thiness might not have passed muster. The Court has applied *Turner Elkhorn* in upholding retroactive application of pension plan termination provisions to cover the period of congressional consideration, declaring that the test for retroactive application of legislation adjusting economic burdens is merely whether "the retroactive application . . . is itself justified by a rational legislative purpose." [553]

Rent regulations were sustained as applied to prevent execution of a judgment of eviction rendered by a state court before the enabling legislation was passed.[554] For the reason that "those who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end," no vested right to use housing, built with the aid of FHA mortgage insurance for transient purposes, was acquired by one obtaining insurance under an earlier section of the National Housing Act, which, though silent in this regard, was contemporaneously construed as barring rental to transients, and was later modified by an amendment that expressly excluded such use.[555] An order by an Area Rent Director reducing an unapproved rental and requiring the landlord to refund the excess previously collected, was held, with one dissenting vote, not to be the type of retroactivity which is condemned by law.[556] The application of a statute providing for tobacco marketing quotas, to a crop planted prior to its enactment, was held not to deprive the producers of property without due pro-

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[553] Pension Benefit Guaranty Corp. v. R.A. Gray & Co., 467 U.S. 717, 730 (1984). *Accord*, United States v. Sperry Corp., 493 U.S. 52, 65 (1989) (upholding imposition of user fee on claimants paid by Iran-United States Claims Tribunal prior to enactment of fee statute). Concrete Pipe & Products v. Construction Laborers Pension Trust, 508 U.S. 602, 636–41 (1993) (imposition of multiemployer pension plan withdrawal liability on an employer is not irrational, even though none of its employees had earned vested benefits by the time of withdrawal). In Eastern Enterprises v. Apfel, 524 U.S. 498 (1998), the challenge was to a statutory requirement that companies formerly engaged in mining pay miner retiree health benefits, as applied to a company that had placed its mining operations in a wholly owned subsidiary three decades earlier, before labor agreements included an express promise of lifetime benefits. In a fractured opinion, the justices ruled 5–4 that the scheme's severe retroactive effect offended the Constitution, though differing on the governing clause. Four of the majority justices based the judgment solely on takings law, while opining that "there is a question" whether the statute violated due process as well. The remaining majority justice, and the four dissenters, viewed substantive due process as the sole appropriate framework for resolving the case, but disagreed on whether a violation had occurred.

[554] Fleming v. Rhodes, 331 U.S. 100, 107 (1947).

[555] FHA v. The Darlington, Inc., 358 U.S. 84, 89–91, 92–93 (1958). Dissenting, Justices Harlan, Frankfurter, and Whittaker maintained that under the Due Process Clause the United States, in its contractual relations, is bound by the same rules as private individuals unless the action taken falls within the general federal regulatory power.

[556] Woods v. Stone, 333 U.S. 472 (1948).