only with the approval of the PGF. Under this procedure, the dollar amount of the PGF's potential aggregate liability could be definitely determined at any time. It would be the