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RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT, 1973

HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

ON

S. 4

TO STRENGTHEN AND IMPROVE THE PROTECTIONS AND INTERESTS OF PARTICIPANTS AND BENEFICIARIES OF EMPLOYEE PENSION AND WELFARE BENEFIT PLANS

S. 75

TO AMEND THE WELFARE AND PENSION PLANS DISCLOSURE ACT, TO ESTABLISH MINIMUM VESTING STANDARDS, AND TO ESTABLISH A PENSION INSURANCE PROGRAM

FEBRUARY 15 AND 16, 1973

JUN 27 1973

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RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT, 1973

THURSDAY, FEBRUARY 15, 1973

U.S. SENATE,
SUBCOMMITTEE ON LABOR,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The committee met, pursuant to notice, at 9:35 o'clock a.m., in room 4232 Dirksen Building, Hon. Harrison Williams, chairman, presiding.

Present: Senators Williams, Nelson, Javits, and Schweiker.

Committee staff members present: Mario T. Noto, special counsel; Michael R. Schoenenberger, assistant special counsel; Michael Gordon, minority counsel.

The CHAIRMAN. This is a hearing of the Senate Subcommittee on Labor.

We are returning to consideration of retirement income security for employees and the legislation that is introduced this year carries the number S. 4.

Senator Javits and I introduced this bill on January 4, and I am pleased to say that we now have been joined by over 50 cosponsors.

This legisation is identical to S. 3598, which Senator Javits and I sponsored in the last Congress. It is the end product of some 3 years of detailed inquiry by the Subcommittee on Labor into the operations of private pension plans.

Our study—mandated by resolution of the Senate on three different occasions—has pinpointed some very disturbing problems in private pensions. We learned that many employees have little or no understanding of their rights and obligations under their plans. We also learned that there is virtually no uniform regulation of the actions of trustees and administrators of private pension plans.

And, most disturbing of all, we learned that many pension plan participants never receive the benefits they are led to expect during their period of employment. In case after case studied by the subcommittee, we learned that the promise of retirement benefits often turns out to be an illusion.

(The texts of S. 4 and S. 75, titled the "Employee Benefits Protection Act of 1973," follow:)

93D CONGRESS
1ST SESSION

S. 4

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1973

Mr. WILLIAMS (for himself, Mr. JAVITS, Mr. BAYH, Mr. BEALL, Mr. BIBLE, Mr. BROOKE, Mr. BURDICK, Mr. CASE, Mr. COOK, Mr. CRANSTON, Mr. DOMINICK, Mr. EAGLETON, Mr. GRAVEL, Mr. HART, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. KENNEDY, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MAGNUSON, Mr. MANSFIELD, Mr. MONDALE, Mr. MONTOYA, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PASTORE, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. RIBICOFF, Mr. SCHWEIKER, Mr. SPARKMAN, Mr. STAFFORD, Mr. STEVENSON, Mr. TAFT, Mr. TUNNEY, and Mr. WEICKER) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Retirement Income Secu-
4 rity for Employees Act".

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2 TITLE VI—ENFORCEMENT

3 TITLE VII—EFFECTIVE DATES

4 SEC. 2. (a) The Congress finds that private pension
5 and other employee benefit plans and programs in the United
6 States are intrinsically woven into the working and retire-
7 ment lives of American men and women; that such plans

1 and programs have become firmly rooted into our economic
2 and social structure; that their operational scope and eco-
3 nomic impact is interstate and increasingly affecting more
4 than thirty million worker participants throughout the United
5 States; that the pension assets of approximately $150,000,-
6 000,000 accelerating at more than $10,000,000,000 an-
7 nually, represent the largest fund of virtually unregulated
8 assets in the United States; that the growth in size, scope,
9 and numbers of employee benefit plans is continuing rapidly
10 and substantially; that Federal authority over the establish-
11 ment, administration, and operations of these plans is frag-
12 mented and ineffective to secure adequate protection of retire-
13 ment and welfare benefits due to the workers covered and
14 affected; that deficient and inadequate provisions contained
15 in a number of such plans are directly responsible for hard-
16 ships upon working men and women who are not realizing
17 their expectations of pension benefits upon retirement; that
18 there have been found to be serious consequences to such
19 workers covered by these plans directly attributable to inade-
20 quate or nonexistent vesting provisions, lack of portability
21 to permit the transfer of earned credits by employees from
22 one employment to another; that terminations of plans beyond
23 the control of employees, without necessary and adequate
24 funding for benefit payments, has deprived employees and
25 their dependents of earned benefits; that employee partici-

1 pants have not had sufficient information concerning their
2 rights and responsibilities under the plans, resulting in loss
3 of benefits without knowledge of same; that the lack of uni-
4 form minimum standards of conduct required of fiduciaries,
5 administrators, and trustees has jeopardized the security of
6 employee benefits; and that it is therefore desirable, in the
7 interests of employees and their beneficiaries, and in the
8 interest of the free flow of commerce, that minimum stand-
9 ards be prescribed to assure that private pension and em-
10 ployee benefit plans be equitable in character and financially
11 sound and properly administered.
12 (b) It is the declared policy of this Act to protect
13 interstate commerce, and the equitable interests of partici-
14 pants in private pension plans and their beneficiaries, by
15 improving the scope, administration, and operation of such
16 plans, by requiring pension plans to vest benefits in em-
17 ployees after equitable periods of service; to meet adequate
18 minimum standards of funding; to prevent the losses of
19 employees' earned credits resulting from change of or sepa-
20 ration from employment; to protect vested benefits of em-
21 ployees against loss due to plan termination; and to require
22 more adequate disclosure and reports to participants and
23 beneficiaries of plan administration and operations, including
24 financial information by the plan to the participant, as may
25 be necessary for the employees to have a comprehensive

1 and better understanding of their rights and obligations to
2 receive benefits from the plans in which they are partici-
3 pants; to establish minimum standards of fiduciary conduct,
4 and to provide for more appropriate and adequate remedies,
5 sanctions, and ready access to the courts.

6 DEFINITIONS

7 SEC. 3. As used in this Act—
8 (1) "Secretary" means the Secretary of Labor.
9 (2) "Office" means the Office of Pension and Welfare
10 Plans Administration.
11 (3) "Assistant Secretary" means the Assistant Secre-
12 tary of Labor in charge of the Office of Pension and Welfare
13 Plans Administration.
14 (4) "State" means any State of the United States, the
15 District of Columbia, Puerto Rico, the Virgin Islands, Amer-
16 ican Samoa, Guam, Wake Island, the Canal Zone, and
17 Outer Continental Shelf lands defined in the Outer Conti-
18 nental Shelf Lands Act (43 U.S.C. 1331–1343).
19 (5) "Commerce" means trade, traffic, commerce, trans-
20 portation, or communication among the several States, or
21 between any foreign country and any State, or between any
22 State and any place outside thereof.
23 (6) "Industry or activity affecting commerce" means
24 any activity, business, or industry in commerce or in which
25 a labor dispute would hinder or obstruct commerce or the

1 free flow of commerce and includes any activity or industry
2 affecting commerce within the meaning of the Labor-
3 Management Relations Act, 1947, as amended, or the Rail-
4 way Labor Act, as amended.
5 (7) "Employer" means any person acting directly as
6 an employer or indirectly in the interest of an employer in
7 relation to a pension or profit-sharing-retirement plan, and
8 includes a group or association of employers acting for an
9 employer in such capacity.
10 (8) "Employee" means any individual employed by
11 an employer.
12 (9) "Participant" means any employee or former em-
13 ployee of an employer or any member or former member of
14 an employee organization who is or may become eligible to
15 receive a benefit of any type from a pension or profit-sharing-
16 retirement plan, or whose beneficiaries may be eligible to
17 receive any such benefit.
18 (10) "Beneficiary" means a person designated by a par-
19 ticipant or by the terms of a pension or profit-sharing-re-
20 tirement plan who is or may become entitled to a benefit
21 thereunder.
22 (11) "Person" means an individual, partnership, cor-
23 poration, mutual company, joint-stock company, trust, unin-
24 corporated organization, association, or employee organi-
25 zation.

1 (12) "Employee organization" means any labor union
2 or any organization of any kind, or any agency or employee
3 representation committee, association, group, or program, in
4 which employees participate and which exists for the pur-
5 pose in whole or in part, of dealing with employers concern-
6 ing a pension or profit-sharing-retirement plan, or other
7 matters incidental to employment relationships; or any em-
8 ployees' beneficiary association organized for the purpose, in
9 whole or in part, of establishing or maintaining such a plan.
10 (13) The term "fund" means a fund of money or other
11 assets maintained pursuant to or in connection with a pension
12 or profit-sharing-retirement plan, and includes employee con-
13 tributions withheld but not yet paid to the plan by the
14 employer, or a contractual agreement with an insurance car-
15 rier. The term does not include any assets of an investment
16 company subject to regulation under the Investment Com-
17 pany Act of 1940.
18 (14) "Pension plan" means any plan, fund, or pro-
19 gram, other than a profit-sharing-retirement plan, which is
20 communicated or its benefits described in writing to em-
21 ployees and which is established or maintained for the pur-
22 pose of providing for its participants, or their beneficiaries,
23 by the purchase of insurance or annuity contracts or other-
24 wise, retirement benefits.
25 (15) "Profit-sharing-retirement plan" means a plan

1 established or maintained by an employer to provide for
2 the participation by the employees in the current or accumu-
3 lated profits, or both the current and accumulated profits of
4 the employer in accordance with a definite predetermined
5 formula for allocating the contributions made to the plan
6 among the participants and for distributing the funds accu-
7 mulated under the plan upon retirement or death. Such plan
8 may include provisions permitting the withdrawal or distri-
9 bution of the funds accumulated upon contingencies other
10 than, and in addition to, retirement and death.

11 (16) "Registered plan" means a pension plan or profit-
12 sharing-retirement plan registered and certified by the Sec-
13 retary as a plan established and operated in accordance with
14 title I of this Act.

15 (17) "Money purchase plan" refers to a pension plan
16 in which contributions of the employer and employee (if
17 any) are accumulated, with interest, or other income, to pro-
18 vide at retirement whatever pension benefits the resulting
19 sum will buy.

20 (18) The term "administrator" means—

21 (A) the person specifically so designated by the
22 terms of the pension or profit-sharing-retirement plan,
23 collective bargaining agreement, trust agreement, con-
24 tract, or other instrument, under which the plan is
25 established or operated; or

1 (B) in the absence of such designation, (i) the em-
2 ployer in the case of a pension or profit-sharing-retire-
3 ment plan established or maintained by a single em-
4 ployer, (ii) the employee organization in the case of
5 such plan established or maintained by an employee
6 organization, or (iii) the association, committee, joint
7 board of trustees, or other similar group of representa-
8 tives of the parties who have established or maintain
9 such plan, in the case of a plan established or main-
10 tained by two or more employers or jointly by one or
11 more employers and one or more employee organiza-
12 tions.

13 (19) "Initial unfunded liability" means the amount (on
14 the effective date of title II, or the effective date of the es-
15 tablishment of a pension plan or any amendment thereto,
16 whichever is later), by which the assets of the plan are re-
17 quired to be augmented to insure that the plan is and will
18 remain fully funded.

19 (20) "Unfunded liability" means the amount on the
20 date when such liability is actuarially computed, by which
21 the assets of the plan are required to be augmented to insure
22 that the plan is and will remain fully funded.

23 (21) "Fully funded" with respect to any pension plan
24 means that such plan at any particular time has assets deter-

1 mined, by a person authorized under section 101 (b) (1), to
2 be sufficient to provide for the payment of all pension and
3 other benefits to participants then entitled or who may be-
4 come entitled under the terms of the plan to an immediate or
5 deferred benefit in respect to service rendered by such
6 participants.
7 (22) "Experience deficiency" with respect to a pension
8 plan means any actuarial deficit, determined at the time of a
9 review of the plan, that is attributable to factors other than
10 the existence of an initial unfunded liability or the failure of
11 any employer to make any contribution required by the
12 terms of the plan or by section 210, except insofar as such
13 failure to make a required contribution is treated as an ex-
14 perience deficiency under section 217 (a) (1).
15 (23) "Funding" shall mean payment or transfer of
16 assets into a fund, and shall also include payment to an insur-
17 ance carrier to secure a contractual right pursuant to an
18 agreement with such carrier.
19 (24) "Normal service cost" means the annual cost
20 assigned to a pension plan, under the actuarial cost method
21 in use (as of the effective date of title II or the date of
22 establishment of a pension plan after such date), exclusive
23 of any element representing any initial unfunded liability
24 or interest thereon.
25 (25) "Special payment" means a payment made to a

1 pension plan for the purpose of liquidating an initial un-
2 funded liability or experience deficiency.
3 (26) "Nonforfeitable right" or "vested right" means a
4 legal claim obtained to that part of an immediate or deferred
5 life annuity which notwithstanding any conditions subsequent
6 which could affect receipt of any benefit flowing from such
7 right, arises from the participant's covered service under the
8 plan, and is no longer contingent on the participant remain-
9 ing covered by the plan.
10 (27) "Covered service" means that period of service
11 performed by a participant for an employer or as a member
12 of an employee organization which is recognized under the
13 terms of the plan or the collective bargaining agreement
14 (subject to the requirements of part A of title II) for pur-
15 poses of determining a participant's eligibility to receive pen-
16 sion benefits or for determining the amount of such benefits.
17 (28) "Normal retirement benefit" means that benefit
18 payable under a pension or profit-sharing-retirement plan in
19 the event of retirement at the normal retirement age.
20 (29) "Normal retirement age" means the normal re-
21 tirement age, specified under the plan but not later than age
22 65 or, in the absence of plan provisions specifying the nor-
23 mal retirement age, age 65.
24 (30) "Pension benefit" means the aggregate, annual,
25 monthly, or other amounts to which a participant will be-

1 come entitled upon retirement or to which any other person
2 is entitled by virtue of such participant's death.
3 (31) "Accrued portion of normal retirement benefit"
4 means that amount of benefit which, irrespective of whether
5 the right to such benefit is nonforfeitable, is equal to—
6 (A) in the case of a profit-sharing-retirement plan
7 or money purchase plan, the total amount (including
8 all interest held in the plan) credited to the account of
9 a participant;
10 (B) in the case of a unit benefit-type pension plan,
11 the benefit units credited to a participant; or
12 (C) in the case of other types of pension plans, that
13 portion of the prospective normal retirement benefit of
14 a participant, which under rule or regulation of the Sec-
15 retary is determined to constitute the participant's ac-
16 crued portion of the normal retirement benefit under
17 the terms of the appropriate plan.
18 (32) "Multi-employer plan" means a collectively bar-
19 gained pension plan to which a substantial number of un-
20 affiliated employers are required to contribute and which
21 covers a substantial portion of the industry in terms of
22 employees or a substantial number of employees in the
23 industry in a particular geographic area.
24 (33) "Unaffiliated employers" means employers other
25 than those under common ownership or control, or having

1 the relationship of parent-subsidiary, or directly or indirectly
2 controlling or controlled by another employer.
3 (34) "Qualified insurance carrier" means an insurance
4 carrier subject to regulation and examination by the govern-
5 ment of any State, which is determined by rule or regulation
6 of the Secretary to be suitable for the purchase of the single
7 premium life annuity or the annuity with survivorship op-
8 tions authorized under section 305(2).
9 (35) "Vested liabilities" means the present value of
10 the immediate or deferred pension benefits for participants
11 and their beneficiaries which are nonforfeitable and for
12 which all conditions of eligibility have been fulfilled under
13 the provisions of the plan prior to its termination.
14 (36) "Unfunded vested liabilities" means that amount
15 of vested liabilities that cannot be satisfied by the assets of
16 the plan, at fair market value, as determined by rule or
17 regulation of the Secretary.

18 ## TITLE I—ORGANIZATION

19 ### PART A—ORGANIZATIONAL STRUCTURE

20 #### POWERS AND DUTIES OF THE SECRETARY

21 SEC. 101. (a) It shall be the duty of the Secretary—
22 (1) to promote programs and plans for the estab-
23 lishment, administration, and operations of pension,
24 profit-sharing-retirement, and other employee benefit

1 plans in furtherance of the findings and policies set forth
2 in this Act;
3 (2) to determine, upon application by a pension or
4 profit-sharing-retirement plan, such plan's eligibility for
5 registration with the Secretary under section 105 and,
6 upon qualification, to register such plan and issue appro-
7 priate certificates of registration;
8 (3) to cancel certificates of registration of pension
9 and profit-sharing-retirement plans registered under sec-
10 tion 105, upon determination by the Secretary that such
11 plans are not qualified for such registration;
12 (4) (A) to direct, administer, and enforce the pro-
13 visions and requirements of this Act and the Welfare
14 and Pension Plans Disclosure Act, except where such
15 provisions are only enforceable by a private party;
16 (B) to make appropriate and necessary inquiries
17 to determine violations of the provisions of this Act, or
18 the Welfare and Pension Plans Disclosure Act, or any
19 rule or regulation issued thereunder: *Provided, however,*
20 That no periodic examination of the books and records
21 of any plan or fund shall be conducted more than once
22 annually unless the Secretary has reasonable cause to
23 believe there may exist a violation of this Act or the
24 Welfare and Pension Plans Disclosure Act or any rule
25 or regulation thereunder;

1 (C) for the purpose of any inquiry provided
2 for in subaragraph (B), the provisions of sections 9
3 and 10 (relating to the attendance of witneses and the
4 production of books, papers, and documents) of the
5 Federal Trade Commission Act of September 1, 1914,
6 are hereby made applicable to the jurisdiction, powers,
7 and duties of the Secretary.
8 (5) to bring civil actions authorized by this Act
9 subject to control and direction of the Attorney Gen-
10 eral;
11 (6) to appoint and fix the compensation of such
12 employees as may be necessary for the conduct of his
13 business under this Act in accordance with the provi-
14 sions of title 5, United States Code, governing appoint-
15 ment in the competitive service, and chapter 51 and
16 subchapter III of chapter 53 of such title relating to
17 classification and General Schedule pay rates, and to
18 obtain the services of experts and consultants as neces-
19 sary in accordance with section 3109 of title 5, United
20 States Code, at rates for individuals not to exceed the
21 per diem equivalent for GS-18;
22 (7) to perform such other functions as may be
23 necessary to carry out the purposes of this Act.
24 (b) The Secretary is authorized to prescribe rules and
25 regulations—

1 (1) establishing standards and qualifications for
2 persons responsible for performing services under this
3 Act as actuaries and upon application of any such per-
4 son, to certify whether such person meets the standards
5 and qualifications prescribed;
6 (2) establishing reasonable fees for the registration
7 of pension and profit-sharing-retirement plans and other
8 services to be performed by him in implementing the
9 provisions of this Act, and all fees collected by the Secre-
10 tary shall be paid into the general fund of the Treasury;
11 (3) establishing reasonable limitations on actuarial
12 assumptions, based upon appropriate experience, includ-
13 ing, but not limited to, interest rates, mortality, and
14 turnover rates;
15 (4) such as may be necessary or appropriate to
16 carry out the purposes of this Act, including but not
17 limited to definitions of actuarial, accounting, technical,
18 and other trade terms in common use in the subject
19 matter of this Act and the Welfare and Pension Plans
20 Disclosure Act; and
21 (5) governing the form, detail, and inspection of
22 all required records, reports, and documents, the main-
23 tenance of books and records, and the inspection of such
24 books and records, as may be required under this Act.
25 (c) (1) The Secretary is authorized and directed to un-

1 dertake appropriate studies relating to pension and profit-
2 sharing-retirement plans including but not limited to the
3 effects of this Act upon the provisions and costs of pension
4 and profit-sharing-retirement plans, the role of private pen-
5 sions in meeting retirement security needs of the Nation, the
6 administration and operation of pension plans, including types
7 and levels of benefits, degree of reciprocity or portability
8 financial characteristics and practices, methods of encourag-
9 ing the growth of the private pension system, and advisability
10 of additional coverage under this Act.

11 (2) The Secretary shall submit annually a report to the
12 Congress covering his activities under this Act during the
13 preceding fiscal year, together with the results of such studies
14 as are conducted pursuant to this Act, or, from time to
15 time, pursuant to other Acts of Congress, and recommenda-
16 tions for such further legislation as may be advisable.

17 (d) Prior to promulgating rules or regulations, the
18 Secretary shall consult with appropriate departments or
19 agencies of the Federal Government to avoid unnecessary
20 conflicts, duplications, or inconsistency with rules and regu-
21 lations which may be applicable to such plans under other
22 laws of the United States.

23 (e) In order to avoid unnecessary expense and duplica-
24 tion of functions among Government agencies, the Secretary

1 may make such arrangements or agreements for cooperation
2 or mutual assistance in the performance of his functions under
3 this Act and the functions of any agency, Federal or State,
4 as he may find to be practicable and consistent with law. The
5 Secretary may utilize on a reimbursable basis the facilities or
6 services of any department, agency, or establishment of the
7 United States, or of any State, including services of any of
8 its employees, with the lawful consent of such department,
9 agency, or establishment; and each department, agency, or
10 establishment of the United States is authorized and directed
11 to cooperate with the Secretary, and to the extent permitted
12 by law, to provide such information and facilities as the
13 Secretary may request for his assistance in the performance
14 of his functions under this Act.

15 APPROPRIATIONS

16 SEC. 102. There are authorized to be appropriated such
17 sums as may be necessary to enable the Secretary to carry
18 out his functions and duties.

19 OFFICE OF ADMINISTRATION

20 SEC. 103. (a) There is hereby established within the
21 Department of Labor an office to be known as the Office of
22 Pension and Welfare Plan Administration. Such Office
23 shall be headed by an Assistant Secretary of Labor who shall
24 be appointed by the President, by and with the advice and
25 consent of the Senate.

1 (b) It shall be the duty of the Assistant Secretary of
2 Labor under the supervision of the Secretary to exercise
3 such power and authority as may be delegated to him by
4 the Secretary for the administration and enforcement of this
5 Act.
6 (c) Paragraph 20, of section 5315, title 5, United
7 States Code, is amended by striking "(5)" and inserting
8 in lieu thereof "(6)".
9 (d) Such functions, books, records, and personnel of
10 the Labor Management Services Administration as the Sec-
11 retary determines are related to the administration of the
12 Welfare and Pension Plans Disclosure Act are hereby
13 transferred to the Office of Pension and Welfare Plan
14 Administration.
15 PART B—COVERAGE, EXEMPTIONS, AND REGISTRATION
16 COVERAGE AND EXEMPTIONS
17 SEC. 104. (a) Except as provided in subsections (b)
18 and (c), titles II, III, and IV of this Act shall apply to any
19 pension plan and any profit-sharing-retirement plan estab-
20 lished or maintained by any employer engaged in interstate
21 commerce or any industry or activity affecting interstate
22 commerce or by any employer together with any employee
23 organization representing employees engaged in commerce
24 or in any industry or activity affecting such commerce or by
25 any employee organization representing employees engaged

1 in commerce or in any industry or activity affecting
2 commerce.
3 (b) Titles II, III, and IV of this Act shall not apply
4 to any pension plan or any profit-sharing-retirement plan
5 if—
6 (1) such plan is established or maintained by the
7 Federal Government or by the government of a State or
8 by a political subdivision of the same or by any agency
9 or instrumentality thereof;
10 (2) such plan is established or maintained by a re-
11 ligious organization described under section 501 (c) of
12 the Internal Revenue Code of 1954 which is exempt from
13 taxation under the provisions of section 501 (a) of such
14 Code;
15 (3) such plan is established or maintained by a self-
16 employed individual exclusively for his own benefit or for
17 the benefit of his survivors or established or maintained
18 by one or more owner-employers exclusively for his or
19 their benefit or for the benefit of his or their survivors;
20 (4) such plan covers not more than twenty-five
21 participants;
22 (5) such plan is established or maintained outside
23 the United States primarily for the benefit of employees
24 who are not citizens of the United States and the situs of
25 the employee benefit plan fund established or maintained

1 pursuant to such plan is maintained outside the United
2 States;
3 (6) such plan is unfunded and is established or main-
4 tained by an employer primarily for the purpose of pro-
5 viding deferred compensation for a select group of
6 management employees and is declared by the employer
7 as not intended to meet the requirements of section
8 401 (a) of the Internal Revenue Code; or
9 (7) such plan is established or maintained by an
10 employee organization and is administered and financed
11 solely by contributions from its members.
12 (c) Title IV and part B of title II shall not apply to
13 profit-sharing-retirement plans or money purchase plans.
14 (d) Titles V and VI shall apply to any plan covered
15 by the Welfare and Pension Plans Disclosure Act and any
16 pension plan or profit-sharing-retirement plan covered by
17 this Act.
18 REGISTRATION OF PLANS
19 SEC. 105. (a) Every administrator of a pension or
20 profit-sharing-retirement plan to which titles II, III, or IV
21 apply shall file with the Secretary an application for regis-
22 tration of such plan. Such application shall be in such form
23 and shall be accompanied by such documents as shall be
24 prescribed by regulation of the Secretary. After qualification
25 under subsection (c), the administrator of such plan shall

1 comply with such requirements as may be prescribed by the
2 Secretary to maintain the plan's qualification under this title.
3 (b) In the case of plans established on or after the ef-
4 fective date of this title, the filing required by subsection (a)
5 shall be made within six months after such plan is estab-
6 lished. In the case of plans established prior to the effective
7 date of this title, such filing shall be made within six months
8 after the effective date of regulations promulgated by the
9 Secretary to implement this section but in no event later than
10 twelve months after the date of enactment of this Act.
11 (c) Upon the filing required by subsection (a), the
12 Secretary shall determine whether such plan is qualified for
13 registration under this title, and if the Secretary finds it quali-
14 fied, he shall issue a certificate of registration with respect to
15 such plan.
16 (d) If at any time the Secretary determines that a plan
17 required to qualify under this title is not qualified or is no
18 longer qualified for registration under this title, he shall
19 notify the administrator, setting forth the deficiency or de-
20 ficiencies in the plan or in its administration or operations
21 which is the basis for the notification given, and he shall
22 further provide the administrator, the employer of the
23 employees covered by the plan (if not the administrator),
24 and the employee organization representing such employees,
25 if any, a reasonable time within which to remove such defi-

1 ciency or deficiencies. If the Secretary thereafter determines
2 that the deficiency or deficiencies have been removed, he
3 shall issue or continue in effect the certificate, as the case
4 may be. If he determines that the deficiency or deficiencies
5 have not been removed, he shall enter an order denying or
6 canceling the certificate of registration, and take such further
7 action as may be appropriate under title VI.
8 (e) A pension or profit-sharing-retirement plan shall
9 be qualified for registration under this section if it conforms
10 to, and is administered in accordance with this Act, the
11 Welfare and Pension Plans Disclosure Act, and in the case
12 of a pension plan subject to title IV of this Act, applies
13 for and maintains plan termination insurance and pays the
14 required assessments and premiums.
15 REPORTS ON REGISTERED PLANS
16 SEC. 106. The Secretary may, by regulations, provide
17 for the filing of a single report satisfying the reporting re-
18 quirements of this Act, and the Welfare and Pension Plans
19 Disclosure Act.
20 AMENDMENTS OF REGISTERED PLANS
21 SEC. 107. Where a pension or profit-sharing-retirement
22 plan filed for registration under this title is amended subse-
23 quent to such filing, the administrator shall (pursuant to
24 regulations promulgated by the Secretary) file with the Sec-
25 retary a copy of the amendment and such additional infor-

1 mation and reports as the Secretary by regulation may re-
2 quire, to determine the amount of any initial unfunded liabil-
3 ity created by the amendment, if any, and the special pay-
4 ments required to remove such liability.

5 CERTIFICATE OF RIGHTS

6 SEC. 108. The Secretary shall, by regulation, require
7 each pension and profit-sharing-retirement plan to furnish
8 or make available, whichever is the most practicable, to
9 each participant, upon termination of service with a vested
10 right to an immediate or a deferred pension benefit or other
11 vested interest, with a certificate setting forth the benefits to
12 which he is entitled, including, but not limited to, the name
13 and location of the entity responsible for payment, the
14 amount of benefits, and the date when payment shall begin.
15 A copy of each such certificate shall be filed with the Sec-
16 retary. Such certificate shall be deemed prima facie evidence
17 of the facts and rights set forth in such certificate.

18 TITLE II—VESTING AND FUNDING
19 REQUIREMENTS

20 PART A—VESTING REQUIREMENTS

21 ELIGIBILITY

22 SEC. 201. No pension or profit-sharing-retirement plan
23 filed for registration under this Act shall require as a condi-
24 tion for eligibility to participate in such a plan a period of
25 service longer than one year or an age greater than twenty-
26 five, whichever occurs later: *Provided, however,* That in the

1 case of any plan which provides for immediate vesting of
2 100 per centum of earned benefits of participants, such plan
3 may require as a condition for eligibility to participate in
4 the plan, a period of service no longer than three years or
5 an age greater than thirty, whichever occurs later.

6 VESTING SCHEDULE

7 SEC. 202. (a) All pension or profit-sharing-retirement
8 plans filed for registration under this Act, except as pro-
9 vided for in paragraphs (2) and (3) herein, shall provide
10 under the terms of the plan with respect to covered service
11 both before and after the effective date of the title, that:
12 (1) a plan participant who has been in covered
13 service under the plan for a period of eight years is
14 entitled upon termination of service prior to attaining
15 normal retirement age—
16 (A) in the case of a pension plan, to a deferred
17 pension benefit commencing at his normal retirement
18 age; or
19 (B) in the case of a profit-sharing-retirement
20 plan, to a nonforfeitable right to his interest in such
21 plan
22 equal to 30 per centum of the accrued portion of the
23 normal retirement benefit as provided by the plan in
24 respect of such service, or of such interest, respectively,
25 and such entitlement shall increase by 10 per centum

1 per year thereafter of covered service until the comple-
2 tion of fiteen years of covered service after which such
3 participant shall be entitled upon termination of service
4 prior to attaining normal retirement age to a deferred
5 pension benefit commencing at his normal retirement
6 age equal to 100 per centum of the accrued portion of
7 the normal retirement benefit as provided by the plan
8 with respect to such service, or to the full amount of
9 such interest in the profit-sharing-retirement plan;
10 (2) the requirements of paragraph (1) of this
11 subsection need not apply with respect to accrued por-
12 tions of normal retirement benefits attributable to covered
13 service rendered prior to the effective date of this title by
14 any plan participant who has not attained forty-five years
15 of age on the effective date of this title and, in the event
16 a plan is established or amended after the effective date
17 of this title, the requirements of paragraph (1) of this
18 subsection need only apply to service rendered after the
19 date of the plan's establishment or the date of such plan
20 amendment with respect to any improvement in benefits
21 made by such amendment.
22 (3) if the plan is a class year plan, then such plan
23 shall provide that the participant shall acquire a nonfor-
24 feitable right to 100 per centum of the employer's con-
25 tribution on his behalf with respect to any given year,

1 not later than the end of the fifth year following the year
2 for which such contribution was made. For the pur-
3 poses of this paragraph, the term "class year plan"
4 means a profit-sharing-retirement plan which provides
5 for the separate vesting of each annual contribution
6 made by the employer on behalf of a participant.
7 (4) the pension benefits provided under the terms of
8 a pension plan, and the interest in a profit-sharing-re-
9 tirement plan referred to in subparagraph (B) of para-
10 graph (1) shall not be capable of assignment or alien-
11 ation and shall not confer upon an employee, personal
12 representative, or dependent, or any other person, any
13 right or interest in such pension benefits or profit-sharing-
14 retirement plan, capable of being assigned or otherwise
15 alienated; except that where a plan fails to make appro-
16 priate provisions therefor, the Secretary shall, by regu-
17 lation, provide for the final disposition of plan benefits
18 or interests when beneficiaries cannot be located or as-
19 certained within a reasonable time.
20 (b) Any participant covered under a plan, for the
21 number of years required for a vested right under this sec-
22 tion, shall be entitled to such vested right regardless of
23 whether his years of covered service are continuous, except
24 that a plan may provide that—
25 (1) three of the eight years required to qualify for

1 the 30 per centum vested right under subsection (a)
2 shall be continuous under standards prescribed under
3 subsection (c),
4 (2) service by a participant prior to the age of
5 twenty-five may be ignored in determining eligibility for
6 a vested right under this section, unless such participant
7 or an employer has contributed to the plan with respect
8 to such service, and
9 (3) in the event a participant has attained a vested
10 right equal to 100 per centum of the accrued portion of
11 the normal retirement benefit as provided by the plan
12 with respect to such service, or to the full amount of
13 such interest in a profit-sharing-retirement plan, and
14 such participant has been separated permanently from
15 coverage under the plan and subsequently returns to
16 coverage under the same plan, such participant may be
17 treated as a new participant for purposes of the vesting
18 requirements set forth in section 202(a)(1) without
19 regard to his prior service.
20 (c) The Secretary shall prescribe standards, consistent
21 with the purposes of this Act, governing the maximum num-
22 ber of working hours, days, weeks, or months, which shall
23 constitute a year of covered service, or a break in service for
24 purposes of this Act. In no case shall a participant's time
25 worked in any period in which he is credited for a period

1 of service for the purposes of this section, be credited to any
2 other period of time unless the plan so provides.
3 (d) Notwithstanding any other provision of this Act,
4 a pension or profit-sharing-retirement plan may allow for
5 vesting of pension benefits after a lesser period than is re-
6 quired by this section.
7 (e) Notwithstanding any other provision of this Act
8 whereupon application and notice to affected or interested
9 parties by the plan Administrator, the Secretary determines
10 that the plan contains vesting provisions which are as liberal
11 as the vesting schedule set forth in section 202 (a) (1), the
12 Secretary may waive the requirements therein as long as
13 the vesting schedule contained in the plan remains un-
14 changed. For the purposes of this subsection, the term
15 "liberal" refers to a vesting formula which provides vested
16 benefits comparable to or greater than those provided under
17 section 202 (a) (1) to the majority of the participants in
18 the plan as indicated by the plan's actuarial experience.
19 PART B—FUNDING
20 FUNDING REQUIREMENTS
21 SEC. 210. (a) Unless a waiver is granted pursuant to
22 part C of this title, every pension plan filed for registration
23 under this Act shall provide for funding, in accordance with
24 the provisions of this part, which is adequate to provide for

1 payment of all pension benefits which may be payable under
2 the terms of the plan.
3 (b) Provisions in the plan for funding shall set forth
4 the obligation of the employer or employers to contribute
5 both in respect of the normal service cost of the plan and
6 in respect of any initial unfunded liability and experience
7 deficiency. The contribution of the employer, including any
8 contributions made by employees, shall consist of the pay-
9 ment into the plan or fund of—
10 (1) all normal service costs; and
11 (2) where the plan has an initial unfunded lia-
12 bility, special payments consisting of no less than equal
13 amounts sufficient to amortize such unfunded liabilities
14 over a term not exceeding:
15 (A) in the case of an initial unfunded liability
16 existing on the effective date of this title, in any
17 plan established before that date, thirty years from
18 such date;
19 (B) in the case of an initial unfunded liability
20 resulting from the establishment of a pension plan,
21 or an amendment thereto, on or after the effective
22 date of this title, thirty years from the date of such
23 establishment or amendment, except that in the event
24 that any such amendment after the effective date of
25 this title results in a substantial increase to any un-

1 funded liability of the plan, as determined by the
2 Secretary, such increase shall be regarded as a new
3 plan for purposes of the funding schedule imposed
4 by this subsection and the plan termination insur-
5 ance requirements imposed by title IV.

6 (3) special payments, where the plan has an expe-
7 rience deficiency, consisting of no less than equal annual
8 amounts sufficient to remove such experience deficiency
9 over a term not exceeding five years from the date on
10 which the experience deficiency was determined, except
11 where the experience deficiency cannot be removed over
12 a five-year period without the amounts required to re-
13 move such deficiency exceeding the allowable limits for
14 a tax deduction under the Internal Revenue Code of 1954
15 for any particular year during which such payments must
16 be made, the Secretary shall, consistent with the pur-
17 poses of this subsection, prescribe such additional time as
18 may be necessary to remove such deficiency within
19 allowable tax deduction limitations.

20 (c) within six months after the effective date of rules
21 promulgated by the Secretary to implement this title (but in
22 no event more than 12 months after the effective date of this
23 title) or within six months after the date of plan establish-
24 ment, whichever is later, the plan administrator shall submit

1 a report of an actuary (certified under section 101(b))
2 stating—
3 (1) the estimated cost of benefits in respect of
4 service for the first plan year for which such plan is
5 required to register and the formula for computing such
6 cost in subsequent years up to the date of the following
7 report;
8 (2) the initial unfunded liability, if any, for bene-
9 fits under the pension plan as of the date on which the
10 plan is required to be registered;
11 (3) the special payments required to remove such
12 unfunded liability and experience deficiencies in accord-
13 ance with subsection (b);
14 (4) the actuarial assumptions used and the basis for
15 using such actuarial assumptions; and
16 (5) such other pertinent actuarial information re-
17 quired by the Secretary.
18 (d) The administrator of a registered pension plan shall
19 cause the plan to be reviewed not less than once every five
20 years by a certified actuary and shall submit a report of such
21 actuary stating—
22 (1) the estimated cost of benefits in respect of serv-
23 ice in the next succeeding five-year period and the
24 formula for computing such cost for such subsequent five-
25 year period;

1 (2) the surplus or the experience deficiency in the
2 pension plan after making allowance for the present
3 value of all special payments required to be made in the
4 future by the employer as determined by previous
5 reports;
6 (3) the special payments which will remove any
7 such experience deficiency over a term not exceeding five
8 years;
9 (4) the actuarial assumptions used and the basis
10 for using such actuarial assumptions; and
11 (5) such other pertinent actuarial information re-
12 quired by the Secretary.
13 If any such report discloses a surplus in a pension plan, the
14 amount of any future payments required to be made to the
15 fund or plan may be reduced or the amount of benefits may
16 be increased by the amount of such surplus, subject to the
17 provisions of the Internal Revenue Code of 1954 and regu-
18 lations promulgated thereunder. The reports under this sub-
19 section shall be filed with the Secretary by the administrator
20 as part of the annual report required by section 7 of the
21 Welfare and Pension Plans Disclosure Act, at such time
22 that the report under such section 7 is due with respect to
23 the last year of such five-year period.
24 (e) Where an insured pension plan is funded exclu-
25 sively by the purchase of insurance contracts which—

1 (1) require level annual premium payments to be
2 paid extending not beyond the retirement age for each in-
3 dividual participant in the plan, and commencing with
4 the participant's entry into the plan (or, in the case of
5 an increase in benefits, commencing at the time such
6 increase becomes effective), and
7 (2) benefits provided by the plan are equal to the
8 benefits provided under each contract, and are guaran-
9 teed by the insurance carrier to the extent premiums
10 have been paid,
11 such plan shall be exempt from the requirements imposed by
12 subsections (b) (2) and (3), (c), and (d) of this section.
13 (f) The Secretary may exempt any plan, in whole or in
14 part, from the requirement that such reports be filed where
15 the Secretary finds such filing to be unnecessary.

16 DISCONTINUANCE OF PLANS

17 SEC. 211. (a) Subject to the authority of the Secretary
18 to provide exemptions or variances where necessary to avoid
19 substantial hardship to participants or beneficiaries, upon
20 complete termination or substantial termination (as deter-
21 mined by the Secretary), of a pension plan, and subject to
22 the provisions of the Internal Revenue Code and regulations
23 promulgated thereunder, relating to limitations applicable to
24 the twenty-five highest paid employees of an employer, all
25 assets of the plan shall be applied under the terms of the
26 plan, as follows—

1 (1) first, to refund to nonretired participants in the
2 plan the amount of contributions made by them;
3 (2) second, to participants in the plan who have
4 retired prior to the date of such termination and have
5 been receiving benefits under the plan;
6 (3) third, to those participants in the plan who,
7 on the date of such termination had the right to retire
8 and receive benefits under the plan;
9 (4) fourth, to those participants in the plan who
10 had acquired vested rights under the plan prior to ter-
11 mination of the plan but had not reached normal re-
12 tirement age on the date of such termination; and
13 (5) fifth, to any other participants in the plan who
14 are entitled to benefits under the plan pursuant to the
15 requirements of section 401 (a) (7) of the Internal Rev-
16 enue Code of 1954.
17 (b) Upon complete termination, or substantial termina-
18 tion (as determined by the Secretary), any party obligated
19 to contribute to the plan pursuant to section 210(b), or to
20 contribute on behalf of employees pursuant to a withholding
21 or similar arrangement, shall be liable to pay all amounts
22 that would otherwise have been required to be paid to meet
23 the funding requirements prescribed by section 210 up to
24 the date of such termination to the insuror,. trustee, or
25 administrator of the plan.

1 (c) Upon complete termination, or substantial termina-
2 tion (as determined by the Secretary), of a profit-sharing-
3 retirement plan, the interests of all participants in such plan
4 shall fully vest.
5 (d) In any case, the Secretary may approve payment
6 of survivor benefits with priorities equal to those of the em-
7 ployees or former employees on whose service such benefits
8 are based.

9 PART C—VARIANCES

10 DEFERRED APPLICABILITY OF VESTING STANDARDS

11 SEC. 216. (a) The Secretary may defer, in whole or
12 in part, applicability of the requirements of part A of this
13 title for a period not to exceed five years from the effective
14 date of title II, upon a showing that compliance with the
15 requirements of part A on the part of a plan in existence on
16 the date of enactment of this Act would result in increasing
17 the costs of the employer or employers contributing to the
18 plan to such an extent that substantial economic injury would
19 be caused to such employer or employers and to the interests
20 of the participants or beneficiaries in the plan.
21 (b) For purposes of subsection (a), the term "sub-
22 stantial economic injury" includes, but is not limited to,
23 a showing that (1) a substantial risk to the capability of
24 voluntarily continuing the plan exists, (2) the plan will be
25 unable to discharge its existing contractual obligations for

1 benefits, (3) a substantial curtailment of pension or other
2 benefit levels or the levels of employees' compensation would
3 result, or (4) there will be an adverse effect on the levels of
4 employment with respect to the work force employed by the
5 employer or employers contributing to the plan.

6 (c) (1) In the case of any plan established or maintained
7 pursuant to a collective bargaining agreement, no applica-
8 tion for the granting of the variance provided for under sub-
9 section (a) shall be considered by the Secretary unless it
10 is submitted by the parties to the collective bargaining agree-
11 ment or their duly authorized representatives.

12 (2) As to any application for a variance under sub-
13 section (a) submitted by the parties to a collective bargain-
14 ing agreement or their duly authorized representatives, the
15 Secretary shall accord due weight to the experience, tech-
16 nical competence, and specialized knowledge of the parties
17 with respect to the particular circumstances affecting the plan,
18 industry, or other pertinent factors forming the basis for the
19 application.

20 VARIANCES FROM FUNDING REQUIREMENTS

21 SEC. 217. (a) Where, upon application and notice to
22 affected or interested parties by the plan administrator, the
23 Secretary determines that—

24 (1) any employer or employers are unable to make
25 annual contributions to the plan in compliance with the

1 funding requirements of section 210(b) (2) or (3), and
2 he has reason to believe that such required payment for
3 that annual period cannot be made by such employer or
4 employers, the Secretary may waive the annual contri-
5 bution otherwise required to be paid, and prescribe an
6 additional period of not more than five years for the
7 amortization of such annual funding deficiency, during
8 which period the funding deficiency shall be removed by
9 no less than equal annual payments. Any funding de-
10 ficiency permitted under this section shall be treated for
11 the purposes of any actuarial report required under this
12 Act as an experience deficiency under section 210;
13 (2) no waiver shall be granted unless the Secretary
14 is satisfied after a review of the financial conditions of the
15 plan and other related matters that—
16 (A) such waiver will not adversely affect the
17 interests of participants or beneficiaries of such plan;
18 or
19 (B) will not impair the capability of the Pen-
20 sion Benefit Insurance Fund to equitably underwrite
21 vested benefit losses in accordance with title IV,
22 (3) waivers granted pursuant to this provision
23 shall not exceed five consecutive annual waivers.
24 (b) Where a plan has been granted five consecutive
25 waivers pursuant to subsection (a), the Secretary may—

1 (1) order the merger or consolidation of the de-
2 ficiently funded plan with such other plan or plans or
3 the contributing employer or employers in a manner
4 that will result in future compliance with the funding
5 requirements of part B of title II of this Act without
6 adversely affecting the interests of participants and bene-
7 ficiaries in all plans which may be involved;
8 (2) where necessary to protect the interests of
9 participants or beneficiaries, or to safeguard the capa-
10 bility of the Pension Benefit Insurance Fund to equitably
11 underwrite vested benefit losses, under title IV; order
12 plan termination in accordance with such conditions as
13 the Secretary may prescribe; or
14 (3) take such other action as may be necessary to
15 fulfill the purposes of this Act.
16 (c) No amendments increasing plan benefits shall be
17 permitted during any period in which a funding waiver is
18 in effect.
19 (d) (1) Notwithstanding the requirements of part
20 B of title II of this Act the Secretary shall by rule or regula-
21 tion prescribe alternative funding requirements for multiem-
22 ployer plans which will give reasonable assurances that the
23 plan's benefit commitments will be met.
24 (2) The period of time provided to fund such multiem-
25 ployer plans shall be a period which will give reasonable as-

1 surances that the plan's benefit commitments will be met and
2 which reflects the particular circumstances affecting the plan,
3 industry, or other pertinent factors, except that no period
4 prescribed by the Secretary shall be less than thirty years.
5 (3) No multiemployer plan shall increase benefits be-
6 yond a level for which the contributions made to the plan
7 would be determined to be adequate unless the contribution
8 rate is commensurately increased.
9 (e) Upon a showing by the plan administrator of a
10 multiemployer plan that the withdrawal from the plan by any
11 employer or employers has or will result in a significant re-
12 duction in the rate of aggregate contributions to the plan, the
13 Secretary may take the following steps:
14 (1) require the plan fund to be equitably allocated
15 between those participants no longer working in covered
16 service under the plan as a result of their employer's
17 withdrawal, and those participants who remain in cov-
18 ered service under the plan;
19 (2) treat that portion of the plan fund allocable
20 under (1) to participants no longer in covered service,
21 as a terminated plan for the purposes of the plan termi-
22 nation insurance provisions of title IV; and
23 (3) treat that portion of the plan fund allocable
24 to participants remaining in covered service as a new

1 plan for purposes of the funding standards imposed by
2 part B of title II of this Act, any variance granted by
3 this section, and the plan termination insurance provi-
4 sions of title IV.

5 TITLE III—VOLUNTARY PORTABILITY
6 PROGRAM FOR VESTED PENSIONS

7 PROGRAM ESTABLISHED

8 SEC. 301. (a) There is hereby established a program
9 to be known as the Voluntary Portability Program for
10 Vested Pensions (hereinafter referred to as the "Portability
11 Program"), which shall be administered by and under the
12 direction of the Secretary. The Portability Program shall
13 facilitate the voluntary transfer of vested credits between
14 registered pension or profit-making-retirement plans. Nothing
15 in this title or in the regulations issued by the Secretary here-
16 under shall be construed to require participation in such Port-
17 ability Program by a plan as a condition of registration under
18 this Act.

19 (b) Pursuant to regulations issued by the Secretary,
20 plans registered under this Act may apply for membership
21 in the Portability Program, and, upon approval of such ap-
22 plication by the Secretary, shall be issued a certificate of
23 membership in the Portability Program (plans so accepted
24 shall be hereinafter referred to as "member plans").

1 ACCEPTANCE OF DEPOSITS

2 SEC. 302. A member plan shall, pursuant to regulations
3 prescribed by the Secretary, pay, upon request of the partici-
4 pant, to the fund established by section 303, a sum of money
5 equal to the current discounted value of the participant's
6 vested rights under the plan, which are in settlement of
7 such vested rights, when such participant is separated from
8 employment covered by the plan before the time prescribed
9 for payments to be made to him or to his beneficiaries under
10 the plan. The fund is authorized to receive such payments,
11 on such terms as the Secretary may prescribe.

12 SPECIAL FUND

13 SEC. 303. (a) There is hereby created a fund to be
14 known as the Voluntary Portability Program Fund (herein-
15 after referred to as the "Fund"). The Secretary shall be
16 the trustee of the Fund. Payments made into the Fund in
17 accordance with regulations prescribed by the Secretary
18 under section 302 shall be held and administered in accord-
19 ance with this title.

20 (b) With respect to such Fund, it shall be the duty of
21 the Secretary to—

22 (1) administer the Fund;

23 (2) report to the Congress not later than the first
24 day of April of each year on the operation and the

1 status of the Fund during the preceding fiscal year and
2 on its expected operation and status during the current
3 fiscal year and the next two fiscal years and review the
4 general policies followed in managing the Fund and rec-
5 ommend changes in such policies, including the neces-
6 sary changes in the provisions of law which govern the
7 way in which the Fund is to be managed; and
8 (3) after amounts needed to meet current and an-
9 ticipated withdrawals are set aside, deposit the surplus
10 in interest-bearing accounts in any bank the deposits of
11 which are insured by the Federal Deposit Insurance
12 Corporation or savings and loan association in which the
13 accounts are insured by the Federal Savings and Loan
14 Insurance Corporation. In no case shall such deposits
15 exceed 10 per centum of the total of such surplus, in
16 any one bank, or savings and loan association.

17 INDIVIDUAL ACCOUNTS

18 SEC. 304. The Secretary shall establish and maintain
19 an account in the Fund for each participant for whom the
20 Secretary receives payment under section 302. The amount
21 credited to each account shall be adjusted periodically, as
22 provided by the Secretary pursuant to regulations to reflect
23 changes in the financial condition of the Fund.

1 PAYMENTS FROM INDIVIDUAL ACCOUNTS

2 SEC. 305. Amounts credited to the account of any par-
3 ticipant under this title shall be paid by the Secretary to—
4 (1) a member plan, for the purchase of credits
5 having at least an equivalent actuarial value under such
6 plan, on the request of such participant when he becomes
7 a participant in such member plans;
8 (2) a qualified insurance carrier selected by a par-
9 ticipant who has attained the age of sixty-five, for the
10 purchase of a single premium life annuity in an amount
11 having a present value equivalent to the amount credited
12 to such participant's account, or in the event the par-
13 ticipant selects an annuity with survivorship options, an
14 amount determined by the Secretary to be fair and
15 reasonable based on the amount in such participant's
16 account; or
17 (3) to the designated beneficiary of a participant
18 in accordance with regulations promulgated by the
19 Secretary.

20 TECHNICAL ASSISTANCE

21 SEC. 306. The Secretary shall provide technical assist-
22 ance to employers, employee organizations, trustees, and ad-
23 ministrators of pension and profit-sharing-retirement plans in
24 their efforts to provide greater retirement protection for
25 individuals who are separated from employment covered

1 under such plans. Such assistance may include, but is not
2 limited to (1) the development of reciprocity arrangements
3 between plans in the same industry or area, and (2) the
4 development of special arrangements for portability of credits
5 within a particular industry or area.

6 TITLE IV—PLAN TERMINATION INSURANCE

7 ESTABLISHMENT AND APPLICABILITY OF PROGRAM

8 Sec. 401. (a) There is hereby established a program
9 to be known as the Private Pension Plan Termination In-
10 surance Program (hereinafter referred to as the "Insurance
11 Program"), which shall be administered by and under the
12 direction of the Secretary.

13 (b) Every plan subject to this title shall obtain and
14 maintain plan termination insurance to cover unfunded
15 vested liabilities incurred prior to enactment of the Act as
16 well as after enactment of the Act.

17 CONDITIONS OF INSURANCE

18 Sec. 402. (a) The insurance program shall insure par-
19 ticipants and beneficiaries of those plans registered under
20 this Act against loss of benefits derived from vested rights
21 which arise from the complete or the substantial termination
22 of such plans, as determined by the Secretary.

23 (b) The rights of participants and beneficiaries of a
24 registered pension plan shall be insured under the insurance
25 program only to the extent that—

1 (1) such rights as provided for in the plan do
2 not exceed: (A) in the case of a right to a monthly re-
3 tirement or disability benefit for the employee himself,
4 the lesser of 50 per centum of the average monthly wage
5 he received from the contributing employer in the five-
6 year period after the registration date of the plan for
7 which his earnings were its greatest, or $500 a month;
8 (B) in the case of a right of one or more dependents
9 or members of the participant's family, or in the case of
10 a right to a lump-sum survivor benefit on account of
11 the death of a participant, an amount no greater than
12 the amount determined under clause (A);
13 (2) the plan is terminateed more than three years
14 after the date of its establishment or its initial regis-
15 tration with the Secretary, except that the Secretary may
16 in his discretion authorize insurance payments in such
17 amounts as may be reasonable to any plan terminated
18 in less than three years after the date of its initial regis-
19 tration with the Secretary where (A) such plan has
20 been established and maintained for more than three
21 years prior to its termination, (B) the Secretary is
22 satisfied that during the period the plan was unregis-
23 tered, it was in substantial compliance with the provi-
24 sions of this Act, and (C) such payments will not pre-
25 vent equitable underwriting of losses of vested benefits

1 arising from plan terminations otherwise covered by
2 this title;
3 (3) such rights were created by a plan amendment
4 which took effect more than three years immediately
5 preceding termination of such plan; and
6 (4) such rights do not accrue to the interest of a
7 participant who is the owner of 10 per centum or more
8 of the voting stock of the employer contributing to the
9 plan, or of the same percentage interest in a partner-
10 ship contributing to the plan.

11 ASSESSMENTS AND PREMIUMS

12 SEC. 403. (a) Upon registration with the Secretary,
13 each plan shall pay a uniform assessment to the insurance
14 program as prescribed by the Secretary to cover the admin-
15 istrative costs of the insurance program.
16 (b) (1) Each registered pension plan shall pay an
17 annual premium for insurance at uniform rates established
18 by the Secretary based upon the amount of unfunded vested
19 liabilities subject to insurance under section 402.
20 (2) For the three-year period immediately following the
21 effective date of this title such premium shall—
22 (A) not exceed 0.2 per centum of a plan's un-
23 funded vested liabilities with respect to such unfunded
24 vested liabilities incurred after the date of enactment
25 of this Act;

1 (B) not exceed 0.2 per centum of a plan's unfunded
2 vested liabilities incurred prior to the date of enactment
3 of this Act, where such plan's median ratio of plan
4 assets to unfunded vested liabilities was 75 per centum
5 during the five-year period immediately preceding the
6 enactment of this Act, or in the event of a plan
7 established within the five-year period immediately
8 preceding the date of enactment of this Act, where the
9 plan has reduced the amount of such unfunded vested
10 liabilities at the rate of at least 5 per centum each year
11 since the plan's date of establishment;
12 (C) not exceed 0.4 per centum or be less than 0.2
13 per centum of a plan's unfunded vested liabilities incurred
14 prior to the date of enactment of this Act where such
15 plan does not meet the standards set forth in subpara-
16 graph (B);
17 (D) not exceed 0.2 per centum of a plan's unfunded
18 vested liabilities regardless of whether such liabilities
19 were incurred prior to or subsequent to the date of
20 enactment of this Act with respect to multiemployer
21 plans.
22 (3) (A) The Secretary is authorized to prescribe differ-
23 ent uniform premium rates after the initial three-year period
24 based upon experience and other relevant factors.
25 (B) Any new rates proposed by the Secretary shall

1 be effective at the end of the first period of ninety calendar
2 days of continuous session of the Congress after the date on
3 which the proposed rates are published in the Federal
4 Register.
5 (C) For the purpose of subparagraph (B)—
6 (i) continuity of a session is broken only by an
7 adjournment sine die; and
8 (ii) the days on which either House is not in ses-
9 sion because of an adjournment of more than three days
10 to a day certain are excluded in the computation of the
11 ninety-day period.
12 (c) Assessments and premiums referred to in this sec-
13 tion shall be prescribed by the Secretary only after consul-
14 tation with appropriate Government agencies and private
15 persons with expertise on matters relating to assessment and
16 premium structures in insurance and related matters, and
17 after notice to all interested persons and parties.
18 PAYMENT OF INSURANCE
19 SEC. 404. (a) No plan insured under this title shall
20 terminate without approval of the Secretary. The Secretary
21 shall not approve a plan termination unless he is satisfied
22 that the requirements of this Act and those of the Welfare
23 and Pension Plans Disclosure Act have been complied with
24 and that such termination is not designed to avoid or cir-
25 cumvent the purposes of this Act.

1 (b) As determined by the Secretary, subject to the
2 conditions specified in section 402, the amount of insurance
3 payable under the insurance program shall be the difference
4 between the realized value of the plan's assets and the
5 amount of vested liabilities under the plan.
6 (c) The Secretary shall, by regulation, prescribe the
7 procedures under which the funds of terminated plans shall
8 be wound-up and liquidated and the proceeds therefrom
9 applied to payment of the vested benefits of participants and
10 beneficiaries. In implementing this paragraph, the Secretary
11 shall have authority to:
12 (1) transfer the terminated fund to the Pension
13 Benefit Insurance Fund for purposes of liquidation
14 and payment of benefits to participants and beneficiaries;
15 (2) purchase single-premium life annuities from
16 qualified insurance carriers from the proceeds of the
17 terminated plan on terms determined by the Secretary
18 to be fair and reasonable; or
19 (3) take such other action as may be appropriate
20 to assure equitable arrangements for the payment of
21 vested benefits to participants and beneficiaries under the
22 plan.
23 RECOVERY
24 SEC. 405. (a) Where the employer or employers con-
25 tributing to the terminating plan or who terminated the plan

1 are not insolvent (within the meaning of section 1 (19) of
2 the Bankruptcy Act), such employer or employers (or any
3 successor in interest to such employer or employers) shall be
4 liable to reimburse the insurance program for any insurance
5 benefits paid by the program to the beneficiaries of such
6 terminated plan to the extent provided in this section.
7 (b) An employer, determined by the Secretary to be
8 liable for reimbursement under subsection (a), shall be liable
9 to pay a percentage of the terminated plan's unfunded vested
10 liabilities equal to 100 per centum less the percentage of the
11 ratio of the plan's unfunded vested liabilities to the net worth
12 of the employer: *Provided, however,* That if the ratio of the
13 terminated plan's unfunded vested liabilities is less than 50
14 per centum of the employer's net worth the employer shall
15 be liable to pay the total amount of insurance benefits paid by
16 the insurance program.
17 (c) The Secretary is authorized to make arrangements
18 with employers, liable under subsection (a), for reimburse-
19 ment of insurance paid by the Secretary, including arrange-
20 ments for deferred payment on such terms and for such pe-
21 riods as are deemed equitable and appropriate.
22 (d) (1) If any employer or employers liable for any
23 amount due under subsection (a) of this section neglects or
24 refuses to pay the same after demand, the amount (including
25 interest) shall be a lien in favor of the United States upon

1 all property and rights in property, whether real or personal,
2 belonging to such employer or employers.
3 (2) The lien imposed by paragraph (1) of this sub-
4 section shall not be valid as against a lien created under
5 section 6321 of the Internal Revenue Code of 1954.
6 (3) Notice to the lien imposed by paragraph (1) of this
7 subsection shall be filed in a manner and form prescribed by
8 the Secretary. Such notice shall be valid notwithstanding any
9 other provision of law regarding the form and content of a
10 notice of lien.
11 (4) The Secretary shall promulgate rules and regula-
12 tions with regard to the release of any lien imposed by para-
13 graph (1) of this subsection.
14 PENSION BENEFIT INSURANCE FUND
15 SEC. 406. (a) There is hereby created a separate fund
16 for pension benefit insurance to be known as the Pension
17 Benefit Insurance Fund (hereafter in this section called the
18 insurance fund) which shall be available to the Secretary
19 without fiscal year limitation for the purposes of this title.
20 The Secretary shall be the trustee of the insurance fund.
21 (b) All amounts received as premiums, assessments, or
22 fees, and any other moneys, property, or assets derived from
23 operations in connection with this title shall be deposited in
24 the insurance fund.
25 (c) All claims, expenses, and payments pursuant to

1 operation of the program under this title shall be paid from
2 the insurance fund.
3 (d) All moneys of the insurance fund, may be invested
4 in obligations of the United States or in obligations guaran-
5 teed as to principal and interest by the United States.
6 (e) With respect to such insurance fund, it shall be the
7 duty of the Secretary to—
8 (1) administer the insurance fund; and
9 (2) report to the Congress not later than the first
10 day of April of each year on the operation and the
11 status of the insurance fund during the preceding fiscal
12 year and on its expected operation and status during
13 the current fiscal year and the next two fiscal years and
14 review the general policies followed in managing the
15 insurance fund and recommend changes in such policies,
16 including the necessary changes in the provisions of law
17 which govern the way in which the insurance fund is to
18 be managed.
19 TITLE V—DISCLOSURE AND FIDUCIARY
20 STANDARDS
21 Sec. 501. In addition to the filing requirements of the
22 Welfare and Pension Plans Disclosure Act, it shall be a con-
23 dition of compliance with section 7 of such Act that each
24 annual report hereinafter filed under that section shall be
25 accompanied by a certificate or certificates in the name of

1 and on behalf of the plan, the administrator, and any em-
2 ployer or employee organization participating in the estab-
3 lishment of the plan, designating the Secretary as agent for
4 service of process on the persons and entities executing such
5 certificate or certificates in any action arising under the Wel-
6 fare and Pension Plans Disclosure Act or this Act.

7 SEC. 502. (a) Section 3 of the Welfare and Pension
8 Plans Disclosure Act (72 Stat. 997) is amended by adding
9 at the end thereof the following new paragraphs:

10 "(14) The term 'relative' means a spouse, ancestor,
11 descendant, brother, sister, son-in-law, daughter-in-law,
12 father-in-law, mother-in-law, brother-in-law, or sister-in-
13 law.

14 "(15) The term 'administrator' means—

15 "(A) the person specifically so designated by the
16 terms of the plan, collective-bargaining agreement, trust
17 agreement, contract, or other instrument, under which
18 the plan is operated; or

19 "(B) in the absence of such designation (i) the
20 employer in the case of an employee benefit plan estab-
21 lished or maintained by a single employer, (ii) the em-
22 ployee organization in the case of a plan established or
23 maintained by an employee organization, or (iii) the
24 association, committee, joint board of trustees, or other
25 similar group of representatives of the parties who estab-

1 lished or maintained the plan, in the case of a plan es-
2 tablished or maintained by two or more employers or
3 jointly by one or more employers and one or more em-
4 ployee organizations.

5 "(16) The term 'employee benefit plan' or 'plan' means
6 an employee welfare benefit plan or an employee pension
7 benefit plan or a plan providing both welfare and pension
8 benefits.

9 "(17) The term 'employee benefit fund' or 'fund' means
10 a fund of money or other assets maintained pursuant to or
11 in connection with an employee benefit plan and includes
12 employee contributions withheld but not yet paid to the plan
13 by the employer. The term does not include: (A) any
14 assets of an investment company subject to regulation under
15 the Investment Company Act of 1940; (B) premium, sub-
16 scription charges, or deposits received and retained by an
17 insurance carrier or service or other organization, except for
18 any separate account established or maintained by an insur-
19 ance carrier.

20 "(18) The term 'separate account' means an account
21 established or maintained by an insurance company under
22 which income, gains, and losses, whether or not realized,
23 from assets allocated to such account, are, in accordance
24 with the applicable contract, credited to or charged against

1 such account without regard to other income, gains, or losses
2 of the insurance company.
3 "(19) The term 'adequate consideration' when used in
4 section 15 means either (A) at the price of the security
5 prevailing on a national securities exchange which is regis-
6 tered with the Securities and Exchange Commission, or (B)
7 if the security is not traded on such a national securities
8 exchange, at a price not less favorable to the fund than the
9 offering price for the security as established by the current
10 bid and asked prices quoted by persons independent of the
11 issuer or (C) if the price of the security is not quoted by
12 persons independent of the issuer, a price determined to be
13 the fair value of the security.
14 "(20) The term 'nonforfeitable pension benefit' means
15 a legal claim obtained by a participant or his beneficiary to
16 that part of an immediate or deferred pension benefit which,
17 notwithstanding any conditions subsequent which would
18 affect receipt of any benefit flowing from such right, arises
19 from the participant's covered service under the plan and
20 is no longer contingent on the participant remaining covered
21 by the plan.
22 "(21) The term 'covered service' means that period of
23 service performed by a participant for an employer or as a
24 member of an employee organization which is recognized
25 under the terms of the plan or the collective-bargaining agree-

1 ment (subject to the requirements of the Retirement Income
2 Security for Employees Act), for purposes of determining a
3 participant's eligibility to receive pension benefits or for deter-
4 mining the amount of such benefits.

5 "(22) The term 'pension benefit' means the aggregate,
6 annual, monthly, or other amounts to which a participant
7 will become entitled upon retirement or to which any other
8 person is entitled by virtue of such participant's death.

9 "(23) The term 'accrued portion of normal retirement
10 benefit' means that amount of such benefit which, irrespective
11 of whether the right to such benefit is nonforfeitable, is equal
12 to—

13 "(A) in the case of a profit-sharing-retirement
14 plan or money purchase plan, the total amount credited
15 to the account of a participant;

16 "(B) in the case of a unit benefit-type pension plan,
17 the benefit units credited to a participant; or

18 "(C) in the case of other types of pension plans,
19 that portion of the prospective normal retirement bene-
20 fit of a participant that pursuant to rule or regulation,
21 under the Retirement Income Security for Employees
22 Act, is determined to constitute the participant's accrued
23 portion of the normal retirement benefit under the terms
24 of the appropriate plan.

25 "(24) The term 'security' means any note, stock, treas-

1 ury stock, bond, debenture, evidence of indebtedness, certifi-
2 cate of interest or participation in any profit-sharing
3 agreement, collateral-trust certificate, preorganization certifi-
4 cate or subscription, transferable share, investment contract,
5 voting-trust certificate, certificate of deposit for a security,
6 fractional undivided interest in, or, in general, any interest
7 or instrument commonly known as a security, or any certifi-
8 cate of interest or participation in, temporary or interim cer-
9 tificate for, receipt for, guarantee of, or warrant or right to
10 subscribe to or purchase, any of the foregoing.

11 "(25) The term 'fiduciary' means any person who exer-
12 cises any power of control, management, or disposition with
13 respect to any moneys or other property of any employee
14 benefit fund, or has authority or responsibility to do so.

15 "(26) The term 'market value' or 'value' when used in
16 this Act means fair market value where available, and other-
17 wise the fair value as determined pursuant to rule or regula-
18 tion under this Act."

19 (b) Paragraph (1) of section 3 of such Act is amended
20 by inserting the words "or maintained" after the word
21 "established".

22 (c) Paragraph (2) of section 3 of such Act is amended
23 by inserting the words "or maintained" after the word
24 "established".

25 (d) Paragraph (3) of section 3 of such Act is amended

1 by striking out the word "plan" the first time it appears and
2 inserting in lieu thereof the word "program".

3 (e) Paragraphs (3), (4), (6), and (7) of section 3
4 of such Act are amended by striking out the words "welfare
5 or pension" wherever they appear.

6 (f) Paragraph (13) of section 3 of such Act is amended
7 to read as follows:

8 "(13) The term 'party in interest' means as to an em-
9 ployee benefit plan or fund, any administrator, officer, fidu-
10 ciary, trustee, custodian, counsel, or employee of any
11 employee benefit plan, or a person providing benefit
12 plan services to any such plan, or an employer, any of
13 whose employees are covered by such a plan or any person
14 controlling, controlled by, or under common control with,
15 such employer or officer or employee or agent of such em-
16 ployer or such person, or an employee organization having
17 members covered by such plan, or an officer or employee or
18 agent of such an employee organization, or a relative, part-
19 ner, or joint venturer or any of the above-described persons.
20 Whenever the term 'party in interest' is used in this Act, it
21 shall mean a person known to be a party in interest.

22 "(14) If any moneys or other property of an employee
23 benefit fund are invested in shares of an investment company
24 registered under the Investment Company Act of 1940,
25 such investment shall not cause such investment company or

1 such investment company's investment adviser or principal
2 underwriter to be deemed to be a 'fiduciary' or a 'party
3 in interest' as those terms are defined in this Act, except
4 insofar as such investment company or its investment adviser
5 or principal underwriter acts in connection with an employee
6 benefit fund established or maintained pursuant to an em-
7 ployee benefit plan covering employees of the investment
8 company, the investment adviser, or its principal underwriter.
9 Nothing contained herein shall limit the duties imposed on
10 such investment company, investment adviser, or principal
11 underwriter by any other provision of law."
12 SEC. 503. (a) Section 4(a) of the Welfare and Pen-
13 sion Plans Disclosure Act is amended by striking out the
14 words "welfare or pension", "or employers", and "or orga-
15 nizations" wherever they appear.
16 (b) Paragraph (3) of section 4(b) of such Act is
17 amended to read as follows:
18 "(3) Such plan is administered by a religious orga-
19 nization described under section 501(c) of the Internal Rev-
20 enue Code of 1954 which is exempt from taxation under the
21 provisions of section 501(a) of such Code;"
22 (c) Paragraph (4) of section 4(b) of such Act is
23 amended by inserting before the period the following: ", ex-
24 cept that participants and beneficiaries of such plan shall be
25 entitled to maintain an action to recover benefits or to clarify

1 their rights to future benefits as provided in section 604 of
2 the Retirement Income Security for Employees Act".
3 (d) Section 4 (b) of such Act is further amended by
4 adding at the end thereof the following new paragraph:
5 "(5) such plan is established or maintained outside the
6 United States primarily for the benefit of employees who are
7 not citizens of the United States and the situs of the employee
8 benefit plan fund established or maintained pursuant to such
9 plan is maintained outside the United States."
10 SEC. 504. (a) Section 5 (b) of the Welfare and Pension
11 Plans Disclosure Act is amended to read as follows:
12 "(b) The Secretary may require the filing of special
13 terminal reports on behalf of an employee benefit plan which
14 is winding up its affairs, so long as moneys or other assets
15 remain in the plan. Such reports may be required to be filed
16 regardless of the number of participants remaining in the
17 plan and shall be in such form and filed in such manner as
18 the Secretary may prescribe."
19 (b) Section 5 of such Act is further amended by adding
20 at the end thereof the following new subsection:
21 "(c) The Secretary may by regulation provide for the
22 exemption from all or part of the reporting and disclosure
23 requirements of this Act of any class or type of employee
24 benefit plans if the Secretary finds that the application of

1 such requirements to such plans is not required in order to
2 implement the purposes of this Act."
3 SEC. 505. Section 6 of the Welfare and Pension Plans
4 Disclosure Act is amended to read as follows:
5 "SEC. 6. (a) A description of any employee benefit
6 plan shall be published as required herein within ninety days
7 after the establishment of such plan or when such plan
8 becomes subject to this Act.
9 "(b) The description of the plan shall be comprehensive
10 and shall include the name and type of administration of the
11 plan; the name and address of the administrator; the names
12 and addresses of any person or persons responsible for the
13 management or investment of plan funds; the schedule of
14 benefits; a description of the provisions providing for vested
15 benefits written in a manner calculated to be understood
16 by the average participant; the source of the financing
17 of the plan and identity of any organization through which
18 benefits are provided; whether records of the plan are kept
19 on a calendar year basis, or on a policy or other fiscal year
20 basis, and if on the latter basis, the date of the end of such
21 policy or fiscal year; the procedures to be followed in present-
22 ing claims for benefits under the plan and the remedies avail-
23 able under the plan for the redress of claims which are denied
24 in whole or in part. Amendments to the plan reflecting
25 changes in the data and information included in the original

1 plan, other than data and information also required to be
2 included in annual reports under section 7, shall be included
3 in the description on and after the effective date of such
4 amendments. Any change in the information required by this
5 subsection shall be reported in accordance with regulations
6 prescribed by the Secretary."

7 SEC. 506. (a) Subsection (a) of section 7 of the Wel-
8 fare and Pension Plans Disclosure Act is amended by adding
9 the number " (1) " after the letter " (a) ", and by striking out
10 that part of the first sentence which precedes the word "if" the
11 first time it appears and inserting in lieu thereof the words
12 "An annual report shall be published with respect to any
13 employee benefit plan if the plan provides for an employee
14 benefit fund subject to section 15 of this Act or".

15 (b) Section 7 (a) (1) of such Act is further amended by
16 striking out the word "investigation" and inserting in lieu
17 thereof the words "notice and opportunity to be heard", by
18 striking out the words "year (or if" and inserting in lieu
19 thereof the words "policy or fiscal year on which", adding a
20 period after the word "kept", and striking out all the words
21 following the word "kept".

22 (c) Section 7 (a) of such Act is further amended by
23 adding the following paragraphs:

24 " (2) If some or all of the benefits under the plan are
25 provided by an insurance carrier or service or other or-

1 ganization, such carrier or organization shall certify to; the
2 administrator of such plan, within one hundred and twenty
3 days after the end of each calendar, policy, or other fiscal
4 year, as the case may be, such information as determined by
5 the Secretary to be necessary to enable such administrator to
6 comply with the requirements of this Act.

7 "(3) The administrator of an employee benefit plan
8 shall cause an audit to be made annually of the employee
9 benefit fund established in connection with or pursuant to the
10 provisions of the plan. Such audit shall be conducted in ac-
11 cordance with accepted standards of auditing by an independ-
12 ent certified or licensed public accountant, but nothing herein
13 shall be construed to require such an audit of the books or
14 records of any bank, insurance company, or other institution
15 providing insurance, investment, or related function for the
16 plan, if such books or records are subject to periodic exam-
17 ination by any agency of the Federal Government or the
18 government of any State. The auditor's opinion and com-
19 ments with respect to the financial information required to
20 be furnished in the annual report by the plan administrator
21 shall form a part of such report."

22 (d) Sections 7 (b) and (c) of such Act are amended
23 to read as follows:

24 "(b) A report under this section shall include—

25 "(1) the amount contributed by each employer;

1 the amount contributed by the employees; the amount
2 of benefits paid or otherwise furnished; the number of
3 employees covered; a statement of assets, liabilities, re-
4 ceipts, and disbursements of the plan; a detailed state-
5 ment of the salaries and fees and commissions charged
6 to the plan, to whom paid, in what amount, and for
7 what purposes; the name and address of each fiduciary,
8 his official position with respect to the plan, his rela-
9 tionship to the employer of the employees covered by the
10 plan, or the employee organization, and any other office,
11 position, or employment he holds with any party in
12 interest;
13 "(2) a schedule of all investments of the fund show-
14 ing as of the end of the fiscal year:
15 "(A) the aggregate cost and aggregate value
16 of each security, by issuer,
17 "(B) the aggregate cost and aggregate value,
18 by type or category, of all other investments, and
19 separately identifying (i) each investment, the value
20 of which exceeds 3 per centum of the value of the
21 fund and (ii) each investment in securities or prop-
22 erties of any person known to be a party in interest;
23 "(3) a schedule showing the aggregate amount,
24 by type of security, of all purchases, sales, redemptions,
25 and exchanges of securities made during the reporting

1 period; a list of the issuers of such securities; and in
2 addition, a schedule showing, as to each separate trans-
3 action with or without respect to securities issued by any
4 person known to be a party in interest, the issuer, the
5 type and class of security, the quantity involved in the
6 transaction, the gross purchase price, and in the case
7 of a sale, redemption, or exchange, the gross and net
8 proceeds (including a description and the value of any
9 consideration other than money) and the net gain or
10 loss, except that such schedule shall not include distribu-
11 tion of stock or other distributions in kind from profit-
12 sharing or similar plans to participants separated from
13 the plan;
14 "(4) a schedule of purchases, sales, or exchanges
15 during the year covered by the report of investment
16 assets other than securities—
17 "(A) by type or category of asset the aggre-
18 gate amount of purchases, sales, and exchanges; the
19 aggregate expenses incurred in connection there-
20 with; and the aggregate net gain (or loss) on sales,
21 and
22 "(B) for each transaction involving a person
23 known to be a party in interest and for each trans-
24 action involving over 3 per centum of the fund, an
25 indication of each asset purchased, sold, or exchanged

1 (and, in the case of fixed assets such as land, build-
2 ings, and leaseholds, the location of the asset); the
3 purchase or selling price; expenses incurred in con-
4 nection with the purchase, sale, or exchange; the
5 cost of the asset and the net gain (or loss) on each
6 sale; the identity of the seller in the case of a pur-
7 chase, or the identity of the purchaser in the case of
8 a sale, and his relationship to the plan, the employer,
9 or any employee organization;
10 "(5) a schedule of all loans made from the fund
11 during the reporting year or outstanding at the end of
12 the year, and a schedule of principal and interest pay-
13 ments received by the fund during the reporting year,
14 aggregated in each case by type of loan, and in addition,
15 a separate schedule showing as to each loan which—
16 "(A) was made to a party in interest, or
17 "(B) was in default, or
18 "(C) was written off during the year as un-
19 collectable, or
20 "(D) exceeded 3 per centum of the value of
21 the fund,
22 the original principal amount of the loan, the amount of
23 principal and interest received during the reporting year,
24 the unpaid balance, the identity and address of the loan
25 obligor, a detailed description of the loan (including date

1 of making and maturity, interest rate, the type and value
2 of colleratera, and the material terms), the amount of
3 principal and interest overdue (if any) and as to loans
4 written off as uncollectable an explanation thereof;
5 "(6) a list of all leases with—
6 "(A) persons other than parties in interest
7 who are in default, and
8 "(B) any party in interest,
9 including information as to the type of property leased
10 (and, in the case of fixed assets such as land, buildings,
11 leaseholds, and so forth, the location of the property),
12 the identity of the lessor or lessee from or to whom the
13 plan is leasing, the relationship of such lessors and les-
14 sees, if any, to the plan, the employer, employee organi-
15 zation, or any other party in interest, the terms of the
16 lease regarding rent, taxes, insurance, repairs, expenses,
17 and renewal options; if property is leased from persons
18 described in (B) the amount of rental and other ex-
19 penses paid during the reporting year; and if property
20 is leased to persons described in (A) or (B), the date
21 the leased property was purchased and its cost, the date
22 the property was leased and its approximate value at
23 such date, the gross rental receipts during the reporting
24 period, the expenses paid for the leased property during
25 the reporting period, the net receipt from the lease, and

1 with respect to any such leases in default, their identity,
2 the amounts in arrears, and a statement as to what steps
3 have been taken to collect amounts due or otherwise rem-
4 edy the default;
5 "(7) a detailed list of purchases, sales, exchanges,
6 or any other transactions with any party in interest made
7 during the year, including information as to the asset
8 involved, the price, any expenses connected with the
9 transaction, the cost of the asset, the proceeds, the net
10 gain or loss, the identity of the other party to the trans-
11 action and his relationship to the plan;
12 "(8) subject to rules of the Secretary designed to
13 preclude the filing of duplicate or unnecessary state-
14 ments if some or all of the assets of a plan or plans are
15 held in a common or collective trust maintained by a
16 bank or similar institution or in a separate account main-
17 tained by an insurance carrier, the report shall include
18 a statement of assets and liabilities and a statement of
19 receipts and disbursements of such common or collective
20 trust or separate account and such of the information
21 required under paragraphs (2), (3), (4), (5), (6),
22 and (7) of section 7(b) with respect to such common
23 or collective trust or separate account as the Secretary
24 may determine appropriate by regulation. In such case
25 the bank or similar institution or insurance carrier shall

1 certify to the administrator of such plan or plans, within
2 one hundred and twenty days after the end of each
3 calendar, policy, or other fiscal year, as the case may be,
4 the information determined by the Secretary to be nec-
5 essary to enable the plan administrator to comply with
6 the requirements of this Act; and

7 "(9) in addition to reporting the information called
8 for by this subsection, the administrator may elect to
9 furnish other information as to investment or rein-
10 vestment of the fund as additional disclosures to the
11 Secretary.

12 "(c) If the only assets from which claims against an
13 employee benefit plan may be paid are the general assets
14 of the employer or the employee organization, the report
15 shall include (for each of the past five years) the benefits
16 paid and the average number of employees eligible for
17 participation."

18 (e) Section 7(d) of such Act is amended by striking
19 out the capital "T" in the word "The" the first time it
20 appears in paragraphs (1) and (2) and inserting in lieu
21 thereof a lowercase "t".

22 (f) Section 7(e) of such Act is amended to read as
23 follows:

24 "(e) Every employee pension benefit plan shall include
25 with its annual report (to the extent applicable) the fol-
26 lowing information:

1 "(1) the type and basis of funding,
2 "(2) the number of participants, both retired and
3 nonretired, covered by the plan,
4 "(3) the amount of all reserves or net assets
5 accumulated under the plan,
6 "(4) the present value of all liabilities for all non-
7 forfeitable pension benefits and the present value of all
8 other accrued liabilities,
9 "(5) the ratios of the market value of the reserves
10 and assets described in (3) above to the liabilities de-
11 scribed in (4) above.
12 "(6) a copy of the most recent actuarial report, and
13 "(A) (i) the actuarial assumptions used in
14 computing the contributions to a trust or payments
15 under an insurance contract, (ii) the actuarial as-
16 sumptions used in determining the level of benefits,
17 and (iii) the actuarial assumptions used in connec-
18 tion with the other information required to be
19 furnished under this subsection, insofar as any such
20 actuarial assumptions are not included in the most
21 recent actuarial report,
22 "(B) (i) if there is no such report, or (ii) if
23 any of the actuarial assumptions employed in the
24 annual report differ from those in the most recent
25 actuarial report, or (iii) if different actuarial as-
26 sumptions are used for computing contributions or

1 payments then are used for any other purpose, a
2 statement explaining same; and
3 "(7) such other reasonable information pertinent
4 to disclosure under this subsection as the Secretary may
5 by regulation prescribe."
6 (g) Section 7 of such Act is further amended by strik-
7 ing out in their entirety subsections (f), (g), and (h).
8 SEC. 507. (a) Section 8 of the Welfare and Pension
9 Plans Disclosure Act is amended by striking out subsections
10 (a) and (b) in their entirety and by redesignating subsec-
11 tion (c) as subsection (a). The subsection redesignated as
12 subsection (a) is further amended by striking out the words
13 "of plans" after the word "descriptions", striking out the
14 word "the" before the word "annual" and adding the word
15 "plan" before the word "descriptions".
16 (b) Such secction is further amended by adding subsec-
17 tions (b), (c), and (d), to read as follows:
18 "(b) The administrator of any employee benefit plan
19 subject to this Act shall file with the Secretary a copy of the
20 plan description and each annual report. The Secretary shall
21 make copies of such descriptions and annual reports available
22 for public inspection.
23 "(c) Publication of the plan descriptions and annual
24 reports required by this Act shall be made to participants
25 and beneficiaries of the particular plan as follows:

1 "(1) the administrator shall make copies of the
2 plan description (including all amendments or modifica-
3 tions thereto) and the latest annual report and the bar-
4 gaining agreement, trust agreement, contract, or other
5 instrument under which the plan was established or
6 is operated available for examination by any plan par-
7 ticipant or beneficiary in the principal office of the
8 administrator;

9 "(2) the administrator shall furnish to any plan
10 participant or beneficiary so requesting in writing a fair
11 summary of the latest annual report;

12 "(3) the administrator shall furnish or make avail-
13 able, whichever is most practicable: (i) to every partici-
14 pant upon his enrollment in the plan and within one
15 hundred and twenty days after each major amendment
16 to the plan, a summary of the plan's important pro-
17 visions, including the names and addresses of any person
18 or persons responsible for the management or investment
19 of plan funds, and requirements of the amendment,
20 whichever is applicable, written in a manner calculated
21 to be understood by the average participant; such ex-
22 planation shall include a description of the benefits avail-
23 able to the participant under the plan and circumstances
24 which may result in disqualification or ineligibility, and
25 the requirements of the Welfare and Pension Plans

1 Disclosure Act with respect to the availability of copies
2 of the plan bargaining agreement, trust agreement, con-
3 tract or other instrument under which the plan is estab-
4 lished or operated; and (ii) to every participant every
5 three years (commencing January 1, 1975), a revised
6 up-to-date summary of the plan's important provisions
7 and major amendments thereto, written in a manner cal-
8 culated to be understood by the average participant; and
9 (iii) to each plan participant or beneficiary so request-
10 ing in writing a complete copy of the plan description
11 (including all amendments or modifications thereto) or
12 a complete copy of the latest annual report, or both. He
13 shall in the same way furnish a complete copy of any
14 bargaining agreement, trust agreement, contract, or other
15 instrument under which the plan is established or op-
16 erated. In accordance with regulations of the Secretary,
17 an administrator may make a reasonable charge to cover
18 the cost of furnishing such complete copies.
19 "(d) In the event a plan is provided a variance with
20 respect to standards of vesting, funding, or both, pursuant to
21 title II of the Retirement Income Security for Employees
22 Act, the administrator shall furnish or make available, which-
23 ever is most practicable, notice of such action to each partici-
24 pant in a manner calculated to be understood by the average

1 participant, and in such form and detail and for such periods
2 as may be prescribed by the Secretary."
3 SEC. 508. Section 9 (d) of such Act is amended to elim-
4 inate the words "after first requiring certification in accord-
5 ance with section 7 (b)".
6 SEC. 509. Section 14 of such Act is amended to read
7 as follows:
8 "SEC. 14. (a) (1) There is hereby established an Advi-
9 sory Council on Employee Welfare and Pension Benefit
10 Plans (hereinafter referred to as the 'Council') consisting
11 of twenty-one members appointed by the Secretary. Not more
12 than ten members of the Council shall be members of the
13 same political party.
14 "(2) Members shall be appointed from among persons
15 recommended by groups or organizations which they shall
16 represent and shall be persons qualified to appraise the pro-
17 grams instituted under this Act and the Retirement Income
18 Security for Employees Act.
19 "(3) Of the members appointed, five shall be repre-
20 sentatives of labor organizations; five shall be representatives
21 of management; one representative each from the fields of
22 insurance, corporate trust, actuarial counseling, investment
23 counseling, and the accounting field; and six representatives
24 shall be appointed from the general public.

1 "(4) Members shall serve for terms of three years, ex-
2 cept that of those first appointed, six shall be appointed for
3 terms of one year, seven shall be appointed for terms of two
4 years, and eight shall be appointed for terms of three years.
5 A member may be reappointed, and a member appointed to
6 fill a vacancy shall be appointed only for the remainder of
7 such term. A majority of members shall constitute a quorum
8 and action shall be taken only by a majority vote of those
9 present.

10 "(5) Members shall be paid compensation at the rate
11 of $150 per day when engaged in the actual performance
12 of their duties except that any such member who holds an-
13 other office or position under the Federal Government shall
14 serve without additional compensation. Any member shall
15 receive travel expenses, including per diem in lieu of sub-
16 sistence as authorized by section 5703 of title 5, United
17 States Code, for persons in the Government service em-
18 ployed intermittently.

19 "(b) It shall be the duty of the Council to advise the
20 Secretary with respect to the carrying out of their functions
21 under this Act, and to submit to the Secretary recommenda-
22 tions with respect thereto. The Council shall meet at least
23 four times each year and at such other times as the Secretary
24 requests. At the beginning of each regular session of the
25 Congress, the Secretary shall transmit to the Senate and

1 House of Representatives each recommendation which he has
2 received from the Council during the preceding calendar
3 year and a report covering his activities under the Act for
4 the preceding fiscal year, including full information as to
5 the number of plans and their size, the results of any studies
6 he may have made of such plans and the operation of this
7 Act and such other information and data as he may deem
8 desirable in connection with employee welfare and pension
9 benefit plans.

10 "(c) The Secretary shall furnish to the Council an ex-
11 ecutive secretary and such secretarial, clerical, and other
12 services as are deemed necessary to conduct its business. The
13 Secretary may call upon other agencies of the Government
14 for statistical data, reports, and other information which will
15 assist the Council in the performance of its duties."

16 SEC. 510. The Welfare and Pension Plans Disclosure
17 Act is further amended by renumbering sections 15, 16, 17,
18 and 18 as sections 16, 17, 18, and 19, respectively, and by
19 inserting the following new section immediately after section
20 14:

21 "FIDUCIARY STANDARDS

22 "SEC. 15. (a) Every employee benefit fund established
23 to provide for the payment of benefits under an employee's
24 benefit plan shall be established or maintained pursuant
25 to a duly executed written document which shall set forth

1 the purpose or purposes for which such fund is established
2 and the detailed basis on which payments are to be made into
3 and out of such fund. Such fund shall be deemed to be a
4 trust and shall be held for the exclusive purpose of (1)
5 providing benefits to participants in the plan and their
6 beneficiaries and (2) defraying reasonable expenses of
7 administering the plan.

8 "(b) (1) A fiduciary shall discharge his duties with
9 respect to the fund—

10 "(A) with the care under the circumstances then
11 prevailing that a prudent man acting in a like capacity
12 and familiar with such matters would use in the conduct
13 of an enterprise of a like character and with like aims;
14 and

15 "(B) subject to the standards in subsection (a)
16 and in accordance with the documents and instruments
17 governing the fund insofar as is consistent with this Act,
18 except that (i) any assets of the fund remaining upon
19 dissolution or termination of the fund shall, after com-
20 plete satisfaction of the rights of all beneficiaries to
21 benefits accrued to the date of dissolution or termination,
22 be distributed ratably to the beneficiaries thereof or, if
23 the trust agreement so provides, to the contributors
24 thereto; and (ii) that in the case of a registered pension
25 or profit-sharing-retirement plan, such distribution shall

1 be subject to the requirements of the Retirement Income
2 Security for Employees Act.
3 "(2) Except as permitted hereunder, a fiduciary shall
4 not—
5 "(A) rent or sell property of the fund to any person
6 known to be a party in interest of the fund;
7 "(B) rent or purchase on behalf of the fund any
8 property known to be owned by a party in interest of
9 the fund;
10 "(C) deal with such fund in his own interest or for
11 his own account;
12 "(D) represent any other party with such fund, or
13 in any way act on behalf of a party adverse to the fund
14 or adverse to the interests of its participants or bene-
15 ficiaries;
16 "(E) receive any consideration from any party
17 dealing with such fund in connection with a transaction
18 involving the fund for the fiduciary's personal interest
19 or for the personal interest of any party in interest;
20 "(F) loan money or other assets of the fund to any
21 party in interest of the fund;
22 "(G) furnish goods, services, or facilities of the fund
23 to any party in interest of the fund;
24 "(H) permit the transfer of any assets or property

1 of the fund to, or its use by or for the benefit of, any
2 party in interest of the fund; or
3 "(I) permit any of the assets of the fund to be
4 held, deposited, or invested outside the United States
5 unless the indicia of ownership remain within the juris-
6 diction of a United States District Court, except as
7 authorized by the Secretary by rule or regulation. The
8 Secretary, by rules or regulations or upon application
9 of any fiduciary or party in interest, by order, shall pro-
10 vide for the exemption conditionally or unconditionally
11 of any fiduciary or class of fiduciaries or transaction or
12 class of transactions from all or part of the proscriptions
13 contained in this subsection 15 (b) (2) when the Secre-
14 tary finds that to do so is consistent with the purposes of
15 this Act and is in the interest of the fund or class of funds
16 and the participants and beneficiaries: *Provided, how-*
17 *ever,* That any such exemption shall not relieve a fidu-
18 ciary from any other applicable provisions of this Act.
19 "(c) Nothing in this section shall be construed to pro-
20 hibit the fiduciary from—
21 "(1) receiving any benefit to which he may be
22 entitled as a participant or beneficiary in the plan under
23 which the fund was established;
24 "(2) receiving any reasonable compensation for
25 services rendered, or for the reimbursement of expenses

1 properly and actually incurred, in the performance of
2 his duties with the fund, or receiving in a fiduciary ca-
3 pacity proceeds from any transaction involving plan
4 funds, except that no person so serving who already
5 receives full-time pay from an employer or an association
6 of employers whose employees are participants in the
7 plan under which the fund was established, or from an
8 employee organization whose members are participants
9 in such plan shall receive compensation from such fund,
10 except for reimbursement of expenses properly and actu-
11 ally incurred and not otherwise reimbursed;
12 "(3) serving in such position in addition to being
13 an officer, employee, agent, or other representative of
14 a party in interest;
15 "(4) engaging in the following transactions:
16 "(A) holding or purchasing on behalf of the
17 fund any security which has been issued by an em-
18 ployer whose employees are participants in the plan,
19 under which the fund was established or a corpo-
20 ration controlling, controlled by, or under common
21 control with such employer, except that (i) the pur-
22 chase of any security is for no more than adequate
23 consideration in money or money's worth, and (ii)
24 that if an employee benefit fund is one which pro-
25 vides primarily for benefits of a stated amount, or

1 an amount determined by an employee's compen-
2 sation, an employee's period of service, or a com-
3 bination of both, or money purchase type benefits
4 based on fixed contributions which are not geared
5 to the employer's profits, no investment shall be
6 held or made by a fiduciary of such a fund in
7 securities of such employer or of a corporation con-
8 trolling, controlled by, or under common control
9 with such employer, if such investment, when added
10 to such securities already held, exceeds 10 per cen-
11 tum of the fair market value of the assets of the
12 fund. Notwithstanding the foregoing, such 10 per
13 centum limitation shall not apply to profit sharing,
14 stock bonus, thrift and savings or other similar plans
15 which explicitly provide that some or all of the plan
16 funds may be invested in securities of such employer
17 or a corporation controlling, controlled by, or under
18 common control with such employer, nor shall said
19 plans be deemed to be limited by any diversification
20 rule as to the percentage of plan funds which may
21 be invested in such securities. Profit sharing, stock
22 bonus, thrift, or other similar plans, which are in
23 existence on the date of enactment and which allow
24 investment in such securities without explicit pro-
25 vision in the plan, shall remain exempt from the 10

1 per centum limitation until the expiration of one
2 year from the date of enactment of Retirement In-
3 come Security for Employees Act. Nothing con-
4 tained in this subparagraph shall be construed to
5 relieve profit sharing, stock bonus, thrift and sav-
6 ings or other similar plans from any other applicable
7 requirements of this section;

8 "(B) purchasing on behalf of the fund any
9 security or selling on behalf of the fund any security
10 which is acquired or held by the fund, to or from a
11 party in interest if (i) at the time of such purchase
12 or sale the security is of a class of securities which is
13 listed on a national securities exchange registered
14 under the Securities Exchange Act of 1934 or which
15 has been listed for more than one month (after the
16 date of enactment of this Act) on an electronic quo-
17 tation system administered by a national securities
18 association registered under the Securities Exchange
19 Act of 1934, (ii) no brokerage commission, fee (ex-
20 cept for customary transfer fees), or other remunera-
21 tion is paid in connection with such transaction, (iii)
22 adequate consideration is paid, and (iv) that in the
23 event the security is one described in subparagraph
24 (A), the transaction has received the prior approval
25 of the Secretary;

1 "(5) making any loan to participants or benefi-
2 ciaries of the plan under which the fund was established
3 where such loans are available to all participants or
4 beneficiaries on a nondiscriminatory basis and are made
5 in accordance with specific provisions regarding such
6 loans set forth in the plan;
7 "(6) contracting or making reasonable arrange-
8 ments with a party in interest for office space and other
9 services necessary for the operation of the plan and pay-
10 ing reasonable compensation therefor;
11 "(7) following the specific instructions in the trust
12 instrument or other document governing the fund insofar
13 as consistent with the specific prohibitions listed in sub-
14 section (b) (2);
15 "(8) taking action pursuant to an authorization in
16 the trust instrument or other document governing the
17 fund, provided such action is consistent with the pro-
18 visions of subsection (b).
19 "(d) Nothing in this section shall be construed to
20 prohibit a person who is a party in interest by reason of
21 providing benefit plan services to a plan, from providing
22 any other services ordinarily and customarily furnished at
23 arm's length by such person, to any fiduciary or any other
24 party in interest to the plan, and nothing in this section shall
25 be construed to preclude any fiduciary or party in interest

1 in the plan from purchasing such services or contracting
2 or making reasonable arrangements for the receipt of such
3 services on such terms as are fair and reasonable.
4 "(e) Any fiduciary who breaches any of the respon-
5 sibilities, obligations, or duties imposed upon fiduciaries by
6 this Act shall be personally liable to such fund for any losses
7 to the fund resulting from such breach, and to pay to such
8 fund any profits which have inured to such fiduciary through
9 use of assets of the fund.
10 "(f) When two or more fiduciaries undertake jointly the
11 performance of a duty or the exercise of a power, or where
12 two or more fiduciaries are required by an instrument
13 governing the fund to undertake jointly the performance of
14 a duty or the exercise of power, but not otherwise, each of
15 such fiduciaries shall have the duty to prevent any other
16 such cofiduciary from committing a breach of responsi-
17 bility, obligation, or duty of a fiduciary or to compel such
18 other cofiduciary to redress such a breach, except that no
19 fiduciary shall be liable for any consequence of any act
20 or failure to act a cofiduciary who is undertaking or is
21 required to undertake jointly any duty or power if he shall
22 object in writing to the specific action and promptly file a
23 copy of his objection with the Secretary.
24 "(g) No fiduciary may be relieved from any responsi-
25 bility, obligation, or duty imposed by law, agreement, or

1 otherwise. Nothing herein shall preclude any agreement allo-
2 cating specific duties or responsibilities among fiduciaries,
3 or bar any agreement of insurance coverage or indemnifi-
4 cation affecting fiduciaries, unless specifically disapproved
5 by the Secretary.

6 "(h) A fiduciary shall not be liable for a violation of
7 this Act committed before he became a fiduciary or after he
8 ceased to be a fiduciary.

9 "(i) No individual who has been convicted of, or has
10 been imprisoned as a result of his conviction of: robbery,
11 bribery, extortion, embezzlement, grand larceny, burglary,
12 arson, violation of narcotics laws, murder, rape, kidnapping,
13 perjury, assault with intent to kill, assault which inflicts
14 grievous bodily injury, any crime described in section 9 (a)
15 (1) of the Investment Company Act of 1940, or a violation
16 of any provision of the Welfare and Pension Plans Dis-
17 closure Act, or a violation of section 302 of the Labor-
18 Management Relations Act of 1947 (61 Stat. 157, as
19 amended), or a violation of chapter 63 of title 18, United
20 States Code, or a violation of section 874, 1027, 1503, 1505,
21 1506, 1510, 1951, or 1954 of title 18, United States Code,
22 or a violation of the Labor-Management Reporting and Dis-
23 closure Act of 1959 (73 Stat. 519, as amended), or con-
24 spiracy to commit any such crimes or attempt to commit

1 any such crimes or a crime in which any of the foregoing
2 crimes is an element, shall serve—
3 "(1) as an administrator, officer, trustee, custodian,
4 counsel, agent, employee (other than as an employee
5 performing exclusive clerical or janitorial duties) or
6 other fiduciary position of any employee benefit plan: or
7 "(2) as a consultant to any employee benefit plan,
8 during or for five years after such conviction or after
9 the end of such imprisonment, unless prior to the end
10 of such five-year period, in the case of a person so con-
11 victed or imprisoned, (A) his citizenship rights having
12 been revoked as a result of such conviction, have been
13 fully restored, or (B) the Secretary determines that such
14 person's service in any capacity referred to in clause (1)
15 or (2) would not be contrary to the purposes of this
16 Act. No person shall knowingly permit any other person
17 to serve in any capacity referred to in clause (1) or (2)
18 in violation of this subsection. Any person who willfully
19 violates this subsection shall be fined not more than
20 $10,000 or imprisoned for not more than one year, or
21 both. For the purposes of this subsection, any person
22 shall be deemed to have been 'convicted' and under the
23 disability of 'conviction' from the date of the judgment of
24 the trial court or the date of the final sustaining of such
25 judgment on appeal, whichever is the later event, re-

1 gardless of whether such conviction occurred before or
2 after the date of enactment of this section. For the pur-
3 poses of this subsection, the term 'consultant' means any
4 person who, for compensation, advises or represents an
5 employee benefit plan or who provides other assistance
6 to such plan, concerning the establishment or operation
7 of such plan.

8 (j) All investments and deposits of the funds of an
9 employee benefit fund and all loans made out of any such
10 fund shall be made in the name of the fund or its nominee,
11 and no employer or officer or employee thereof, and no labor
12 organization, or officer or employee thereof, shall either
13 directly or indirectly accept or be the beneficiary of any fee,
14 brokerage, commission, gift, or other consideration for or
15 on account of any loan, deposit, purchase, sale, payment, or
16 exchange made by or on behalf of the fund.

17 "(k) In order to provide for an orderly disposition of
18 any investment, the retention of which would be deemed to
19 be prohibited by this Act, and in order to protect the inter-
20 est of the fund and its participants and its beneficiaries, the
21 fiduciary may in his discretion effect the disposition of such
22 investment within three years after the date of enactment
23 of this Act, or within such additional time as the Secretary
24 may by rule or regulation allow, and such action shall be
25 deemed to be in compliance with this Act."

1 (l) In accordance with regulations of the Secretary,
2 every employee benefit plan subject to this Act shall—
3 (1) provide adequate notice in writing to any par-
4 ticipant or beneficiary whose claim for benefits from the
5 plan has been denied, setting forth the specific reasons
6 for such denial, written in a manner calculated to be
7 understood by the participant, and
8 (2) afford a reasonable opportunity to any par-
9 ticipant whose claim for benefits has been denied for a
10 full and fair review by the plan administrator of the
11 decision denying the claim.

12 TITLE VI—ENFORCEMENT

13 SEC. 601. Whenever the Secretary—
14 (1) determines, in the case of a pension or profit-
15 sharing-retirement plan required to be registered under
16 this Act, that no application for registration has been
17 filed in accordance with section 102, or
18 (2) issues an order under section 107 denying or
19 canceling the certificate of registration of a pension or
20 profit-sharing-retirement plan, or
21 (3) determines, in the case of a pension plan sub-
22 ject to title II, that there has been a failure to make
23 required contributions to the plan in accordance with the
24 provisions of this Act or to pay required assessments

1 or premiums under title III, or to pay such other fees
2 or moneys as may be required under this Act,
3 the Secretary may petition any district court of the United
4 States having jurisdiction of the parties, or the United States
5 District Court for the District of Columbia, for an order
6 requiring the employer or other person responsible for the
7 administration of such plan to comply with the require-
8 ments of this Act as will qualify such plan for registration
9 or compel or recover the payment of required contributions,
10 assessments, premiums, fees, or other moneys.
11 SEC. 602. Whenever the Secretary has reasonable cause
12 to believe that an employees' benefit fund is being or has
13 been administered in violation of the requirements of the Wel-
14 fare and Pension Plans Disclosure Act or the documents
15 governing the establishment or operation of the fund, the
16 Secretary may petition any district court of the United States
17 having jurisdiction of the parties or the United States Dis-
18 trict Court for the District of Columbia for an order (1)
19 requiring return to such fund of assets transferred from such
20 fund in violation of the requirements of such Act, (2) re-
21 quiring payment of benefits denied to any participant or
22 beneficiary due to violation of the requirement of such
23 Act, and (3) restraining any conduct in violation of the
24 fiduciary requirements of such Act, and granting such other
25 relief as may be appropriate to effectuate the purposes of this

1 Act, including, but not limited to, removal of a fiduciary who
2 has failed to carry out his duties and the removal of any per-
3 son who is serving in violation of the requirements of section
4 15(i) of the Welfare and Pension Plans Disclosure Act.
5 SEC. 603. Civil actions for appropriate relief, legal or
6 equitable, to redress or restrain a breach of any respon-
7 sibility, obligation or duty of a fiduciary, including but not
8 limited to, the removal of a fiduciary who has failed to carry
9 out his duties and the removal of any person who is serving
10 in violation of the requirements of section 15(i) of the Wel-
11 fare and Pension Plans Disclosure Act or against any person
12 who has transferred or received any of the assets of a plan
13 or fund in violation of the fiduciary requirements of the Wel-
14 fare and Pension Plans Disclosure Act or in violation of the
15 document or documents governing the establishment or oper-
16 ation of the fund, may be brought by any participant or
17 beneficiary of any employee benefit plan or fund subject to
18 the Welfare and Pension Plans Disclosure Act in any court
19 of competent jurisdiction, State or Federal, or the United
20 States District Court for the District of Columbia, without
21 respect to the amount in controversy and without regard to
22 the citizenship of the parties. Where such action is brought
23 in a district court of the United States, it may be brought in
24 the district where the plan is administered, where the breach
25 took place, or where a defendant resides or may be found, and

1 process may be served in any other district where a defend-
2 ant resides or may be found.

3 SEC. 604. Suits by a participant or beneficiary entitled,
4 or who may become entitled, to benefits from an employee
5 benefit plan or fund, subject to the Welfare and Pension
6 Plans Disclosure Act, as amended by this Act may be
7 brought in any court of competent jurisdiction, State or
8 Federal, or the United States District Court for the District
9 of Columbia, without respect to the amount in controversy
10 and without regard to the citizenship of the parties, against
11 any such plan or fund to recover benefits due him required to
12 be paid from such plan or fund pursuant to the document
13 or documents governing the establishment or operation of the
14 plan or fund, or to clarify his rights to future benefits under
15 the terms of the plan. Where such action is brought in a
16 district court of the United States, it may be brought in the
17 district where the plan is administered, or where a defendant
18 resides or may be found, and process may be served in any
19 other district where a defendant resides or may be found.
20 Such actions may also be brought by a participant or bene-
21 ficiary as a representative party on behalf of all participants
22 or beneficiaries similarly situated.

23 SEC. 605. (a) In any action brought under section 603
24 or 604, the court in its discretion may—

1 (1) allow a reasonable attorney's fee and costs of
2 the action to any party;
3 (2) require the plaintiff to post security for pay-
4 ment of costs of the action and reasonable attorney's fees.
5 (b) A copy of the complaint in any action brought un-
6 der section 603 or 604 shall be served upon the Secretary
7 by certified mail, who shall have the right, in his discretion,
8 to intervene in the action.
9 (c) Notwithstanding any other law, the Secretary shall
10 have the right to remove an action brought under section
11 603 or 604 from a State court to a district court of the
12 United States, if the action is one seeking relief of the kind
13 the Secretary is authorized to sue for under this Act. Any
14 such removal shall be prior to the trial of the action and shall
15 be to a district court where the Secretary could have initiated
16 the action.
17 Sec. 606. The provisions of the Act entitled "An Act
18 to amend the Judicial Code and to define and limit the
19 jurisdiction of courts sitting in equity, and for other pur-
20 poses", approved March 23, 1932, shall not be applicable
21 with respect to suits brought under this title.
22 Sec. 607. Suits by an administrator or fiduciary of a
23 pension plan, a profit-sharing-retirement plan, or an em-
24 ployees' benefit fund subject to the Welfare and Pension

1 Plans Disclosure Act, to review final order of the Secretary,
2 to restrain the Secretary from taking any action contrary to
3 the provisions of this Act, or to compel action required under
4 this Act, may be brought in the name of the plan or fund in
5 the district court of the United States for the district where
6 the fund has its principal office, or in the United States Dis-
7 trict Court for the District of Columbia.

8 SEC. 608. Any action, suit, or proceeding based upon a
9 violation of this Act or the Welfare and Pension Plans Dis-
10 closure Act shall be commenced within five years after the
11 violation occurs. In the case of fraud or concealment, such
12 action, suit or proceeding shall be commenced within five
13 years of the date of discovery of such violation.

14 SEC. 609. (a) It is hereby declared to be the express
15 intent of Congress that, except for actions authorized by
16 section 604 of this title, the provisions of this Act or the
17 Welfare and Pension Plans Disclosure Act shall super-
18 sede any and all laws of the States and of political subdivi-
19 sions thereof insofar as they may now or hereafter relate to
20 the subject matters regulated by this Act or the Welfare and
21 Pension Plans Disclosure Act, except that nothing herein
22 shall be construed—

23 (1) to exempt or relieve any employee benefit plan
24 not subject to this Act or the Welfare and Pension Plans
25 Disclosure Act from any law of any State;

1 (2) to exempt or relieve any person from any law
2 of any State which regulates insurance, banking, or se-
3 curities or to prohibit a State from requiring that there
4 be filed with a State agency copies of reports required by
5 this Act to be filed with the Secretary; or
6 (3) to alter, amend, modify, invalidate, impair, or
7 supersede any law of the United States other than the
8 Welfare and Pension Plans Disclosure Act or any rule
9 or regulation issued under any law except as specifically
10 provided in this Act.
11 (b) Subsection (a) of this section shall not be deemed
12 to prevent any State court from asserting jurisdiction in any
13 action requiring or permitting accounting by a fiduciary dur-
14 ing the operation of an employee benefit fund subject to the
15 Welfare and Pension Plans Disclosure Act or upon the termi-
16 nation thereof or from asserting jurisdiction in any action
17 by a fiduciary requesting instructions from the court or seek-
18 ing an interpretation of the trust instrument or other docu-
19 ment governing the fund. In any such action—
20 (1) the provisions of this Act and the Welfare and
21 Pension Plans Disclosure Act shall supersede any
22 and all laws of the State and of political subdivisions
23 thereof, insofar as they may now or hereafter relate to
24 the fiduciary, reporting, and disclosure responsibilities
25 of persons acting for or on behalf of employee bene-

1 fit plans or on behalf of employee benefit funds sub-
2 ject to the Welfare and Pension Plans Disclosure Act
3 except insofar as they may relate to the amount of
4 benefits due beneficiaries under the terms of the plan;
5 (2) notwithstanding any other law, the Secretary
6 or, in the absence of action by the Secretary, a partici-
7 pant or beneficiary of the employee benefit plan or fund
8 affected by this subsection, shall have the right to remove
9 such action from a State court to a district court of the
10 United States if the action involves an interpretation of
11 the fiduciary, or reporting, and disclosure responsibilities
12 of persons acting on behalf of employee benefit plans
13 subject to the Welfare and Pension Plans Disclosure Act;
14 (3) the jurisdiction of the State court shall be con-
15 ditioned upon—
16 (A) written notification, sent to the Secretary
17 by registered mail at the time such action is filed,
18 identifying the parties to the action, the nature of
19 the action, and the plan involved; and satisfactory
20 evidence presented to the court that the participants
21 and beneficiaries have been adequately notified with
22 respect to the action; and
23 (B) the right of the Secretary or of a partici-
24 pant or beneficiary to intervene in the action as an
25 interested party.

1 TITLE VII—EFFECTIVE DATES

2 SEC. 701. (a) Sections 101, 102, 103, and 104, title V,
3 and title VI of this Act shall become effective upon the date
4 of enactment of this Act.

5 (b) Title II of this Act shall become effective three years
6 after the date of enactment of this Act, and titles III and IV
7 of this Act shall become effective one year after the date of
8 enactment of this Act.

93D CONGRESS
1ST SESSION

S. 75

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1973

Mr. GRIFFIN introduced the following bill; which was read twice and referred to the Committees on Finance and Labor and Public Welfare, jointly (by unanimous consent)

A BILL

To amend the Welfare and Pension Plans Disclosure Act, to establish minimum vesting standards, and to establish a pension insurance program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Employee Benefits
4 Protection Act of 1973".

5 FINDINGS AND DECLARATION OF POLICY

6 SEC. 2. (a) The Congress finds that private pension
7 plans are a major and increasing factor with respect to the
8 continued well-being and security of millions of employees
9 and their dependents; that because of the present and antici-

1 pated size and importance of these plans they have a sig-
2 nificant bearing on industrial relations, on employment, and
3 on the national economy; that owing to their interstate char-
4 acter they have become an important factor in commerce,
5 that a large volume of the activities carried on by such plans
6 are effected by means of the mails and instrumentalities of
7 interstate commerce; that they substantially affect the rev-
8 enues of the United States because they are afforded pref-
9 erential Federal tax treatment; that despite the enormous
10 growth in such plans many employees with long years of
11 employment are losing anticipated retirement benefits owing
12 to the lack of adequate vesting provisions in such plans; that
13 owing to the termination of plans before requisite funds
14 have been accumulated, employees and their dependents
15 have been deprived of anticipated benefits; that employee
16 participants have not had sufficient information concerning
17 their rights and responsibilities under the plans, resulting in
18 loss of benefits without knowledge of same; that the lack of
19 uniform minimum standards of conduct required of fiduci-
20 aries, administrator, and trustees has jeopardized the security
21 of employee benefits; and that it is therefore desirable in the
22 interests of employees and their beneficiaries, for the pro-
23 tection of the revenue of the United States, and to provide
24 for the free flow of commerce, that minimum standards be
25 provided assuring the equitable character and proper admin-

1 istration of such plans and protection of benefits in the event
2 of plan termination.
3 (b) It is hereby declared to be the policy of this Act
4 to protect interstate commerce, the Federal taxing power,
5 and the interests of participants in private pension plans and
6 their beneficiaries by improving the equitable character and
7 the soundness of such plans by requiring them to vest the
8 accrued benefits of employees with significant periods of
9 service; by protecting the vested rights of participants against
10 losses due to plan termination; by requiring more adequate
11 disclosure and reports to participants and beneficiaries of
12 plan administration and operations, including financial infor-
13 mation by the plan to the participant, as may be necessary
14 for the employees to have a comprehensive and better under-
15 standing of their rights and obligations to receive benefits
16 from the plans in which they are participants; by establishing
17 minimum standards of fiduciary conduct; and by providing
18 for more appropriate and adequate remedies, sanctions, and
19 ready access to the courts.

20 TITLE I—AMENDMENTS TO THE WELFARE AND
21 PENSION PLANS DISCLOSURE ACT

22 SEC. 101 (a) The title of section 2 of the Welfare and
23 Pension Plans Disclosure Act is amended by adding the
24 words "DECLARATION OF" after the word "AND".
25 (b) Section 2 (a) of such Act is amended by striking out

1 the words "welfare and pension", by adding the words "that
2 the operational scope and economic impact of such plans is
3 increasingly interstate;" after the word "substantial;", by
4 adding the words "and adequate safeguards" after the word
5 "information", and by adding the words "and safeguards be
6 provided" after the word "made".

7 (c) Section 2 (b) of such Act is amended by striking
8 out the period at its end and inserting in lieu thereof a comma
9 followed by the words "by establishing fiduciary stand-
10 ards of conduct, responsibility, and obligation upon all per-
11 sons who exercise any powers of control, management, or
12 disposition with respect to employee benefit funds or have
13 authority or responsibility to do so, and by providing for
14 appropriate remedies and ready access to the Federal
15 courts.".

16 SEC. 102. (a) Paragraphs 1 through 13 of section 3 of
17 the Welfare and Pension Plans Disclosure Act are redesig-
18 nated as subsections "(a)" through "(m)" respectively.

19 (b) Sections 3 (a) and (b) of such Act are amended
20 by inserting the words "or maintained" after the word
21 "established" in both subsections.

22 (c) Sections 3 (c), (d), (f), and (g) of such Act are
23 amended by striking out the words "welfare or pension"
24 where they appear in each subsection respectively.

1 (d) Section 3 (m) of such Act is amended to read as
2 follows:
3 "(m) The term 'party in itnerest' means any adminis-
4 trator, officer, trustee, custodian, counsel, or employee of any
5 employee benefit plan, or a person providing benefit plan
6 services to any such plan, or any employer any of whose em-
7 ployees are covered by such a plan or any person controlling,
8 controled by, or under common control with, such employer
9 or officer or employee or agent of such employer or such per-
10 son, or an employee organization having members covered
11 by such plan, or an officer or employee or agent of such an
12 employee organization, or a relative, partner or joint ven-
13 turer of any of the persons described in this subsection."
14 (e) Section 3 of such Act is further amended by adding
15 the following new subsections:
16 "(n) The term 'relative' means a spouse, ancestor, de-
17 scendant, brother, sister, son-in-law, daughter-in-law, father-
18 in-law, mother-in-law, brother-in-law, or sister-inlaw.
19 "(o) The term 'administrator' means—
20 "(1) the person specifically designated by the
21 terms of the plan, collective bargaining agreement, trust
22 agreement, contract, or other instrument, under which
23 the plan is operated; or
24 "(2) in the absence of such designation (A) the

1 employer in the case of an employee benefit plan estab-
2 lished or maintained by a single employer, (B) the
3 employee organization in the case of a plan established
4 or maintained by an employee organization, or (C) the
5 association, committee, joint board of trustees, or other
6 similar group of representatives of the parties who estab-
7 lished or maintained the plan, in the case of a plan
8 established or maintained by two or more employers or
9 jointly by one or more employers and one or more em-
10 ployee organizations.

11 "(p) The term 'employee benefit plan' or 'plan' means
12 an employee welfare benefit plan or an employee pension
13 benefit plan or a plan providing both welfare and pension
14 benefits.

15 "(q) The term 'employee benefit fund' or 'fund' means
16 a fund of money or other assets maintained pursuant to or in
17 connection with an employee benefit plan and includes em-
18 ployee contributions withheld but not yet paid to the plan
19 by the employer. The term does not include (1) any assets
20 of an investment company subject to regulation under the
21 Investment Company Act of 1940, (2) premiums, subscrip-
22 tion charges, or deposits received and retained by an insur-
23 ance carrier or service or other organization, except for any
24 separate account established or maintained by an insurance
25 carrier.

1 "(r) The term 'separate account' means an account
2 established or maintained by an insurance company under
3 which income, gains, and losses, whether or not realized,
4 from assets allocated to such account, are, in accordance with
5 the applicable contract, credited to or charged against such
6 account without regard to other income, gains, or losses of
7 the insurance company.
8 "(s) The term 'adequate consideration' when used in
9 section 14 means either (1) at the price of the security
10 prevailing on a national securities exchange which is regis-
11 tered with the Securities and Exchange Commission, or (2)
12 if the security is not traded on such a national securities
13 exchange, at a price not less favorable to the fund than the
14 offering price for the security as established by the current
15 bid and asked prices quoted by persons independent of the
16 issuer.
17 "(t) The term 'nonforfeitable pension benefit' means an
18 immediate or deferred pension or other benefit which a
19 participant or his beneficiary would upon proper application
20 be entitled to receive under the provisions of the plan if at
21 the time in question he had terminated his employment
22 irrespective of any conditions subsequent which could affect
23 receipt of such benefit.
24 "(u) The term 'accrued benefit' means that benefit
25 which, irrespective of whether such benefit is nonforfeitable

1 is equal to: (1) in the case of a profit sharing or money
2 purchase type pension plan, the total amount credited to the
3 account of a participant; (2) in the case of a unit benefit
4 type pension plan, the benefit units credited to a partici-
5 pant; or (3) in the case of other types of pension plans,
6 that portion of the prospective benefit of a participant of
7 the plan as the Secretary may by rule or regulation provide
8 constitutes the participant's accrued benefit under the plan.
9 "(v) The term 'security' has the same meaning as in
10 the Securities Act of 1933 (15 U.S.C. 77(a) et seq.).
11 "(w) The term 'fiduciary' means any person who
12 exercises any power of control, management, or disposition
13 with respect to any moneys or other property of an em-
14 ployee benefit fund, or has authority or responsibility to do
15 so.
16 "(x) The term 'market value' or 'value' means fair
17 market value where available, and otherwise the fair value
18 as determined in good faith by the administrator."
19 SEC. 103. (a) Subsection (a) of section 4 of the Wel-
20 fare and Pension Plans Disclosure Act is amended by strik-
21 ing out the words "welfare or pension", "or employers", and
22 "or organizations".
23 (b) (1) Section 4(b) of such Act is amended by strik-
24 ing out the words "welfare or pension".
25 (2) Section 4(b) of such Act is further amended by

1 striking out paragraph (3) and redesignating paragraph (4)
2 as paragraph (3).
3 (3) Paragraph (3) of such section (as redesignated by
4 this section) is amended to read as follows:
5 "(3) such plan covers not more than 15 partic-
6 ipants, except that participants and beneficiaries of such
7 plan shall be entitled to maintain an action to recover
8 benefits or to clarify their rights to future benefits as
9 provided in section 9(e) (1) (B)."
10 SEC. 104. (a) Section 5(a) of the Welfare and Pen-
11 sion Plans Disclosure Act is amended to read as follows:
12 "(a) The administrator of an employee benefit plan
13 shall cause to be published, in accordance with section 8,
14 to each participant or beneficiary covered under such plan
15 (1) a description of the plan and (2) an annual financial
16 report. Such description and such report shall contain the
17 information required by sections 6 and 7 of this Act in such
18 form and detail as the Secretary shall prescribe and shall be
19 executed, published, and filed in accordance with the provi-
20 sions of this Act and regulations of the Secretary."
21 (b) Section 5(b) of such Act is amended to read as
22 follows:
23 "(b) The Secretary may require the filing of special
24 terminal reports on behalf of an employee benefit plan which

1 is winding up its affairs, so long as moneys or other assets
2 remain in the plan. Such reports may be required to be filed
3 regardless of the number of participants remaining in the
4 plan and shall be on such forms and filed in such manner as
5 the Secretary may by regulation prescribe.".
6 (c) Section 5 of such Act is further amended by adding
7 at the end thereof the following new subsection:
8 "(e) The Secretary may by regulation provide for the
9 exemption from all or part of the reporting and disclosure
10 requirements of this Act of any class or type of employee
11 benefit plans, if the Secretary finds that the application of
12 such requirements to such plans is not required in order to
13 effectuate the purposes of this Act."
14 SEC. 105. Section 6 of the Welfare and Pension Plans
15 Disclosure Act is amended to read as follows:
16 "(a) A description of any employee benefit plan shall
17 be published as required herein within ninety days after the
18 establishment of such plan or when such plan becomes subject
19 to this Act.
20 "(b) The description of the plan shall be comprehen-
21 sive and shall include the name and type of administration of
22 the plan; the name and address of the administrator; the
23 schedule of benefits; a description of the provisions provid-
24 ing for nonforfeitable pension benefits (if the plan so pro-
25 vides) written in a manner calculated to be understood by

1 the average participant; the source of the financing of the
2 plan and the identity of any organization through which
3 benefits are provided; whether records of the plan are
4 kept on a calendar year basis, or on a policy or other fiscal
5 year basis, and if on a fiscal year basis, the date of the end of
6 such policy or fiscal year; the procedures to be followed in
7 presenting claims for benefits under the plan and the reme-
8 dies available under the plan for the redress of claims which
9 are denied in whole or in part. Amendments to the plan
10 reflecting changes in the data and information included in
11 the original plan, other than data and information also re-
12 quired to be included in annual reports under section 7, shall
13 be included in the description on and after the effective date
14 of such amendments. Any change in the information required
15 by this subsection shall be reported in accordance with regu-
16 lations prescribed by the Secretary."
17 SEC. 106. (a) Subsection (a) of section 7 of the Wel-
18 fare and Pension Plans Disclosure Act is amended by insert-
19 ing "(1)" after the subsection designation "(a)", and by
20 striking out that part of the first sentence which precedes the
21 word "if" the first time it appears and inserting in lieu
22 thereof the words "An annual report shall be published with
23 respect to any employee benefit plan if the plan provides for
24 an employee benefit fund subject to section 14 of this Act
25 or".

1 (b) Section 7 (a) (1) of such Act (as redesignated by
2 this section) is further amended by adding the following
3 paragraphs:
4 "(2) If some or all of the benefits under the plan are
5 provided by an insurance carrier or service or other orga-
6 nization, such carrier or organization shall certify to the
7 administrator of such plan, within one hundred and twenty
8 days after the end of each calendar, policy, or other fiscal
9 year, as the case may be, such reasonable information deter-
10 mined by the Secretary to be necessary to enable such
11 administrator to comply with the requirements of this Act.
12 "(3) The administrator of an employee benefit plan
13 shall cause an audit to be made annually of the employee
14 benefit fund established in connection with or pursuant to
15 the provisions of the plan. Such audit shall be conducted in
16 accordance with accepted standards of auditing by an inde-
17 pendent certified or licensed public accountant, but nothing
18 herein shall be construed to require such an audit of the
19 books or records of any bank, insurance company, or other
20 institution providing an insurance, investment, or related
21 function for the plan, if such books or records are subject to
22 periodic examination by an agency of the Federal Govern-
23 ment or the government of any State. The auditor's opinion
24 and comments with respect to the financial information

1 required to be furnished in the annual report by the plan
2 administrator shall form a part of such report."
3 (c) Section 7(b) of such Act is amended to read as
4 follows:
5 "(b) A report under this section shall include:
6 "(1) The amount contributed by each employer;
7 the amount contributed by the employees; the amount
8 of benefits paid or otherwise furnished; the number of
9 employees covered; a statement of assets, liabilities,
10 receipts, and disbursements of the plan; a detailed
11 statement of the salaries and fees and commissions
12 charged to the plan, to whom paid, in what amount, and
13 for what purposes; the name and address of each fiduci-
14 ary, his official position with respect to the plan, his
15 relationship to the employer of the employees covered
16 by the plan, or the employee organization, and any
17 other office, position, or employment he holds with any
18 party in interest.
19 "(2) A schedule of all investments of the fund
20 showing as of the end of the fiscal year:
21 "(A) The aggregate cost and aggregate value
22 of each security, by issuer;
23 "(B) The aggregate cost and aggregate value,
24 by type or category, of all other investments, and
25 separately identifying (i) each investment the value

1 of which exceeds $100,000 or 3 per centum of the
2 value of the fund, and (ii) each investment in
3 securities or properties of any person known to be
4 a party in interest.

5 "(3) A schedule showing the aggregate amount, by
6 type of security, of all purchases, sales, redemptions, and
7 exchanges of securities made during the reporting period;
8 a list of the issuers of such securities and in addition a
9 schedule showing, as to each separate transaction with
10 or with respect to securities issued by any person known
11 to be a party in interest, the issuer, the type and class
12 of security, the quantity involved in the transaction, the
13 gross purchase price, and in the case of a sale, redemp-
14 tion, or exchange, the gross and net proceeds (including
15 a description and the value of any consideration other
16 than money) and the net gain or loss.

17 "(4) A schedule of purchases, sales or exchanges
18 during the year covered by the report) of investment
19 assets other than securities—

20 "(A) by type or category of asset the aggregate
21 amount of purchases, sales, and exchanges; the ag-
22 gregate expenses incurred in connection therewith;
23 and the aggregate net gain (or loss) on sales, and

24 "(B) for each transaction involving a person
25 known to be a party in interest and for each trans-

1 action involving over $100,000 or 3 per centum of
2 the fund, an indication of each asset purchased,
3 sold, or exchanged (and, in the case of fixed assets
4 such as land, buildings, and leasehold, the location
5 of the asset) ; the purchase or selling price; expenses
6 incurred in connection with the purchase, sale, or
7 exchange; the cost of the asset and the net gain
8 (or loss) on each sale; the identity of the seller
9 in the case of a purchase, or the identity of the
10 purchaser in the case of a sale, and his relationship
11 to the plan, the employer, or any employee organi-
12 zation.
13 "(5) A schedule of all loans made from the fund
14 during the reporting year or outstanding at the end of
15 the year, and a schedule of principal and interest pay-
16 ments received by the fund during the reporting year,
17 aggregated in each case by type of loan, and in addition
18 a separate schedule showing as to each loan which—
19 "(A) was made to a party in interest, or
20 "(B) was in default, or
21 "(C) was written off during the year as un-
22 collectible, or
23 "(D) exceed $100,000 or 3 per centum of the
24 value of the fund,
25 the original principal amount of the loan, the amount of

1 principal and interest received during the reporting year,
2 the unpaid balance, the identity and address of the
3 obligor, a detailed description of the loan (including
4 date of making and maturity, interest rate, the type and
5 value of collateral and other material terms), the amount
6 of principal and interest overdue (if any) and as to
7 loans written off as uncollectible an explanation thereof.
8 "(6) A list of all leases with—
9 "(A) persons other than parties in interest
10 who are in default, and
11 "(B) any party in interest,
12 including information as to the type of property leased
13 (and, in the case of fixed assets such as land, buildings,
14 leaseholds, etc., the location of the property), the iden-
15 tity of the lessor or lessee from or to whom the plan is
16 leasing, the relationship of such lessors and lessees, if
17 any, to the plan, the employer, employee organization,
18 or any other party in interest, the terms of the lease
19 regarding rent, taxes, insurance, repairs, expenses, and
20 renewal options; if property is leased from persons
21 described in (B) the amount of rental and other ex-
22 penses paid during the reporting year; and if property
23 is leased to persons described in (A) or (B), the date
24 the leased property was purchased and its cost, date the
25 property was leased, and its approximate value at such

1 date, the gross rental receipts during the reporting
2 period, expenses paid for the leased property during the
3 reporting period, the net receipts from the lease, and
4 with respect to any such leases in default, their identity,
5 the amounts in arrears, and a statement as to what steps
6 have been taken to collect amounts due or otherwise
7 remedy the default.

8 "(7) A detailed list of purchases, sales, exchanges,
9 or other transactions with any party in interest made
10 during the year, including information as to the asset
11 involved, the price, any expenses connected with the
12 transaction, the cost of the asset, the proceeds, the net
13 gain or loss, the identity of the other party to the trans-
14 action and his relationship to the plan.

15 "(8) If some or all of the assets of a plan or plans
16 are held in a common or collective trust maintained by
17 a bank or similar institution or in a separate account
18 maintained by an insurance carrier, a statement of assets
19 and liabilities and a statement of receipts and disburse-
20 ments of such common or collective trust or separate
21 account and such of the information required under
22 paragraphs (2), (3), (4), (5), (6), and (7) of
23 section 7(b) with respect to such common or collective
24 trust or separate account as the Secretary may determine

1 appropriate by regulation. In such case the bank or
2 similar institution or insurance carrier shall certify to the
3 administrator of such plan or plans, within one hundred
4 and twenty days after the end of each calendar, policy,
5 or other fiscal year, as the case may be, the information
6 determined by the Secretary to be necessary to enable
7 the plan administrator to comply with the requirements
8 of this Act.
9 In addition to reporting the information called for by this
10 subsection, the administrator may elect to furnish other in-
11 formation as to investment or reinvestment of the fund as
12 additional disclosures to the Secretary."
13 (d) Section 7 (c) of such Act is amended to read as
14 follows:
15 "(c) If the only assets from which claims against an
16 employee benefit plan may be paid are the general assets
17 of the employer or the employee organization, the report
18 shall include (for each of the past five years) the benefits
19 paid and the average number of employees eligible for
20 participation."
21 (e) Section 7 (d) of such Act is amended by striking
22 out the word "The" the first time it appears in paragraphs
23 (1) and (2), respectively, and inserting in lieu thereof the
24 word "the".

1 (f) Section 7 (e) of such Act is amended to read as
2 follows:
3 "(e) Every employee pension benefit plan shall include
4 with its annual report (to the extent applicable) the follow-
5 ing information—
6 "(1) the type and basis of funding;
7 "(2) the number of participants, both retired and
8 nonretired, covered by the plan;
9 "(3) the amount of all reserves or net assets accu-
10 mulated under the plan;
11 "(4) the present value of all liabilities for all non-
12 forfeitable pension benefits and the present value of all
13 other accrued liabilities;
14 "(5) the ratios of the market value of the reserves
15 and assets described in (3) above to the liabilities de-
16 scribed in (4) above;
17 "(6) a copy of the most recent actuarial report,
18 including—
19 "(A) (i) the actuarial assumptions used in com-
20 puting the contributions to a trust or payments under
21 an insurance contract, (ii) the actuarial assumptions
22 used in determining the level of benefits, and (iii)
23 the actuarial assumptions used in connection with
24 the other information required to be furnished under
25 this subsection, insofar as any such actuarial assump-

1 tions are not included in the most recent actuarial
2 report,
3 "(B) (i) if there is no such report, or (ii) if
4 any of the actuarial assumptions employed in the
5 annual report differ from those in the most recent
6 actuarial report, or (iii) if different actuarial as-
7 sumptions are used for computing contributions or
8 payments than are used for any other purpose, a
9 statement explaining the reasons for the use of such
10 different actuarial assumptions;
11 "(7) a statement showing the number of partici-
12 pants who terminated service under the plan during the
13 year, whether or not they retain any nonforfeitable
14 rights, their length of service by category, the present
15 value of the total accrued benefits of said participants,
16 and the present value of such benefits forfeited; and
17 "(8) such other information pertinent to disclosure
18 under this subsection as the Secretary may by regulation
19 prescribe."
20 (g) Section 7 of such Act is further amended by strik-
21 ing out subsections (f), (g), and (h).
22 SEC. 107. (a) Section 8 of such Act is amended by
23 striking out subsections (a) and (b) thereof and by redes-
24 ignating subsection (c) as subsection (a) and striking out
25 therein the words "of plans" after the word "descriptions",

1 and striking out the word "the" before the word "annual"
2 and adding the word "plan" before the word "descriptions".
3 (b) Section 8 of such Act is further amended by adding
4 at the end thereof the following new subsections:
5 "(b) The administrator of any employee benefit plan
6 subject to this Act shall file with the Secretary a copy of
7 the plan description and each annual report. The Secretary
8 shall make copies of such descriptions and annual reports
9 available for inspection in the public document room of the
10 Department of Labor.
11 "(c) Publication of the plan descriptions and annual
12 reports required by this Act shall be made to participants and
13 beneficiaries of the particular plan as follows:
14 "(1) the administrator shall make copies of the
15 plan description (including all amendments or modifica-
16 tions thereto) and the latest annual report and the bar-
17 gaining agreement, trust agreement, contract, or other
18 instrument under which the plan was established and is
19 operated available for examination by any plan partici-
20 pant or beneficiary in the principal office of the admin-
21 istrator;
22 "(2) the administrator shall furnish to any plan
23 participant or beneficiary so requesting in writing a fair
24 summary of the latest annual report;
25 "(3) the administrator shall furnish to any plan

participant or beneficiary so requesting in writing a complete copy of the plan description (including all amendments or modifications thereto) or a complete copy of the latest annual report, or both. He shall in the same way furnish a complete copy of the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established and operated. In accordance with regulations of the Secretary, an administrator may make a reasonable charge to cover the cost of furnishing such complete copies.

"(d) The administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary so requesting in writing a statement indicating (1) whether or not such person has a nonforfeitable right to a pension benefit, (2) the nonforfeitable pension benefits, if any, which have accrued or the earliest date on which benefits will become nonforfeitable, and (3) the total pension benefits accrued.

"(e) Upon the termination of service under the plan of a participant having a right to a benefit, payable at a later date, the plan administrator shall furnish to the participant or his surviving beneficiary a statement setting forth his rights and privileges under the plan. The statement shall be in such form, be furnished and filed in such manner, and shall contain such information, including but not limited to, the nature and amount of benefits to which he is entitled,

1 the name and address of the entity responsible for payment,
2 the date when payment shall begin, and the procedure for
3 filing his claim, as the Secretary may by regulation prescribe.
4 The statement furnished to the participant or his surviving
5 beneficiary or a true copy shall be prima facie evidence of
6 the facts, rights, and privileges set forth therein."

7 SEC. 108. (a) Section 9 (a) of such Act is amended by
8 inserting "sections 5 through 13 of" before the word "this".

9 (b) Subsections (b) through (i) of section 9 of such
10 Act are amended to read as follows:

11 "(b) Any plan administrator who fails or refuses to
12 comply with a request as provided in section 8 of this Act
13 within thirty days (unless such failure or refusal results
14 from matters reasonably beyond the control of the adminis-
15 trator) by mailing the material requested to the last known
16 address of the requesting participant or beneficiary may in
17 the court's discretion be personally liable to such participant
18 or beneficiary in the amount of up to $50 a day from the
19 date of such failure or refusal, and the court may in its dis-
20 cretion order such other relief as it deems proper.

21 "(c) The Secretary shall have power, when he believes
22 it necessary in order to determine whether any person has
23 violated or is about to violate any provision of this Act,
24 to make an investigation and in connection with an investi-
25 gation he may require the filing of supporting schedules

1 of the financial information required to be furnished under
2 section 7 of this Act and may enter such places, inspect
3 such records and accounts, and question such persons as he
4 deems necessary to enable him to determine the facts rele-
5 vant to such investigation. The Secretary may report to
6 interested persons or officials concerning the facts required
7 to be shown in any report required by this Act and concern-
8 ing the reasons for failure or refusal to file such a report or
9 any other matter which he deems to be appropriate as a
10 result of such an investigation.

11 "(d) For the purposes of any investigation provided for
12 in this Act, the provisions of sections 9 and 10 (relating
13 to the attendance of witnesses and the production of books,
14 records, and documents) of the Federal Trade Commission
15 Act (15 U.S.C. 49, 50), are hereby made applicable to
16 the jurisdiction, powers, and duties of the Secretary or any
17 officers designated by him.

18 "(e) Civil actions under this Act may be brought:
19 "(1) by a participant or beneficiary—
20 "(A) for the relief provided for in section 9
21 (b), or
22 "(B) to recover benefits due him under the
23 terms of his plan or to clarify his rights to future
24 benefits under the terms of the plan;
25 "(2) by the Secretary or by a participant or bene-

1 ficiary (as a representative party on behalf of all par-
2 ticipants or beneficiaries similarly situated where the
3 requirements for maintaining a class action are met)
4 for appropriate relief, legal or equitable, to redress a
5 breach of any responsibility, obligation or duty of a
6 fiduciary, including the removal of a fiduciary who has
7 failed to carry out his duties or who is serving in viola-
8 tion of section 15 of this Act; or
9 "(3) by the Secretary, to enjoin any act or practice
10 which appears to him to violate any provision of this
11 Act.
12 "(f) (1) Civil actions under this Act brought by a
13 participant or beneficiary may be brought in any court of
14 competent jurisdiction, State or Federal.
15 "(2) Where such an action is brought in a district court
16 of the United States, it may be brought in the district where
17 the plan is administered, where the breach took place, or
18 where a defendant resides or may be found, and process
19 may be served in any other district where a defendant re-
20 sides or may be found.
21 "(3) Notwithstanding any other law, the Secretary shall
22 have the right to remove an action from a State court to a
23 district court of the United States, if the action is one seeking
24 relief of the kind the Secretary is authorized to sue for herein,

1 Any such removal shall be prior to the trial of the action and
2 shall be to a district court where the Secretary could have
3 initiated such an action.

4 "(g) The district courts of the United States shall have
5 jurisdiction without respect to the amount in controversy, to
6 grant the relief provided for in this section.

7 "(h) (1) In any action by a participant or beneficiary,
8 the court in its discretion may allow a reasonable attorney's
9 fee and costs of the action to any party.

10 "(2) A copy of the complaint in any action by a par-
11 ticipant or beneficiary shall be served upon the Secretary by
12 certified mail who shall have the right, in his discretion, to
13 intervene in the action.

14 "(i) Except as provided in this Act, nothing contained
15 herein shall be construed or applied to authorize the Secre-
16 tary to regulate, or interfere in the management of, any
17 employee welfare or pension benefit plan."

18 (c) Section 9 of such Act is further amended by adding
19 at the end thereof the following new subsection:

20 "(j) In order to avoid unnecessary expense and dupli-
21 cation of functions among Government agencies, the Secre-
22 tary may make such arrangements or agreements for co-
23 operation or mutual assistance in the performance of his
24 functions under this Act and the functions of any such agency
25 as he may find to be practicable and consistent with law.

1 The Secretary may utilize the facilities or services of any
2 department, agency, or establishment of the United States
3 or of any State or political subdivision of a State, including
4 the services of any of its employees, with the lawful consent
5 of such department, agency, or establishment; and each
6 department, agency, or establishment of the United States
7 is authorized and directed to cooperate with the Secretary
8 and, to the extent permitted by law, to provide such infor-
9 mation and facilities as he may request in the performance
10 of his functions under this Act. The Secretary shall im-
11 mediately forward to the Attorney General or his repre-
12 sentative any information coming to his attention in the
13 course of the administration of this Act which may warrant
14 consideration for criminal prosecution under the provisions
15 of this Act or any other Federal law."
16 SEC. 109. Section 13 of the Welfare and Pension Plans
17 Disclosure Act is amended by—
18 (1) striking out the word "welfare" after the word
19 "employee" the second time it appears in subsection
20 (a);
21 (2) strking out the words "or of any employee
22 pension benefit plan" after the word "plan" the first
23 time it appears in subsection (a);
24 (3) striking out the words "welfare benefit plan or

1 employee pension" after the word "employee" the sec-
2 ond time it appears in subsection (b); and
3 (4) striking out the words "welfare benefit plan or
4 of an employee pension" after the word "employee" the
5 first time it appears in subsection (d).
6 SEC. 110. The Welfare and Pension Plans Disclosure
7 Act is further amended by designating sections 14
8 through 18, and all reference thereto, as sections 16
9 through 20, respectively, and by inserting after section
10 13 the following new sections:
11 "FIDUCIARY RESPONSIBILITY
12 "SEC. 14. (a) Every employee benefit fund shall be
13 deemed to be a trust and shall be held for the exclusive pur-
14 pose of (1) providing benefits to participants in the plan
15 and their beneficiaries, and (2) defraying reasonable ex-
16 penses of administering the plan.
17 "(b) (1) A fiduciary shall discharge his duties with re-
18 spect to the fund—
19 "(A) solely in the interests of the participants and
20 their beneficiaries;
21 "(B) with the care under the circumstances then
22 prevailing that a prudent man acting in a like capacity
23 and familiar with such matters would use in the con-
24 duct of an enterprise of a like character and with like
25 aims; and

1 "(C) in accordance with the documents and instru-
2 ments governing the fund insofar as is consistent with
3 this Act.
4 "(2) Except as permitted hereunder, a fiduciary shall
5 not—
6 "(A) lease or sell property of the fund to any per-
7 son known to be a party in interest;
8 "(B) lease or purchase on behalf of the fund any
9 property known to be property of any party in interest;
10 "(C) deal with such fund in his own interest or
11 for his own account;
12 "(D) represent any other party with such fund. or
13 in any way act on behalf of a party adverse to the fund
14 or to the adverse interests of its participants or bene-
15 ficiaries;
16 "(E) receive any consideration from any party
17 dealing with such fund in connection with a transaction
18 involving the fund;
19 "(F) loan money or other assets of the fund to any
20 person known to be a party in interest;
21 "(G) furnish goods, services, or facilities to any per-
22 son known to be a party in interest; or
23 "(H) permit the transfer of any property of the
24 fund to, or its use by, or for the benefit of any person
25 known to be a party in interest.

1 The Secretary may by rule or regulation provide for the
2 exemption of any fiduciary or transaction from all or part of
3 the proscriptions contained in this subsection, when the Secre-
4 tary finds that to do so is consistent with the purposes of
5 this Act and in the interest of the fund and its participants
6 and beneficiaries, except that any such exemption shall not
7 relieve a fiduciary from any other applicable provisions of
8 this Act.
9 "(c) Nothing in this section shall be construed to pro-
10 hibit any fiduciary from:
11 "(1) receiving any benefit to which he may be
12 entitled as a participant or beneficiary in the plan under
13 which the fund was established;
14 "(2) receiving any reasonable compensation for
15 services rendered, or for the reimbursement of expenses
16 properly and actually incurred, in the performance of
17 his duties with the fund, except that no person so serv-
18 ing who already receives full-time pay from an employer
19 or an association of employers whose employees are
20 participants in the plan under which the fund was estab-
21 lished, or from an employee organization whose mem-
22 bers are participants in such plan shall receive compen-
23 sation from such fund, except for reimbursement of
24 expenses properly and actually incurred and not other-
25 wise reimbursed;

1 "(3) serving in such position in addition to being
2 an officer, employee, agent or other representative of a
3 party in interest;
4 "(4) engaging in the following transactions:
5 "(A) purchasing on behalf of the fund any
6 security which has been issued by an employer
7 whose employees are participants in the plan under
8 which the fund was established or a corporation
9 controlling, controlled by, or under common control
10 with such employer; unless (i) that the purchase
11 of any security is for no more than adequate con-
12 sideration in money or money's worth; and (ii) that
13 an employee benefit fund is one which provides
14 primarily for benefits of a stated amount, or an
15 amount determined by an employee's compensation,
16 an employee's period of service, or a combination
17 of both, or money purchase type benefits based on
18 fixed contributions which are not geared to the
19 employer's profits, no investment shall be made
20 fiduciary of such a fund in securities of such an
21 employer or of a corporation controlling, controlled
22 by, or under common control with such employer, if
23 such investment, when added to such securities
24 already held, exceeds 10 per centum of the fair
25 market value of the assets of the fund. Notwith-

1 standing the foregoing, such 10 per centum limita-
2 tion shall not apply to profit-sharing plans, nor to
3 stock bonus, thrift, and savings or other similar
4 plans which have the requirement that some or all
5 of the plan funds shall be invested in securities of
6 such employer;

7 "(B) purchasing on behalf of the fund any
8 security other than one described in (A) immedi-
9 ately above, or selling on behalf of the fund any
10 security which is acquired or held by the fund, to
11 a party in interest, unless (i) that the security is
12 listed and traded on an exchange subject to regu-
13 lation by the Securities and Exchange Commission;
14 (ii) that no brokerage commission, fee (except
15 for customary transfer fees), or other renumeration
16 is paid in connection with such transaction; and
17 (iii) that adequate consideration is paid;

18 "(5) making any loan to participants or benefici-
19 aries of the plan under which the fund was established
20 where such loans are available to all participants or
21 beneficiaries on a nondiscriminatory basis and are made
22 in accordance with specific provisions regarding such
23 loans set forth in the plan;

24 "(6) contracting or making reasonable arrange-
25 ments with a party in interest for office space and other

1 services necessary for the operation of the plan and pay-
2 ing reasonable compensation therefor;
3 "(7) following the direction in the trust instrument
4 or other document governing the fund insofar as con-
5 sistent with the specific prohibitions listed in section
6 14 (b) (2);
7 "(8) taking action pursuant to an authorization in
8 the trust instrument or other document governing the
9 fund, provided such action is consistent with the pro-
10 visions of subsection 14 (b).
11 "(d) Any fiduciary who breaches any of the responsi-
12 bilities, obligations, or duties imposed upon fiduciaries by
13 this Act shall be personally liable to make restitution to
14 such fund for any losses to the fund resulting from such
15 breach, and to restore to such fund any profits accruing to
16 such fiduciary as a result of the use of the assets of the fund
17 by the fiduciary.
18 "(e) When two or more fiduciaries undertake jointly
19 the performance of a duty or the exercise of a power or where
20 two or more fiduciaries are required by any instrument gov-
21 erning the fund to undertake jointly the performance of a
22 duty or the exercise of a power, but not otherwise, each of
23 such fiduciaries shall have the duty to prevent any other such
24 cofiduciary from committing a breach of a responsibility,
25 obligation or duty of a fiduciary or to compel such other co-

1 fiduciary to redress such a breach; except that no fiduciary
2 shall be liable for any consequence of any act or failure to
3 act of a cofiduciary who is undertaking or is required to
4 undertake jointly any duty or power if he shall object in
5 writing to the specific action and promptly file a copy of his
6 objection with the Secretary.
7 "(f) Each employee benefit plan shall contain specific
8 provisions for the disposition of its fund assets upon termina-
9 tion. In the event of termination, whether under the express
10 terms of the plan or otherwise, such fund, or any part
11 thereof, shall not be expended, transferred or otherwise
12 disposed of, except for the exclusive benefit of the plan
13 participants and their beneficiaries and, if applicable, in ac-
14 cordance with the provisions of title III of the Employee
15 Benefits Protection Act of 1973. Notwithstanding the fore-
16 going, after the satisfaction of all liabilities with respect to
17 the participants and their beneficiaries under an employee
18 pension benefit plan in accordance with the Internal Revenue
19 Code of 1954 and regulations promulgated thereunder, any
20 remaining fund assets may be returned to any person who has
21 a legal or equitable interest in such assets by reason of such
22 person or his predecessor having made financial contribution
23 thereto.
24 "(g) No fiduciary may be relieved from responsibility,
25 obligation, or duty under this Act by agreement or other-

1 wise. Nothing herein shall preclude any agreement allocating
2 specific duties or responsibilities among fiduciaries, or bar
3 any agreement of insurance coverage or indemnification
4 affecting fiduciaries, but no such agreement shall restrict the
5 obligations of any fiduciary to a plan or to any participant
6 or beneficiary.

7 "(h) No action, suit, or proceeding based on a viola-
8 tion of this section shall be maintained unless it be com-
9 menced within three years after the filing with the Secretary
10 of a report, statement, or schedule with respect to any matter
11 disclosed by such report, statement, or schedule, or, with
12 respect to any matter not so disclosed, within three years
13 after the complainant otherwise has notice of the facts consti-
14 tuting such violation, whichever is later, except that no such
15 action, suit or proceeding shall be commenced more than six
16 years after the violation occurred. In the case of a willfully
17 false or fraudulent statement or representation of a material
18 fact or the willful concealment of, or willful failure to disclose,
19 a material fact required by this Act to be disclosed, a pro-
20 ceeding in court may be brought at any time within ten
21 years after such violation occurs.

22 "(i) A fiduciary shall not be liable for a violation of
23 this Act committed before he became a fiduciary or after
24 he ceased to be a fiduciary.

1 "PROHIBITION AGAINST CERTAIN PERSONS HOLDING
2 OFFICE

3 "SEC. 15. (a) No person who has been convicted of,
4 or has been imprisoned as a result of his conviction of: rob-
5 bery, bribery, extortion, embezzlement, grand larceny, bur-
6 glary, arson, violation of narcotics laws, murder, rape, kidnap-
7 ing, perjury, assault with intent to kill, assault which
8 inflicts grievous bodily injury, any crime described in sec-
9 tion 9(a)(1) of the Investment Company Act of 1940
10 (15 U.S.C. 80a-9(a)(1)), or a violation of section 302
11 of the Labor Management Relations Act of 1947 (61 Stat.
12 157; 29 U.S.C. 186), or a violation of chapter 63 and sec-
13 tions 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954
14 of title 18, United States Code, or a violation of the Labor-
15 Management Reporting and Disclosure Act of 1959 (29
16 U.S.C. 401), or conspiracy to commit any such crimes or
17 attempt to commit any such crimes, or a crime in which any
18 of the foregoing crimes is an element, shall serve—

19 "(1) as an administrator, officer, trustee, custodian,
20 counsel, agent, employee (other than as an employee
21 performing exclusively clerical or janitorial duties) or
22 other fiduciary position of any employee welfare or
23 pension benefit plan, or

24 "(2) as a consultant to any employee benefit plan,
25 during or for five years after such conviction or after the

1 end of such imprisonment, unless prior to the end of such
2 five-year period, in the case of a person so convicted or
3 imprisoned, (A) his citizenship rights, having been
4 revoked as a result of such conviction, have been fully
5 restored, or (B) the Secretary determines that such
6 person's service in any capacity referred to in clauses
7 (1) and (2) would not be contrary to the purposes of
8 this Act. Prior to making any such determination the
9 Board shall hold an administrative hearing and shall give
10 notice of such proceeding by certified mail to the State,
11 county, and Federal prosecuting officials in the juris-
12 diction or jurisdictions in which such person was con-
13 victed. The Board's determination in any such proceeding
14 shall be final. No person shall knowingly permit any
15 other person to serve in any capacity referred to in
16 clauses (1) and (2) in violation of this subsection.
17 "(b) Any person who willfully violates this section
18 shall be fined not more than $10,000 or imprisoned for not
19 more than one year, or both.
20 "(c) For the purposes of this section, any person shall
21 be deemed to have been 'convicted' and under the disability
22 of 'conviction' from the date of the judgment of the trial
23 court or the date of the final sustaining of such judgment
24 on appeal, whichever is later, regardless of whether such

1 conviction occurred before or after the date of enactment
2 of this section.

3 "(d) For the purposes of this section, the term 'con-
4 sultant' means any person who, for compensation, advises
5 or represents an employee benefit plan or who provides other
6 assistance to such plan, concerning the establishment or op-
7 eration of such plan."

8 SEC. 111. (a) Section 16(b) of the Welfare and Pen-
9 sion Plan Disclosure Act is amended by striking out the
10 word "such" the second time it appears and by inserting
11 in lieu thereof the word "the", and striking out the word
12 "calendar" the second time it appears and inserting in lieu
13 thereof the word "fiscal".

14 (b) Section 16(d) of such Act is amended by striking
15 out the words "rate of $50 per diem" and inserting in lieu
16 thereof the words "maximum per diem rate authorized in
17 the current Department of Labor Appropriation Act for
18 consultants and experts", adding the words "such members
19 are" after the word "when" the first time it appears, and
20 striking out the designation "73b-2" after "5 U.S.C." and
21 inserting in lieu thereof the designation "5703".

22 (c) Section 16 of such Act is further amended by strik-
23 ing out subsection (e).

24 SEC. 112. (a) Section 17 of the Welfare and Pension
25 Plans Disclosure Act is amended by adding a comma after

1 the word "Act" the first time it appears in subsection (a),
2 and the following: "5 U.S.C. 551 et seq.,", and by adding
3 at the end of subsection (a) the following sentence: "The
4 Secretary, or his delegate, in consultation with the Secretary
5 of the Treasury or his delegate, shall prescribe all necessary
6 rules and regulations for the administration and enforcement
7 of this Act, except that all rules and regulations issued with
8 respect to section 14 shall be prescribed by the Secretary of
9 Labor or his delegate with the concurrence of the Secretary
10 of Treasury or his delegate."
11 (b) Section 17 of such Act is further amended by strik-
12 ing out substceions (c) and (d).
13 SEC. 113. Section 18 of the Welfare and Pension Plans
14 Disclosure Act is amended to read as follows:
15 "SEC. 18. It is hereby declared to be the express intent
16 of Congress that except for actions authorized by section
17 9(e)(1)(B) of this Act, the provisions of this Act shall
18 supersede any and all laws of the States and of political sub-
19 divisions thereof insofar as they may now or hereafter relate
20 to the fiduciary, reporting, and disclosure responsibilities of
21 persons acting on behalf of employee benefit plans provided
22 that nothing herein shall be construed to exempt or relieve
23 any person from any law of any State which regulates in-
24 surance, banking, or securities or to prohibit a State from
25 requiring that there be filed with a State agency copies of

1 reports required by this Act to be filed with the Secretary.
2 Nothing herein shall be construed to alter, amend, modify,
3 invalidate, impair, or supersede any law of the United States
4 (other than the Welfare and Pension Plans Disclosure Act
5 (29 U.S.C. 301)) or any rule or regulation issued under
6 any such law."

7 SEC. 114. Section 20 of the Welfare and Pension Plans
8 Disclosure Act is amended to read as follows:

9 "SEC. 20. (a) The provisions of paragraphs (3), (4),
10 and (5) of section 7(b) (relating to the aggregating of
11 items reported) shall become effective two years after the
12 date of enactment of the Employee Benefits Protection Act
13 of 1973.

14 "(b) Except as provided in subsection (a), the amend-
15 ments made by the Employee Benefits Protection Act of
16 1973 to the reporting requirements of the Welfare and
17 Pension Plans Disclosure Act shall become effective upon
18 the promulgation of revised report forms by the Secretary.

19 "(c) All other provisions of this Act shall become effec-
20 tive thirty days after enactment hereof.

21 "(d) In order to provide for an orderly disposition of
22 any investment, the retention of which would be deemed to
23 be prohibited by this Act, and in order to protect the interest
24 of the fund and its participants and its beneficiaries, the
25 fiduciary may in his discretion effect the disposition of such
26 investment within three years after the date of enactment of

1 the Employee Benefits Protection Act or within such addi-
2 tional time as the Secretary may by rule or regulation allow,
3 and such action shall be deemed to be in compliance with this
4 Act."

5 SEC. 115. The table of contents of the Welfare and Pen-
6 sion Plans Disclosure Act is amended to read as follows:

"TABLE OF CONTENTS

"WELFARE AND PENSION PLANS DISCLOSURE ACT

"Sec. 1. Short title.
"Sec. 2. Findings and declaration of policy.
"Sec. 3. Definitions.
"Sec. 4. Coverage.
"Sec. 5. Duty of disclosure and reporting.
"Sec. 6. Description of the plan.
"Sec. 7. Annual reports.
"Sec. 8. Publication.
"Sec. 9. Enforcement.
"Sec. 10. Reports made public information.
"Sec. 11. Retention of records.
"Sec. 12. Reliance on administrative interpretation and forms.
"Sec. 13. Bonding.
"Sec. 14. Fiduciary responsibility.
"Sec. 15. Prohibition against certain persons holding office.
"Sec. 16. Advisory Council.
"Sec. 17. Administration.
"Sec. 18. Effect of other laws.
"Sec. 19. Separability of provisions.
"Sec. 20. Effective date."

7 SEC. 116. Section 1954(a) of title 18, United States
8 Code, is further amended by striking out "3(3) and 5(b)
9 (1) and (2)" and inserting in lieu thereof "3(e) and
10 3(o)".

11 TITLE II—MINIMUM VESTING STANDARDS

12 ELIGIBILITY REQUIREMENTS

13 SEC. 201. No plan shall require as a condition of eligi-
14 bility to participate in such plan the attainment of an age
15 greater than twenty-five years or the completion of a period

1 of service with an employer contributing to, or maintaining
2 a plan greater than one year, whichever occurs later.

3 NONFORFEITABLE RIGHTS

4 SEC. 202. (a) Every plan shall provide for nonforfeit-
5 able rights to normal retirement benefits after a specified pe-
6 riod of service not exceeding ten years as to not less than 100
7 per centum of the accrued portion of the normal retirement
8 benefit (including benefits accrued prior to the effective date
9 of this title).

10 (b) In computing the period of service under the plan,
11 an employee's entire service with the employer contributing
12 to or maintaining the plan shall be considered, except that
13 the following periods may be disregarded:

14 (1) service prior to fulfillment of any eligibility re-
15 quirements to participate in the plan;

16 (2) service during which the employee declined to
17 contribute to a plan requiring employee contributions;
18 and

19 (3) service with a predecessor of the employer
20 contributing to or maintaining the plan (except where
21 the plan of the predecessor has been continued in effect
22 by the successor employer).

23 (c) No plan subject to this title to which employees
24 contribute shall provide for forfeiture of benefits which ac-
25 crued during participation in the plan by the employee and

1 which were attributable to employer contributions, solely
2 because of withdrawal by such employee of amounts attribut-
3 able to his own contributions.

4 PARTICIPATING EMPLOYEE TERMINATION

5 SEC. 203. Nonforfeitable benefits accrued by a terminat-
6 ing employee shall be distributed in accordance with the
7 terms of the plan, except that distribution of such benefits
8 shall commence no later than age sixty-five.

9 VARIATIONS: APPEALS BOARD

10 SEC. 204. (a) The Secretary on his own motion or
11 after having received the petition of an administrator may,
12 after giving interested persons an opportunity to be heard,
13 and in accordance with the provisions of subsection (b)
14 or (c) of this section, prescribe an alternative method for
15 satisfying the requirements of this title with respect to any
16 plan or any type of plan.
17 (b) The Secretary may prescribe an alternative method
18 for satisfying the requirements of this title for such limited
19 periods of time as are necessary or appropriate to carry
20 out the purposes of this Act and which will provide adequate
21 protection to the participants and beneficiaries in the plan,
22 whenever he finds that the application of this title would in-
23 crease the costs of the employer maintaining or contributing
24 to the plan to such an extent that there would result a
25 substantial risk to the voluntary continuation of the plan,

1 or a substantial curtailment of pension benefit levels or
2 the levels of employees' compensation, or an adverse effect
3 on the levels of employment with respect to the work force
4 employed by the employer maintaining or contributing to the
5 plan. No variation shall be authorized for a period of time
6 longer than five years and no period of service longer than
7 fifteen years shall be permitted for vesting accrued portions
8 of normal retirement benefits.
9 (e) There is hereby established a Variation Appeals
10 Board which shall hear and determine appeals from deci-
11 sions denying grants of variations in accordance with proce-
12 dures promulgated by the Secretary pursuant to regulation.
13 Such Board shall include the Secretary of the Treasury or
14 his designee, the Secretary of Labor or his designee, and
15 a person jointly selected by the Secretaries of Treasury and
16 Labor from among persons who are not officers or employees
17 of the Federal Government and who are, by reason of
18 training or experience, or both, familiar with and competent
19 to deal with, problems involving employees' benefit plans.
20 The Secretary of Treasury or his designee shall serve as pre-
21 siding officer on such Board. The selected member of the
22 Board shall be compensated at a rate fixed by the Secretary
23 but not in excess of the maximum rate of pay for grade
24 GS-18 of the General Schedule under section 5332 of title
25 5 of the United States Code for each day he is engaged in

1 the work of the Board and, while in service away from his
2 home or regular place of business, may be allowed travel
3 expenses, including per diem in lieu of subsistence, as author-
4 ized by section 5703 of title 5, United States Code, for
5 persons in the Government employed intermittently.

6 TITLE III—PLAN TERMINATION INSURANCE AND
7 EMPLOYER LIABILITY INSURANCE COVERAGE

8 SEC. 301. Every plan subject to this title shall obtain in-
9 surance, from the Corporation established under title IV of
10 this Act, payable for a loss of vested benefits in the event of
11 an involuntary plan termination, covering unfunded vested
12 liabilities (including liabilities accrued prior to enactment
13 of this Act) in an amount equal to the difference between
14 the vested liabilities and 90 per centum of the market value
15 of the assets of the plan.

16 GENERAL REQUIREMENTS

17 SEC. 302. (a) Not later than one hundred and fifty
18 days after the beginning of a plan year the administrator
19 shall submit to the Corporation a report indicating the
20 amount of vested liability and the market value of the plan's
21 assets as of the beginning of such plan year.

22 (b) In determining the assets of a plan only those assets
23 may be counted which in the event of plan termination
24 could be applied to meet vested liabilities.

25 (c) Concurrent with the filing of the report required

1 by subsection (a) of this section, the administrator shall file
2 an application for insurance in accordance with such proce-
3 dures as are established by the Corporation, and shall pay
4 the premium required by section 303.
5 (d) The Corporation shall issue a certificate of insur-
6 ance to the administrator upon approval of the application
7 and receipt of the initial premium. A plan's insurance cover-
8 age shall be effective as of the first day of the plan year and
9 shall be effective as of the first day of the plan year and
10 shall be continuous from such date until canceled.
11 (e) No administrator shall operate a plan subject to this
12 title without a valid certificate of insurance.
13 PREMIUM
14 SEC. 303. (a) The initial normal premium rate for in-
15 surance under this title shall be equal to two-tenths of 1
16 percent of the unfunded vested liability for any plan year
17 beginning after December 31, 1972. Such rate may from
18 time to time (but not more than once in any 12-month
19 period) be adjusted by the Corporation.
20 (b) The Corporation may establish reasonable plan
21 classifications for the purpose of increasing or reducing the
22 normal premium rate, if it finds that the risk insured against
23 under section 301 with respect to certain types of plans is
24 substantially different from the risk on which the normal
25 premium rate is based.

1 (c) Should any administrator of a plan subject to this
2 title fail to pay any premiums required to be paid under
3 subsection (a) of this section, the Corporation shall give
4 the administrator of the plan not less than thirty days' notice
5 of intention to cancel insurance unless the premium is paid
6 by the end of such period. If the unpaid premium is not paid
7 by the end of such period, the Corporation may cancel the
8 plan's certificate of insurance and the administrator of the
9 plan shall give notice of such cancellation to each person
10 entitled to a vested benefit under the plan.

11 CLAIMS PROCEDURE

12 SEC. 304. (a) The administrator of a plan subject to
13 the provisions of this title shall file a claim with the Cor-
14 poration in the event the plan is terminated and he finds
15 that the assets of the plan may not be sufficient to pay
16 vested liabilities. The Corporation shall honor such claim
17 up to the limits prescribed by section 207.

18 (b) Claims shall be made as specified in the rules and
19 regulations of the Corporation. The Corporation shall also
20 require the administrator who files the claim to submit
21 proof of all facts necessary to establish a claim, but in any
22 event, the Corporation may in its discretion independently
23 make such investigation as may be necessary for it to de-
24 termine the validity of any claim. The Corporation shall re-

1 quire the repayment of any amount owed by the employer
2 pursuant to the provisions of section 306.
3 (e) The Corporation shall give written notice to the
4 administrator of its decision on any claim. Upon notice that
5 a claim will be honored the administrator shall wind up the
6 affairs of the plan by arranging for the purchase of single
7 premium annuities from a qualified life insurance company
8 for each person entitled to vested benefits, or by making such
9 other arrangements for the distribution of vested benefits or
10 otherwise as the Corporation by regulation determines to
11 be adequate protection to persons with vested benefits. The
12 administrator shall be allowed a reasonable period in which
13 to liquidate the assets of the plan. Upon completing the
14 process of liquidation he shall thereafter submit to the Cor-
15 poration, within such period specified by regulation of the
16 Corporation, a plan termination report. Such report shall
17 fully disclose the amount of the vested benefit payable to
18 each person under the terms of the plan as of the date the
19 plan was terminated, the amount realized from liquidating
20 assets, the aggregate amount of funds needed to purchase
21 single premium annuities to provide the vested benefit to
22 which each person is entitled under the terms of the plan,
23 and such additional information as may be prescribed by the
24 Corporation. Upon receipt of the plan termination report,
25 the Corporation shall direct the purchase of annuities or

1 authorize the implementation of such other approved ar-
2 rangement for distributing vested benefits or protecting
3 vested benefits and pay the claim in the amount authorized
4 under this title.

5 PAYMENT OF CLAIMS

6 SEC. 305. (a) The amount of insurance payable under
7 a valid claim shall be the difference between the realized
8 value of the assets of the plan, as defined in section 302,
9 and the amount of vested liabilities limited by the amount
10 of insurance in force at the time the plan was terminated.

11 (b) The Corporation shall advance any portion of a
12 claim for which any employer is liable pursuant to the provi-
13 sions of section 306 if the Corporation determines that such
14 action is necessary to protect fully the rights of participants
15 and beneficiaries. Such employer shall be liable to fully
16 reimburse the Corporation for any such payment, and the
17 Corporation shall have the full right of subrogation against
18 any party who is liable to such person with regard to such
19 liability.

20 EMPLOYER LIABILITY

21 SEC. 306. (a) Every employer contributing to or
22 maintaining a plan subject to this title shall be liable to
23 reimburse the Corporation for any insurance benefits paid by
24 the Corporation in the event of a voluntary plan termina-
25 tion, or in the event of an involuntary plan termination

1 where the amount of insurance under section 301 is insuffi-
2 cient to cover the unfunded vested liabilities or where such
3 liabilities are not covered by insurance as required under such
4 section.

5 (b) (1) If any employer liable for any amount due
6 under subsection (a) of this section neglects or refuses
7 to pay the same after demand, the amount (including inter-
8 est) shall be a lien in favor of the United States upon all
9 property and rights in property, whether real or personal,
10 belonging to such employer or employers.

11 (2) The lien imposed by paragraph (1) of this sub-
12 section shall not be valid as against a lien created under
13 section 6321 of the Internal Revenue Code of 1954.

14 (3) Notice to the lien imposed by paragraph (1) of
15 this subsection shall be filed in a manner and form prescribed
16 by the Corporation. Such notice shall be valid notwith-
17 standing any other provision of law regarding the form and
18 content of a notice of lien.

19 (4) The Corporation shall promulgate rules and regula-
20 tions with regard to the release of any lien imposed by
21 paragraph (1) of this subsection.

22 (c) The Corporation may provide that the liability im-
23 posed under this section may be discharged by periodic pay-
24 ments or by means other than a lump sum payment, includ-
25 ing the substitution of a new plan providing essentially the

1 same nonforfeitable rights and normal retirement benefits as
2 were provided under the terminated plan, if undue financial
3 hardship would be placed on the employer by the operation
4 of subsection (a) of this section.

5 DEFINITIONS

6 SEC. 307. For purposes of this title the term—
7 (a) "employer" means any person controlling the
8 business of the employer, controlled by, or under com-
9 mon control with, such employer.
10 (b) "involuntary plan termination" means a ter-
11 mination due to insolvency on the part of the employer
12 within the meaning of section 1 (19) of the Bankruptcy
13 Act or such other reasons as the Corporation may specify
14 by regulation.

15 TITLE IV—PENSION BENEFIT INSURANCE
16 CORPORATION

17 CORPORATION ESTABLISHED

18 SEC. 401. There is established a wholly owned Gov-
19 ernment corporation to be known as the Pension Benefit
20 Insurance Corporation (hereinafter referred to as the "Cor-
21 poration") which shall insure the vested liabilities of pen-
22 sion plans subject to title II. The Corporation shall be an
23 agency and instrumentality of the United States, within the
24 Department of the Treasury, subject to the general super-
25 vision and direction of the Secretary of the Treasury. The

1 principal office of the Corporation shall be in the District of
2 Columbia but there may be established agencies or branch
3 offices elsewhere in the United States under bylaws of the
4 Corporation.

5 FUNCTIONS

6 SEC. 402. The functions of the Corporation shall be—
7 (1) to insure vested liabilities of pension plans
8 under this Act to protect participants and beneficiaries
9 against possible loss of vested benefits arising from an
10 involuntary termination of the plan;
11 (2) to administer claims in the event a pension
12 plan is terminated for whatever reason;
13 (3) to administer the Pension Insurance Fund;
14 (4) to collect premiums from the administrators of
15 pension plans subject to title III; and
16 (5) to issue certificates of insurance coverage to
17 each plan administrator.

18 POWERS OF CORPORATION

19 SEC. 403. (a) The Corporation shall have the following
20 powers—
21 (1) to adopt, alter, and use a corporate seal;
22 (2) to enter into and carry out such contracts or
23 agreements as are necessary in the conduct of its busi-
24 ness;
25 (3) to sue and be sued, in any district court of the

1 United States or its territories or possessions or the
2 Commonwealth of Puerto Rico, which courts shall have
3 exclusive original jurisdiction, without regard to the
4 amount in controversy, of all suits brought by or against
5 the Corporation except that nothing herein shall be con-
6 strued to exempt the Corporation from the application
7 of sections 517 and 2679 of title 28, United States Code;
8 (4) to adopt, amend, and repeal bylaws, rules, and
9 regulations governing the manner in which its business
10 may be conducted and the powers vested in it may be
11 exercised.
12 (5) to the use of the United States mails in the same
13 manner and upon the same conditions as the executive
14 departments of the Federal Government;
15 (6) to carry out the provisions of title II, to make
16 investigations and in connection therewith to enter such
17 places and inspect such records and accounts and ques-
18 tion such persons as the Corporation may deem neces-
19 sary to determine the facts relative thereto;
20 (7) to determine the character of and the neces-
21 sity for its obligations and expenditures and the man-
22 ner in which they shall be incurred, allowed, and paid,
23 subject to provisions of law specifically applicable to
24 wholly owned Government corporations; and
25 (8) to establish adequate premium rates to cover

1 the insurance of vested liabilities of private pension
2 plans and the administrative expenses of the Cor-
3 poration;
4 (9) to establish procedures for the application,
5 renewal, and cancellation of insurance, including the
6 prescribing of such forms and reports as may be neces-
7 sary or appropriate to implement such procedures;
8 (10) to collect premiums and manage and invest
9 the funds of the Corporation;
10 (11) to adjust and pay claims for insurance or
11 otherwise under rules prescribed by the Corporation;
12 (12) to conduct research, surveys, and investiga-
13 tions relating to pension plan insurance and assemble
14 data for the purpose of establishing sound basis for
15 insurance;
16 (13) to bring an action in the appropriate district
17 court of the United States or United States court of
18 any place subject to the jurisdiction of the United
19 States, to enjoin any acts or practices that constitute
20 or will constitute a violation of title III or of any regu-
21 lation or order issued thereunder, to assess and collect
22 any civil penalties for violations of title III, to recover
23 payments made for which an employer is liable, or to
24 obtain any other appropriate relief, and the United
25 States district courts and the United States courts of

1 any place subject to the jurisidiction of the United States
2 shall have jurisdiction for cause shown, to restrain vio-
3 lations of title III and provide for any other appro-
4 priate relief; and

5 (14) to carry out such other functions as are
6 required by this Act and as Congress may specifically
7 authorize or provide for.

8 (b) For the purpose of any investigation provided for
9 herein, the provisions of sections 9 and 10 (relating to the
10 attendance of witnesses and the production of books, papers,
11 and documents) of the Federal Trade Commission Act (15
12 U.S.C. 49, 50), are made applicable to the jurisdiction,
13 powers, and duties of the Corporation or any officers desig-
14 nated by the Corporation.

15 PENSION INSURANCE FUND

16 SEC. 404. (a) There is created within the Treasury a
17 separate fund for pension insurance (hereafter in this sec-
18 tion called the "fund") which shall be available to the Cor-
19 poration without fiscal year limitation for the purposes of this
20 title.

21 (b) There is hereby authorized to be appropriated such
22 sums as are necessary to provide capital for the fund. All
23 amounts received as premiums and any other moneys (in-
24 cluding civil penalties collected), property, or assets derived
25 from operations in connection with this title shall be deposited

1 in the fund; except that no such amounts may be used to ad-
2 vance any portion of an employer's liability.
3 (c) All claims, expenses, and payments pursuant to op-
4 eration of the Corporation under this title shall be paid from
5 the fund. From time to time, and at least at the close of each
6 fiscal year, the Corporation shall pay from the fund into the
7 Treasury, as miscellaneous receipts, interest on the cumula-
8 tive amount of appropriations provided as capital to the fund,
9 less the average undisbursed cash balance in the fund dur-
10 ing the year. The rate of such interest shall be determined
11 by the Secretary of the Treasury, taking into consideration
12 the average market yield during the month preceding each
13 fiscal year on outstanding marketable Treasury obligations.
14 Interest payments may be deferred with the approval of the
15 Secretary of the Treasury, but any interest payments so de-
16 ferred shall themselves bear interest.
17 (d) The Corporation is authorized to borrow from the
18 Treasury such amounts as may be necessary to advance any
19 portion of the employer's liability. Such moneys shall be re-
20 paid by the Corporation from the amounts recovered from
21 any person in satisfaction of his liability.
22 BOARD OF DIRECTORS
23 SEC. 405. (a) The Corporation shall be headed by a
24 Board of Directors, who shall be responsible for carrying out
25 the functions of the Corporation under the provisions of

1 this Act. The Board shall consist of the Secretaries of
2 Labor and Treasury ex officio and three Directors appointed
3 by the President by and with the consent of the Senate. The
4 President shall designate a chairman of the Board from
5 among the three appointed Directors. Of the first Directors,
6 one shall be appointed to serve for a term of two years;
7 one shall be appointed to serve for a term of four years; and
8 one shall be appointed to serve for a term of six years, as
9 designated by the President at the time of appointment.
10 Thereafter, upon the expiration of the term of office, each
11 succeeding Director shall be appointed to serve for a term
12 of six years. Not more than two of the appointed Directors
13 shall be members of the same political party. At least one
14 of the appointed Directors shall be a representative of em-
15 ployee organizations. Each appointed Director shall receive
16 compensation at the rate of $150 per day when engaged in
17 the actual performance of duties of the Board, except that
18 any such Director who holds another office or position under
19 the Federal Government shall serve without additional com-
20 pensation. Any Director may be allowed travel expenses,
21 including per diem in lieu of subsistence, as authorized by
22 section 5703 of title 5, United States Code, for persons in
23 the Government employed intermittently. A majority of the
24 Directors shall constitute a quorum of the Board and action
25 shall be taken only by a majority vote of those present.

1 (b) Any Director appointed to fill a vacancy occurring
2 before the expiration of the term for which his predecessor
3 was appointed shall serve for the remainder of such term.
4 (c) Any Director (including a Director appointed to
5 fill a vacancy) shall serve until his successor is appointed
6 and qualified. A Director may be reappointed.

7 TECHNICAL ADVISORY COMMITTEE

8 SEC. 406. There shall be a Technical Advisory Com-
9 mittee on Pension Insurance which shall be composed of
10 five members to be appointed by the Secretary to advise
11 and consult with the Corporation with respect to carrying
12 out the provisions of this Act. The Secretary shall select
13 for appointment to the Committee individuals who are, by
14 reason of training or experience, or both, familiar with and
15 competent to deal with problems involving employees' pen-
16 sion plans and problems relating to the insurance of such
17 plans. Members of the Committee shall be appointed for a
18 term of two years. Members shall be compensated at the
19 rate of $125 per day for each day they are engaged in the
20 duties of the Committee and, while serving away from their
21 homes or regular places of business, may be allowed travel
22 expenses, including per diem in lieu of subsistence, as au-
23 thorized by section 5703 of title 5, United States Code, for
24 persons in the Government employed intermittently. The
25 Committee shall meet at Washington, District of Columbia,

1 upon call of the Chairman of the Board of Directors who
2 shall serve as Chairman of the Committee. Meetings shall
3 be called by such Chairman not less often than twice a year.

4 PERSONNEL OF CORPORATION

5 SEC. 407. The Corporation shall appoint and fix the
6 compensation of such officers, attorneys, and employees as
7 may be necessary for the conduct of its business in accord-
8 ance with the provisions of title 5, United States Code,
9 governing appointment in the competitive service, and chap-
10 ter 51 of subchapter 53 of such title relating to classification
11 and General Schedule pay rates, and may obtain the serv-
12 ices of experts and consultants in accordance with section
13 3109 of title 5, United States Code, at rates for individuals
14 not to exceed the rate prescribed for GS–18 under section
15 5332 of such title.

16 INVESTMENT OF FUNDS

17 SEC. 408. All money of the Corporation, except appro-
18 priated funds, may be invested in obligations of the United
19 States or in obligations guaranteed as to principal and inter-
20 est by the United States.

21 TAX EXEMPTION

22 SEC. 409. The Corporation, including its franchise, its
23 capital, reserves, and surplus, and its income and property
24 shall be exempt from all taxation imposed by any State or
25 political subdivision thereof, except nothing herein exempts

1 from taxation any real property acquired and held by the
2 Corporation.

3 RECORDS; ANNUAL REPORT

4 SEC. 410. The Corporation shall at all times maintain
5 complete and accurate books of account and shall transmit an-
6 nually a complete report on the business of the Corporation,
7 to the President for transmittal to the Congress.

8 GOVERNMENT CORPORATION CONTROL ACT

9 SEC. 411. Section 101 of the Government Corporation
10 Control Act (59 Stat. 597), as amended (31 U.S.C. 846),
11 is amended by inserting "Pension Benefit Insurance Cor-
12 poration;" after "Panama Canal Company;".

13 TITLE V—GENERAL PROVISIONS

14 DEFINITIONS

15 SEC. 501. When used in titles II through V the term—
16 (a) "Secretary" means the Secretary of the Treasury.
17 (b) "Plan" meant any pension plan, fund, or program
18 which is communicated or its benefits described in writing to
19 the employees as a group and which was heretofore or is
20 hereafter established or maintained by an employer or by an
21 employer together with an employee organization, for the
22 purpose of providing for its participants or their beneficiaries,
23 by the purchase of insurance or annuity contracts or other-
24 wise, retirement benefits, including any profit-sharing plan
25 which provides benefits after retirement, except that nothing

1 herein shall be construed to include any plan, fund, or pro-
2 gram to which only employees contribute.
3 (c) "Employee organization" means any labor union or
4 any organization of any kind, or any agency or employee
5 representation, committee, association, group, or plan, in
6 which employees participate and which exists for the pur-
7 pose, in whole or in part, of dealing with employers concern-
8 ing an employee benefit plan, or other matters incidental to
9 employment relationships.
10 (d) "Participant" means any employee or former em-
11 ployee of an employer or any member of an employee
12 organization who is or may become eligible to receive a
13 benefit of any type from a plan, or whose beneficiaries
14 may be eligible to receive any such benefit.
15 (e) "Beneficiary" means a person designated by a par-
16 ticipant or by the terms of a plan who is or may become
17 entitled to a benefit thereunder.
18 (f) "Employee" means any individual employed by
19 an employer.
20 (g) "Employer" means any person acting directly as
21 an employer or indirectly in the interest of an employer
22 in relation to an employee benefit plan, and includes a
23 group or association of employers acting for an employer
24 in such capacity.
25 (h) "Person" means an individual, partnership, cor-

1 poration, mutual company, joint stock company, trust,
2 unincorporated organization, association, or employee
3 organization.

4 (i) "State" means any State of the United States,
5 the District of Columbia, the Canal Zone, the Common-
6 wealth of Puerto Rico, any territory or possession of the
7 United States, or the Outer Continental Shelf lands as de-
8 fined in the Outer Continental Shelf Lands Act (43 U.S.C.
9 1331–1343).

10 (j) "Corporation" means the Pension Benefit Insurance
11 Corporation established pursuant to title IV of this Act.

12 (k) "Administrator" means—

13 (1) the person specifically so designated by the
14 terms of the plan, collective-bargaining agreement,
15 trust agreement, contract, or other instrument, under
16 which the plan is operated; or

17 (2) in the absence of such designation (A) the
18 employer in the case of an employee benefit plan estab-
19 lished or maintained by a single employer, or (B) the
20 association, committee, joint board of trustees, or other
21 similar group of representatives of the parties who
22 established or maintain the plan, in the case of a plan
23 established or maintained by two or more employers
24 or jointly by one or more employers and one or more
25 employee organizations.

1 (l) "Credited service" means service during which the
2 employee participates in such plan.
3 (m) "Normal retirement age" means the earliest age at
4 which an employee can retire with unreduced accrued bene-
5 fits but in no event later than age 65.
6 (n) "Normal retirement benefit" means a benefit pay-
7 able at normal retirement age excluding any preretirement
8 death or disability benefits or any incidental benefits that may
9 be provided by the plan.
10 (o) "Accrued portion of the normal retirement benefit"
11 means—
12 (1) under a plan which provides benefits that are
13 definitely determinable prior to termination of employ-
14 ment, that portion of such benefit which would have been
15 payable at normal retirement age, computed as of the day
16 of termination of employment, as the number of years of
17 credited service under the plan bears to the total possible
18 years of credited service had employment continued to
19 the normal retirement age; or
20 (2) under a plan which provides benefits that are
21 not definitely determinable prior to termination of em-
22 ployment, the benefit based solely upon the amount
23 credited to the employee toward normal retirement bene-
24 fits at the time of termination of employment.

1 (p) "Vested liabilities" means the present value of the
2 following benefits:
3 (1) for active employees, the accrued portion of
4 normal retirement benefits which cannot be forfeited by
5 termination of employment;
6 (2) for persons who have previously terminated
7 with vested rights, the accrued portion of the normal
8 retirement benefits to which they are entitled according
9 to the plan vesting schedule;
10 (3) for persons currently receiving benefits under
11 the plan, the benefit currently payable and any con-
12 tinuation promised by the plan after the current bene-
13 ficiary's death.
14 (q) "Plan termination" means complete termination
15 and partial termination, as defined by the Corporation,
16 including, but not limited to—
17 (1) a substantial reduction in the level of benefits
18 payable to participants or beneficiaries having non-for-
19 feitable rights to such benefits;
20 (2) a discontinuance of contributions to the plan;
21 and
22 (3) an involuntary termination of employment of
23 a substantial group of employees covered by the plan.
24 (r) "Market value" means fair market value where

1 available, and otherwise the fair value as determined in good
2 faith by the administrator.

3 COVERAGE AND EXEMPTIONS

4 SEC. 502. (a) Except as provided in subsections (b)
5 and (c), titles II–V of this Act shall apply to any plan—
6 (1) if it is established or maintained by any em-
7 ployer engaged in commerce or in any industry or
8 activity affecting commerce or by such employer together
9 with any employee organization representing employees
10 engaged in commerce or in any industry or activity
11 affecting commerce; or
12 (2) if such plan is established or maintained by any
13 employer or by any employer together with any em-
14 ployee organization and if, in the course of its activities,
15 such plan, directly or indirectly, uses any means or in-
16 struments of transportation or communication in inter-
17 state commerce or the mails.
18 (b) Titles II–V shall not apply to any plan—
19 (1) administered by the Federal Government or by
20 a political subdivision of the State, or by any agency or
21 instrumentality of any of the foregoing;
22 (2) established or maintained by a self-employed
23 individual exclusively for his own benefit or for the
24 benefit of his survivors or established or maintained by

1 one or more owner-employers exclusively for his or their
2 benefit or for the benefit of his or their survivors;
3 (3) which covers not more than 15 participants;
4 or
5 (4) which is unfunded and which is established or
6 maintained by an employer primarily for the purpose of
7 providing deferred compensation for a select group of
8 management employees and is declared by the employer
9 as not intended to meet the requirements of section 401
10 (a) of the Internal Revenue Code.
11 (c) Title III of this Act shall not apply (1) to any
12 plan which does not provide definitely determinable bene-
13 fits prior to termination of employment and (2) to any plan
14 or to any unfunded vested liabilities created by a plan amend-
15 ment which has been in effect for a period of not more than
16 three years.
17 QUALIFICATION OF PLANS UNDER THE INTERNAL
18 REVENUE CODE
19 SEC. 503. (a) Section 401 (a) of the Internal Revenue
20 Code of 1954 (relating to qualified pension, profit-sharing,
21 and stock bonus plans) is amended by adding at the end
22 thereof the following paragraph:
23 "(11) A trust forming part of a plan which is subject
24 to title I of the Employee Benefits Protection Act of 1973,
25 shall not constitute a qualified trust under this section unless

1 such plan meets the requirements of sections 101, 102, and
2 103 of such title."
3 (b) Section 404(a)(2) of such Code (relating to de-
4 ductions for contributions of an employer to employee annuity
5 plans) is amended by striking out "and (8)" and inserting
6 in lieu thereof "(8), and (11)".
7 (c) The amendments made by this section shall apply
8 to taxable years of a plan beginning after December 31,
9 1973.
10 AMENDMENT TO THE BANKRUPTCY ACT
11 SEC. 504. Section 64 a (2) of the Bankruptcy Act, as
12 amended (11 U.S.C. 104(a)(2)), is amended to read as
13 follows:
14 "(2) wages not to exceed $600 to each claimant,
15 which have been earned within three months before the
16 date of the commencement of the proceeding, due to
17 workmen, servants, clerks, or traveling or city salesmen
18 on salary or commission basis, whole or part time,
19 whether or not selling exclusively for the bankrupt, and
20 the amount of any payment or payments for which the
21 bankrupt would otherwise be liable under the provisions
22 of section 306 of the Employee Benefits Protection Act
23 of 1973, if there had been a voluntary termination of a
24 plan providing pension or retirement benefits for such
25 workmen, servants, clerks, or salesmen, but only insofar

1 as any such payment or payments are due on account of
2 workmen, servants, clerks, or salesmen who are entitled
3 to receive immediate benefits under such plan on the date
4 of the commencement of the proceeding or who, if they
5 had been retired on such date, would be eligible to re-
6 ceive immediate benefits under such plan;".

7 ANNUAL REPORTS

8 SEC. 505. The Secretary shall submit annually a report
9 to the Congress detailing the administration of this Act for
10 the preceding year and including such information, data, re-
11 search findings, and recommendations for further legislation
12 in connection with the matters covered by this Act as he may
13 find advisable.

14 ADMINISTRATIVE PROCEDURE

15 SEC. 506. The provisions of subchapters I and II of
16 chapter 5 of title 5, United States Code, dealing with
17 administrative procedure, shall be applicable to agency pro-
18 ceedings under this Act.

19 FEDERAL COOPERATION

20 SEC. 507. In order to avoid unnecessary expense and
21 duplication of functions among Government agencies, the
22 Secretary may make such arrangements or agreements for
23 cooperation or mutual assistance in the performance of his
24 functions under this Act and the functions of any such agency
25 as he may find to be practicable and consistent with other

1 provisions of law. The Secretary may utilize, on a reimburs-
2 able basis, the facilities or services of any department, agency,
3 or establishment of the United States or of any State or polit-
4 ical subdivision of a State, including the services of any of
5 its employees, with the lawful consent of such department,
6 agency, or establishment; and each department, agency, or
7 establishment of the United States is authorized and directed
8 to cooperate with the Secretary and, to the extent permitted
9 by law, to provide such information and facilities as he may
10 request for his assistance in the performance of his functions
11 under this Act. The Attorney General or his representative
12 shall receive from the Secretary for appropriate action such
13 evidence developed in the performance of his functions under
14 this Act as may be found to warrant consideration for crimi-
15 nal prosecution under Federal law.

16 RULES AND REGULATIONS

17 SEC. 508. The Secretary shall prescribe such rules and
18 regulations as he finds necessary or appropriate to carry out
19 the provisions of titles II and V of this Act. Such rules and
20 regulations shall define accounting, technical, and trade terms
21 used in such provisions; and may prescribe the form and
22 detail of all reports required to be made under such provi-
23 sions; and may provide for the keeping of books and records,
24 and for the inspection of such books and records.

1 INVESTIGATIONS

2 SEC. 509. (a) The Secretary, in his discretion, may
3 investigate any facts, conditions, practices, or matters which
4 he may deem necessary or appropriate to determine whether
5 any person has violated or is about to violate any provisions
6 of titles II and V of this Act or any rule, regulation or order
7 thereunder, or to aid in the enforcement of the provisions of
8 titles II and V in the prescribing of rules, regulations, or
9 orders thereunder. The Secretary, in his discretion, may
10 publish, or make available to any interested person or
11 official, information concerning any matter which may be
12 the subject of investigation.

13 (b) For the purpose of any investigation provided for
14 in subsection (a), the provisions of sections 9 and 10 (re-
15 lating to attendance of witnesses and the production of books,
16 papers, and documents) of the Federal Trade Commission
17 Act (15 U.S.C. 49, 50) are made applicable to the juris-
18 diction, powers, and duties of the Secretary or any officers
19 designated by him.

20 JUDICIAL REVIEW

21 SEC. 510. Any person who has been aggrieved by a final
22 decision on a request for a variation under title II of this Act
23 or by any final decision with respect to any claim for payment
24 of insurance under title III may obtain a review of such de-
25 cision or any other order or final decision made under this

1 Act, in the United States district court for the district where
2 the principal office of the plan is located. Such court shall
3 have jurisdiction to affirm, modify or set aside such order or
4 decision, in whole or in part. The administrative findings as
5 to the facts if supported by substantial evidence on the record
6 as a whole shall be conclusive.

7 SEPARABILITY PROVISIONS

8 SEC. 511. If any provision of this Act, or the application
9 of such provision to any person or circumstances, shall be held
10 invalid, the remainder of this Act or the application of such
11 provision to persons or circumstances other than those as to
12 which it is held invalid, shall not be affected thereby.

13 ENFORCEMENT—PENALTIES

14 SEC. 512. (a) Whenever it shall appear to the Secretary
15 that any person is engaged or about to engage in any acts or
16 practices that constitute or will constitute a violation of any
17 provision of title II or V or of any regulation, variation, or
18 order issued thereunder, he may in his discretion, bring an
19 action in the proper district court of the United States or
20 United States court of any place subject to the jurisdiction of
21 the United States, to enjoin such acts or practices, and upon
22 a proper showing a permanent or temporary injunction or
23 restraining order shall be granted.

24 (b) The United States district courts and the United
25 States courts of any place subject to the jurisdiction of the

1 United States shall have exclusive jurisdiction with respect to
2 violations of title II or V or regulations, variations or orders
3 issued thereunder, and of all suits in equity and actions at law
4 brought to enforce any liability or duty created by, or to
5 enjoin any violation of title II or V or regulations or orders
6 thereunder, and to provide such other relief as may be
7 appropriate.

8 (b) Any person who willfully violates any provision of
9 this Act or any rule, regulation, variation, or order issued
10 thereunder, shall upon conviction be fined not more than
11 $10,000 or imprisoned not more than five years, or both,
12 except that in the case of such violation by a person not an
13 individual, the fine imposed upon such person shall be a fine
14 not exceeding $200,000.

15 (c) (1) Whoever violates section 202(e) of this title
16 shall be liable to a civil penalty of not more than $200,000
17 for such violation.

18 (2) Whoever violates any other provision of this title
19 or any rule or regulation issued thereunder shall be liable to
20 a civil penalty of not more than $10,000 for each violation.

21 (3) The Corporation may assess, collect, and com-
22 promise any civil penalty incurred under this Act and may
23 bring an action for that purpose. In determining the amount
24 of such penalty, or the amount agreed upon in compromise,
25 the appropriateness of such penalty to the size of the business

1 or plan of the employer shall be considered with respect to a
2 violation of subsection (a) of this section. The Corporation
3 shall also consider the gravity of the violation, taking into
4 account good faith efforts to comply with the provisions of
5 this title. The amount of such penalty, when finally deter-
6 mined, or the amount agreed upon in compromise may be
7 deducted from any sums owing by the United States to the
8 person charged.

9 ADMINISTRATIVE ASSESSMENTS AND APPROPRIATIONS

10 SEC. 513. (a) The Secretary shall, pursuant to regula-
11 tion, assess each plan which is subject to this Act such fees or
12 charges as the Secretary deems appropriate to cover ad-
13 ministrative costs incurred by the Secretary, and as are con-
14 sistent with the policy of title V of the Independent Offices
15 Appropriation Act, 1952 (31 U.S.C. 483).

16 (b) There is hereby authorized to be appropriated such
17 sums without fiscal limitation, as may be necessary to enable
18 the Secretary to carry out his functions and duties under this
19 Act.

20 EFFECTIVE DATE

21 SEC. 514. (a) The provisions of titles II and III shall
22 become effective at the beginning of plan years commencing
23 in 1974.

24 (b) The amendments made by section 503 of title V

1 shall apply to taxable years of a plan beginning after Decem-
2 ber 31, 1973.

3 (c) The amendment made by the section 504 of title
4 V shall govern proceedings in cases instituted on or after the
5 date of enactment of this Act.

6 (d) Except as otherwise provided in this section, the
7 provisions of titles IV and V shall become effective on the
8 date of enactment of this Act.

The CHAIRMAN. The subcommittee heard a long succession of witnesses tell stories of heartbreak caused when the bubble of retirement security burst. There were brewery workers in New Jersey, automobile workers in Minneapolis, restaurant employees in Philadelphia, foundry workers in Ohio, and many others, on and across the country. Some of them worked 40 years or more with a vision of retirement security before them, only to see their dreams turn to dust.

And in all of these cases, regardless of where the worker was from or what industry he was in, there was a common denominator: all of these workers had toiled away a lifetime anticipating a pension they never received. We are able to trace these personal, financial disasters to a number of specific deficiencies in pension plans.

Among these were:

Inadequate or nonexistent vesting provisions;

Inadequate funding;

Absence of any kind of insurance against premature plan terminations;

Lack of portability provisions;

Poor communication between plan administrators and participants;

And, little or no supervision of plan fiduciary agents.

All of these conditions demand reform.

During the 3 years of our study, the subcommittee compiled a great amount of evidence in favor of comprehensive, reform legislation. And that evidence makes a compelling case for the necessity of passing such legislation now.

That is why Senator Javits and I introduced S. 3598 in the last Congress. It is designed to remedy precisely those shortcomings detected in our study. This bill was the subject of complete legislative hearings last June. And the Committee on Labor and Public Welfare unanimously reported it to the Senate, with a favorable recommendation.

Unfortunately, S. 3598 was delayed when the Finance Committee requested the opportunity to review it. The bill was referred to that committee after we reported it.

And it will be recalled that at that time, the Senate Finance Committee requested an opportunity to study the bill, because it believed that certain provisions of that bill were within its jurisdiction. After 1 week of study by that committee, it reported the bill back to the Senate with amendments which struck out all provisions of the bill other than those relating to fiduciary clauses, disclosure, and reporting reforms.

At that time in a letter addressed to me from Senator Long, he said, in part:

> Regrettably this bill was reported so late in the session that the Finance Committee was able to take action which was procedural only. It was impossible to undertake the kinds of study necessary to affirmatively adopt the provisions of S. 3598 and draft the necessary Internal Revenue code amendments needed to incorporate such changes.

It was recalled, of course, there was not time during the closing dates of the last session to take the Labor Committee reported bill up.

But a number of Senators did record their commitment to early action on it and in this session. Senator Javits and I renewed our

commitment to that goal by reintroducing the bill at the earliest possible time. These hearings have been scheduled so as to permit prompt floor action. I anticipate that in the next 2 days the numerous compelling reasons why we need this legislation will be reiterated. I also anticipate hearing some of the same arguments in favor of delay to permit further study. I would like to make it clear right now that as far as I am concerned further delay would be unconscionable.

The problems are very real and well defined. The solutions are clear and obtainable. And the needs of some 35 million American workers will not wait for still more study. The need for pension reform is immediate, and I have every expectation that this Congress will meet that need.

Senator JAVITS. I hope we are coming to the end of the road on holding hearings on this bill. I feel that we are approaching passage in the Senate. We have worked together for 3 years, and I think we have developed all the material that commands and demands this action. I turn to you.

Senator JAVITS. Thank you very much, Mr. Chairman. May I express my deep gratification respecting our partnership in this matter which I think is very promising for the benefit of the 35 million workers who are covered.

This is an enormous area of our national life, Mr. Chairman. Aside from the 35 million workers, there are $150 billion in private pension plan resources and they are growing at the rate of $10 to $12 billion a year.

Most of us would agree that it is inconsistent with our concepts of social justice and our deep concern, which I know the chairman and I and Senator Schweiker, share of the erosion of the work ethic, to perpetuate a system which maximizes worker frustrations as a means of satisfying the needs of only a fortunate few. Today we commence the second round of legislative hearings on the Williams-Javits pension and welfare reform bill, now cosponsored by more than a majority of the Senate, 52 Members.

I might say, too, that I have witnessed very few bills in all my legislative career, now a quarter of a century, which have struck such a responsive chord in Government, industry, labor, and the public generally. To those who believe the American people are apathetic about social issues, I say come in and examine literally thousands of letters on private pension plan abuses that have been sent to this committee over the last 3 years. I hazard the chairman, like myself has run into the fact that almost every older person who is a worker, almost everyone, when he sees either one of us, asks us about the fate of this pension plan legislation.

The reason for this outpouring of public concern and concern of Senators is summed up in one word, "injustice." To cite just a few examples familiar by now to all of us: It is unjust to allow an employee to work over 40 years under a private pension plan and then lay him off without entitlement to any pension benefit whatsoever. Yet that has happened. It is unjust for an employee to work 30 years and qualify for a pension only to be disqualified because he had a 3-month break in service. It is unjust for hundreds of employees to be terminated in a plant closing and learn that their earned pension rights are worthless because there are insufficient funds to pay what they are owed. Most of all, it is un-

just deliberately to install a pension plan to attract workers, knowing full well in advance that only a small fraction of those who are attracted to work by a pension plan have any reasonable expectation of ever getting one dime from the plan.

We know all of this. Our committee has spent 3 years and close to $1 million documenting in detail the nature and scope of these problems, and that money has been allowed by the Senate which is deeply impressed with this problem. Last year we unanimously approved this legislation, feeling it would go a long way toward safeguarding workers against these unjust deprivations of private pension benefits. As the Chair has said, and I join him 100 percent, the time is now, and we cannot permit ourselves to be frustrated in any way. I appreciate the interest of the Finance Committee in the revenue aspects of the matter, but it is essentially a matter of the working people of the country.

I hope very much the Senate will see it that way and the Senate is the final judge. The chairman and I have acted in a completely bipartisan way, with the aid of the members of this committee. Every one of the members of the committee now sponsors this bill. I am grateful to Senator Schweiker for being here this morning.

This started 3 years ago with the chairman and myself, and 6 years ago with me, when I first put in the bill. Both the Johnson and Nixon administrations have proposed bills moving somewhat along the lines of reform, but not nearly far enough. As the Chair has said, we have studied the matter exhaustively. Now we hold these hearings simply to give everybody an opportunity to make further constructive suggestions on a bill that is already carefully developed and is a mature piece of legislation. We will not be deterred by those seeking to block enactment of the bill, even by those urging extreme solutions, known to be impractical or by seeking to detour the legislation into some jurisdictional morass between ourselves and Finance or any other committee.

Also there have been misrepresentations of the bill, indeed as to the nature of the problems, in order to serve the pet theory of some as to how reform should be accomplished. This committee is interested in effective comprehensive legislation that will become law. We do not intend to offer pie in the sky. There is plenty of that in pension and welfare plans already and the time has come to tell workers what they are going to get and to assure that they get it.

Nor should we be intimidated by thinly disguised efforts from either the right or the left to undermine a sound and practical legislative approach. Mr. Chairman, I am grateful to the Chair for calling these hearings so promptly. It is quite characteristic of our chairman, and I think we really have a personal commitment to the people to put this law on the statute books.

Mr. Chairman, while I have the floor, too, I would like to express my thanks to the majority leader and to the minority leader who have given us top priority for this bill as soon as we can report it out of our committee. I conclude, Mr. Chairman, as follows: Working people can no longer wait for ethereal visions of pension millennium to be fulfilled. Nor will they abide efforts to thwart their just and reasonable pension expectations.

At stake, therefore, is the continued and healthy existence of the private plans for without the confidence of 35 million beneficiaries,

the plans will lose their vitality as a meaningful instrument for worker motivation.

Thank you.

The CHAIRMAN. Senator Schweiker has developed some of our most illuminating hearings on this subject.

Senator Schweiker.

Senator SCHWEIKER. Thank you very much, Mr. Chairman.

I want to commend Senator Williams, our chairman, and Senator Javits for their initial leadership and great efforts in this area. I believe the need of this bill is overwhelming. Last summer the chairman designated me to conduct field hearings in Philadelphia. I appreciated, Mr. Chairman, that opportunity. We learned in those hearings about two pension plans in that area which had failed, leaving destitute, in one of the plans, people who had worked 30 or 40 years in the system, with no economic protection whatsoever. That was the Horn-Hardart Baking Co., which is bankrupt now.

I want to say that by starting early, what Senator Williams and Senator Javits are doing here, I think we assure the success of the battle.

I was as disappointed as anyone at the gutting of the bill by another legislative unit of our Congress last year. I think the early start here assures us that the majority will work its will. I do think it is rather ironic that an economic system which so vitally depends on workers for loyal dedication, perseverence and longevity does not even provide the basic economic safeguards and protection for these people.

I believe this committee and its bill will overcome that problem. I think this is a bill whose time has clearly come and this is the year. I am pleased to be part of it.

The CHAIRMAN. Thank you, Senator Schweiker.

We have many of our colleagues coming forward this morning to speak to the bill and testify in support of it. Before we reach them, we appropriately start with a statement from the Department of Labor. Secretary Brennan has asked Frank M. Kleiler, Deputy Assistant Secretary for Labor Relations, Planning and Evaluation, to make a statement this morning.

STATEMENT OF FRANK M. KLEILER, DEPUTY ASSISTANT SECRETARY FOR PLANNING AND EVALUATION, DEPARTMENT OF LABOR, ACCOMPANIED BY HENRY ROSE, ASSOCIATE

Mr. KLEILER. Mr. Chairman, I am accompanied by Henry Rose, Associate Solicitor of Labor.

You have copies of my prepared statement. I would like to read portions of it. To save your time at this hearing, I would skip the reading of certain portions if the entire statement will appear in the record. Can that be arranged?

In his letter to Chairman Williams dated January 31, 1973, Secretary of Labor Brennan said:

> As you know, I share your desire for effective pension reform legislation. I want to cooperate with you and the committee, but I am not yet ready to present to you the administration's position on S. 4. I would be pleased, however, to designate appropriate officials of the Department of Labor to appear before you to provide any technical assistance you might require in dealing with this very complicated subject.

We are here today only for the purpose of providing technical assistance. We are not here to discuss substantively S. 4 or any other bill pending in the 93d Congress.

As you know, former Secretary of Labor Hodgson appeared as a witness before this subcommittee on June 20, 1972, and presented his views on S. 3598 in the last Congress. He testified in support of two administration bills concerning pensions—S. 3024, which would amend the Welfare and Pension Plans Disclosure Act along much the same lines as is provided in title V of S. 3598, and S. 3012, which would amend the Internal Revenue Code to provide a "rule of 50" minimum vesting standard and to increase opportunities for individual workers and the self-employed to help assure their retirement security. Those two administration bills have not yet been resubmitted by the administration to the 93d Congress. They are being reexamined within the administration to determine what, if any, changes should be made in them. Secretary Brennan is taking a fresh look at this whole area and he wants the administration bill, when introduced, to reflect the benefit of his fresh approach. The Secretary has just recently taken office, as you know, and is making every effort to incorporate his views into the administration proposals and to expedite their presentation to the Congress.

The correspondence between Chairman Williams and Secretary Brennan refers to the study of pension plan terminations undertaken jointly by the Treasury and Labor Departments pursuant to the President's direction, which he announced in his message to the Congress in December 1971. The study was begun promptly, but we found it impossible to obtain adequate data on benefit losses in connection with most of the pension plans which had terminated before the study began. To gather relevant information the Internal Revenue Service instituted a special survey for all pension plan terminations reported to it during 1972.

Thus far, the data-gathering process has not been completed for all plans reported as terminated in 1972, and considerable data processing still needs to be accomplished.

However, an interim report is being prepared and we will submit it to this subcommittee when it is completed. A final report encompassing data for all reported pension plan terminations during 1972 will be issued later this year.

Limiting my testimony to technical matters pertaining to S. 4, I would like to direct your attention to the following points relating to the disclosure and fiduciary provisions:

I will not read the next several paragraphs. They are important, but they are not easy to understand unless you have the text of the bill to look over at the same time you are reading them. Let us skip to the bottom of page 6, but I would hope that the committee and the staff will consider most carefully those paragraphs which I am skipping.

With respect to title IV, providing plan termination insurance, I suggest that further consideration be given to section 404(a). It states that "no plan insured under this title shall terminate without approval of the Secretary" and that the Secretary shall not approve a plan termination unless he is satisfied that the requirements of law have been complied with and that the termination is not designed

to avoid or circumvent the purposes of the act. Please keep in mind that I am neither advocating nor opposing the basic idea or any type of termination insurance, but I foresee some practical operating difficulties in the administration of section 404(a) as it is presently written. Most pension plans are terminated because of business necessity. Section 404(a) would require investigation to determine that the provisions of the law have been complied with. Does this section mean that the employer must stay in business throughout an investigation and determination by the Secretary that there has been no violation of the law? The chances are that an employer in financial difficulties has already failed to make the contributions required by title II of the bill before he formally terminates the plan. Is he thereby precluded from terminating the plan because of his violation of the funding standards?

One of the thorniest problems in developing legislation for pension plan termination insurance is to define the event for which insurance is to be provided. S. 4 does not contain any definition of the word "termination." Section 402(a) of the bill says that the insurance program shall insure participants and beneficiaries "against loss of benefits, derived from vested rights which arise from the complete or the substantial termination of such plans, as determined by the Secretary."

Let us skip to the bottom of page 9.

There is a section of the Internal Revenue Code which provides that a pension trust fund is not qualified for tax purposes unless the plan provides that "upon its termination or upon complete discontinuance of contributions under the plan, the rights of all employees to benefits accrued to the date of such termination or discontinuance, to the extent then funded, or the amounts credited to the employees' accounts are nonforfeitable."

IRS regulations in section 1.401–6 explain what is meant by a termination or complete discontinuance of contributions. It is a long and complicated explanation which in effect requires the IRS to make a determination on the facts in each case.

If some type of insurance program is to be enacted, I suggest that the definition of termination should be the same for IRS vesting purposes and for termination insurance purposes. The insurable event should occur at the same moment as 100-percent vesting under the Internal Revenue Code. I am not suggesting that the IRS definition be included in S. 4. A better definition might be developed, but the better definition should be used for both purposes. In any event, it seems to be impractical to require approval of the Secretary of Labor before a pension plan terminates if one of the conditions of approval is that the Secretary must be satisfied that there has been compliance with minimum funding standards.

With respect to the voluntary portability provisions in title III of S. 4, I should like to raise a question in the hope that the intent will be clarified:

Is it contemplated that the Secretary of Labor will provide free actuarial service in (1) the course of accepting deposits as provided in section 302, (2) making payments from individual accounts as provided in section 305, or (3) providing technical assistance to employers, employee organizations, trustees and administrators pursuant

to section 306? A substantial amount of actuarial work would be required in the practical operation of the voluntary portability program.

In the next three paragraphs I indicate in general what I think that the Department of Labor would be expected to provide in the way of free actuarial services for some but not all purposes, but I am not sure my understanding of those three sections on this point is correct.

Let us skip now to the last page.

As a technician I hope that it can be made clear in each of these sections as to who is responsible for doing or paying for the actuarial work—the Department of Labor or the plan administrators.

I do not purport to have covered all the technicalities in this legislation. In fact, I have mentioned only a few of them. Your staff and that of the Department of Labor have worked together effectively on technical matters and there is no reason why this cooperation cannot continue. Mr. Rose and I are available to discuss any technical problems with you or your staff, without attempting to articulate a Department of Labor position or an administration position on the substantive provisions of S. 4.

Thank you.

The CHAIRMAN. I appreciate that which was offered. Of course, it is not definitive and your instruction is obviously from the Secretary not to be definitive on this legislation or any other; is that right?

Mr. KLEILER. That is correct.

The CHAIRMAN. I will say, you heard the opening statements of mine and my colleagues?

Mr. KLEILER. I did.

The CHAIRMAN. There is nothing new in this legislation. It was legislation that was fully processed through the hearings, through committee executive action to the floor last year, so it does not come as new material to a continuing executive administration. It would seem to me that the Department should be ready to be definitive, and quite soon. I will say this, if the Department is not, we are going to move anyway. This is not going to delay us. Therefore, are you in a position—you are certainly qualified—but are you in a position to deny that the provisions of this bill are needed in terms of vesting, funding, insurance termination, fiduciary standards, and fuller disclosure?

Mr. KLEILER. Mr. Chairman, let me use a metaphor in explaining my position. I am sort of a Neanderthal man left over from the Middle Ages.

The CHAIRMAN. I like your longevity. You have been in this Department through the good days and through the bad days.

Mr. KLEILER. I have been working in the Federal Government for 36 years. I have survived the New Deal, the Fair Deal——

The CHAIRMAN. You prospered under the New Deal and Fair Deal. You have survived this deal.

Mr. KLEILER (continuing). The New Frontier and the Great Society. The newspapers have not invented a phrase for what we have now, but I hope to continue to serve in the Government. I am not a Presidential appointee. I am a career executive. My usefulness is in not talking too much when policy matters are under consideration. I can assure you that all of the pension reform subjects are under active consideration in the administration.

The CHAIRMAN. I hope you survive. I do not have any further questions.

Senator Javits.

Senator JAVITS. Mr. Secretary, I appreciate everything you say. I join with the chairman in the expectation, not only the hope, that you will survive. But I do think the only way we can publicly transmit a message to the Secretary of Labor is through you. Therefore I make the following statement. There is a definite time limitation on how long we ought to wait for the interim statement on plan terminations in 1972 and for the final report, both of which are referred to at pages 3 and 4 of your statement in the following words:

> However, an interim report is being prepared and we will submit it to this subcommittee when it is completed. A final report encompassing data for all reported pension plan terminations during 1972 will be issued later this year.

Therefore, we say to the Secretary that we will confer with him in order to give him some idea of our time table for markup but that considering the history of this legislation, the fact that it has been very thoroughly explored, testified to, and so forth, including testimony by Secretary Brennan's predecessor, we are not under any moral or other constraint to hold things up for an indeterminate period. The Secretary should let us know seasonably about this legislation, so that his views and his findings may be cranked into the result: We should not have to wait on him.

I think my credentials in this regard are pretty good, as I had something to do with Secretary Brennan's early confirmation. So there is no criticism involved, except that I think we have to serve notice that this is not the kind of a bill that can sit around and wait for a report. The report has to come seasonably to us if it is going to count for anything in connection with the proper time table for the legislation.

The other point I would like to make is this. We welcome, I certainly welcome and I am sure our chairman does, your willingness to afford your experience, technical assistance, and that of the Associate Solicitor of the Department in the perfecting of this bill. I am sure we will take advantage of it as we have before.

The CHAIRMAN. I certainly echo that. I appreciate the offer. I overlooked making the same similar observation.

Senator Schweiker.

Senator SCHWEIKER. I have no questions, Mr. Chairman. Thank you.

(The prepared statement of Mr. Kleiler follows:)

STATEMENT OF
FRANK M. KLEILER
DEPUTY ASSISTANT SECRETARY
FOR LABOR RELATIONS PLANNING AND EVALUATION
DEPARTMENT OF LABOR
before the
SUBCOMMITTEE ON LABOR
SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

February 15, 1973

Mr. Chairman; Members of the Subcommittee:

In his letter to Chairman Williams dated January 31, 1973, Secretary of Labor Brennan said:

> "As you know, I share your desire for effective pension reform legislation. I want to cooperate with you and the Committee, but I am not yet ready to present to you the Administration's position on S. 4. I would be pleased, however, to designate appropriate officials of the Department of Labor to appear before you to provide any technical assistance you might require in dealing with this very complicated subject."

My appearance here today is only for the purpose of providing technical assistance. I am accompanied by Mr. Henry Rose, Associate Solicitor of Labor. We are not here to discuss substantively S. 4 or any other bill pending in the 93rd Congress.

As you know, former Secretary of Labor Hodgson appeared as a witness before this Subcommittee on June 20, 1972, and presented his views on S. 3598 in the last Congress. He testified in support of two Administration bills concerning pensions--S. 3024, which would amend the Welfare and Pension Plans Disclosure Act along much the same lines as is provided in Title V of S. 3598, and S. 3012, which would amend the Internal Revenue Code to provide a "Rule of 50" minimum vesting standard and to increase opportunities for individual workers and the self-employed to help assure their retirement security. Those two Administration bills have not yet been resubmitted by the Administration to the 93rd Congress. They are being reexamined within the Administration to determine what, if any, changes should be made in them. Secretary Brennan is taking a fresh look at this whole area and he wants the Administration bill, when introduced, to reflect the benefit of his fresh approach. The Secretary has just recently taken office, as you know, and is making every effort to incorporate his views into the

Administration proposals and to expedite their presentation to the Congress.

The correspondence between Chairman Williams and Secretary Brennan refers to the study of pension plan terminations undertaken jointly by the Treasury and Labor Departments pursuant to the President's direction, which he announced in his message to the Congress in December 1971. The study was begun promptly, but we found it impossible to obtain adequate data on benefit losses in connection with most of the pension plans which had terminated before the study began. To gather relevant information the Internal Revenue Service instituted a special survey for all pension plan terminations reported to it during 1972.

Thus far, the data-gathering process has not been completed for all plans reported as terminated in 1972, and considerable data processing still needs to be accomplished.

However, an interim report is being prepared and we will submit it to this Subcommittee when it is completed. A final report encompassing data for

all reported pension plan terminations during 1972 will be issued later this year.

Limiting my testimony to technical matters pertaining to S. 4, I would like to direct your attention to the following points relating to the disclosure and fiduciary provisions:

Regarding the administrator's publication obligation in section 507 of S. 4, the requirement that all plan documents and information (other than annual report summaries) shall be furnished or made available, "whichever is most practicable," may defeat the intent of that section. Where a plan administrator determines that it is "most practicable" to merely make the information available, rather than to furnish it, participants and beneficiaries may face difficulties in actually getting the data. The problem is compounded because the bill contains no criteria by which a determination might be made as to whether the data has been made "available."

Substantial Government involvement in disputes between a beneficiary and a plan administrator over benefit payments is virtually assured under section 602 of S. 4. Disputes over benefits may be expected to

arise for many reasons; often these reasons will at least arguably involve a violation of either the Act or the underlying plan documents. Under Section 602, the Secretary may in these cases be obliged to become involved on the participant's behalf. Yet it is highly questionable whether a particular dispute over benefit payments is a matter in which the Federal Government should be intimately involved. Indeed, a major rationale for the enhanced reporting and disclosure required by this legislation is to enable participants and beneficiaries to enforce their own rights.

Sections 603 and 604 authorize suits by individual participants and beneficiaries for fiduciary breach or removal of a fiduciary. Since the subject matter of most such suits will concern all participants and beneficiaries equally, it seems desirable that notice be given to all concerned parties and that they be given the opportunity to be heard. Moreover, to avoid subjecting the fiduciary to a multiplicity of suits involving similar facts, the bill might also include provisions insuring that any final judgment will be binding on all participants and beneficiaries of the plan .

There is a tendency in this bill to substitute administrative discretion for clear and unambiguous statutory language concerning particular transactions. Assuming, of course, the undesirability of legislation that is unduly rigid, S. 4 may go too far in the other direction. For example, the bill calls for the Secretary's involvement and discretion on such particular transactions and matters as investment of a fund's assets outside the United States (section 15(b)), allocation of duties and responsibilities among a plan's fiduciaries (section 15(g)), and direct purchase by a fiduciary of the employer's securities (section 15(c)). The certainty that would result from clear statutory rules in these areas would be beneficial to plan administrators, fiduciaries, and participants and beneficiaries. It would also enable the Secretary to concentrate his resources on matters of major importance under the Act.

With respect to Title IV, providing plan termination insurance, I suggest that further consideration be given to Section 404(a). It states that "no plan insured under this title shall terminate without approval of the Secretary" and that the Secretary shall not approve

a plan termination unless he is satisfied that the requirements of law have been complied with and that the termination is not designed to avoid or circumvent the purposes of the Act. Please keep in mind that I am neither advocating nor opposing the basic idea or any type of termination insurance, but I foresee some practical operating difficulties in the administration of Section 404(a) as it is presently written. Most pension plans are terminated because of business necessity. Section 404(a) would require investigation to determine that the provisions of the law have been complied with. Does this section mean that the employer must stay in business throughout an investigation and determination by the Secretary that there has been no violation of the law? The chances are that an employer in financial difficulties has already failed to make the contributions required by Title II of the bill before he formally terminates the plan. Is he thereby precluded from terminating the plan because of his violation of the funding standards?

One of the thorniest problems in developing legislation for pension plan termination insurance is to define the event for which insurance is to be provided. S. 4 does not contain any definition of the word "termination." Section 402(a) of the bill says that the insurance program

shall insure participants and beneficiaries "against loss of benefits, derived from vested rights which arise from the complete or the substantial termination of such plans, as determined by the Secretary."

Senator Griffin's bill (S. 75) refers in Title III to "involuntary plan termination," defined as a "termination due to insolvency on the part of the employer within the meaning of section 1 (19) of the Bankruptcy Act or such other reasons as the Corporation (administering the insurance system) may specify by regulation." In Title V of the bill, "plan termination" is defined as a "complete termination and partial termination, as defined by the Corporation, including, but not limited to--(1) a substantial reduction in the level of benefits payable to participants or beneficiaries having nonforfeitable rights to such benefits; (2) a discontinuance of contributions to the plan; and (3) an involuntary termination of employment of a substantial group of employees covered by the plan."

In the House, the Bennett bill (H.R. 294) refers to a plan termination "for reasons of financial difficulty or bankruptcy, essentially involuntary closing of plant or facility (or subdivision, department or unit thereof), by order of the Secretary (of Labor), or such other reasons as the Corporation (administering the insurance system) by regulation shall specify as

reflecting an essentially involuntary plan termination." The Carney bill (H.R. 366) and the Railsback bill (H.R. 935) insure "against loss of nonforfeitable benefits to which . . ." beneficiaries ". . . are entitled under . . ." a ". . . pension plan arising from substantial cessation of one or more of the operations carried on by the contributing employer in one or more facilities of such employer before such plan has been fully funded." The Dent bill (H.R. 462) refers only to "termination," without further definition.

Section 401(a)(7) of the Internal Revenue Code provides that a pension trust fund is not qualified for tax purposes unless the plan provides that "upon its termination or upon complete discontinuance of contributions under the plan, the rights of all employees to benefits accrued to the date of such termination or discontinuance, to the extent then funded, or the amounts credited to the employees' accounts are nonforfeitable."

IRS regulations in Section 1.401-6 explain what is meant by a termination or complete discontinuance of contributions. It is a long and complicated explanation which in effect requires the IRS to make a determination on the facts in each case.

If some type of insurance program is to be enacted, I suggest that the definition of termination should be the same for IRS vesting purposes and for termination insurance purposes. The insurable event should occur at the same moment as 100 percent vesting under the Internal Revenue Code. I am not suggesting that the IRS definition be included in S. 4. A better definition might be developed, but the better definition should be used for both purposes. In any event, it seems to be impractical to require approval of the Secretary of Labor before a pension plan terminates if one of the conditions of approval is that the Secretary must be satisfied that there has been compliance with minimum funding standards.

With respect to the voluntary portability provisions in Title III of S. 4, I should like to raise a question in the hope that the intent will be clarified:

Is it contemplated that the Secretary of Labor will provide free actuarial service in (1) the course of accepting deposits as provided in Section 302, (2) making payments from individual accounts as provided in Section 305 or (3) providing technical assistance to employers, employee organizations, trustees and administrators pursuant to Section 306? A substantial amount of

actuarial work would be required in the practical operation of the Voluntary Portability Program.

As I read Section 302, I have the impression that the administrator of the pension plan would be responsible for determining the "sum of money equal to the current discounted value of the participant's vested rights under the plan" when the plan participant's employment is terminated. If that is the intent, the plan would bear the costs of actuarial work rather than the Department of Labor.

As I read Section 305, the burden of actuarial work would fall partly upon the Department of Labor and partly upon the receiving plan when a person with an account in the protability fund becomes a participant in a pension plan voluntarily participating in the portability program.

As I read Section 306, the Secretary of Labor would be expected to provide actuarial service in the development of reciprocity arrangements between plans and the development of special arrangements for portability of credits within a particular industry or area. The technical assistance

other than actuarial work which might be supplied would be relatively insubstantial, and so if this section is to be effective the Department of Labor would need to staff itself with actuaries to perform the anticipated functions.

As a technician I hope that it can be made clear in each of these sections as to who is responsible for doing or paying for the actuarial work--the Department of Labor or the plan administrators.

I do not purport to have covered all the technicalities in this legislation. In fact, I have mentioned only a few of them. Your staff and that of the Department of Labor have worked together effectively on technical matters and there is no reason why this cooperation cannot continue. Mr. Rose and I are available to discuss any technical problems with you or your staff, without attempting to articulate a Department of Labor position or an Administration position on the substantive provisions of S. 4.

The CHAIRMAN. Mr. Howard, you are appearing with Senator Stevenson. He is detained in a conference just outside the door.

STATEMENT OF HON. ADLAI E. STEVENSON III, A U.S. SENATOR FROM THE STATE OF ILLINOIS, ACCOMPANIED BY GORDON HOWARD, PENSIONER FROM ELGIN WATCH CO.

Mr. HOWARD. My name is Gordon Howard.

The CHAIRMAN. Your position was and is?

Mr. HOWARD. I am a pensioner of the Old Elgin Watch Co. I started there many years ago.

The CHAIRMAN. We are having a little difficulty hearing.

Senator Stevenson, we were just introduced to Mr. Howard. We appreciate your being with us.

Senator STEVENSON. Thank you, Mr. Chairman. I apologize for my tardiness. If Mr. Howard has already been introduced, I will wait.

The CHAIRMAN. Not fully. Why not introduce him?

Senator STEVENSON. Thank you, Mr. Chairman. I have the pleasure this morning of introducing Mr. Gordon Howard. Mr. Howard was born in Elgin, Ill. He worked for the Elgin Watch Co., starting in 1923, retired in 1961. He began with that company by working on the employee magazine, and ended his career as the advertising director of the company.

The Elgin Watch Co. was one of the great companies of the United States. It was for many years a pillar of strength and economic well-being in the community of Elgin, Ill. During many of those years Mr. Howard was an employee and in a position of responsibility with that company. Rather than continue to describe the company and what has happened at this company, I would like to leave that to Mr. Howard. Upon the completion of his remarks, I will, if I may, make a few of my own.

The CHAIRMAN. Fine.

Mr. HOWARD. I will just take a few minutes to tell you about the Elgin National Watch Co. They were founded in 1864 in the midst of the Civil War, and they produced the first watch in 1867. This watch was named after Elgin's first president, B. W. Raymond, who was twice mayor of Chicago.

Elgin's start was humble. It was in a two-story frame building, propped up by 2 by 4's to keep it from falling down from the vibration of the machinery. One night this frame building caught fire. The employees, the officials and their wives formed the bucket brigade to save it and they did, and then it grew.

They grew quite rapidly and were the world's largest fine jewelry watch factory. They were a happy family. They were not bosses to their help; they were fellow craftsmen who respected each other's ability. They were proud of their product. There were families who had four generations work for Elgin. From 1864 to 1961, 96 years, they had six presidents. Since 1962, through the present time, they have also had six presidents. Kind of like musical chairs.

There was also a feeling of room at the top for the employees. Our vice president in charge of manufacturing started as an errand boy. He was from Strawberry Point, Iowa. He worked for 50 cents a day, a 10-hour day. Our vice president in charge of marketing started

as an office boy and became the head of marketing and sales. These two men spent over a century in service.

At the peak, Elgin employed about 6,500 employees. Today they have 60. They did a vital job during the war. They were over 100 percent dedicated to the war work, while their competition, the Swiss watches, could produce all the watches and ship them to America that they possibly could without price controls on them and at the same time supply the enemy with the vital war instruments that they needed, timing devices.

The pension fund in Elgin was always strong in employee activities of all kinds. They were one of the first nationally known corporations that started the private pension plan. It started on October 1, 1918, and the company contributed $100,000 in Liberty Bonds to start it.

The CHAIRMAN. What year was that?

Mr. HOWARD. October 1, 1918, one of the original private pension plans. I maintain that that fund has been overfunded since its inception, and we will bring out some figures later. The present management, Elgin Industries, Inc., gained control in the mid- to late-sixties. They have completely changed the rules and regulations of the pension fund. They had difficult times when they met with the union, they had not much to bargain with, but always increased the pension fund as a fringe benefit. There was no severance pay that they had to award these employees.

Now the employees over 55 years' existence of the pension fund have contributed a gross amount of nearly $15 million. The company has contributed $12 million. There have been no contributions by the company to the pension fund since 1958. The present management has not contributed one penny to it.

The CHAIRMAN. Now you are not reading this statement; are you?

Mr. HOWARD. No, sir.

The CHAIRMAN. We can interrupt and it will not break you?

Mr. HOWARD. Please do.

The CHAIRMAN. This has always been a pension plan that was funded in part by employees' direct contributions?

Mr. HOWARD. That is right.

The CHAIRMAN. Since 1958 solely employees' contributions funded the plan?

Mr. HOWARD. That is right, sir.

The CHAIRMAN. It is a unique funding approach.

Mr. HOWARD. We think it is. There are a lot of unique things in the current events, Mr. Chairman.

The CHAIRMAN. What was it before 1958, when it was a jointly contributed fund, 50 to 50?

Mr. HOWARD. No; the employees made a contribution based on their age when they started employment. I have those figures somewhere here.

The CHAIRMAN. Just in rough terms, what is the average—50 percent employer?

Mr. HOWARD. Well the company in some years, the old company was bound to contribute a minimum percentage to the fund, I think that ran about 5 percent of the payroll. Now the employees, if they started at a young age, contributed at a much lesser percent.

I think I made the statement here that in the present report to the shareholders the company carries in their assets over $4 million, a figure I do not quite understand, is present paid pension expenses.

The present pension fund is worth about, well it is worth over $30 million. The company proposes to buy annuities for the pensioned employees, annuities which will prevent any further increases for the pensioners, even cost of living, and according to their own statement, their net recovery will be $12 million. This is something they have not contributed anything to. They have not encountered tax credits since January 1, 1971, through September 30. The corporation has lost over $16 million. This money will come to them entirely tax free.

Now on the point of taxes, to show the somewhat injustice of it, the employees paid taxes on their contributions. When they start on their pensions, the contributions are tax free, which usually takes about 2 years, but from then on they again pay income tax. The corporation will get this money tax free.

For instance, on some of the stocks that were bought many years ago, for instance Eastman Kodak, they bought 75 shares of stock at a cost of $37,000, now worth $1,200,000; 8,500 shares of Sharon Plow for $300,000, now worth $1.2 million; 5,000 shares of IBM for some $800,000. It is now worth $2,230,000.

That is a nice profit. There are capital gains on it.

In 1969 in a report of this company to their shareholders they said they were overfunded by $9 million. "And decided at this time to amend the pension plan, not terminate."

The pensioners—the employees at the present time have no representation at all on the board of trustees of the pension fund. This is entirely controlled by company officials and members of the board of directors. I think there are some interesting things that take place there. There is a Mr. Gould who is on the Board of Directors of Elgin. He is a trustee of the pension fund.

The CHAIRMAN. What is his firm name?

Mr. HOWARD. Milton S. Gould. As I say, he is a member of the Board of Directors of Elgin National Industries. He is a trustee of the pension fund. He is senior partner of Shea, Gould, Climentko & Kramer, which is the law firm that is handling this liquidation. I think that is an interesting coincidence. I am not condemning Mr. Gould as a man, because I do not know him.

Senator JAVITS. Can you tell us what Mr. Gould is proposing to do and how does he fit into the picture?

Mr. HOWARD. Well, Senator, as I mentioned, he is a member of the board of directors, No. 1, of the Elgin National Industries. No. 2, he is a member of the board of directors, as a member of the board of directors, he has been appointed trustee of the pension fund which controls it, the regulation is without any notifications to the pensioners, what they are. They have never communicated with the pensioners.

Senator JAVITS. What does he propose to do? I am just trying to tie Gould into this. What is he proposing to do that you object to?

Mr. HOWARD. Well, I think with a law firm that he is a senior member of, and is representing them, we would like to get a lot more information about the pension fund, which they have been very reluc-

tant to do. Their attorney who represents them, Mr. Jones, I would not say we have had the ultimate of cooperation from him.

Senator JAVITS. Gould is withholding information? I know this man. I know the law firm. That is why I am interested. I would like to know what you say he is responsible for. I do not quite get what you are charging against him.

Mr. HOWARD. He is responsible as a member of the board of trustees for the pension fund of all the actions of the pension fund.

Senator JAVITS. How many trustees are there?

Mr. HOWARD. I think there is about six, but they are all company officials. I am not condemning Mr. Gould. Please do not——

Senator JAVITS. I do not mind that you do. I am trying to pin down the facts.

Senator STEVENSON. If I may respond, Mr. Gould is masterminding this company's attempt to terminate the pension fund.

Senator JAVITS. That is what I was trying to pin down.

Mr. HOWARD. The pensioners of course are without funds. They have subscribed by dollars and different things to share the expenses of what has to be done, communication by letters. We have had some fine meetings in Elgin. I would say they are unusually good people. They are good citizens. They were faithful employees. They owned their homes in Elgin. As I say, four generations of some families work for old Elgin Watch Co. They are quiet people. They are proud people. They do not break laws, parade, picket, burn buildings or anything, but they are a hurt people.

As an example, some of them—one woman the other day came up to my home. "They said I cannot afford to give you anything. I only get $30 a month, but I know you have worked hard on this, Mr. Howard, I thought you would like this loaf of bread and some cookies." It is real touching, what they do.

The CHAIRMAN. Senator Stevenson spoke to me about this Elgin situation some weeks back. I expressed my gratitude that he would go to Elgin, which I understand Senator Stevenson did, and report back to us the situation as he saw it from his inquiry there. I wonder in a moment if we could turn to you and we could get your conclusions, your observations and conclusions from that inquiry you made, Senator?

Senator STEVENSON. I would be glad to, Mr. Chairman. Mr. Howard might remain, if you wish.

The CHAIRMAN. The company is down to 60 employees. The company is still an operating company, it has not been folded into any other operation; is that right?

Mr. HOWARD. Mr. Chairman, the company has sold their real estate in Elgin, what remains. The opinion of even the employees now is that they are going to phase out pretty quickly. If I may just for 1 minute, I have some evidence supporting the company's contributory efforts that I would like to introduce; is that all right, Senator?

Senator STEVENSON. I believe the chairman would be glad to have them.

The CHAIRMAN. These are the company's contributions to the plan?

Mr. HOWARD. This tells how they felt about—here is the 75th anniversary advertising of the annual report to the shareholders, and

certified by Price Waterhouse, signed by the president who at that time was Mr. Potter.

The CHAIRMAN. That was in the midfifties?

Mr. HOWARD. No; this was 1939. They are over 100 years old now.

The CHAIRMAN. That is right, it was founded around the time of the Civil War.

Mr. HOWARD. That is correct. This was mailed out to all the shareholders. It was mailed out to all the pensioners. It was mailed out to all the employees of the company.

This will just take a minute. They tell about the setup of the pension fund, how the contributions are based, to provide service retirement pensions starting at 65 for men and women, and so forth. But this is the interesting part:

> Employee contributions are returnable in full in the event of severance of employment. The company, however, releases all claims to its contributions. These immediately become the permanent part of the fund's operating capital and under no circumstances are returnable to the company.

They had handbooks that they issued to the employees. Every employee got one. This was the rules of his employment. This one was issued in 1938, I think:

> Contributions made by the company automatically become a part of the fund and under no circumstances may they be returned to the company.

A similar one in 1940. On their 85th anniversary for 1949, and I will just read this quickly:

> The company contributes a sum of equivalent to 5.49 percent of the total payroll to the pension fund. When an employee resigns or leaves, he may withdraw the entire amounts he has contributed. Company contributions, however, may not be returned to the company.

Thank you very much.

The CHAIRMAN. Thank you.

Senator STEVENSON. Thank you. This company has been in continuous existence as a corporate entity for a long time, as Mr. Howard mentioned. In recent years, outside interests began to acquire the common stock of the company. New management came in. That management now proposes to terminate this pension fund. I am told that if it happens according to the plans which have been advanced that the present owners of the company will acquire more out of this pension fund than they ever invested in the company. They will acquire the pension fund surplus as well as the company. In accordance with the suggestion that you made, Mr. Chairman, in your letter to me of February 1, I did conduct a 3-hour factfinding hearing in Elgin on Friday, February 9. The witnesses who testified at the hearing include pensioners, representatives of the company union, the company, pension experts, representatives of unions, and senior citizen organizations.

This subcommittee has documented numerous cases in which hundreds of thousands of innocent employees have suffered upon termination of underfunded pension plans. We know what happens when an underfunded plan terminates. The employee bears the risk of the loss.

The Elgin case is the other side of the coin. It demonstrates that when the termination involves an overfunded rather than an underfunded plan, the surplus may under existing law not go to the employees but to the company. What we have, then, is a no-win proposi-

tion for the employees and a no-lose proposition for the company. If for any reason the pension fund is too small, the employees are deprived of the benefits they were promised. If on the other hand, the fund proves to be larger than anticipated, the company may under existing law be able to terminate the plan and receive the entire surplus as a windfall.

As far as I can determine, the Elgin case constitutes the most extreme example of what can happen if the law permits companies to terminate overfunded plans at any time and for any reason. Elgin National Industries has not made any contributions to the pension fund since the overfunding was first discovered in 1957. Since then, much of the company's common stock has changed hands, and new management has taken over. Most of the contributions were made by the employees.

The company's contributions to the pension fund were deductible against corporate income for Federal tax purposes. For over 15 years, the income earned by investment of the money in the fund was exempt from taxes. Although the Internal Revenue Code provides that the surplus proceeds received by a company upon termination of a pension plan are taxable as ordinary income, it appears that in this case, Elgin National Industries may not have to pay any income tax on the surplus because the company has experienced large losses against which the surplus can be offset. Thus, if the efforts to terminate the plan are successful, it will be the company and not the employees who will be the prime beneficiary of the pension plan. It will be the company and not the employees which will reap the benefits of a 15 year tax-free investment program. But it will be the employees and not the company who will be left to live out their retirement years on small fixed pensions, which contain absolutely no protection against rising prices. And the taxpayers will have subsidized the company—not the employees.

Mr. Chairman, I submit that if this company can crack this pension fund to the tune of $12 million, and if new legislation permits a company to take the entire surplus upon termination of an overfunded plan, every overfunded plan will be viewed as fair game by financial manipulators and fast-buck artists. We cannot allow that to happen.

For that reason, I believe that S. 4 should contain explicit provisions guaranteeing the rights of employees to some or all of the surplus upon termination of overfunded plans. I see no reason why such provisions could not become effective upon the date of enactment. Employees could receive reasonable protection either by a requirement that the entire surplus inure to their benefit or by a requirement that any surplus available upon termination of an overfunded plan be used first to guarantee all pensioners full protection against cost of living increases. These safeguards could be worked into title IV of the act, under which the Secretary of Labor already has the power to disapprove proposed plan terminations which do not comply with the requirements of S. 4, or which avoid or circumvent the purposes of S. 4. You, your staff, and the minority staff have been most cooperative on this question. If you are persuaded that more explicit treatment of overfunded plan terminations is in the public interest. I would welcome the opportunity to work with you, Senator

Javits and the majority and minority staff in the preparation of statutory language addressed to this problem.

In closing, my experience with the Elgin case reinforces my conviction that pension reform, and specifically enactment of S. 4, is of the highest priority. I commend you and the committee for your energy and determination and stand ready to do all that I can to promote the enactment of this landmark bill.

Thank you.

The CHAIRMAN. We certainly thank you, Senator Stevenson and Mr. Howard. I made an observation that this long period of time with the employees the sole contributors to the pension fund is most unique. The fact that you appear close to the end as an operating company with a surplus in the fund is most unusual.

I will confess the legislation in the bill before us does not deal with this situation expressly, and I appreciate Senator Stevenson, your proffer of assistance to the committee. While you are no longer a member of the committee, we certainly will call on you to see whether this kind of situation can be provided for——

Senator STEVENSON. It really makes little difference whether the contributions are from the employee or from the company.

The CHAIRMAN. I appreciate that. I just made the point that we have two unique situations here. The overfunding, whatever the source of contributions to the fund, that is the situation you are primarily addressing yourself to in terms of the legislation.

Senator Javits.

Senator JAVITS. Senator Stevenson, you can help us in this way. The reason I asked the question I did is because if we are going to try this testify too, including Mr. Gould. Therefore, it is only in a legislative frame of reference that I addressed my question. I ask you, therefore, is it not a fact that you are impressing upon us the inclusion in the legislation of a provision respecting overfunded plans, rather than expecting us to come to some judgment as to the morality or propriety of what is being done about this plan?

Senator STEVENSON. Yes. I will say, Senator Javits, that representatives of the company and of the trustees did appear at our hearing that we conducted in Elgin. I made it quite clear then that if S. 4 was enacted, and with or without the suggestions that I have suggested, it might resolve the dispute in this very case, but certainly this is not a court of law. The matter is in a court of law, and the precise issues in the case cannot be resolved here.

Senator JAVITS. Thank you very much. I do not want to get us into the trial of somebody's character. Thank you.

The CHAIRMAN. Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman. I just would like a minute to recapitulate a few of the facts. As the chairman stated, this is such an unusual case. We are still in a state of shock about seeing a pension fund overfunded that I do not think we fully realize the implication here of what you are trying to tell us. It is my understanding that you say that $15 million was put in by individuals and $12 million by the company? Was that a given period of time or was that total input?

Mr. HOWARD. That was total gross input.

Senator SCHWEIKER. $15 million by individuals and $12 million by the company?

Mr. HOWARD. That is correct. Of course some of that $15 million was put in by the employees when they went to work for another company, quit their jobs, they could withdraw their money. But still the company has the use of that and probably profited by their investment.

Senator SCHWEIKER. In 1958 someone discovered that the fund was overfunded; is that correct?

Mr. HOWARD. I would think from the reports that we got, it has always been overfunded.

Senator SCHWEIKER. I believe you or someone said 1958 was the year that it first became public knowledge. It may well have been inside knowledge. Then they took certain actions. They in essence said no more company contributions, just individual contributions from then on, is that correct?

Mr. HOWARD. That is correct.

Senator SCHWEIKER. And then under the termination procedures, in essence the company will get back $12 million. I believe that was Senator Stevenson's statement. So in essence they are getting every cent back that theoretically the company put into the plan. You told me a moment ago that $12 million was their total contribution, not counting interest and investment, and now they are getting $12 million. They get it back tax free, because they can offset it against the loss the company suffered, which is really ironic.

Mr. HOWARD. That is correct.

Senator SCHWEIKER. I certainly concur with Senator Stevenson that we have got to provide against cases like this that occur. I just wonder about one other situation. Did anybody petition or discuss with the trustees the possibility of distributing that more equitably? In other words, what action has been taken by the beneficiaries to say that it ought to be divided in some workable way? Has any action legally or otherwise occurred where the suggestion was made that this was an equitable distribution?

Mr. HOWARD. We never received any communication from the company up until the time they held the hearings to tell us they were going to liquidate the pension fund, terminate it, and liquidate it. The first step that they made, and this started last August, was negotiate with the union, which consisted of about 15 employees. We heard about that. We sent a petition to the Elgin National—Elgin pension fund in New York, saying we should have some consideration. We started having no money, the pensioners, they started a letter writing campaign to the pension reform committee, and thank goodness they responded and helped bring us to this point.

We have had no direct communication with the pension trustees as a group.

Senator STEVENSON. That was one of the points that was emphasized over and over again during the hearings I conducted in Elgin. The then employees of the company were represented by a company union. There were 60 such employees. The far larger number of past employees, the pensioners were not represented. There was absolutely no representation for the pensioners. The suggestion was made repeatedly that there really ought to be some institutionalized way of guaranteeing the beneficiaries of a pension plan, some representation when it does come time

to consider the future in this case, a plan for termination of the plan. They were left out in the cold.

Senator SCHWEIKER. Did your hearings show up, Senator Stevenson, at all as to any reasons for the overfunding? Was it a matter of just an actuarial error? Changing conditions in the company? Again this is a tax-free contribution that the company was making at that point. Were there any other motivations as to how a pension fund got overfunded?

Senator STEVENSON. I do not think it was brought out. There could be a variety of reasons. I once served as a pension fund trustee as part of my duties as treasurer of the State of Illinois. Actuarial methods are changing, and it may be that the actuarial methods that contributions were once based on were overly conservative. They are becoming a little less so now-a-days. Maybe Mr. Howard would have some information.

Senator SCHWEIKER. Here is somebody that made a 40-percent error, as I see it, in the total picture. You are putting $15 and $12 million in. They are getting $12 million out. That is nearly 45 percent of the pie that somebody overcalculated it. It seems unusual. Do you have any light to throw on it?

Mr. HOWARD. I could only say it was done as speculation. The jewelry business is a very much up and down business. You get slight recessions or something, and naturally a luxury product like a watch is not purchased. So I think at times they were intentionally overfunding to safeguard against years when they might not be able to contribute as much.

Senator SCHWEIKER. At the time that new management acquired this company, did anyone get into the matter of whether when the company was last acquired taht the plum of the $12 million was a reason for acquisition and was a factor in acquisition, and with some gold nugget that somebody discovered? What that brought out at all, a factor in acquisition——

Mr. HOWARD. In my personal opinion, and the opinion of pensioners and officials of the company, our last president is serving on our pension committee to fight this, that this fell into the hands—Elgin was a very rich company, I mean cash on hand and so forth, and they had a very wealthy pension fund. When the stock was being purchased, I think it was a financial venture, may I say, with the eyes on the pension fund.

Senator SCHWEIKER. And the company that merged with it, were the pension benefits more liberal or less liberal? Who has the better pension plan now? The new controlled company or the Elgin plan? Can you tell me?

Mr. HOWARD. It is difficult without having the figures in the actuary reports available, of course. I would say the longer a person worked there, and the later he retired, they had better pensions, because the company had no money to negotiate when they sat down with the union. The only thing they had to negotiate was more liberal pension benefits.

Senator SCHWEIKER. When they decide to arbitrarily take $12 million back, are they treating the Elgin people differently than the rest of the people have been treated in the overall company's pension plan? Maybe you do not know that.

Mr. HOWARD. We had one group of pensions that were pensioned previous to January 1, 1963; I think there were about 456 pensioners at that time, and that includes from the President on down who were vested as pension. But the average pension was $50 per month. Some employees would work there for 50 years, one fellow I know, 50 years and 8 months, half a century, was drawing a pension of $50.

Senator SCHWEIKER. Fifty a month, and they gave back $12 million?

Mr. HOWARD. That is correct.

Senator SCHWEIKER. I think you answered the question. Thank you, Mr. Chairman, that is all I have.

The CHAIRMAN. Thank you very much.

Senator JAVITS. Just one other point. I did not wish by anything I said to indicate that we would not, with the greatest sympathy, look into what you want, as Senator Schweiker has brought out the details. We will do that; and as one of the coauthors of the bill I assure you of my own desire that we give great consideration to the possibility of an amendment. May I suggest, Senator Stevenson, the possibility of your giving us your ideas and text for an amendment.

Senator STEVENSON. I would be glad to, Senator Javits. I am confident I can say this on behalf of Mr. Howard, I in no way wanted in anything we said to reflect upon the character of any individual.

The CHAIRMAN. Thank you very much.

Our next witness is Senator Griffin.

STATEMENT OF HON. ROBERT P. GRIFFIN, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator GRIFFIN. Thank you, Mr. Chairman, members of the committee, I appreciate your willingness to hear me out of turn. I unfortunately will have to abbreviate my statement, because I have to get over to the floor. The Senate goes in at 11 o'clock. I am delighted to be here to indicate my interest in this subject and to commend the subcommittee for getting underway with hearings and consideration of legislation on this important subject so early in the session.

I recall that there was an effort made in the last session. While it was impossible to carry that effort through to the enactment of legislation, the majority leader, Senator Mansfield, did give assurance that this would be a matter of high priority in this session. I applaud that decision and statement by the majority leader and I applaud the action of this subcommittee in turning to the task early. I want to say that Congress has been talking a good deal about this subject, at least for the last 8 years, since a Presidential Cabinet committee recommended that there be legislation to set minimum vesting standards and to insure pension rights of the American working men and women. I think that the time for talking, and discussing, has come to an end and it is time to act.

The details of the various processes also are sure to be complex, but the issue at stake is quite simple. Will workers be treated merely as bookkeeping statistics to be written off when decisions are made that are beyond their control after working for many, many years to earn pension benefits? Or, are we going to enact legislation that will pro-

vide a minimum reasonable degree of security for these workers when they retire and have earned pension benefits?

I think we recognize that there have been even in the absence of legislation considerable improvement in many of the pension plans that have been enacted. But, the progress has not been rapid enough and it has not applied to nearly enough workers.

Mr. Chairman, I am not going into great detail about the various aspects of the legislation. I would like to focus on one provision in my bill, S. 75, one of the bills before the committee. It would make a change in the bankrupt situation. It provides that unfunded pension benefits to which a worker is immediately entitled would have priority over other claims except unpaid wages.

My particular bill, S. 75, would impose a responsibility for payment of pension benefits on the employer. That is not the case under present law, nor would it be the case under some of the other measures proposed. My bill seeks, in this way, to encourage sound funding of pension obligations by employers. Furthermore, I hope that a great deal of study will be given to the testimony of actuaries and other experts. But I believe that not only should past services be taken into account and given credit under whatever legislation is passed, but also that past benefits should be protected under the legislation that finally becomes law. And then my bill, S. 75, that is before the committee would have an effective date of 1 year after enactment rather than 3 years after enactment.

I call attention to that difference, and hope that maybe it would be possible to make the effective date earlier than it was in the bill enacted in the last session.

Mr. Chairman, I know that you have a long list of witnesses, and I do appreciate the opportunity to at least make a brief statement.

Mr. CHAIRMAN. Just a fast observation. We were grateful indeed to your contribution. Your full statement will be part of our record. We will study it and look forward to conferring with you, I know we all do, on two ideas that you suggest that are not here, the bankrupt situation—the bankrupt situation application priority, and the other one, the last point you made——

Senator GRIFFIN. Accelerating effective date. I think if it were actually possible, we ought to try to make it effective prior to the 3 years after enactment. There are a great many workers who are nearing retirement age. This legislation means a great deal to them, and we want to try to help as many of them as we can. I just might say that in the last year I received over 40,000 letters from Michigan workers alone on this subject. That is a great deal of correspondence on the subject. I am sure that it only represents the tip of the iceberg, in terms of concern both in my State and around the country on this particular subject.

Senator JAVITS. We will not detain you except to say, you are a great supporter of this and I know you will continue to be. It may be that some of your amendments would be better on the floor than before us. We certainly will consider them very carefully. They may involve other committee jurisdictions but I assure you we deeply appreciate the way in which you backed us up and your assurance that you will continue to do so.

(The prepared statement of Senator Griffin follows:)

PENSION REFORM LEGISLATION

Statement by U. S. SENATOR ROBERT P. GRIFFIN

Before the Senate Labor Subcommittee

February 15, 1973

Mr. Chairman, and Members of the Subcommittee, it is a pleasure to appear before the Subcommittee this morning to testify on the subject of pension reform legislation.

Nearly eight years ago a Presidential Cabinet Committee recommended Federal legislation to set minimum vesting standards and to insure the pension rights of American working men and women. If Congress had acted to protect workers' pensions back in 1965, many more thousands of workers would be assured today of receiving a pension at retirement than is otherwise the case.

Unfortunately, Congress is still debating what to do. Obviously, it is impossible to go back and correct all the inequities that have occured during the intervening years. However, further delays are inexcusable and the Committee is to be commended for moving promptly on the pending bills.

The details of the various legislative proposals are complex but the issue at stake is very simple. Will workers be treated merely as bookkeeping statistics to be written off when funds are not available for one reason or another -- or will they have a reasonable chance to receive the pension benefits they have worked for over a long period of time?

Although there has been a continuing improvement in pension plans, the progress is far too slow. Even now over one-fifth of pension plan members can only look forward to no vesting at all of their pension rights, no matter how long they work.

If a 10-year vesting standard were in effect today, an additional 3 1/2 million American workers, including nearly a million over age 50, would have immediate vested pension rights, according to Treasury Department estimates.

However, better vesting is only part of the answer. Pension rights are meaningless unless there is money to back them up. Plant closings can literally wipe out a lifetime of dedicated service under a pension plan and have been on the increase in recent years.

For instance, the number of terminated UAW pension plans doubled in 1970 over the average for the preceding 10 years. In 1971 the number of terminations doubled again.

The cost of providing Federal insurance to protect against the risk of termination would be relatively low. It is estimated that the annual premium cost would be only about one-tenth of 1 percent of annual pension contributions by employers. That is hardly an excessive cost to insure that workers get what they bargained for.

Mr. Chairman, it is extremely important to emphasize the concern of American workers over the future of their pensions. In addition to the testimony and letters received by your Subcommittee, I have received over 40,000 letters and communications from Michigan workers. I am sure the feelings of these workers in my State are just the tip of the iceberg and are representative of the concerns and anxieties of workers across the country.

As you know, I introduced in the last Congress, and again in this Congress, legislation (S. 75) to deal with the problem of inadequate vesting and pension plan terminations. S. 75 would require most plans with 15 or more participants to provide 100% vesting after 10 years of service.

The bill would also create a Federal Pension Insurance Corporation to administer an insurance program designed to protect against any loss of vested benefits, whether these benefits are earned before or after the date of enactment of the bill.

In addition the bill contains a truth-in-pensions proposal requiring better disclosure of pension plan terms to workers and imposing fiduciary standards to protect against the mismanagement of pension funds.

Mr. Chairman, although some of the provisions in my bill are similar to other bills in many respects, there are several important differences.

First, full vesting after 10 years of service is a standard already applicable to roughly 25% of all pension plan members. Congress should not go below this widely accepted practice in setting minimum vesting standards.

Second, any vesting requirement should apply to benefits earned before, as well as after, enactment of legislation. The major reason behind pension reform legislation is the grim story of benefits lost by workers nearing retirement. If Congress acts, but fails to help those most in need, the American worker will indeed have won a hollow victory.

Third, although my bill would not impose additional funding standards on pension plans, the objective of better funding would be achieved by placing principal responsibility for payment of pension benefits on the employer. If an employer terminates a plan voluntarily, by merger or otherwise, he should bear the full burden for any unfunded vested pension benefits.

Likewise, in the event of bankruptcy, my bill would amend the bankruptcy code to provide that unfunded pension benefits to which a worker is immediately entitled would have priority over all other claims except unpaid wages.

These provisions would encourage sound funding of pension obligations by employers.

Fourth, the effective date of pension reform legislation should be no later than 1 year after enactment. Any added

cost burdens can be met through appropriate transition and waiver provisions. A delay in implementing Federal standards is no different than a delay in passing the legislation in the first place.

Mr. Chairman, while I recognize that differences of opinion may exist on many of these issues, I believe the elements of pension legislation previously outlined would provide maximum worker protection with the least amount of Federal regulation.

Mr. Chairman, once again let me express my appreciation to you for allowing me to appear today and I join with you in the desire to see meaningful pension legislation enacted in the current session of Congress.

The CHAIRMAN. Senator Hartke is here.

Senator Hartke has become a reliable contributor to the bill during the deliberations of the Labor Committee.

STATEMENT OF HON. VANCE HARTKE, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator HARTKE. Chairman Williams, today promises to be the first bright day in the coming fight to reform the private pension system. And that reform is long overdue.

My own interest in private pension reform dates from 1964—the year in which the Studebaker plant in South Bend, Ind., closed its doors. The company remained in existence, but existing laws allowed it to escape its obligations to thousands of employees—employees who were left with no pensions after years of hard work.

Since that time, I have fought for Federal reinsurance of private pension plans. The Hartke plan was the pioneer reinsurance program and I am pleased to see that the Williams-Javits bill has incorporated most of the Hartke reinsurance features. Plan protection remains a top priority item.

Senators Williams and Javits have done some pioneering of their own—and they have done it in the field of vesting. Many plans have vague or arbitrary rules on who can participate, how long they must be employed before the employee has a vested right to a pension, and what effect occasional interruptions in service will have on an employee's pension.

Vesting is at the heart of the current battle over pension reform. Decent rules on vesting will open the way for more frequent job changes, increases in work satisfaction, and a more mobile, more effective labor force.

Throughout the 1960's, the American public has been assaulted with warnings about the rate of growth of productivity in American industry. Business groups are quick to point an accusing finger at labor. Sociologists have been quick to discover a new phenomenon—hippies on the assembly line.

There has been so much talk about how labor resists technological change, labor resists imports, labor this and labor that. Few have gone behind the rhetoric to find why labor might resist innovations that cost jobs or why foreign imports that close plants and devastate whole industries bring forth a demand for governmental action. Pensions or the lack of them are a big part of the story.

When an American loses his job, pension rights frequently go with him. Some plans offer an employee no security until he has actually retired. Forty years of service can disappear into nothing should a bad year force layoffs—and letting the oldest go first may save on pension expenses.

For too long, labor relations have been treated like a replay of the Army-Navy game. The worker loses and the whole country loses as our rate of economic growth is irretrievably slowed.

The William-Javits pension bill has taken an important first step to bringing some order and fairness in the field of vesting. The basic rule would require that all employees 25 or older with at least 1 year of

service with the company would be admitted to participate in the company's pension plan.

Thirty percent of benefits must be vested after 8 years. An additional 10 percent will vest every year until full vesting is achieved after 15 years.

Special conditions, specific exemptions nad flexibility for hardship cases have combined to erode the effectiveness of the vesting standard—and in some cases seriously delay its implementation.

Despite these definite shortcomings, Williams-Javits is a definite step ahead. I intend to work for it in the Senate Finance Committee and on the floor of the U.S. Senate. But I am also convinced that we must move more rapidly both to institute vesting standards and to improve our public pension system—social security. Accordingly, I have asked my staff to explore the feasibility of 100-percent vesting after 10 years of service with standards for 100-percent vesting declining to 5 years over time.

My staff is also working on the public pension-social security front. The eventual goal is to see that all retirees are assured a retirement income above the poverty level that will be increasingly financed out of general revenues.

Portability: Looking to the future, I am pleased to see that the current Williams-Javits bill has retained the portability provisions from last year. Portability not only opens up the possibility of greater labor mobility but may be the forerunner of more multi-employer and multi-industry pension plans.

In many ways, the existing TIAA/CREF—Teachers' Retirement Association—plans are a model for the future. Immediate vesting and full funding eliminate the need for reinsurance and create the best climate for economic growth.

Funding: Plan failures that have been so prevalent in our private pension system reflect the problem of promises made but not yet paid for. The famous Studebaker failure was a classic case of pension rights that had been vested but never funded—plant failure meant plan failure.

Williams-Javits proposes a 30-year period within which vested pension rights must be fully funded. I think this is neither fast enough nor broad enough in coverage. The Hartke staff is currently exploring the possibility of full funding within 25 years and eventual extension of funding requirements to encompass a certain proportion of potential through presently unvested liabilities.

Fiduciary standards: Only the tightening of fiduciary standards has evoked little opposition from either the administration or the pension industry itself. Despite the lack of opposition, the proposed changes in the fiduciary standards in the Williams-Javits bill are not mere paper tigers. They merit support and quick enactment.

The legislative future: Pension reform is one of those ideas whose time has very definitely come. The present social security system is still unable to meet the needs of all our citizens and private pensions have become an integral and highly valued part of the American retirement system.

Pension legislation system: Pension legislation in the 93d Congress will be but the first step in a continuing reassessment of our national

system of providing retirement income. Increasingly, the question of retirement, rights to pensions, the role of Social Security will be more consciously meshed with the needs for a mobile labor force and rapid technological innovation.

The Williams-Javits pension reform bill is a first step in the right direction. It does not take us all the way down the road, but it is not just a timid step forward. The entire Labor and Public Welfare Committee is to be commended for the thoughtful and thorough way in which the committee legislation has been prepared. Their efforts are a model for the preparation of social legislation.

As a pioneer in the field of pension reform I am very pleased to see the day of legislative action near at hand. I have fought all these years and will continue to fight—both for the Labor and Public Welfare Committee bill and for better plans in the future. Thank you.

The CHAIRMAN. It is a great statement, and strong statement, and we welcome it indeed. We are grateful to you for your position on the Finance Committee that when parts of this bill are before you, your attitude will be present and obviously made known to the committee. Where the Labor Committee and the Finance Committee do cross jurisdiction is at the point where we provide for 30-year funding; we have to recognize tax law, and therefore have the opportunity to communicate with the Finance Committee on this part of the bill.

Senator HARTKE. I can assure you it will not be held up in the Finance Committee. If you will move rapidly. I think the Finance Committee will move rapidly.

The CHAIRMAN. We appreciate that more than I can say.

Senator JAVITS. I would like to join the chairman in his observations, and not repeat them. I do think that the people will look to us not to get fouled up in jurisdiction. We are supposed to know something about labor, how to encourage it, and what is fair to it, and really the tax aspect of this matter incidental to the total picture.

I must say that I thought it was scandalous to nullify our work and our expertise particularly when there was not even a murmur over jurisdiction during the 3 years that we went about our job, with the close to $1 million that the Senate gave us. Then after only superficial consideration and in one leap, to strike virtually everything that was substantive out of the bill—that certainly does not promote respect for or credit to our legislative process in the Senate. So I greatly appreciate, Senator, your attitude. I thank you for it and I know the workers of the country thank you for it. I would like to remind also the workers of the country that you were one of the first to offer reinsurance. As a matter of fact, it was I who frustrated you in your effort to enact reinsurance separately. My reason was, and I am glad that now we see it together, that it is very difficult to insure a plan without making some provision to be sure that that plan is based on some reasonably sound funding standard, so the Government just is not buying an empty sack.

Your intentions and the purpose of our getting our feet to the fire was most admirable. I want to congratulate you.

Senator HARTKE. I want to thank you. It did disturb me, that we could go ahead and insure the stockbrokers on Wall Street and could

not insure workers on Main Street. That bothered me a little at that time. You have again demonstrated your effectiveness. I am not too sure of the wisdom of it but——

[Laughter.]

Senator JAVITS. I appreciated the tone of it, but a liberal, and I am a liberal just like you are, has to look into the package. If he is not wise about the liabilities imposed on the United States, the other taxpayers are not going to allow us latitude when we need it. That was my only point. So I am glad that we see eye to eye now.

Senator HARTKE. I personally would say to you that when you pass this bill, as I said, it is not a timid first step, it is a great first step, and I congratulate you for it. Let us move rapidly.

The CHAIRMAN. Thank you.

Senator SCHWEIKER. I just concur, thank you.

The CHAIRMAN. We will now receive for the record a statement from Senator Chiles.

STATEMENT OF HON. LAWTON CHILES, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator CHILES. In his book "Fulfilling Pension Expectations," Dan McGill pointed out:

> Private pension plans have become more than an instrument of business (and union) policy; they are now an imposing instrument of social policy. In a very real sense the business community and the federal government have become partners in a vast program designed to provdie economic security in old age.

There is, I feel, a great deal of truth to Mr. McGill's statement in its explanation of the difference in the way we look at pensions today from the way we used to look upon them. Pensions used to be viewed as a kind of gift—a bonus received after years of loyalty and hard work. But in recent years our views have changed considerably. Pensions are depended upon, expected; they are deferred wages to which employees are entitled.

The Senate Subcommittee on Labor has for the past 3 years, under the able leadership of Senator Williams, directed a detailed study of private pension plans in the United States. Their study documented the weaknesses of private pension plans—weaknesses which have made the difference between a comfortable, secure old age and years of deprivation. Experts now maintain that up to half the 30 to 35 million people now in jobs with pension plans may never receive a cent, because of shifts to another job, company shutdowns, or employer bankruptcy. And this unhappy prospect casts a threatening shadow of economic insecurity over the lives of millions of working Americans.

What is most encouraging about the bill S. 4, the committee is considering, is the fact that despite the complexity of the issue itself and the variety of opinions concerning the strengthening of the weaknesses of the system, the committee has come up with a proposal with strong bipartisan support and the cosponsorship of over half of the Senate.

It is my understanding that there are approximately 200,000 private retirement plans but most of these are individual plans for self-employed persons or for small businesses with only a few employees.

The present assets of these plans are $155 billion—one of the single biggest concentrations of capital in the world. And the committee has estimated that by 1980, some 42.3 million people will be covered and the plans will have nearly $250 billion in assets.

But though the money figures are astounding the human tragedy involved with this problem is the element that compels us to give the bill our full support and early consideration.

An article in the Miami Herald of December 17, 1972, cited the example of Stephen Duane who had worked for 32 years at an A. & P. coldstorage warehouse in Jersey City, N.J. He had, naturally enough, looked very much forward to receiving a company pension when he reached retirement age. He was counting on it. But in 1970, A. & P. shut down his warehouse and contracted the work out to another firm. And Duane at the age of 51—4 years short of reaching the company's minimum pension age, was fired; 32 years of service—"half my life" as he put it—and he gets nothing.

The actual number of people losing benefits through termination may be "small" according to the Department of Labor, but the loss to the individual is incalculable and tragic.

It is stories like Stephen Duane's—details of actual experiences of hardworking individuals—that stick in the minds of people, that grate against a simple sense of justice. When an employee leaves his place of employment—for any reason, voluntarily or because of a shutdown prior to achieving the required age and length of service and gets nothing—it is plainly unfair. And something ought to be done about it.

Under S. 4, 8 years of service will vest a worker with 30 percent of his retirement benefits; increased by 10 percent each year until full vesting is achieved at 15 years. The Internal Revenue Code requires sponsors to meet minimum levels of funding in private pension plans to qualify for tax exemptions. But the law does not require sponsors to maintain the funds at sufficiently high levels to guarantee payment of all liabilities to employees if the plans terminate because of business failure, plant transfer, merger or other reasons. S. 4 requires funding of all pension benefit liabilities over a 30-year period and also includes a Federal insurance program to assure against loss of pension benefits prior to full funding of a plan. The bill also establishes a voluntary system for portability enabling employees to transfer their vested rights from one plan to another when they change jobs. It provides improved and more stringent fiduciary standards and more comprehensive and understandable disclosure to plan participants of their rights and obligations.

S. 4 is not a cure-all to this complex question of private pensions. It is, admittedly, aimed at solving pension problems in the future and would not correct inequities that already have occurred. But such pension reform legislation has been talked about for years in the Congress and I believe this proposal is a workable measure that ought to be strongly supported. The personal experience of so many have been recorded and analyzed and recognized as unjust. And now it is time to correct the system that produced these injustices.

Because a pension plan isn't a lottery ticket or a bet on a horse, but rather a system of deferred payment of wages; and because most people believe that money paid into their pension fund by their employer belongs to them since they "earned" it; I have cosponsored S. 4, to

strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

The CHAIRMAN. Now the United Auto Workers, Pat Greathouse, vice president. President Woodcock had hoped we could have had these hearings on another day, and he hoped that we can move expeditiously on this legislation. We just could not accommodate his schedule that has him far away from Washington today.

We know his feeling, and his strong support will be more than adequately expressed by Vice President Pat Greathouse.

STATEMENT OF PAT GREATHOUSE, VICE PRESIDENT OF UNITED AUTO WORKERS, ACCOMPANIED BY JACK BEIDLER, LEGISLATIVE DIRECTOR, AND WILLARD SOLENBERGER, PENSION CONSULTANT

Mr. GREATHOUSE. My name is Pat Greathouse. I am vice president of UAW. I am accompanied by Jack Beidler, from our Washington office, and Willard Solenberger, actuary in our social security department. We will all be available for any questions you may want to ask, following the presentation.

As you pointed out, President Woodcock of our union did want to be here very much. It was impossible for him to be here today because of a very important conference in our union. What I would like to do in presenting the statement on his behalf, which has been given to your committee, would be to summarize the statement, rather than to read it, and to make a few comments on it, and then answer any questions that may come up.

President Woodcock was before your committee on June of last year, and at that time he stressed the long-standing commitment of our union to this kind of a program, and made a number of suggestions as to how the legislation which you were then considering could in his opinion be strengthened. We are happy to say that Senate bill S. 4 contains a number of these provisions, and in our opinion is a much stronger bill than you were considering in the last session.

We in the UAW are very concerned with this legislation. Providing guaranteed benefits is a prime concern to all of us and unions across the country. We know private pension plans are a very important factor in our economy. As was pointed out in the statement presented by President Woodcock, there are more than 32 million people covered by some type of retirement plan. The forecast is, there will be some 40 million within a relatively few years. Accumulated assets are well over $160 billion, growing at a rate of more than $10 billion annually.

Your subcommittee is also well aware, from your 3-year study of the functioning of private pension plans, that the system has grievous shortcomings affecting significant numbers of those who look to it for security in retirement. Too many workers with substantial service with their employers and well along in years have failed, through lack of reasonable vesting, to acquire non-forfeitable benefit rights prior to termination from their jobs. In too many plans—even if a minority—funding practices in relation to benefit liabilities have been inadequate. In too many plans—even if a still smaller minority—trust funds, supposedly consecrated to the securing of worker benefits, have

been manipulated for alien purposes. In too many instances the abrupt termination of a going plan, even if well designed and administered, leaves in its wake a trail of bruised or broken pension promises.

Nor do I need to stress the patent fact that these and other shortcomings call for comprehensive, interrelated reform legislation, not piecemeal gestures. Your subcommittee has properly addressed itself to the need for a broad and comprehensive approach to strengthening the performance of the private pension system. We are confident, Mr. Chairman, that measures of the kind embodied in S. 4 can and should enable the system to better fulfill its role as a meaningful and flexible part of total retirement security for millions of wage earners in addition to the basic and still all too minimal benefits of social security.

UAW PENSION PLANS—MEMBERSHIP STAKE

The concern and stake of UAW members and their families in the effectiveness of the private pension system is long-standing.

Our union pioneered in the historic breakthrough—more than 23 years ago—which for the first time established private plan pension coverage for large numbers of blue collar production workers in America. Since that time, UAW-negotiated pension programs have been widely recognized as playing a significant role in shaping and contributing to the development of industrial plans.

At present we have some 1,500 contracts which include pension commitments, entailing plans of all sizes and types applicable to some 1.2 million UAW members (as well as thousands of others) working in the automobile, aerospace, agricultural implement and supplier industries. Approximately a quarter of a million pensioners are currently drawing benefits. Annual pension payments in 1971 amounted to approximately $500 million. We estimate current pension fund assets of more than $6 billion in these plans, with liabilities still to be funded probably at least equal to this figure.

We have constantly sought to make our plans responsive to the needs of our members, both active and retired.

From the beginning we have put emphasis on the inclusion of sound basic pension principles as essential building blocks, not only in major plans, but in the smallest. With few exceptions, UAW negotiated programs include provision for systematic funding of current and prior service costs, as determined by independent actuaries; joint union-management administrative boards to determine benefit rights of participants; use of qualified independent fiduciary institutions (banks or insurance companies) to receive and invest plan contributions; and annual reports on plan operations and financial condition.

UAW members have consistently given a high priority to pension benefits in collective bargaining. Repeatedly, with membership support from all age groups, decisions have been made to direct substantial parts of potential economic packages into pensions. Understandably, the initial plans in the early 1950's put primary emphasis on the immediate income needs of workers then near or past normal retirement age. As the plans developed under successive contracts, vesting provisions were introduced and liberalized until, by 1964, full vesting after 10 years' service at any age had been achieved as a definite UAW pattern. Other evolutions, making use of the valuable flexibility in-

herent in the private pension system, have included meaningful early retirement provisions with special supplements or allowances in addition to basic pensions, more adequate disability protection, liberalized service crediting. We have also pioneered subsidized survivor benefit elections with a substantial part of the cost borne by the plan rather than by an actuarially equivalent reduction in the worker's pension. In addition, we have recognized a continuing obligation to improve and protect the purchasing power of pensions being received by retired members.

As a corollary to the priority our membership has placed on pensions in collective bargaining, we have had considerable experience with instances where plans can run into trouble, particularly in the case of abrupt and unforeseen termination.

It is against this background of our members' stake in the system, Mr. Chairman, that I wish to offer specific comment today on the matters dealt with in Senate bill S. 4.

INSURANCE OF RISK OF PLAN TERMINATION

In the view of the UAW, a sound, workable and immediately effective program of plan termination insurance is a centrally important and indispensible element of any pension reform worthy of the name.

In testimony before this subcommittee last year, we expressed our concern over the fact that the initial formulation of a reinsurance provision under S. 3598 (the earlier version of the present bill), while a forward step, would have almost completely bypassed the present generation of workers because of its delayed implementation, exclusion of benefits earned prior to implementation and applicability only to future benefits becoming vested under minimum prospective standards.

We are gratified that, after further weighing of the issues and needs, this initial formulation has been fundamentally revised and that the termination insurance program, as endorsed and reported by your full committee last fall and now included in S. 4, meets basic principles we have long advocated and which we believe merit and will receive broad support.

We believe reinsurance coverage of pension plans should be mandatory and effective promptly after enactment of legislation.

As a minimum goal, plan participants and beneficiaries should be protected against loss of pension benefits to which they have vested rights under the terms of the particular plan, including benefits based on service before as well as after enactment of legislation.

We believe premiums should be assessed against all plans at uniform rates based on the unfunded insured liabilities of each plan.

To the broadest extent possible, insured benefit guarantees should cover all types of plan terminations, including partial discontinuances, subject to reasonable safeguards to prevent abuse and unloading of liabilities.

VESTING AND FUNDING

Under S. 4 the provisions covering mandatory minimum vesting and funding standards are scheduled to take effect 3 years after enactment of the act, in contrast to the timetable of 1 year for full effectiveness of plan termination insurance and voluntary portability arrangements. We believe this distinction is justifiable, Mr. Chairman, for the

reasons you indicated in your summary of the bill, including the urgency of giving workers the protection of plan terminations as promptly as possible while allowing an additional period for pension plans, particularly those involving collective bargaining, to make any required adjustments with respect to their present vesting and funding.

MINIMUM VESTING STANDARDS

Establishment of minimum vesting standards for all private plans to which workers look for retirement security is long overdue. It makes neither economic nor social sense to impose a penalty of loss of substantial earned pension rights on a worker who, after a significant period of service, is separated voluntarily or involuntarily from his job before retirement age.

The vesting formula proposed in S. 4 would provide graded vesting starting with 30 percent after 8 years and increasing by additional 10-percent increments for additional service up to 15 years, at which point vesting would be 100 percent.

We note and commend, Mr. Chairman, two important changes which have been made in the initially contemplated provisions: First, the inclusion of prior service as well as future service as the basis for minimum vesting in the case of workers aged 45 or over on the effective date of the legislation. Second, the very sound provision that if a plan's present vesting schedule is equal to or better than the minimum stadard in its overall effect, it will be considered as meeting requirements.

With these changes, we think the vesting provisions of S. 4 represent a reasonable starting-point approach to meeting the most urgent needs in this important areas of pension reform. We urge, however, that further consideration be given to bring in past service under the minimum for workers below age 45. In view of the flexibility permitted by the variance provisions of the act, to allow extra time for certain plans with inferior vesting to come into full compliance, we think no undue cost burdens would be imposed on existing plans by reducing or elminating this age feature and we believe the cost estimates for various vesting provisions prepared by independent actuaries for this subcommittee bear this out.

I have already mentioned the high priority which the UAW has given to vesting and the fact 10-year vesting, without age requirements, based on all service, prevails in the great majority of UAW-negotiated plans.

The significance of this standard in terms of worker protection is demonstrated in most recent data we have for our pension plans with the "Big Four" automobile manufacturers:

As of January 1, 1972, out of a total of 779,000 active workers covered by these plans—

More than 44 percent of all workers had met requirements for 100-percent vesting and could count on full accrued benefits at age 65 (or actuarially equivalent amount at age 60), whether or not they remain with the companies until retirement.

Among those age 40 and over, with perhaps the greatest stake in retirement security, four out of five (79.4 percent) were fully vested.

This ratio increases significantly with age, the vested percentages becoming 84 percent for those 45 and over, 88 percent for those above 50 and 91 percent for those over 55.

More complete data are summarized in an appendix which I submit with this testimony.

MINIMUM STANDARDS FOR FUNDING

A comprehensive approach to pension reform, including the essential element of plan termination insurance, must likewise include consideration of appropriate minimum standards to be followed in funding accrued and accruing pension benefits.

We believe the standard proposed in S. 4—requiring, as a minimum, that plan contributions be sufficient to meet current service costs and to amortize unfunded past service costs over periods not in excess of 30 years—is a reasonable and practicable objective. For a great many plans, including most of those covered by UAW negotiated agreements, the standard should require little, if any, change in present practices. Where changes are required, the time allowed for such changes, coupled with the "variance" provisions included in the bill, should make compliance feasible.

It is worth noting that satutory funding standards already in effect in Canada for some years are actually more stringent. Our experience as an international union, with numerous collectively bargained pension contracts is that country, convince us that the fears sometimes expressed to the effect that any legislated funding standards will stifle the development and flexibility potential of private pensions are groundless.

FIDUCIARY STANDARDS AND DISCLOSURE REQUIREMENTS

As I indicated at the beginning of my remarks, the UAW has long supported the enactment of Federal standards of fiduciary conduct in the handling of employee benefit funds. We also support measures to assure more intelligible disclosure of descriptive and financial information to covered workers and other interested persons. The specific provisions in S. 4 are long overdue and should be effective, workable and scarcely controversial.

VOLUNTARY PENSION PORTABILITY PROGRAM

This feature of S. 4, as stated in title III, is intended to "facilitate the voluntary transfer of vested credits" from one pension plan to another when workers change jobs. A plan's membership in the portability program would be voluntary.

A worker separated from a member plan could request the plan to transfer a sum of money equal to "the current discounted value" of his vested credits to a central portability fund to be held in an individual account and either: (1) transferred later to the plan of a new employer if the new plan is a member of the program) so as to purchase credits of equivalent value or (2) used to buy a single premium life annuity when he reaches age 65. If he should die before either of these payouts, the value of the account would be available as a death benefit.

Such a voluntary arrangement could conceivably be a useful and worthwhile mechanism for those retirement plans whose design, funding and type of benefits would make it practicable—that is, profit-sharing, money purchase or similar plans providing benefits based on allocated assets (individual accounts or individual annuities) derived from employer (or employee) contributions.

We have some genuine doubts, however, about its technical applicapability and usefulness to the more typical plans covering the great majority of workers which operate with pooled funds of unallocated assets. At least to the extent such funds are derived from employer contributions, they serve as a general reserve to provide promised future pensions to active or former employees who meet the plan's eligibility requirements and are not assignable to indivdual participants. Even if the variation in benefit structures, funding methods and "depth" of funding in such plans could be matched up, I understand from our actuaries who have studied the provisions of this part of the bill that there would be still serious technical and equity problems in the way of their effective participation in this scheme. There may be some danger, therefore, Mr. Chairman, that this is understandably an appealing feature of S. 4 that would raise unrealizable hopes and expectations on the part of a great many workers.

Certainly, in any order of priorities, we believe legislated minimum vesting standards and voluntary liberalization of vesting beyond such standards, coupled with reinsurance of the risk of plan termination, is the most effective means of achieving practical and widepsread pension "portability."

CONCLUSION

Let me conclude by saying that the present session of this Congress has a unique opportunity to adopt comprehensive, logical and constructive legislation to improve the effectiveness of the private pension system, make it more equitable in its distribution of benefits, assure that pension funds are managed in the interests of covered workers, and more fairly allocate the costs of plan terminations.

We believe that Senate bill S. 4, as now constituted, includes the principles on which this legislation must be based.

As you are aware, Mr. Chairman, the UAW has endorsed and is working strongly for the passage of Senate bill S. 3—the Health Security Act. On the basis of our union's long-standing commitment to passage of meaningful pension reform legislation, I have no hesitation in assuring you of our membership's full support of Senate bill S. 4—the Retirement Income Security for Employees Act.

We urge passage of this legislation. The hour is late. As you so well pointed out in your statement to the Senate in introducing S. 4, "the changes envisioned in this bill are long, long overdue—it would be an outrage if we failed to act."

I am confident that affirmative action by the Congress will be responsive to the concerns of millions of working people with a stake in the effective functioning of private pension plans and that such action will add greatly to retirement security which is rightfully theirs at the end of their working years while at the same time preserving the system's valuable potential for continuing flexibility, innovation and growth.

We congratulate you on the submission of this kind of bill, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Greathouse, for this statement. Let me also say that your union and your staff has been most helpful to our staff in developing the legislation. Mr. Solenberger is known nationally to be one of the most knowledgeable men in the actuarial part of this pension plan development. He has made a great contribution to our staff.

I want to make another observation. The last time I had the honor to be with Walter Reuther was at the UAW convention in Atlantic City. It was just prior to his most untimely death. At that point the union's objective as I recall it, was cryptically stated as "30 and out."

I said I subscribe to it. Give me 30 years in the Senate and I will be willing to retire, too. Lightly said.

But it was meaningful, the objective there.

When you say that more than 44 percent of all workers had met requirements for more than 100-percent vesting, a count of full accrued benefits at age 65 or actuarially equivalent at age 60, now this is part of

Mr. GREATHOUSE. These are the people who would be vested if they leave. The "30 and out" provision, a supplemental program is in effect for people who retire directly from the plants. What we are saying is that 44 percent of the people that are working there now, if they left the plant tomorrow, would still have full vesting for the years of service that they had been there on the basic pension plan.

The CHAIRMAN. So the "30 and out" objective——

Mr. GREATHOUSE. Thirty and out objective now in effect in the contract is that any worker with at least 30 years of service and at least 56 years of age may retire with $500 a month.

The CHAIRMAN. That was the additional feature, at least 56 years——

Mr. GREATHOUSE. It was 58 until this year, and it automatically dropped to 56.

The CHAIRMAN. Thank you very much.

Senator JAVITS. Like Chairman Williams, I welcome the support of the UAW. It has been powerful in bringing around the support of the majority of the Senate for this bill. So I thank you for it. I have just one or two thoughts, and would appreciate your comment. I know you did not testify to a paragraph that President Woodcock has in his statement about central recordkeeping, as may be a step in the right direction if we cannot get too much done with portability.

I like that idea, and we would welcome your cooperation in looking into it carefully to see if it is practical and not too expensive.

Mr. GREATHOUSE. I like it, too. I think it is a very good item. I did not pass over it for that reason. We think it is a very good provision.

Senator JAVITS. We, too, are worried about portability. Ideally, we should have a central pension bank in this country. Perhaps it will come. We thought, as a beginning on portability that this is about the best we could do.

Finally, I would like to ask you a question, if I may. You may like to refer to the union's board and perhaps give us a written answer, but I will ask it of you.

It has occurred to me that there is a real erosion in the morale of the American worker. This has been much discussed. We had, as a matter of fact, some hearings of this committee on it, over which Senator Kennedy presided. And it is of very deep concern to me. I thought that this bill is one of a number of measures which could go a long way toward rebuilding the confidence of the worker in the American economic system, and its justice, and thereby repair or restore some of the morale which has been eroded. Morale is an indefinable quality, but pretty important when it comes to whether you are getting a tight or a loose automobile, or whether the costs are being terribly increased because of absenteeism and other problems, or whether the workers complain that the assembly line is moving too fast, and so forth.

I just wondered whether you would like to express yourself on this matter.

I am inspired to ask you because of your reference to S. 3, the Health Security Act. It seemed to me that pension reform, health security, and I hope, some form of expanded profit-sharing might all represent real considerations to rebuilding morale of the worker, confidence in the system, and willingness to work in it effectively.

Mr. Greathouse. I think it is certainly an important piece of social legislation, just as S. 3 is, and while S. 3 would probably affect more of our members than S. 4, because substantial portions of our people we think are working for large multiplant corporations and would generally have the guarantees, the idea of having them is very important to us, and certainly helps the morale of our people.

In Senator Hartke's testimony one of the initial things that he referred to was the closedown of the Studebaker plant in South Bend, which our union was directly involved in. Shortly after negotiating pensions, we saw thousands go out the door without promised benefits. This is still happening.

Just last summer, Senator Mondale held hearings up in Minneapolis, where we had a closedown of the Minneapolis Moline plant. It was a situation where this company was purchased by White Motor Truck Co. The White Motor Truck Co. is not going out of business, but made a decision on the matter of moving work out of there. They said to us we are going to terminate the pension plan for these employees, but then we may keep working the plant and hire them back as new people and continue working some of them in the plant on this work. We are going to terminate the pension plan, wipe out the liability that we have, and wipe out the benefits for these people that worked there for many, many years. This is a typical example. It was a key case in the hearings in which Senator Mondale was involved, as I said.

We have many small plant terminations. I think we had over 50 in the last 2 years—which you might not ordinarily think of as involving the UAW. So anything we can do here, whether many or few workers are directly involved, will certainly help the morale and feeling of security that workers have, and I think it will help us in our whole economic situation.

Senator Javits. Thank you very much.

The Chairman. Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman. I just want to commend your union for your leadership, not only in pushing good legislation for reforming pensions in this area, but by doing by your example in your contracts and in your day-to-day pension work. You folks have been a leader in this regard, too, and that certainly gives you a lot of weight when you come before our committee and make suggestions, because you have set the example, and we appreciate it. We appreciate your support of our efforts.

Mr. GREATHOUSE. Thank you.

The CHAIRMAN. Thank you again.

(The prepared statement of Mr. Woodcock, president of the United Auto Workers, follows:)

STATEMENT ON PENSION REFORM LEGISLATION
BY LEONARD WOODCOCK, PRESIDENT, INTERNATIONAL UNION UAW
PRESENTED ON HIS BEHALF BY PAT GREATHOUSE, VICE PRESIDENT, UAW
BEFORE
SUBCOMMITTEE ON LABOR, SENATE COMMITTEE ON LABOR & PUBLIC WELFARE
FEBRUARY 15, 1973

Mr. Chairman, I had the privilege of appearing before this Subcommittee in June of last year to express, on behalf of the more than 1.6 million men and women of the UAW, our deep concern about measures to strengthen the performance of our nation's private pension system. At that time I stressed our long-standing commitment to passage of legislation (1) establishing a broadly based federal insurance program to protect pension promises when plans terminate; (2) instituting reasonable minimum standards for the funding of pension benefits and the vesting of workers' rights to these benefits; and (3) providing for adequate disclosure of plan operations and clear, enforceable federal guidelines governing the fiduciary responsibility of those entrusted with administration of employee benefit funds.

These are, of course, the stated key objectives of Senate Bill S. 4, the Retirement Income Security for Employees Act of 1973. I am happy to come before you again to present our views on the subject matter of this bill. I am also happy to note that a number of the changes in the bill's provisions, particularly those relating to vesting and termination insurance, which we of the UAW felt were important at the time of last summer's hearings, have been adopted. It is our fervent hope that the bill's early introduction in this first session of the new Congress and the impressive list of co-sponsors who have joined their names with yours and that of your

distinguished colleague, Senator Javits, means that pension reform will now receive the priority attention which millions of working people in this country believe it deserves.

I hardly need to stress the significance of private pension plans as a major economic and social institution in America today. The statistics, of which your Subcommittee is well aware, speak for themselves:

- More than 32 million workers covered by some type of retirement plan with forecasts of over 40 million within a relatively few years.
- Accumulated assets of well over $160 billion, growing at a rate of more than $10 billion annually and appropriately cited as "the largest accrual of virtually unregulated funds in the country."

Your Subcommittee is also well aware, from your three-year study of the functioning of private pension plans, that the system has grievous shortcomings affecting significant numbers of those who look to it for security in retirement. Too many workers with substantial service with their employers and well along in years have failed, through lack of reasonable vesting, to acquire non-forfeitable benefit rights prior to termination from their jobs. In too many plans -- even if a minority -- funding practices in relation to benefit liabilities have been inadequate. In too many plans -- even if a still smaller minority -- trust funds, supposedly consecrated to the securing of worker benefits, have been manipulated for alien purposes. In too many instances the abrupt termination of a going plan, even if well designed and administered, leaves in its wake a trail of bruised or broken pension promises.

Nor do I need to stress the patent fact that these and other shortcomings call for comprehensive, interrelated reform legislation, not piecemeal gestures.

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It is against this background of our members' stake in the system, Mr. Chairman, that I wish to offer specific comment today on the matters dealt with in Senate Bill S. 4.

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In the view of the UAW, a sound, workable and immediately effective program of plan termination insurance is a centrally important and indispensible element of any pension reform worthy of the name.

When I testified before this Subcommittee last year, I expressed our concern over the fact that the initial formulation of a reinsurance provision under S. 3598 (the earlier version of the present bill), while a forward step, would have almost completely by-passed the present generation of workers because of its delayed implementation, exclusion of benefits earned prior to implementation and applicability only to future benefits becoming vested under minimum prospective standards.

We are gratified that, after further weighing of the issues and needs, this initial formulation has been fundamentally revised and that the termination insurance program, as endorsed and reported by your full Committee last fall and now included in S. 4, meets basic principles we have long advocated and which we believe merit and will receive broad support.

Without attempting to go into the technical details of the reinsurance title of the bill, let me recap four of these principles which we see as particularly important.

1. <u>Reinsurance coverage of pension plans should be mandatory and effective promptly after enactment of legislation.</u>

Mandatory and basically universal coverage of all pension plans is necessary to achieve the broadest possible sharing of risks and to minimize required premiums. Once termination insurance has been enacted, workers have every right to expect that their plans will be brought unders its protection as soon as administratively feasible. S. 4 meets these objectives. Essentially all plans must obtain and maintain insurance under the program. The only exception which we believe merits further examination is the exclusion of plans covering 25 or fewer participants. It appears desirable to lower this limit, if possible, or at least to permit voluntary adherence of "under 25" plans meeting specified requirements.

2. <u>As a minimum goal, plan participants and beneficiaries should be protected against loss of pension benefits to which they have vested rights under the terms of the particular plan, including benefits based on service before as well as after enactment of legislation.</u>

The definition of the benefits to be guaranteed under the program, in the event of a plan termination with insufficient assets to secure them, is of critical importance. We believe a reasonable starting point is to focus protection on benefits of the type normally paid as life income to eligible employees or former employees and surviving beneficiaries. The benefits would include those for which they are

eligible either immediately or on a deferred basis as a result of meeting plan requirements for vesting. One advantage of this approach is that it will leave private plans free to exercise a maximum degree of innovation and flexibility in meeting auxiliary benefit needs and objectives -- e.g., early retirement arrangements, special supplements, etc. -- with incurring additional reinsurance costs. A further advantage is avoidance of the necessity for elaborate rules to decide what is covered and what is not.

As we understand S. 4, Mr. Chairman, its protection will meet this minimum goal on an equitable basis.

3. Premiums should be assessed against all plans at uniform rates based on the unfunded insured liabilities of each plan.

We believe, on the basis of independent review by UAW actuaries, that the maximum basic annual premium of not more than .2% proposed in S. 4 for the first three years of operation of the program is reasonable and appropriate. In connection with any initially adopted premium, it is, of course, necessary to allow leeway for later revision, in the light of experience, as S. 4 provides. The further provision of the bill, contemplating an additional premium not to exceed .2% with respect to vested unfunded liabilities incurred prior to enactment of the Act where previous funding may have been inadequate, is likewise sound in principle. The specific question of the formula by which such prior inadequacy of funding should be tested may require further examination. The vital point from the standpoint of workers' interests, of course, is that protection should apply to pre-enactment liabilities.

4. <u>To the broadest extent possible, insured benefit guarantees should cover all types of plan terminations, including partial discontinuances, subject to reasonable safeguards to prevent abuse and "unloading" of liabilities.</u>

Perhaps the most frequent argument advanced by opponents of pension termination insurance is the one concerning potential abuses of the program. S. 4 includes two safeguarding features, which should provide effective deterrants against possible abuse.

The first is the "3-year waiting period" provision in Section 403, under which unfunded benefit liabilities of new plans, as well as additional unfunded liabilities resulting from plan amendments will not be covered in the event of plan termination within 3 years after the liabilities were established.

The second is the feature, in Section 405, providing that when a demonstrably solvent company (or its successor) terminates a pension plan, it may be required to reimburse the reinsurance program for a portion of the unfunded benefits which the program has paid off or guaranteed. We believe the concept underlying this feature not only protects the integrity of the termination insurance fund but makes practicable the full implementation of insurance guarantees in virtually all plan terminations, as now contemplated in the bill, with final assessment of appropriate employer co-liability appropriately left for later determination.

A further commendable aspect of the principle of employer co-liability is the salutary effect it may have in injecting a greater degree of social responsibility into some of the acquisition-and-discard transactions of conglomerate corporations.

It is tragic enough, Mr. Chairman, when a small company goes bankrupt and is forced to abandon its business and a pension plan because of market shifts, economic pressures or other circumstances. Even more tragic, however, are the cases -- some of which have been cited in testimony before this Subcommittee and with which our Union has had all too frequent experience -- where a conglomerate gobbles up a smaller firm and shortly afterwards decides to liquidate it and terminate its pension plan. The conglomerate's solvency is hardly in question. It has probably increased. Justice certainly requires that vested benefit losses incurred by workers in either situation be covered by reinsurance. Equity dictates that in the case of the conglomerate there should be appropriate co-liability for the cost.

VESTING AND FUNDING

Under S. 4 the provisions covering mandatory minimum vesting and funding standards are scheduled to take effect three years after enactment of the Act, in contrast to the timetable of one year for full effectiveness of plan termination insurance and voluntary portability arrangements. We believe this distinction is justifiable, Mr. Chairman, for the reasons you indicated in your summary of the bill, including the urgency of giving workers the protection of plan terminations as promptly as possible while allowing an additional period for pension plans, particular those involving collective bargaining, to make any required adjustments with respect to their present vesting and funding.

A. Minimum Vesting Standards

Establishment of minimum vesting standards for all private plans to which workers look for retirement security is long overdue. It makes neither economic

nor social sense to impose a penalty of loss of substantial earned pension rights on a worker who, after a significant period of service, is separated voluntarily or involuntarily from his job before retirement age.

The vesting formula proposed in S. 4 would provide graded vesting starting with 30% after 8 years and increasing by additional 10% increments for additional service up to 15 years, at which point vesting would be 100%.

We note and commend, Mr. Chairman, two important changes which have been made in the initially contemplated provisions: Firstly, the inclusion of prior service as well as future service as the basis for minimum vesting in the case of workers aged 45 or over on the effective date of the legislation. Secondly, the very sound provision that if a plan's present vesting schedule is equal to or better than the minimum standard in its overall effect, it will be considered as meeting requirements.

With these changes, we think the vesting provisions of S. 4 represent a reasonable "starting point" approach to meeting the most urgent needs in this important area of pension reform. We urge, however, that further consideration be given to bringing past service under the minimum for workers below age 45. In view of the flexibility permitted by the "variance" provisions of the Act, to allow extra time for certain plans with inferior vesting to come into full compliance, we think no undue cost burdens would be imposed on existing plans by reducing or eliminating this age feature and we believe the cost estimates for various vesting provisions prepared by independent actuaries for this Subcommittee bear this out.

I have already mentioned the high priority which the UAW has given to vesting and the fact 10 year vesting, without age requirements, based on all

service, prevails in the great majority of UAW-negotiated plans.

The significance of this standard in terms of worker protection is demonstrated in the most recent data we have for our pension plans with the "Big Four"* automobile manufacturers:

As of January 1, 1972, out of a total of 779,000 active workers covered by these plans --

- More than 44% of all workers had met requirements for 100% vesting and could count on full accrued benefits at age 65 (or actuarially equivalent amount at age 60), whether or not they remain with the companies until retirement.
- Among those age 40 and over, with perhaps the greatest stake in retirement security, four out of five (79.4%) were fully vested.
- This ratio increases significantly with age, the vested percentages becoming 84% for those 45 and over, 88% for those above 50 and 91% for those over 55.

More complete data are summarized in an appendix which I submit with this testimony.

B. Minimum Standards for Funding

A comprehensive approach to pension reform, including the essential element of plan termination insurance, must likewise include consideration of appropriate minimum standards to be followed in funding accrued and accruing pension benefits.

We believe the standard proposed in S. 4 -- requiring, as a minimum,

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* General Motors, Ford, Chrysler and American Motors

that plan contributions be sufficient to meet current service costs and to amortize unfunded past service costs over periods not in excess of 30 years -- is a reasonable and practicable objective. For a great many plans, including most of those covered by UAW negotiated agreements, the standard should require little, if any, change in present practices. Where changes are required, the time allowed for such changes, coupled with the "variance" provisions included in the bill, should make compliance feasible.

It is worth noting that statutory funding standards already in effect in Canada for some years are actually more stringent. Our experience as an International Union, with numerous collectively-bargained pension contracts in that country, convince us that the fears sometimes expressed to the effect that any legislated funding standards will stifle the development and flexibility potential of private pensions are groundless.

FIDUCIARY STANDARDS AND DISCLOSURE REQUIREMENTS

As I indicated at the beginning of my remarks, the UAW has long supported the enactment of federal standards of fiduciary conduct in the handling of employee benefit funds. We also support measures to assure more intelligible disclosure of descriptive and financial information to covered workers and other interested persons. The specific provisions in S. 4 are long overdue and should be effective, workable and scarcely controversial.

VOLUNTARY PENSION PORTABILITY PROGRAM

This feature of S. 4, as stated in Title III, in intended to "facilitate the voluntary transfer of vested credits" from one pension plan to another when workers change jobs. A plan's membership in the portability program would be voluntary.

A worker separated from a member plan could request the plan to transfer a sum of money equal to "the current discounted value" of his vested credits to a central portability fund to be held in an individual account and either: (1) transferred later to the plan of a new employer (if the new plan is a member of the program) so as to purchase credits of equivalent value or (2) used to buy a single premium life annuity when he reaches age 65. If he should die before either of these payouts, the value of the account would be available as a death benefit.

Such a voluntary arrangement could conceivably be a useful and worthwhile mechanism for those retirement plans whose design, funding and type of benefits would make it practicable -- that is, profit-sharing, money purchase or similar plans providing benefits based on allocated assets (individual accounts or individual annuities) derived from employer (or employee) contributions.

We have some genuine doubts, however, about its technical applicability and usefulness to the more typical plans covering the great majority of workers which operate with pooled funds of unallocated assets. At least to the extent such funds are derived from employer contributions, they serve as a general reserve to provide promised future pensions to active or former employees who meet the plan's eligibility requirements and are not assignable to individual participants. Even if the variations in benefit structures, funding methods and "depth" of funding in such plans could be matched up, I understand from our actuaries who have studied the provisions of this part of the bill that there would still be serious technical and equity problems in the way of their effective participation in this scheme. There may be some danger, therefore, Mr. Chairman, that this understandably appealing feature of S. 4 would raise unrealizable hopes and expectations on the

part of a great many workers.

Certainly, in any order of priorities, we believe legislated minimum vesting standards and voluntary liberalization of vesting beyond such standards, coupled with reinsurance of the risk of plan termination, is the most effective means of achieving practical and wide-spread pension "portability."

In this connection, we strongly favor the creation of a central record-keeping arrangement under the aegis of the Social Security Administration, to make sure that workers' vested private pensions are not lost through inaction. Specifically, we urge that the Social Security Administration be authorized to receive and record information from any plan whenever an individual terminates under it with a vested pension right. When the individual subsequently applies for Social Security benefits, he would be furnished information regarding such rights. Incidentally, this type of recording could be useful in facilitating locating of former employees with vested pension entitlements in event of plan termination.

CONCLUSION

Let me conclude by saying that the present session of this Congress has a unique opportunity to adopt comprehensive, logical and constructive legislation to improve the effectiveness of the private pension system, make it more equitable in its distribution of benefits, assure that pension funds are managed in the interests of covered workers, and more fairly allocate the costs of plan terminations.

We believe that Senate Bill S. 4, as now constituted, includes the principles on which this legislation must be based.

As you are aware, Mr. Chairman, the UAW has endorsed and is working strongly for the passage of Senate Bill S. 3 -- the Health Security Act. On the basis of our Union's long-standing commitment to passage of meaningful pension reform legislation, I have no hesitation in assuring you of our membership's full support of Senate Bill S. 4 -- the Retirement Income Security for Employees Act.

We urge passage of this legislation. The hour is late. As you so well pointed out in your statement to the Senate in introducing S. 4, "the changes envisioned in this bill are long, long overdue . . . it would be an outrage if we failed to act."

I am confident that affirmative action by the Congress will be responsive to the concerns of millions of working people with a stake in the effective functioning of private pension plans and that such action will add greatly to retirement security which is rightfully theirs at the end of their working years while at the same time preserving the system's valuable potential for continuing flexibility, innovation and growth.

APPENDIX "A"

EFFECT OF 10-YEAR FULL VESTING IN AUTO INDUSTRY -- UAW PENSION PLANS

(Based on age-service data for 779,000* employees covered by "Big Four" Plans#)

January 1, 1972

Completed Years of Age	All Employees		Fully Vested Employees (10 or more years service)	
	Number	Per Cent of Total	Number	Per Cent of Age Group
Under 40	422,500	54.2%	61,500	14.6%
40 - 44	89,100	11.4%	58,800	66.0%
45 - 49	90,600	11.6%	69,000	76.2%
50 - 54	82,200	10.6%	69,200	84.2%
55 - 59	65,200	8.4%	58,800	90.2%
60 & Over	29,400	3.8%	27,000	91.8%
TOTAL	779,000	100%	344,300	44.2%

Age	Per Cent of Employees Fully Vested
All Ages	44.2%
40 & Over	79.4%
45 & Over	83.8%
50 & Over	87.7%
55 & Over	90.7%

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*All figures are rounded to nearest 100.

#General Motors, Ford, Chrysler and American Motors.

The CHAIRMAN. We come now to the National Council of Senior Citizens, another friend of the committee, William Hutton, executive director. It is good to see you here again.

STATEMENT OF WILLIAM HUTTON, EXECUTIVE DIRECTOR, NATIONAL COUNCIL OF SENIOR CITIZENS

Mr. HUTTON. Thank you, Mr. Chairman. I am glad to be here. My name is William Hutton. I am executive director of the National Council of Senior Citizens, an organization of some 3,000 clubs and more than 3 million members.

I know that you have a lot of witnesses for this hearing, Mr. Chairman, and perhaps, with your permission, I could submit for the record the testimony which I have and then, perhaps, just go through with some of the highlights, and be responsive to questions.

The CHAIRMAN. That would be fine. We look forward to your highlighting your statement. The whole statement will be included in the record at the conclusion of your testimony.

Mr. HUTTON. To begin with, Mr. Chairman, we are particularly encouraged to note the breadth of bipartisan support that this legislation now enjoys. We think that is very exciting, with more than 40 Senators from both sides of the aisle.

The CHAIRMAN. Fifty-two now.

Mr. HUTTON. That is great. Pension reform, like tax reform, has been the subject of very much conversation, but very little action, and we need action in that particular area. The first part of my printed testimony refers to the fact that we practice what we preach. The National Council of Senior Citizens introduced its own staff pension program on January 1, 1972. I am very happy to say, Mr. Chairman, that not one single provision of that pension plan would need to be changed by enactment of S. 4. We go a little further than S. 4 in a number of cases.

The concern of the National Council of Senior Citizens with protecting pension plans is not a hasty position. The last five conventions of the National Council, including delegates from all parts of the country, have emphasized the necessity for a private pension program and legislation for the protection of all private pension plans through appropriate vesting, provisions for survivors' benefits, reinsurance or other method of guaranteeing pension funds, and to assure fiduciary responsibiilty.

In the platform, which was called the platform for the seventies of all older Americans—which we prepared before the White House Conference on Aging, in 1971—we again underlined the importance of pension protection for employees, including those employed by small firms. We called for action by the Federal Government in the development of a national pension system.

I will have to comment here that the recommendations of the 1971 White House Conference on Aging is something else again. As excellent as they are, and were, and despite the fact that President Nixon said that he would assure the 3,600 delegates that the Conference recommendations would not gather dust in the National Archives, the sad truth is that the dust on those pension recommendations and

all other recommendations must be inches thick by now. They have made little progress.

The White House Conference recommendations point out that social security benefits provide a basic protection which should continue to be improved but which can be augmented through private pension plans. The Federal Government should take action to encourage appropriate coverage under private pension plans, and insure receipt of benefits by workers and their survivors.

It should require early vesting, the White House Conference said, and/or portability, survivors' benefits and complete disclosure to beneficiaries of benefits promised under the plans.

In addition, we said Federal requirements should assure fiduciary responsibility, minimum funding requirements, and protection through reinsurance and other measures.

Now the 3,600 delegates to that conference were apparently in complete agreement with what I have just quoted to you, for they unanimously endorsed the language offered by the National Council.

Mr. Chairman, there is often a very wide gap between the desires of a Nation's people and the accomplishments of the people's Government. A recent analysis prepared for the post-White House Conference on Aging executive board, on which the National Council of Senior Citizens is represented, states as follows:

> Despite the introduction in the Congress of bills relating to various aspects of private pensions, none contain all the provisions specifically referred to by the Conference Delegates and none were enacted.

The board urged both the administration and the Congress to give serious consideration to all features recommended by the Conference to improve pension plans in the country.

Now we, sir, are fully aware of and appreciate the commitment of this subcommittee and Labor Public Welfare Committee to the development of an adequate and significant private pension system. I do not think it is necessary, sir, for us once again to parade by this committee some of the countless tragic individual stories of pension default in order to underline the magnitude of this problem. I was very impressed by the tragedy of people who worked more than 50 years for Elgin Watch Co., to get only $50 a month in pension, and to learn that the company will take $12 million out of that pension fund.

We are aware that S. 4, is not a perfect piece of legislation. Its vesting proposals do not help seasonal workers or part-time workers. We recognize particularly in the light of the bitter experience of last fall with pension legislations, S. 3598, the opposition of employer groups to any reasonable standards in the field of private pensions.

We recognize that S. 4, is a compromise. Nevertheless, we hold firm to the conviction that S. 4, does represent a significant step forward and we believe that in the course of time it can be substantially improved.

Specfically and significantly, it does provide for the Department of Labor to administer the law. This is important, we believe, because the legislation concerns itself with employee benefit plans. The Secretary of Labor is therefore the proper official to exercise jurisdiction. We note that S. 4, supersedes State laws covering employee benefit plans. Since many, if not most, employee benefit plans cover workers

in several States, this provision would eliminate the administrative costs and burdens of complying with many and often divergent State regulatory agencies.

To move on, sir, we at the National Council of Senior Citizens believe that the lack of almost any effective Federal regulation covering private pension plans prompted the proposal for voluntary portability of private pensions. The argument for this voluntary portability program is that the Williams-Javits bill would set up Federal standards, in the private pension area, which might eventually form the basis for making portability of single employer private pensions mandatory. It is the view of the National Council of Senior Citizens that the Williams-Javits bill or whatever bill is finally adopted, should set up a timeable for making voluntary portability mandatory.

Likewise the national council favors establishment of a Federal reinsurance corporation to guarantee payment of private pensions if, for any reason whatsoever short of a major war or other national calamity, there is any delay in private pension plan payment. This in our opinion should be a matter of right—enforceable automatically when a participant in a private pension plan files a claim with the Government, alleging nonpayment of what is due.

Mr. Chairman, even with these reservations, our members see the Williams-Javits bill as coming closer to the recommendations on private pension plans of the 1971 White House Conference on Aging than any other pending or proposed legislation in this area.

If I may move on, sir, we support the Williams-Javits private pension reform bill because it calls for minimum Federal standards for vesting—that is guaranteeing the right to a private pension—sets minimum qualifications for pension trustees and for funding pension plans.

Further, the Williams-Javits bill establishes a private pension plan termination insurance program, to protect employees against loss caused by an employer's bankruptcy.

In conclusion, I would like to point out that a worker's stake in the private pension system is great and is likely to be much greater in the years ahead. I wanted to say here, Mr. Chairman, that things look pretty tough for senior citizens in this country right now. The danger signals are out. The administration is battening down the hatches. The threat of cutbacks have older people over 65 concerned. But how much more concerned must be the man of 55 who is looking forward to early retirement and learns that not only is his pension not protected, but the benefits he thought he might be getting through medicare may be cut back. These are very sad days, very tough days for older people, Mr. Chairman.

At best, beneficiaries of private pension plans will continue to be concentrated largely among higher paid wage and salaried workers while those having the greatest need during retirement will be least likely to receive private pensions. In short, the social security system will continue to be America's basic method of assuring aged workers an adequate level of retirement income.

So, while the National Council of Senior Citizens favors private pension reform, our membership recognizes that the main reliance of wage and salaried workers for retirement income must be for now and for the foreseeable future on social security benefits.

Thank you for this opportunity to present our case, Mr. Chairman. We do hope that this bill not only will get full support from both sides of the aisle but that it overcomes any threats of Presidential veto.

The CHAIRMAN. Of course we cannot insure that, although that point raises this observation. This administration has a plan to withdraw its support from those programs, many of them developed right here in this room by this committee, designed to make lives of older people better. It has vetoed our Older Americans Act and, the Institute on Aging, which attempts to understand the process of getting old, and slashed other efforts to work with older people. It would seem, however, that they would join with pension reform, which is not going to break the revenue budget and has nothing to do with what they call their great concern.

Mr. HUTTON. One would hope they can see that.

The CHAIRMAN. This bill is designed to deal right at home with employers and employees. It seems to be, did you say veto-proof?

Mr. HUTTON. I hope it will be.

The CHAIRMAN. Philosophically, though, it is not out of joint with the other attitude the Government is withdrawing from—support of older citizens.

Mr. HUTTON. The threat to turn back the clock on social welfare programs is leaving many older people without help and without hope. I fear for those—not just those who are 65—but who are 55 who have nothing to look forward to at all. This pension bill at least could do something for some of them.

The CHAIRMAN. Yes.

Mr. HUTTON. And I hope it is enacted.

The CHAIRMAN. I appreciate that.

Senator Javits, you were called away to the phone, I know. We have just heard from a powerful, great, noble statesman, Bill Hutton.

Senator JAVITS. I am well acquainted with the national council and Mr. Hutton. As far as a veto is concerned, first, I think this bill has overwhelming support; and I would hope if there should be such a thing as a veto, which I think would be most unwise, that we have enough votes to pass the bill and make it law. This is not anything that is going to be frustrated by a lack of appropriation. So I do not think we face problems of impoundment, as such.

Second, S. 4 seems to me consistent with the President's policy, and the administration's legislation itself differ with us in detail, really critically important detail, but still only in detail. I am very hopeful that this great reform will be made.

I would like to say finally, Mr. Hutton, every President wants to go down in history for something noble, something great. President Nixon is certainly going down in history as one of the great Presidents in foreign policy, based upon the relationships and negotiations with the People's Republic of China and the Soviet Union. Here is something on the domestic front which I should think our President would want to value highly and have associated with his name.

For all of those reasons, I think we simply have to move ahead and act and amass such a great sentiment and vote for the bill, that it would be very clear that it has got to become law.

Mr. HUTTON. Thank you, Mr. Chairman, and Senator Javits. I do agree with you. I would like to see the President support this bill. The President has, perhaps, achieved an enviable reputation in foreign affairs field. However, what he is threatening to do, and did do to older people, will have many grandmothers scaring their grandchildren by mentioning his name.

Senator JAVITS. I certainly agree with the priority of helping older people every possible way, and we must fight in the Congress to safeguard and expand programs for older Americans.

The CHAIRMAN. One other observation. The retirement security of the present membership of the national council is not enhanced by this legislation is it?

Mr. HUTTON. No, sir.

The CHAIRMAN. This is for people who are coming on, who have not retired yet.

Mr. HUTTON. The seniors have a great interest in the sons and daughters who follow them. They did not have the advantage of a wonderful bill like this. They are suffering because of a lack of legislation.

The CHAIRMAN. They were there. They do not want the same hardship to visit their children.

Mr. HUTTON. That is right.

The CHAIRMAN. What was that about the grandmother?

Mr. HUTTON. I say they will scare their grandchildren with the President's name if he continues to harass and threaten older people the way be is doing.

The CHAIRMAN. Thank you very much.

(The prepared statement of Mr. Hutton follows:)

Statement on S.4

TO

Subcommittee on Labor of the Senate Committee on Labor and Public Welfare

BY

William R. Hutton,
Executive Director
National Council of Senior Citizens

Thursday, February 15, 1973
Room 4232, Dirksen Senate Office Building
Washington, D. C.

Mr. Chairman and members of the Senate Subcommittee on Labor, my name is William R. Hutton. I am Executive Director of the 3,000,000 member National Council of Senior Citizens. I want to thank you, Mr. Chairman and members of this Subcommittee for being given the opportunity to once again present the views of the National Council of Senior Citizens on proposals for pension reform, and particularly S.4 — the "Retirement Income Security for Employees Act of 1973," sponsored by Senators Williams and Javits.

It is particularly encouraging to note the breadth of bi-partisan support that this legislation now enjoys — with more than 40 Senators from both sides of the isle joining to co-sponsor S.4. The National Council is particularly pleased because, as this Committee well knows, pension reform, like tax reform, has been the subject of much conversation, but precious little significant action.

We, at the National Council of Senior Citizens, have such a strong commitment to an adequate private pension system that we have initiated a pension program for our own staff. The program was developed for us by Mr. Murray Latimer — a distinguished actuary — and a renowned authority in the pension and Social Security field. We have taken this step despite the fact that our resources are severely limited. However, we have developed a good pension plan, following closely the provisions of the Williams-Javits bill, and, I believe, in some areas improved upon the proposed federal provisions.

Let me take the time, Mr. Chairman, to briefly outline the provisions of our pension plan, so that you may better understand the depth of our commitment to pension reform:

Every staff member of the National Council of Senior Citizens, immediately upon employment, enters into a retirement program. This can be accomplished only because the National Council, itself, is paying all the cost.

There is included in our plan, an arrangement for retirement at age 55, as well as an adjusted amount made available for disability pensions for any staff member who has completed five years of service.

We have available a joint and survival pension option - and as indicated earlier, all staff members have a vested right in their pension from day one of employment.

There is also a death benefit which provides to the pensioner's beneficiary, an amount equal to twelve times his monthly pension. When a person becomes eligible for a pension, he or she will receive an amount equal to 2% of the average salary received, multiplied by the number of years of service.

The initiation of this pension plan by the National Council of Senior Citizens serves to demonstrate that "where there's a will, there's a way." But, unfortunately, the record demonstrates that many employers with far greater resources than we, will never initiate an adequate pension plan for their employees without the Federal commitment to action represented by the passage of S.4 into law.

The concern of the National Council with protecting pension plans is not a hasty position. The last five conventions of the National Council of Senior Citizens - including delegates from all parts of the country - have emphasized the necessity for a private pension program; and for legislation that "improved the protection of all private pension plans, through appropriate vesting, provisions for survivors' benefits, reinsurance or other methods of guaranteeing pension funds, and to assure fiduciary responsibility."

In the "Platform For The Seventies For All Older Americans" - prepared by the National Council of Senior Citizens and submitted to the delegates of the 1971 White House Conference on Aging, we again underlined the importance of pension protection for employees including those employed by small firms. We also called for action by the Federal government in the development of a national pension

system as a companion to the Social Security system. We wrote into that platform that:

"Social Security benefits provide a basic protection which should continue to be improved but which can be augmented through private pension plans. The Federal government should take action to encourage appropriate coverage under pribate pension plans and insure receipt of benefits by workers and their survivors. It should require early vesting and/or portability, survivor benefits and complete disclosure to beneficiaries of eligibility benefit provisions of the plans. In addition, Federal requirements should assure fiduciary responsibility, minimum funding requirements, and protection through reinsurance and other measures."

Mr. Chairman, the almost 4,000 delegates to that conference were apparently in agreement with what I have just quoted to you, for they unanimously endorsed the language of the National Council.

However, Mr. Chairman, as you know, there is often a wide gap between the desires of a nation's people, and the accomplishments of the people's government. In a recent analysis prepared for the Post White House Conference on Aging Board, on which the National Council of Senior Citizens is represented, it was stated that:

"Despite the introduction in the Congress of a number of bills relating to various aspects of private pensions, none contain all of the provisions specifically referred to by the Conference delegates and none were enacted."

The panel urged:

"both the Administration and the Congress to give serious consideration to all features recommended by the Conference to improve pension plans in the country."

We in the National Council of Senior Citizens are fully aware of, and appreciate the commitment of this Subcommittee and the full Senate Labor and Public Welfare Committee, to the development of an adequate and significant private pension system. We compliment the Committee and its staff on the unusually comprehensive study of pension history, experience, and issues it has conducted. As a matter of fact, as members of this committee know, we assisted in securing graphic evidence of the personal heartbreak suffered by many who had reasonably expected a decent income from the pensions they had worked toward - only to see those expectations dashed upon the failure of their pension plans.

I don't think it is necessary for me to once again parade by the tragic individual stories of pension default in order to underline the magnitude of the pension problem which this committee must deal. I do wish to point out, however, that if we are going to achieve what the White House Conference on Aging recommended - a total cash income for older people in accordance with the American standard of living - a basic element must be an adequate and fully protected pension system.

As to the bill before you today, we are aware that S.4 is not a perfect piece of legislation - that it offers no solution to the cost problems which seem to keep so many small employers from offering plans to their employees. We are also aware that the bill's vesting proposals don't help the seasonal worker, the part-time worker, or those who change jobs at intervals of less than eight years. Indeed, we recognize - particularly in the light of the bitter experience of last fall with S. 3598 which saw the virulent opposition of employer groups to any standards established in the field of pensions - that S.4 is a compromise. Nevertheless, the National Council of Senior Citizens holds firmly to the conviction

that S.4 does represent a significant step forward; and can, in the course of time be substantially improved.

Significantly, S.4 does provide for the Department of Labor to administer the law. This is important, we believe, because this legislation concerns itself with employee benefit plans and the Secretary of Labor is therefore the proper official to exercise jurisdiction.

Further, we note that S.4 supersedes state laws covering employee benefit plans. Since many, if not most, employee benefit plans cover workers in several states, this provision would eliminate the administrative costs and burdens of complying with many - often divergent - state regulatory agencies.

Further, this bill:

Assures a worker covered by a private pension plan at least 30% of the pension benefit stipulated under the plan after eight years service; and 100% after 15 years.

Sets standards for employer contributions to pension plans so there is always enough cash to pay for all the benefits guaranteed under a plan.

Creates eligibility requirements for trustees under private pension plans and provides procedures for termination of plans.

We are, however, somewhat concerned with the provision in this legislation for voluntary portability for vested pensions, as it affects the single-employer pension plans. This provision would be in the form of a voluntary pension fund for which the Secretary of Labor would be the trustee and administrator - reporting regularly on the fund's status to the Congress. This fund would be invested in institutions insured by the Federal Deposit Insurance Corporation, or the Federal Savings & Loan Insurance Corporation with a limit of 10% investment in any single institution.

A participant transferring from one plan to another may request the Labor Secretary to pay out of the Federal voluntary pension account an amount sufficient to purchase pension coverage that is actuarially equivalent. Unless the cash in a participant's account is transferred to another employer's pension plan at the request of the participant, the Secretary must use what is due the participant to purchase from a qualified insurance carrier, a single-premium life annuity payable when the participant reaches age 65.

We at the National Council believe that the lack of almost any effective Federal regulation governing private pension plans prompted this proposal for voluntary portability of private pensions. The argument, of course, for this voluntary portability program is that the Williams-Javits bill would set up Federal standards in the private pension area which might eventually form the basis for making portability of single-employer private pension plans mandatory.

It is the view of the National Council of Senior Citizens, however, that the Williams-Javits bill - or whatever bill is finally adopted - should set up a time-table for making voluntary portability mandatory. Likewise, the National Council of Senior Citizens favors establishment of a Federal reinsurance corporation to guarantee payment of private pensions if, for any reason whatever, short of a major war or other national calamity, there is any delay in a private pension payment. This, in our opinion, should be a matter of right - enforceable automatically when a participant in a private pension plan files a claim with the Government alleging non-payment of what is due. But, Mr. Chairman, even with these reservations, our membership sees the Williams-Javits bill as coming closer to the recommendation on private pension plans of the 1971 White House Conference on Aging than other pending or proposed legislation in this area.

In the realm of alternate proposals, let me say that we have no idea of what the Administration is going to propose - and we gather this Committee does not either. Further, we would like to know what ever happened to the study the President promised more than a year ago - in December 1971 - which he announced would be conducted by the Departments of Labor and the Treasury to investigate pension plan termination. At the time, this looked like a stall by the White House - after all, even as far back as 1971 the whole area of pension reform had been so thoroughly studied that we could literally line the walls of this hearing room with the volumes of reports. Yet, here we are almost a year and-a-half later, but where is the study?

However, it would seem a rather safe bet to assume that the direction of the Administration's proposal in this area - if it is ever forthcoming - as in all other areas of human welfare, will be backward looking rather than forward reaching. And, if as seems likely, the President's 1973 pension proposals are going to be tax oriented, rather than human oriented, we want none of them. We know what happened last fall when the tax-oriented Senate Finance Committee got hold of S. 3598 and sought to move the legislation toward a tax policy approach. It was specifically to assure that the administration of a pension program would have at least the minimal prospect of being dedicated to the welfare of the average retiree that we earlier endorsed placing enforcement and administration within the Department of Labor. This provision of S.4 which makes the Assistant Secretary of Labor responsible for the Office of Pensions and Welfare Plans Administration focuses responsibility for, and fixes attention on the most critical area of income security for millions of working and retired Americans.

On the assumption that the 1973 Administration proposals, if any, will be in the same general pattern of those presented to the 92nd Congress, I would like, Mr. Chairman, to repeat for the record, our observations when we testified before this Committee last year.

"Under the Administration proposal, individuals could take an income tax deduction amounting to 20% of earned income up to $1,500 a year for cash set-aside for an individual retirement plan.

"Relatively few members of the National Council of Senior Citizens have ever been in the position to save $1,500 a year for retirement, or for anything else. Even more to the point, how many workers in this era of steadily rising prices can put away $1,500 a year for retirement?

"Quite plainly, the Nixon private pension proposal is not for men and women with low or moderate level incomes. It is for the well-to-do.

"The Administration has described its private pension proposal as helpful to older workers. This is rhetoric and nothing more. The number of low or moderate income men and women who would benefit from this proposal is infinitesimal.

"The Administration proposal would raise the deductible (for income purposes) limit on pension contributions by the self-employed from 10% of earned income up to $2,500 a year - to 15% of earned income up to $7,500 a year.

"If a professional man or woman, starting at age 35, saves $7,500 a year for 30 years, that individual will

have accumulated approximately $590,000 if this money is invested so there is a return of 6% a year. This could open a gaping tax loophole for the well-to-do.

"Mr. Chairman, and members of this distinguished Subcommittee, the National Council of Senior Citizens sees an urgent need for closing tax loopholes instead of creating new ones."

That was from last year, Mr. Chairman. The National Council of Senior Citizens supports the Williams-Javits private pension reform bill because it calls for minimum Federal standards for vesting — that is, guaranteeing the right to a private pension, sets minimum qualifications for pension trustees and for funding pension plans. Further, the Williams-Javits bill establishes a Private Pension Plan Termination Insurance Program to protect employees against loss caused by an employer's bankruptcy.

In conclusion, Mr. Chairman and Subcommittee members, I would like to point out that a worker's stake in the private pension system is great and will be much greater in the years ahead. But, at best, beneficiaries of private pensions will continue to be concentrated largely among higher paid wage and salaried workers, while those having the greatest need during retirement will be least likely to receive private pensions.

In short, the Social Security System will continue to be America's basic method of assuring the aged an adequate level of income. So, while the National Council of Senior Citizens favors private pension reform, our membership recognizes that the main reliance of wage and salaried workers for retirement income must be for now — and for the foreseeable future — on Social Security benefits.

Thank you for this opportunity Mr. Chairman. If you, or any member of this distinguished Subcommittee has any questions — I will do my best to answer them at this time.

The CHAIRMAN. Our next witness is Mr. Roach, director of the Bureau of Labor Services of New York City. We are very pleased that the city is taking an important interest in this bill.

I am glad to introduce you to the committee as a witness. We welcome you, Mr. Roach. Please proceed.

STATEMENT OF ARVID ROACH, DIRECTOR OF THE BUREAU OF LABOR SERVICES OF NEW YORK CITY

Mr. ROACH. The city of New York has long recognized as a matter of policy and practice that the rights of the working poor need protection through effective legislation, governmental regulation, and informal mediation. Mayor Lindsay's labor service center was established several years ago to resolve workers' complaints of labor abuses at the hands of their employers and unions. The most exploited workers are often sadly the most unaware of their rights as employees and how to act on them. Recently expanded to more than twice its former scope, the mayor's labor service center has provided the Nation's first and largest one-stop agency to meet this crucial need of the working poor.

Our case handlers have found no problem more unamenable to satisfactory resolution than employees' complaints concerning the loss of pension rights. We have handled countless cases of arbitrary plan administration and inflexible rules and regulations that have stripped workers of their long-anticipated retirement benefits. Men and women who have spent most of their lives contributing to the firms that employed them have discovered, mostly too late, that their expected pensions are unavailable to them because of severe vesting requirements, the absence of plan termination insurance, incomplete disclosure of plan information, and unfair review procedures.

Existing pension laws, largely Federal, stand only as piecemeal, inadequate efforts to regulate private pension plans. For example, the Internal Revenue Code enables employers to deduct their contributions to qualified plans, and provides tax exemptions for earnings from plan investments. It also requires that plans must be for the exclusive benefit of their participants, and that plans not discriminate in favor of stockholders or highly compensated employees. The Labor Management Relations Act sets standards for the establishment and operation of a joint employer-union pension fund and has, as its main purpose, the prevention of conspiracy to divert funds to illicit uses. The Welfare and Pension Plan Disclosure Act requires plan administrators to provide participants and their beneficiaries, upon written request, with a plan description and annual report. Amendments in 1962 made Federal crimes of theft, embezzlement, bribery, and kickbacks, if related to the administration of a pension fund.

The core of pension fund abuse is left unregulated by these laws. None mandates adequate funding formulas, the vesting of rights, the portability of credit between employers, plan termination insurance, or reasonable fiduciary standards. In the absence of protective legislation, plan participants are forced to resort to the courts and invoke common law remedies, primarily those of contract law, to enforce their rights. With a few exceptions, the courts have regularly ruled with plan administrators. They have held that employees have no enforceable con-

tract right since employer contributions are mere gratuities, or in holding a right to be present, have found the burden on the employee to prove his eligibility—something which is often impossible under generally restrictive and often arbitrary requirements. Courts shy away from imposing any trust relationship between plan administrators and participants, and claims of good faith reliance on the part of employees are denied. Faced with the obstacles of ineffective legislation and no redress in the courts, our center has relied solely on mediation and negotiation with either the employer or the union. Despite some dramatic successes, these efforts for the most part have ended in failure.

Sound philosophical and economic reasons demand passage of comprehensive pension reform legislation.

The Internal Revenue Code long ago recognized as policy the public responsibility behind private pensions by granting tax credits to contributing employers. To justify this privileged status, employers should be under an enforceable obligation to pay out those pension moneys relied on by employees. They should not be given the right to escape payment through unrealistic vesting periods—or plan termination, or by virtue of the discharge, resignation, or death of a participant.

More generally, public policy now recognizes that the elderly are entitled to live out their remaining years without fear of poverty. Thus, society as a whole is forced to pay through higher taxes for social programs for the elderly largely because of the neglect of employers. The corporate sector must come to assume its full share of the responsibility for its employees.

It is to the economic and social detriment of our Nation as a whole to penalize job mobility and to fail to act against the practices that chronically disadvantage the working poor. Current practice strikes the necessary balance between job stability and job mobility—both beneficial to, and in some measure needed by, employers and employees alike—far too much on the side of powerful punishments to mobility.

Finally, the reforms are called for as a matter of simple justice. Many were influenced to join a specific company on the basis of claims of a variety of fringe benefits including pensions. Often they stayed at their jobs, although they could have, perhaps, earned more elsewhere, because of restrictive vesting procedures. Yet, it is the least well-informed, least-skilled, and lowest paid who are the first to be laid off in a slack economy and in cases of technological displacement. Many end up moving from job to job, often within the same industry, withover ever accruing any vested interest in a pension. It is just these persons, the major clientele of the mayor's labor service center, who most need protection.

Although we support the legislation under question as the best available for the protection of pension rights, we object to certain of the provisions and believe that others could be strengthened.

Part C of title II provides for variances up to a period of 5 years from the minimum vesting requirements if it can be shown that compliance would result in substantial economic injury including the significant curtailment of employment benefit levels. Since almost any plan would fall under this provision, it serves only as a delaying mechanism; and, since the vesting requirements, irrespective of any variance, become effective 3 years after the passage of the legislation, it is likely that 8 years will elapse before workers under 45 will have

their service counted toward their pension. These delays should be substantially decreased.

Title IV provides for the insurance of vested interests upon plan termination. We believe that the nonvested accrued portion of normal retirement benefits should also be protected against circumstances which displace large groups of employees unexpectedly and beyond their control, such as plant closings or plan terminations due to insolvency. A special insurance fund should be established in the legislation to close this gap in covereage.

Finally, we object to the voluntary nature of the portability program of title III. To reduce administrative cost, to provide for a continuity of protection, and to make sure that an employee whose interests are vested will not in the future see his benefits with his former employer evaporate, we support a compulsory portability program.

In support of the legislation, and in light of the reservations noted, I should like to present 10 cases of pension abuse which were handled by the mayor's labor service center during the past year. They represent only a portion of the number of such complaints we have handled but they do provide you with a representative selection of the types of problems experienced by many employees in New York City. All cases point out the need to provide for minimum vesting requirements. Most also demonstrate the necessity for other vesting provisions to protect pension rights.

Many workers come to us with dramatic complaints of last-minute termination.

One woman, age 64, spent 20 years of her life with a single firm. She needed only 10 more weeks of service to become entitled to her pension but was laid off from work because of "poor business." Since her plan failed to provide for even a minimum vesting, she was ineligible for a pension.

An elderly woman had worked for 16½ continuous years as a member of the same union. In 1970, she became disabled and was unable to continue in employment. Her joint pension plan required 20 years of continuous service before any vested rights were attained. She lost all her benefits.

Another gentleman, age 52, worked for 19 years in a different industry in New York City. As that industry declined and wages became less competitive, he was forced to quit and take an unrelated job. That was in 1969. In 1970, the pension plan at his old company was amended to read that a person who left his job to work in another industry and who had acquired 20 years of service would be entitled to a portion of his pension at age 62. Also, the amendment applied only to those persons who were employed as of 1970. Because he lacked any vested interest, and was further blocked by an arbitrary cutoff date, the man had lost all benefits.

Whether by layoff, disability, or the economic decline of an industry, termination late in one's working life often means destitution for the working poor.

Others lose benefits through restrictive rules.

A man of 64, was on record as having earned cumulatively 12¾ years of credit toward his pension. His plan called for full pension rights after only 10 years. Although this gentleman put in over 2 more years of work than was required by his plan, he was denied re-

tirement benefits because of a break in service during his employment history. In his case, noncontinuous service meant no pension.

Another individual who worked for 20 years in one industry left that job before his 65th birthday. He lost all retirement security because the pension rules required that only employees who worked for 20 years immediately preceding the age of 65 were eligible.

The current absense of needed insurance to protect workers in the event of plant shutdowns is documented in the next two cases.

A gentleman of 65 who had worked 4 years with one company had been a member of the local which jointly administered a pension plan. When the company closed its plant in 1960, the man went to work for a former competitor under the jurisdiction of another local that also operated a joint pension fund. The man will get no pension from his first job because he left before his interest vested, and will have to work many more years in his second job under the terms of the pension agreement to become eligible for retirement benefits. It is doubtful that he will be able to obtain any benefits since he is already 65. If the original employer had been required to insure accrued, although nonvested, benefits against plan termination, the man could have received at least some small payment. If his second employer had had earlier vesting, he would have been entitled to a pension there.

Another man worked for one company for 30 years, but had to leave his job when his firm went out of business and his pension plan consequently dissolved. He needed just 2 more years to be entitled to a pension. He subsequently found employment in the same industry with an employer that administered a separate pension plan. He has no hope of acquiring any vested interest in that plan. Unless the legislation is passed to provide earlier vesting or insurance against plan termination the man has no hope of retirement income.

Arbitrary and unfair regulation of pension funds have the effect of denying rights to persons who, in all logic, should be eligible. The next case is an interesting example of this point.

A gentleman, age 65, worked as a cabdriver until 2 years ago. He had been employed by the same company for 23 years and under the pension agreement, needed just 2 more years of service until his rights would vest. Unfortunately, he had to stop driving due to an accident in which he suffered a severe back injury. Unable to obtain a normal pension, he applied for a disability pension also provided by the plan at a reduced rate. However, the rules and regulations of the disability pension plan also provided, in order to obtain benefits, that a person not only be unable to work in the cab industry, as was apparent in this case, but be so disabled as to be unable to work in any other occupation. The plan doctor ruled that the man could work in another capacity and, under these stringest rules, he was disqualified.

Misinformation and the failure to adequately disclose and explain the details of a pension plan are illustrated by the final two cases.

A woman, at the age of 62, assumed that since she could now obtain social security, her pension plan would go into effect at the same age. She, therefore, retired only to find that her assumptions were incorrect and that, in fact, she needed another year of service to qualify. either her employer nor her union ever adequately explained the vesting

requirements nor gave her a copy of her plan. She was denied all benefits.

Another woman inquired prior to reaching age 62, whether she had acquired the necessary years of service to be eligible for a pension. She was assured that she had and could safely retire. She left the job and only then was informed that a mistake had been made and that, in fact, due to a minor break in service years before, she lacked the necessary time for her pension. Only after long negotiations with the union on the part of our center did the woman get her job back to put in the necessary time.

In summary, the city of New York regards the passage of protective private sector pension legislation, with provision made for our reservations, to be absolutely imperative to correct abuses in an area of employee rights long left substantially untouched by law.

In conclusion, let me say I cannot express to everyone here too strongly the emotional impact of handling hundreds of cases of well intentioned people who have been deprived of essential income for the rest of their lives.

In his statement to the subcommittee last year, former Secretary Hodgson said "I do not believe it is wise to legislate on the basis of horror stories." I want to emphasize that while these may be horror stories, they are routine horror stories, and they are a fair sampling of the thousands in New York City alone.

Thank you.

Senator JAVITS. If I may have a word before I have to leave to answer the phone, I would like to thank Mr. Roach and the city of New York for its testimony. We will assure them we will give great consideration to the pragmatic points you raise and test them out in the light of the terms of the legislation.

We appreciate the case histories that you have given us, which will be very useful with respect to the legislation.

If there are any others you would like to supply for the record, because I know they are numerous, I ask unanimous consent that they be included.

Mr. ROACH. We will be happy to send you some additional case histories.

(The information referred to follows:)

Additional Submission for the Record Per Request of Senator Jacob Javits, by Arvid E. Roach II

A Random Selection of Pension Cases Received by the Mayor's Labor Service Center, Calendar Year 1971

24 February 1971: A gentleman, aged 57, worked for a single firm for 25 years. Early in 1971, he was laid off; the company was forced to cut back its employment, and this individual suffered from a minor disability. His employer pension plan required twenty years of service immediately perceding age 65. He was ruled ineligible for a pension. The Center could not induce the employer to reconsider.

7 July 1971: Another man, aged 65, had been employed with the same company for twelve years. A participant in his joint employer-union plan is entitled to a pension after fifteen years of service. Since he needed three more years' service, he was ineligible for any benefits. The Center had no success in its efforts for the man.

11 January 1971: Another person had worked for twenty years in the same business. Earning lower wages because of the decline of his industry, he wanted to leave his job and find more remunerative employment elsewhere. He was, however, trapped in his job because of a restrictive vesting period of 25 years. The Center had no recourse by which to help him.

27 April 1971: At the age of 64, this person stopped working full time. He had earned 24 years of service toward his pension. Neither his employer nor his union advised him that one more year of full time work was a pre-requisite to his qualifying for benefits under their joint pension plan. He worked eight more years on a part time basis, and received no credit toward his pension during those years. At 72, he was unable to work and still a year's work removed from any benefits. The Center had no success in its efforts for him.

19 January 1971: After twenty years with the same company, this man had earned 100% vested interest in his pension. In April 1970, his company merged with another firm. His plan was terminated. Since his pension was not insured against plan termination, he lost all rights to benefits. Nothing could be done to help him.

15 August 1971: In this case, a man retired at the age of 65 after working fourteen years for the same employer. He too was not informed that only one more year's service was needed before he could attain full vesting. In order to make himself eligible, he attempted to regain his job. He was refused, and the Center's intercession was unavailing.

15 April 1971: This 70-year-old man had been employed a total of 24 years by a company whose plan called for vesting after twenty years. Howeverm

15 April 1971: This 70-year-old man had been employed a total of 24 years by a company whose plan called for vesting after twenty years. However, he had left his job for a period, and this break in service cost him all benefits. The Center could not induce his employer to grant any exception.

The CHAIRMAN. Thank you very much. The Bureau of Labor Services of the city of New York I gather has a broad-ranging function. What is your bureau all about?

Mr. ROACH. The bureau is about many things. We also enforce city contract requirements for equal employment opportunity and minimum wages, and we offer private sector mediation services. But the particular unit, the mayor's labor service center receives any individual complaint about private sector labor problems in about 30 different jurisdictional areas. We resolve about half the cases by mediation using the mayor's name and the other half have to be referred to agencies that have legal powers to act.

It is basically an ombudsman role.

The CHAIRMAN. How long has this bureau been in existence?

Mr. ROACH. This particular unit is almost as old as the administration, about 7 years in its current form. The bureau itself is about a month old. We drew together a number of labor programs and had a reorganization of sorts.

The CHAIRMAN. Thank you very much.

I understand that while our next witness was to be from the Allied Industrial Workers of America, I believe they have been advised that in order to meet a change that the National Society of Professional Engineers, Institute of Electrical & Electronics Engineers, American Chemical Society, and American Society of Civil Engineers will be heard now. That is what I understood.

We are glad you are here. We welcome you back to the other side of the table, Mr. Cummings.

Would you please proceed Mr. Cairns.

STATEMENTS OF ROBERT W. CAIRNS, RICHARD BACKE, PAUL ROBBINS, AND FRANK CUMMINGS, CONSISTING OF A PANEL REPRESENTING THE AMERICAN CHEMICAL SOCIETY, INSTITUTE OF ELECTRICAL & ELECTRONICS ENGINEERS, NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS, AND AMERICAN SOCIETY OF CIVIL ENGINEERS

Mr. CAIRNS. My name is Robert W. Cairns. It is my understanding that the procedure to be followed is that our statement and those of the next two gentlemen will be presented without stopping for questions and at the conclusion of the presentation I will be ready to answer any questions that the committee might have.

The CHAIRMAN. Fine.

Mr. CAIRNS. I have a 12-page statement for the American Chemical Society, which I propose to present for the record. I will give the highlights in a very few minutes in the interest of conserving your time.

I am executive director of the American Chemical Society. Previously I had 37 years in the industry, and more recently in the Department of Commerce as Deputy Assistant Secretary for Science and Technology. I resigned from that position on December 1, 1972, to take the post with the American Chemical Society. Accompanying me today are Dr. Robert E. Henze and Dr. Stephen T. Quigley of the American Chemical Society Headquarters.

We are pleased to have this opportunity to again present the views of the American Chemical Society, which I do on behalf of President Alan C. Nixon, who is in California and unable to be here today.

I have the authorization for this statement from the board of directors of the American Chemical Society.

It is our opinion that pension reform legislation such as S. 4, needs to be enacted at this time. We would like to bring up to date the statement that we made in support of S. 3598, on June 23, 1972, and to provide you with a restatement of that position, with a few additional comments.

The subject of pensions for professional employees has been a matter of considerable concern for a long time for the American Chemical Society. One might normally think that people such as our members would enjoy rather stable employment and its favorable consequences. Of course, during the past decade due to changes in governmental policy and the competitive economy there have been, by necessity, changes in jobs, which did not carry with them the benefits that they might have carried if some better attention had been paid to pension benefits.

About 70 percent of our 110,000 members are from industry, that is, employed by large and small employers. About 20 percent are from the academic world, and their interests in pensions are fairly well taken care of for the most part by the Teachers Insurance & Annuity Association program, which is pretty universal in that field. Of course the 10 percent which are government employees are also well taken care of.

So we are speaking about the interest of that 70 percent in industry. In that area about two-thirds of them do enjoy some kind of pension support from their employers, but it is quite variable in its type of provision, particularly with regard to vesting. Vesting, of course, is one of the important elements that is covered in your bill.

We feel the vesting requirements of 30 percent after 8 years and 100 percent after 15 years is somewhat minimal. We have in our own society developed over a period of years a set of "Guidelines for Employers," which has had very wide distribution among the industry. About 3,000 employers, as a matter of fact, have seen it and have inner interactions with us. In these guidelines one of the principal provisions is to provide for vesting of 100 percent after 10 years.

I might add that in our own society operations, where we have upward of 1,500 employees (many of them being professional), we adhere to a policy, fairly recently established, of full vesting after 5 years. This was actually enacted by the board of directors at a meeting this past year.

So we are very strongly in favor of a plan for achieving somewhat earlier vesting than was mentioned in the bill itself. We feel that provisions should be made possible in the bill for the gradual improvement of the vesting period over a period of time.

We have sponsored along with eight other technical societies an effort to arrive at portable pensions on a private basis. It is called Pensions for Professionals, Inc. The group is not part of our society. It actually is independent and it works in the interest of a number of other societies in order to make the provisions more universal.

It, of course, like any other private effort of that type is having a hard time to get organized and to deal with the marketing problems, the funding problems, and all the other associated problems. But they have located an insurance carrier, and they are now before IRS to get approval of their general plan. In that plan, I might add that the vesting period is 100 percent after 5 years. This, I think, about consumes the time that I had been promised to cover my testimony.

In summary, I will say that the American Chemical Society strongly supports the need for pension reform legislation as represented by S. 4. We strongly believe that provisions for early eligibility and early vesting are sorely needed and will contribute tremendously to the stability of careers for professionals of all types. Thank you.

The CHAIRMAN. Mr. Backe.

Mr. BACKE. My name is Richard Backe. Our statement will be similarly brief, in deference to the many hungry stomachs that might be in this room at this hour.

I have been authorized to speak for a number of societies.

I would like to introduce the representatives of those societies who are here. Together we represent approximately 400,000 engineers and scientists in the United States.

Senator JAVITS. Can we identify them.

Mr. BACKE. Mr. Joseph Ward is here for the American Society of Civil Engineers. Mr. Bill Miller is here for the American Society of Mechanical Engineers.

I am here for the Institute of Electrical and Electronics Engineers, together with our counsel who is known to this committee, Mr. Frank Cummings. And, additionally, Mr. Paul Robbins, who has been a frequent witness on this subject, is here for the National Society of Professional Engineers, and will speak after we do.

Our position on S. 4 is the same as it was on the predecessor bill, S. 3598. We testified through Mr. Robbins on behalf of that bill last year, and our position has not changed.

We would like to make three points today. First, we recognize that a bill of this nature may have trouble going through the various committees in Congress. We recognize that changes may be proposed in getting it through the various committees in Congress. There are many points in the bill that are essential to our members. We can accept many, many compromises in the form of the bill, but we would like to be assured that the substance of the bill has not been changed.

Second, the vesting provisions of the bill do not address themselves to the problems of engineers and scientists. This is a general reform bill, and probably not the best vehicle to address our particular problems. But I would like to call the attention of this committee again to the unique problems of engineers and scientists. In pursuing the priorities of this Nation, the engineers and scientists are typically going to move from job to job every 6 years. We have no choice in this matter. It is a matter of responding to national priorities. Any bill that establishes a vesting interval that is considerably in excess of 6 years is not going to help engineers and scientists achieve any security such as they would like to have in the pension system. Of course, there may be other means by which we can assure a pension and retirement system for engineers. And a minority of our members will be assisted by provisions of this bill—those employees who do

stay for a long period of time with one employer. But the majority of our members will not be helped by the vesting provisions of this bill. We nevertheless applaud provisions of this bill because we are interested in other standards of the bill.

Lastly, and I guess this is our most important point, we do think there is—or at least can be—within the context of the bill a provision to do something now for engineers and scientists. There is a provision for a study to be made of pension problems, and specifically we would like to request that the committee consider that a specific study could be made that would directly address itself to the problems of high mobility workers, that such a group could examine those problems over the next 12 months, could consider many other proposed bills that will come before the Congress, could see whether or not they do address themselves to the problem of high mobility workers, and if so, could report back to this committee not only the problems, but legislative proposals, to solve the problems.

If that comes out of this particular hearing on this committee or any action of this committee, it will do a great deal to allay the fears of engineers and scientists that in supporting this bill as we do, if only for the public interest, when it is enacted our problems might be swept under the carpet and no additional action would be taken in the future, after this bill is enacted.

The CHAIRMAN. Very worthy suggestion, and we will deal with it and find the most effective way to reach this.

Mr. BACKE. I think Mr. Cummings would like to explain some of these details. We do have one other group to speak. Would it be all right if the Professional Engineers made their statement, and Mr. Cummings made his remarks on the specific proposals after that?

The CHAIRMAN. Fine.

Mr. Robbins.

Mr. ROBBINS. I am Paul Robbins. I am executive director of the National Society of Professional Engineers (NSPE). Our statement elaborates a little more on some of the points that Mr. Backe has raised.

In addition, the NSPE statement has the endorsement of two additional societies, the American Institute of Industrial Engineers and the American Society for Metals, in addition to the American Society of Mechanical Engineers and the Institute of Electrical and Electronic Engineers.

As we are well aware, the problems to which S. 4 addresses itself are sixfold: eligibility, vesting and portability, funding, insurance, disclosure, and administration. We support for the most part the contents of S. 4. First, eligibility. We are concerned that no pension or profit-sharing plan require as condition of eligibility a period of service longer than 1 year or an age greater than 25, whichever occurs later.

As Mr. Backe has indicated, for engineers and scientific people, we would prefer, if possible, to see immediate eligibility.

Obviously, engineers appreciate the difficulties that are involved in enactment of legislation of this kind, particularly from an administrative viewpoint, and so despite our desire for immediate eligibility, we therefore accept provisions of S. 4.

Mr. Backe has already referred to the mobility of engineers. We feel strongly that there needs to be some vehicle by which this can be

recognized. This important segment of our economy is one that has a unique situation, and we strongly suggest that this be the subject of a continuing study and continuing legislation addressed to this particular segment of our population.

In the matter of vesting, engineers strongly favor immediate vesting. I am sure the engineers do not care whether they receive several checks or whether it comes from one source. If vesting were immediate, the portability problem would solve itself.

We commend the provisions of S. 4 in the matter of funding. We feel Federal law must provide those minimum funding standards necessary to protect the pension plan interests.

We are also supportive of insurance provisions. While engineers are not totally satisfied with provisions of S. 4, with the feeling that much still remains to be done to satisfy their particular need, they nevertheless recognize a certain balance must be struck between all interests involved, especially in the first bill of general applicability.

Engineers therefore are of the view that S. 4 strikes this balance as an original attack on the problem. We sincerely hope Congress will consider it and that it be passed and made into law in the immediate future.

Senator JAVITS. Before Mr. Cummings speaks, I may have to leave, and I would just like to say in fairness to him, though he is now a private practicing lawyer, that he was for a number of years counsel to the minority on the Labor Committee, and then was my administrative assistant, and that I credit him with bringing to me the original idea for the regulation of pension and welfare funds. Whether we agree or disagree with the recommendations which Mr. Cummings' clients may make or he may make, is another matter and obviously is part of the game.

The CHAIRMAN. In fairness to us, I think it should be said that his departure was voluntary.

Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Senator and Mr. Chairman.

I just wanted to call your attention briefly to the two exhibits that are attached to Mr. Backe's statement. They are engineer's exhibit 1 and engineer's exhibit 2.

(Note: engineer's exhibits 1 and 2 appear on p. 282 and p. 283, respectively.)

Mr. CUMMINGS. These two amendments, which we offer to you for your consideration, are not radical. Indeed one of them—exhibit 2—has already passed the Senate as title IV of S. 32 last year.

First, a few words as to engineer's exhibit 1. If you will turn to the text of S. 4 which you have in front of you, and turn to page 17, Senator, you will see that the bill, as written, requires that the Secretary of Labor undertake appropriate studies, and their is a broad spectrum of possible things that the Secretary could study. It doesn't say when he is supposed to reply, or in what order, or with whom he is supposed to consult. We feel that since the engineer's problems are not solved by this bill, although we support it 100 percent, it would be appropriate to put in a specific study, with a specific deadline, and call upon the Secretary to study the problems of high mobility employees who cannot vest in 8 years, because they will not be in one job 8 years.

and call upon the Secretary to consult with the people affected and to give Congress the results of that study within a year.

That is not just us, although we call upon them to consult with professional societies, but also industry representatives, because any solution to a problem has cost, and obviously industry should be consulted.

As to the second exhibit that we offer to you, you will recall that, last year when this committee reported S. 32, there was an amendment, title IV of S. 32, specifically designed to deal with the pension forfeiture problems of engineers and scientists. I recall that Senator Javits offered that amendment, and your committee gratuitously and unanimously accepted it.

It passed the Senate, but the entire bill died in th House.

If you feel it appropriate, you could pick up title IV of S. 32 and attach it to your bill, S. 4, and engineer's exhibit 2 does that, with one change, which we think you would find acceptable. You have engineer's exhibit 2 in front of you. In section 221, on the second line, where the Secretary is supposed to consult with professional societies, we also call upon the Secretary to consult with business organizations who, after all, have the expense of doing anything in this field and ought to be consulted.

Although we support S. 4 in its entirety, we do so acknowledging that it does not solve the vesting problems of engineers, that there are an awful lot of engineers in this country, and these two exhibits are two reasonable ways to attempt to bring some solution to this problem—one of these, of course, is something which the committee has already adopted in another bill—S. 32—and which the Senate has already passed in the previous Congress.

The CHAIRMAN. Is that the same language basically?

Mr. CUMMINGS. The language is identical in every respect except the one I pointed out to you, in which the Secretary is called upon to consult with business organizations in addition to professional societies.

The CHAIRMAN. Is that all you wanted to discuss?

Mr. CUMMINGS. Yes; I have covered the two engineers' exhibits on Mr. Backe's statement.

Senator JAVITS. Mr. Chairman, I had only one observation. I hope that the professional societies, to whose concerns and amendments we will give the utmost consideration, will fully recognize that you represent not only people, but technical training and skills which are indispensable to the future of this country. As a matter of fact I think what we are suffering from in the world is a certain discounting of American technical excellence, which had been preeminent until challenged in the last decade or so by Germany, Japan, and other countries. That is one of the big things at stake here in devaluation of the dollar, et cetera.

Nobody recognizes your importance better than I, and I am sure my colleagues share that view.

I would hope, gentlemen, and I address you all—and I hope you will communicate our views to your members that you do not sit around doing your knitting, waiting for us to act on what concerns you, but that you vigorously utilize your bargaining position for the same purpose.

We know a lot of engineers are out because of shifts in defense and aerospace policy, but that is not long lasting. Our country is still spending I think, in the area of $24 billion a year for research and development. All I say to you is: Sure we will pay attention to what you want, but I hope that you will not strictly rely on Government. I also hope that you will rely on your own bargaining power.

Thank you.

The CHAIRMAN. I appreciate that. I also believe that it is appropriate to make an observation, that it is not only the devaluation of our dollar that we are faced with these days, but in your area there has been a devaluation of science and research. Now certainly the Institute of Health has felt this reduction of national effort. I have not reviewed the Science Foundation in this situation, but I know that the Advisory Science Committee in the White House has been changed somewhat——

Mr. CUMMINGS. It has been abolished.

The CHAIRMAN. Quite a dramatic change; abolished.

We appreciate the broad outlook you have in terms of the legislation, even though it does not present an immediate answer to the work expectations of the engineers who were highly mobile. The study certainly impresses me to include that in the bill.

Anything further? Thank you very much.

(The prepared statements of Messrs. Cairns, Backe, and Robbins with accompanying exhibits, follow:)

STATEMENT

of

THE AMERICAN CHEMICAL SOCIETY

Presented by

DR. ROBERT W. CAIRNS

EXECUTIVE DIRECTOR

to the

SUBCOMMITTEE ON LABOR

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

on the

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT OF 1973

S. 4

Thursday, February 15, 1973

Mr. Chairman and members of the Subcommittee:

My name is Robert W. Cairns. I am the Executive Director of the American Chemical Society and appear before you today to present the Society's statement on behalf of Dr. Alan C. Nixon, the 1973 President of the American Chemical Society, who is unable to be here today. I have spent 37 years in industry and retired as Vice President of Hercules Incorporated on July 1, 1971 to accept the position of Deputy Assistant Secretary of Commerce for Science and Technology. I resigned from that position on December 1, 1972, on acceptance of my present appointment. Accompanying me today are Dr. Robert E. Henze, Director of the Membership Division, and Dr. Stephen T. Quigley of the Department of Chemistry and Public Affairs of the American Chemical Society.

We are pleased to have this opportunity to discuss again the American Chemical Society's experience in private pension plan matters and to comment on S.4

and the prospects it offers for greater assurance of retirement income security. The Society is familiar with the fact that opposition to similar provisions of S.4, under its previous designation S.3598, was generated during the latter stages of the 92nd Congress. It is our opinion that pension reform legislation needs to be enacted at this time. The substance of the Society's position in this regard is the same today as it was when we offered testimony last June 23, 1972 before this Committee. We would like now to provide you with a restatement of that position with a few additional comments.

The American Chemical Society was chartered by Congress in 1937 as a non-profit, scientific and educational organization and has been asked to assist the Government from time to time in matters related to its areas of competence. Our current membership numbers approximately 110,000 individual chemists and chemical engineers.

During the past decade, the Society has become increasingly aware of situations involving its members which stress the lack of adequate retirement security for the nation's professional scientists and engineers, and for all workers. It was almost ten years ago that the specter of retirement program deficiencies first surfaced when scientists and engineers found themselves moving, often involuntarily, from one employer to another as Government contracts were shifted about and as technology requirements changed with the burgeoning aerospace program. They soon realized that with a series of short-term jobs, one of the main elements of more usual steady employment was lacking, namely the accrual of time and credit toward an adequate retirement benefit. Indeed, these professionals were probably among the first to come to grips with the vesting concept and the grim realization that unless they were able to spend from ten to twenty years of their careers with a single employer, they could wind up at age 65 with no pension income aside from Social Security in their later years.

More recently, this experience has been repeated as many chemists and chemical engineers, victims of a recessive national economy, were laid off by their employers. Not only did growing numbers of them find themselves without jobs, likely for the first time in their careers, but many also discovered for the first time that their years of service were insufficient to have earned them a firm stake in their pension plans. The Society's files contain many cases in which competent chemists were terminated with 10, 12, and 15 years of service with nothing to show in the way of credit towards their retirement security. And even where vesting occurred, many learned the sad fact that the benefit they could expect at retirement was very small. We are currently attempting to help one of our members, for example, who after 28 years of service with the same employer has been informed that his pension amounts to less than 10% of his final salary.

In contrast, the principle of early or immediate vesting to avoid these situations is already fact in the form of the Teachers Insurance and Annuity Association program, initially established by Andrew Carnegie in 1905. This aspect is not lost on our members; 80% of those polled in a survey some years ago endorsed the development by the American Chemical Society of an industrial-type of TIAA.

This led us in the mid-1960s to conduct surveys of pension plan benefits available to chemists and chemical engineers. To our knowledge, these were the first known surveys designed to elicit such information on a specific group of technical professionals. They included upwards of 1,000 employers and nearly 50,000 chemists and chemical engineers. Copies of reports of these surveys have been filed previously with this committee.

While showing that most chemical scientists were participants in a pension program, these surveys yielded some bleaker aspects as well. Of particular concern was the finding that only about 70% of industrial employers offered a pension plan as such. Moreover, at that time, more than half the employers did not provide any vesting of pension benefits until after 10 years of employment. In nearly half the cases, too, vesting was graded or deferred so that the chemical scientist was not entitled to a full benefit until after 25 years of service.

Even in terms of eligibility for his pension plan, the chemical scientist frequently was required to work as many as three years before he could be enrolled.

These findings indicated to the Society that there was a real need for a new national system for creating and accumulating retirement credits throughout the scientist's career. Accordingly, on its own initiative, the Society undertook a major feasibility study to determine whether such a national pension plan for professional scientists and engineers could be a viable enterprise. Features of the plan, as then seen in concept, included early eligibility (within one year), early vesting (within 5 years), portability of retirement credits among participating employers, and a money purchase system of benefits adjusted to follow the economy (the so-called variable annuity approach). While doubts about the success of such a venture existed in 1967 when this project was undertaken, the findings were encouraging. They showed that such a project was not beyond the bounds of reality, provided that certain participation conditions could be met and sufficient seed money to underwrite the operation could be obtained.

Out of this ultimately arose a new, non-profit entity established by the Society for the purpose of correcting the inequities found in many private pension plans. Known as Pensions for Professionals, Inc., this entity was designed to be interdisciplinary in its reach, and therefore has turned to other scientific, engineering, and allied professional societies for assistance and sponsorship.

To date, eight such organizations have indicated an intent to join with us in the venture. In addition, many more have expressed an interest in doing so. It is estimated that approximately 2,000,000 scientists and engineers and other technical employees might eventually be covered under such a plan. We have also been successful in identifying a major insurance carrier to assume the principal burden of administering the program, although policy guidance will continue to come from the scientific and engineering community via a board of trustees comprised of representatives designated by the participating societies.

Certain of the principal features of the PFP plan, as we now see them, will be of interest to the Committee since they have their counterparts in S.4. Regarding eligibility, for example, the Pensions for Professionals plan, like S.4, advocates a maximum of one year service and attainment of age 25, before participation can begin. We are aware of the Committee's previous consideration of a lower maximum service requirement and share the view that it is a worthy objective. While we feel that the lowering of the maximum service requirement is probably not unrealistic, our experience has indicated that lowering the age for eligibility is not a critical factor in the area of technical employment.

Vesting, of course, is the principal concern of scientists and engineers, just as it is among others who analyze the structure of the private pension plan system. The proposal of S.4 for initial vesting of 30% after eight years of service with full vesting after 15 years appears to be a reasonable first-step improvement over the large majority of plans covered in our surveys. However, while our Society recognizes the difficulties involved, we feel that the objective of 100% vesting after 10 years should be reached at the earliest possible opportunity. We propose that the committee give serious consideration to an

additional provision under Section 202(a). This provision would promulgate a series of graded earlier vesting percentages over a 5 year period after Title II of S.4 becomes effective. Under such a provision all plan participants under S.4 then would be entitled to 100% vesting after ten years of covered service. This would be accomplished in a period of eight years from the date of enactment of S.4.

The Society has advocated 100% vesting within 10 years for its own members through a statement of employer-employee relationships entitled "Guidelines for Employers", which has been widely distributed among some 3,000 industrial employers. This vesting position was taken as a reflection of the best contemporary, realistic guidelines for advising employers in such matters, although we firmly believe that room for further improvement exists. To illustrate, the Society urges that earlier vesting be provided chemists and chemical engineers who are terminated at the convenience of their employer.

Attractive vesting is also a feature of the Pensions for Professionals program, which predicates 100% vesting in 5 years. Lest this be thought too costly or too evolutionary for the early 1970s, we should bear in mind that the academic community has had a system of virtually immediate vesting for more than 50 years. Moreover, employees in the Civil Service participate in a plan that also features very early vesting among Federal agencies. The question now is how long will it take before employees in the private profit-centered sector of the economy can enjoy the same advantages. Hopefully, through adoption of legislation such as S.4 this question can be responded to affirmatively more quickly.

In keeping with these recommendations the American Chemical Society itself has in recent months taken affirmative action in this area. The Board of

Directors has established that the Society's pension plan will provide 100% vesting after 5 years service for our 1400 employees, effective November 1, 1972. This represents a dramatic change from the previous provisions which were 50% vesting after 10 years, with 100% vesting at 20 years of service.

Portability of benefits, of course, should be a key feature among all participants in a common pension plan, and such is the objective of the one under development by PFP. A main ingredient will be maintenance of individual accounts with a consequent accumulation of individual allocations and individual benefit payouts when these are required. To the extent that these same concepts can be fostered by legislation, we would concur in their adoption, although it should be recognized that early or immediate vesting essentially confers the same effect as portability.

But until there is essentially immediate vesting, portability will continue to be a somewhat elusive factor if for no other reason than that chemists, like other workers who change jobs, will continue to lose some portion of their accumulated vested work time with each successive position. This is why it would be exceedingly useful if federal legislation could stimulate the concept of early vesting, particularly in those situations where initial employment is not involved. Thus, while it may not be unreasonable to insist that an employee serve for some specified period of time, e.g., five to ten years, before initially acquiring a vested right in a common pension plan, it should be possible to devise a system whereby thereafter the same employee would not have to undergo similar vesting incubation in successive positions. What this means, of course, is that

workers would wind up with an integrated system of pension benefits in which virtually all of their service would be credited toward the accumulation of benefits, not just those small increments that occur after vesting is achieved in each successive position. While it may be impractical to develop a specific proposal along these lines in time for S.4, we urge that the Committee look into this concept, possibly with the idea of developing some system of recognition or incentives for private employers willing to participate in such a collaborative, single vesting approach. To reiterate, the essentials of this concept already are working well in the academic community and in Civil Service. Extending them to the private sector is long overdue.

Relative to portability, we would further like to draw your attention to the Society's statement on the National Science Policy and Priorities Act of 1972, H.R. 15789, filed for the record with the Subcomittee on Science, Research and Development of the House Committee on Science and Astronautics on October 3, 1972. The pertinent section of that statement reads as follows:

> "We also support Title IV, 'Protection of the Pension Rights of Scientists and Engineers', as being necessary to permit professionals to switch to work on civil science systems without loss of pension rights and benefits. The thousands of scientists and engineers who regularly provide their services to contractors retained by the Federal Government have become acutely aware of the pension risks associated with this type of employment, particularly as related to vesting. Repeatedly, these workers have had their jobs terminated, frequently on short notice, before they achieved a stake in their pension plans. Hence, the concept of modifying

Federal procurement regulations to insure the protection of the pension and retirement rights of those scientists, engineers, and others working in associated occupations, employed under Federal procurement, construction, or research contracts or grants, reflects the American Chemical Society's position accurately in this area, as expressed on June 23, 1972, in testimony before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare. We do feel, however, that Title IV would be significantly strengthened if Section 404 was modified by deleting the language 'unless the head of such department or agency determines that such changes would not be in the national interest or would not be consistent with the primary objectives of such department or agency'. It is our opinion that the provisions of Title IV are consistent with the primary objectives of all federal departments and procurement agencies and certainly in the national interest. In connection with Section 402, the American Chemical Society would be prepared to cooperate with the National Science Foundation in modifying existing procurement regulations to effectuate the purpose of Title IV."

We also recommend that S.4 consider more positively the position of employers whose vesting is more attractive than that advocated by this

legislation. Title II, Part A, Section 202(d) recognizes that this situation may obtain. To assure that employers who currently offer earlier vesting will not relax their requirements and revert to those stipulated by S.4, we believe it would be in the public interest to provide some incentives, possibly of a tax nature, as an inducement to continue and improve their present programs.

Mention of incentives also leads us to urge that the Congress give positive consideration to means for stimulating still greater involvement by citizens in their own retirement security, either through existing employer pension plans or by individual initiative. Public policy encourages citizens to be mindful of their retirement economic needs. Some spokesmen may even argue that the Government mandates such an attitute through the Social Security system. Indeed, the Government has taken constructive steps to foster such participation, at least, in some areas. It does so through favorable tax considerations for employers who have IRS-qualified plans. It does so through the Keogh Act for self-employed persons and small partnerships. It does so through deferred compensation plans for the nation's more highly remunerated workers who can afford such an option. It also does so for those employed in non-profit scientific, educational, and charitable organizations who can make tax sheltered contributions to the Teachers Insurance and Annuity Association program, for example. But for the large majority of employees, both professional and non-professional, no such incentives exist, and all their contributions to retirement programs, whether voluntary or involuntary, must be made with after-tax dollars. This is an inequity which should be corrected.

There is ample reason to believe that with the same kinds of tax savings offered their employers, for example, more individuals would take a lively interest in their retirement security. Likely, larger numbers would augment their existing contributions or even agree to larger employer deductions for pension benefits. In fact, we believe this single step would do more to bring about pension reform and assure adequate benefits for the nation's workers than virtually any other feature of legislation such as S.4. Its concomitant impact on the overall improved health of the national economy should not be overlooked either.

Lastly, Section 509 of S.4 proposes that Section 14 of the Welfare and Pension Plan Disclosure Act be amended to provide for the establishment of an Advisory Council on Employee Welfare and Pension Benefit Plans. It is our opinion that it would be advantageous for the Secretary of Labor to have the advice of representatives of the professional and technical community with respect to the carrying out of his functions under this Act. We therefore recommend that the representation on this proposed Advisory Council be broadened to reflect that kind of input into its deliberations. To this end, our Society would be pleased to cooperate in identifying knowledgeable chemists or chemical engineers who could assist or participate on the Council.

In summary, the American Chemical Society strongly supports the need for pension reform legislation, as represented by S.4. We strongly believe that its provisions for <u>early eligibility</u> and <u>early vesting</u> are sorely needed. At the same time, we feel that significant improvements in the vesting provisions of Title II, Part A can be achieved. To this end, we foresee the

growth of a symbiotic relationship between federal efforts, such as this legislation, and activities in the private sector, typified by Pensions for Professionals with its multidisciplinary support among the professions. This could signify the next major change in employment practices in the U.S., namely, a more equitable and assured retirement income system for all citizens.

We also want to stress again that the U.S. worker, whatever his status -- professional scientist, skilled laborer, or other -- should be entitled to a retirement benefit based upon all the productive years of his employment, not just those years following the vesting interval at each job.

Some of our members have likened their pension plans to a pair of golden handcuffs by which they are manacled to their jobs. Now is the time, we feel, to turn the key of those handcuffs and let each job serve as its own attraction so that the professional scientist can be free to apply his talents where they can be most effectively utilized. The pension plan should be regarded solely for what it is, a system of deferred compensation in which the employee earns an increment daily. In many respects, S.4 appears to be the key that can bring about this realization and lead to the best professional efforts by the nation's technical community based upon greater assurances of adequate retirement security.

STATEMENT FOR
THE ENGINEERING SOCIETIES
(ASCE, ASME, IEEE, NSPE)
ON
PENSION REFORM LEGISLATION (S.4)
BEFORE THE SUBCOMMITTEE ON LABOR
SENATE COMMITTEE ON LABOR AND
PUBLIC WELFARE

February 15, 1973

MR. CHAIRMAN: MEMBERS OF THE SUBCOMMITTEE

Good Afternoon. My name is Richard Backe. I am pleased to have been invited to appear here today to testify in behalf of several engineering societies which together represent over 350,000 engineers and scientists. Seated with me are representatives of American Society of Civil Engineers (ASCE); American Society of Mechanical Engineers (ASME); Institute of Electrical and Electronic Engineers (IEEE); and the National Society of Professional Engineers (NSPE).

Our societies believe that it is essential that we present a unified approach to pensions which will be recognized as such by our respective members, by all of industry and by the Congress.

I will be brief, since this committee had extensive hearings on this legislation during the last Congress. You may recall that on last June 20th, testimony was given in behalf of ASM, ASME, IEEE and NSPE by Mr. Paul Robbins.

The substance of our position as then stated is unchanged. A subsequent speaker will update certain elements of the June 1972 statement. This statement will highlight only three points -- one of them a basically new proposal.

First, we endorse the goals of S. 4 in all areas, particularly those relating to funding, insurance, disclosure, fiduciary responsibility and portability. However, we observed the past action of other Congressional committees on the predeccessor bill, S. 3598. There was considerable opposition, not so much to the goals of reliable and effective pension plans, but to the administrative means and costs of providing these.

We know the sponsors of this bill and members of this Committee are far more skilled in the legislative process than we are. We, therefore, urge them to seriously consider amendments that might ensure speedy enactment of reform legislation <u>without sacrificing the substance of these goals</u>.

Second, we must emphatically state that this bill will not resolve the problems unique to the highly mobile engineering and scientific work force. If this Nation is to continue to be the world's leader in technology and finance, if we are to lead the effort to restore peace, clean our environment and relieve suffering --- we must retain the flexibility to shift our technical work force to new projects as rapidly as priorities and new developments demand.

This means that engineers and scientists will typically continue to change jobs and employers every 5 to 6 years. The proposed legislation will obviously not solve the problem of this special work force. With vesting starting at 8 years and full vesting deferred until 15 years, no engineer can, on-the-average, benefit under vesting provisions of this plan.

We support the proposed vesting schedule only because it will put a ceiling under which better plans can be devised and because it will benefit a minority of our members. However, the objective of engineers is an adequate pension plan which provides for early vesting of rights in safeguarded pension funds. Vesting should be so scheduled that it does not seriously affect either the employer's or the professional employee's decision as to continued employment.

As a goal, eligibility for participation should be immediate upon undertaking employment, but in no event require more than one year of service or attainment of an age greater than 25. On the question of vesting, immediate vesting, best responds to the engineer's problem.

As a substitute position, we would suggest that vesting begin at the conclusion of the first year of service with 20% of accrued benefits, increasing by 20% each additional year until 100% becomes vested at the conclusion of the fifth year.

Our third point contains a new idea which can readily be integrated into the provisions of this bill. Specifically, we propose that a special study be made which would: (a) examine the pension problems of special groups, (b) determine whether the currently proposed reform measures can and will help these citizens, and (c) report the result to the Congress together with proposed legislative or regulatory amendments that will resolve these special problems. A draft amendment to S. 4 to this effect is submitted as Exhibit 1.

Adoption of this third point would do much to allay the fears of scientists and engineers that pension reform will end with the passage of S. 4 and that their economic welfare will be ignored.

One recommendation that we submit for consideration in this study is the adoption of an amendment to S. 4. This amendment would partially solve our problem through revised government procurement regulations. A draft of such an amendment is attached as Exhibit 2.

Thank you for your continuing interest in our profession.

Engineer's Exhibit 1

93d CONGRESS
1st SESSION

S.4

IN THE SENATE OF THE UNITED STATES

February , 1973

Referred to the Committee on Labor and Public Welfare and ordered to be printed

AMENDMENTS

Intended to be proposed by Mr._________ to S.4, a bill to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans,

viz:

On page 16, line 25, strike our "(c) (1)", and insert in lieu thereof, "(c) (1) (A)".

On page 17, between lines 10 and 11, insert the following new subparagraph:

"(B) without limiting the generality of subsection (c) (1) (A), the Secretary shall undertake a study of the sufficiency of the vesting provisions of this Act as applied to high-mobility employees, such as professional engineers and scientists, and shall recommend such changes in existing law and regulations as may be appropriate to afford to such employees adequate protection against unreasonable forfeiture of pension credits as a result of frequent job changes inherent in the conduct of their professions. In developing such recommendations, the Secretary shall consult with professional societies, industry representatives, and other interested groups with specialized knowledge of the problems of high-mobility workers. The study required by this subsection (c) (1) (B) shall be completed and submitted to the Congress within a year after the enactment of this Act."

93d CONGRESS
1st SESSION

S.4

Engineer's Exhibit 2

IN THE SENATE OF THE UNITED STATES

February , 1973

Referred to the Committee on Labor and Public Welfare and ordered to be printed

AMENDMENTS

Intended to be proposed by Mr._________ to S.4, a bill to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans,

viz:

On page 41, between lines 4 and 5, insert the following:

"Part D--PROTECTION OF PENSION RIGHTS OF SCIENTISTS AND ENGINEERS

Sec. 220. The Congress finds that because of rapid and frequent changes in Federal procurement objectives and policies, engineering and scientific personnel suffer a uniquely high rate of forfeiture of pension benefits under private pension plans, as such employees tend to change employment more frequently than other workers. The Congress declares that it is the policy of the United States to seek to protect scientists and engineers from such forfeitures by making protection against forfeiture of pension credits, otherwise provided, a condition of compliance with Federal procurement regulations.

Sec. 221. The Secretary shall develop, in consultation with appropriate professional societies, business organizations, and heads of interested Federal departments and procurement agencies, recommendations for modifications of Federal procurement regulations to insure that scientists, engineers, and others working in associated occupations employed under Federal procurement, construction, or research contracts or grants shall, to the extent feasible, be protected against forfeitures of pension or retirement rights or benefits, otherwise provided, as a consequence of job transfers or loss of employment resulting from terminations or modifications of Federal contracts or procurement policies.

Sec. 222. Recommended changes in procurement regulations shall be developed by the Secretary, as required by section 221, within six months after enactment of this Act, and shall be published in the Federal Register within fifteen days thereafter as proposed regulations subject to comment by interested parties.

Sec. 223. After publication under section 222, receipt of comments, and such modification of the published proposals as the Secretary deems appropriate, the recommended changes in procurement regulations developed under this title shall be adopted by each Federal department and procurement agency within sixty days thereafter unless the head of such department or agency determines that such changes would not be in the national interest or would not be consistent with the primary objectives of such department or agency."

On page 97, line 2, insert, after "104," the words "Part C of Title II,".

On page 97, line 5, insert, after "Title II", the words "(except Part C thereof)".

On page 2, insert in the index the following:

"PART D -- PROTECTION OF PENSION RIGHTS
OF SCIENTISTS AND ENGINEERS

"Sec. 220. Findings and policy.
"Sec. 221. Development of recommended changes in procurement regulations.
"Sec. 222. Publication of recommended changes in procurement regulations.
"Sec. 223. Adoption of changes in procurement regulations."

STATEMENT

of the

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

on behalf of itself and the

AMERICAN SOCIETY OF MECHANICAL ENGINEERS

AMERICAN SOCIETY FOR METALS

AMERICAN INSTITUTE OF INDUSTRIAL ENGINEERS

INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS

to the

SUBCOMMITTEE ON LABOR

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

on

S-4

February 15, 1973

The National Society of Professional Engineers, a nonprofit organization, with headquarters in Washington, D.C., and consisting of nearly 70,000 individual members who are engaged in every aspect of engineering practice, welcomes this opportunity to present its views on the Retirement Income Security for Employees Act--S.4. I am Paul H. Robbins, a professional engineer, and the Executive Director of the National Society of Professional Engineers.

We speak on this measure today on our own behalf and also on behalf of the American Society of Mechanical Engineers, a 65,000 member group; the American Society for Metals, with 40,000 members; the American Institute of Industrial Engineers, a 23,000 member organization, and the Institute of Electrical and Electronics Engineers, with 140,000 members. All five of these engineering organizations, with a combined membership approach, 350,000 individual engineers, are firmly united in

their judgement that improvements must be made in America's private pension plan system if the country's engineers and their dependents can ever hope for a reasonably secure retirement based upon economic security.

Congress knows what is necessary to bring about this reform. Acting on this knowledge, the Senate Labor Committee favorably reported S.3598 last September--a bill identical in its provisions to S.4 of the current Congress.

The findings of this Subcommittee's lengthy pension study, which extended over the past three years, coupled with detailed testimony given during the Subcommittee's hearings at various times and in various cities during the last Congress, demonstrated beyond doubt that the reasonable expectations of employees upon reaching retirement age fail to materialize in most instances. The Committee is to be commended for taking a bold leadership stand favoring omnibus-type legislation to require reasonable eligibility conditions, mandatory early vesting, required funding so that the money is actually on hand when individuals' retirement occurs, clearer and more detailed disclosure and reporting, reinsurance to protect against untimely plan terminations, and safeguarding fiduciary standards.

For the professional engineer in the United States, the illusory existence of the private pension which the Subcommittee's study confirms is further complicated by the peculiarities of engineering employment. The practice of engineering in America since the end of World War II has been distinguished by an almost singularly peculiar element--the need for mobility. As the country's priorities changed, the technically trained found that they were either often out of a job entirely and forced to find new employment, or were required to follow the government contract from one company to another.

Changing jobs from one employer to another and from one locality to another, caught up in shifting national emphases and needs for technical skills, did not serve the engineer well, at least insofar as aiding in his ability to accumulate

pension credits and the security necessary for a respectable retirement. This condition, moreover, has all the appearances of continuing in the future as a way of life for the American engineer.

Seldom is it possible, the engineer discovered, to acquire a "vested" interest in a pension plan under these circumstances. Even where interests in fact do become "vested", the total accumulation of credits is rarely adequate. The problems for which legislation must provide solution are at least sixfold: eligibility, vesting (portability), funding, insurance, disclosure, and administration. S.4 directs itself to all of these issues.

As a footnote, legislation sponsored in both the last Congress and the current Congress would provide the means whereby individual retirement savings plans might be established with tax-deductible dollars. In May 1972 testimony to the House Ways & Means Committee, engineers supported enactment of this kind of relief, and will again urge its passage in this Congress.

Engineers support passage of S.4. We do have certain suggestions for amendments intended to achieve improvements in the bill.

Turning first to eligibility, S.4 provides that no pension or profit-sharing plan can require, as a condition of eligibility, a period of service longer than one year or an age greater than twenty-five, whichever occurs later. Because participation requisites have a direct relationship to vesting, engineers are of the judgement that the most desirable situation would be immediate eligibility--that all employees be eligible to participate immediately upon taking a job with an employer who has a pension plan. The longer the restrictive period before an employee can begin pension plan participation, the longer, obviously, before any benefits under the plan can be made to vest in his behalf. While this has been the basis for engineering's objection to substantially long eligibility requirements, engineers do appreciate the need of employers for a reasonable waiting

period particularly from an administrative point of view. Accordingly, we find the S.4 conditions acceptable and urge adoption of this provision.

Vesting is really at the heart of the pension problem. It occurs at that point in time when an employee acquires an irrevocable right to receive payment of a benefit upon retirement age. Some private pension plans have no absolute vesting provisions at all; some require as a condition that the employee have been in the service of the same employer for a specified number of years; others insist on a combination of service years with the same employer combined with the attainment of a particular age; and most provide for forfeiture of rights under a variety of conditions.

It is not unusual, as the Subcommittee's Study indicates, for workers to have been employed for upwards of four decades in the same job, by the same employer, and under the same pension plan, only to be fired, to become sick, to be unable to move to a new locale with their employer, or, for any number of other reasons, to falter over the fine print, and to lose absolutely everything--sometimes on the very threshold of retirement.

For the engineer, whose life style of necessity, and frequently in response to national calling, is usually one of high mobility and fast-changing technological obsolescence, the results are predictable. The engineer is unable, in many cases, to stay at one place or with one employer long enough to accumulate any vested pension credits. In many other cases, he is unable to accumulate enough vested benefits to provide for an adequate pension. The engineer must cope with these problems as integral career factors.

What engineers really need is a vehicle whereby they can get into a pension plan early, stay with it until retirement, and accumulate credits along the way even though that may involve a succession of employers and a multiplicity of

retirement checks from different sources at the road's end. In the judgement of engineers, immediate vesting can best accomplish this goal.

S.4 proposes vesting of all pension and profit-sharing retirement plans at the rate of thirty percent of accrued benefits commencing with completion of eight years' service and increasing by ten percent per year thereafter so as to achieve full vesting after fifteen years of service. At the same time, the bill would establish a voluntary program for portability of vested pension credits under the administration and trusteeship of the Labor Secretary for the transfer of earned benefits as between actuarially equivalent plans.

These provisions must be considered together because the substance of vesting and portability are inseparable in the practical final result. In the judgement of engineers, portability can be effectively achieved through mandatory early vesting. Without vesting, in fact, there is nothing to transfer. And with unreasonably long vesting requirements, no system of portability which can possibly be devised will get at the problem of those whose working careers require, for reasons previously noted, changing job patterns. For engineers, the commencement of vesting only after eight years of service is simply too long.

Engineers strongly favor immediate vesting. There would then never be any lapse in the accumulative process, and a formal, separate portability system would be unnecesary--the retirement benefits always being earned from job to job with guarantee of an acceptable aggregate upon retirement. This preference for immediate vesting would, furthermore, avoid the other limitations inherent in S.4's proposed portability system: portability applying only on a voluntary basis; and transfers effectual only between plans which are actuarially equivalent.

Engineers are not unmindful, however, of objections to immediate vesting based on increased costs, benefit reductions, and threatened employer abandonment of pensions altogether should immediate vesting become the law. Accordingly, engineers recommend, in the alternative, a system whereby full accrual of vesting can be accomplished over a period not to exceed 5 years of service. Such system could commence vesting at 20 percent upon the completion of the first year of service, with an additional 20 percent each successive year until the entire accrued portion of the regular retirement benefit provided under each plan is fully vested at a time no later than the end of the fifth year of service. Any requirement for attainment or nonattainment of a particular age as a condition of full or partial vesting would, of course, be wholly incompatible with this engineering-proposed system.

Although we have thus expressed our preference for immediate vesting, both as an independent concept, and as a more desirable method of achieving true portability, we do not flatly oppose the vesting and portability provisions of S.4.

On the contrary, our position is that both go a long way toward providing badly needed relief in the private pension plan system of the United States. Mandatory vesting commencing at the eighth year of service is most assuredly a significant step in the right direction. And the creation of the Voluntary Portability Program Fund, for the first time in any seriously considered legislative proposal, realistically addresses a genuine and most serious problem in a practical way.

Engineers are not insensitive to the problems of attempting to legislate in this complex field. They do appreciate the far-reaching consequences of even minor changes in a finely tuned business. They have studied the objections

of those who would insist on preserving the status quo. Engineers nevertheless unequivocally agree with the findings and conclusions of this Subcommittee, and the sponsors of ths subject bill, that provision for pension plan reforms is an absolute necessity.

Despite our firm conviction that immediate vesting is the best answer to the pension problems of the professional engineer, or, at the least, adoption of the suggested system for beginning vesting at the end of the first year of service and accumulating to full vesting in five years, if the optimum which can practically be achieved at this time is the S.4 approach, then we fully support it.

But we do recommend that, should S.4 as presently proposed become law, the Congress continue its work on the problems of vesting and portability in the light of accumulating experience with a view toward further and additional improvements in the direction of the engineer-preferred goals.

Funding is another major problem area. Federal law must provide for those minimum funding standards necessary to protect pension plan participants' interests. Without the availability of adequate funds to back up the employer's promise of benefits at time of retirement, that promise is meaningless. S.4 seeks to guarantee that this promise is kept, and we support it.

Coupled with strengthening of the funding requirements must be a mandatory program of reinsurance to cover unfunded vested benefits in situations where, for one reason or another, including discontinuance of the employer's business, a pension plan is terminated. S.4 makes provision for this need and we also endorse it.

Improved disclosure requirements, and the establishment of fiduciary standards, are also both necessary to protect the rights and interests of the millions

of workers covered by pension benefit plans. S.4 would greatly improve upon the existing legal requirements in the disclosure area and go a long way toward eliminating many of the situations found to have compromised the obligation of trustees to act solely in the beneficiaries' interests.

This Subcommittee, its Chairman, its leading Minority Member, other Members, and the Staff have labored long and hard to provide remedies in the areas where the evidence positively shows repeated failures to exist in the present retirement security system. The engineers of the United States sincerely thank you all for these efforts. We trust you will not relent until the best remedy has been enacted.

We fully agree with the conclusion expressed in the Committee's Report on S.3598 of last year that it would be unwise and impractical to institute revision in a patchwork fashion. The problems which have been shown to exist are too tragic to deny an omnibus proposal approach. And while engineers are not fully satisfied with the provisions of S.4, feeling that much still remains to be done to satisfy their particular needs, they nevertheless recognize that a certain balance must be struck between all interests involved, especially in the first bill of general applicability. Engineers are of the view that S.4 strikes this balance as an original attack on the problem. We hope that this Congress will consider it in its entirety and that it will be passed into law without further delay.

The CHAIRMAN. Finally this morning we have Mr. Harry Donoian on behalf of the Allied Industrial Workers of America. We appreciate your being with us.

STATEMENT OF HARRY A. DONOIAN, ALLIED INDUSTRIAL WORKERS OF AMERICA

Mr. DONOIAN. Senator Williams, in my prepared statement there is a typographical error on page 7, sixth line. It says "requirement" and it should be "retirement."

I do not intend to read my statement. I want to give you a brief summary of our remarks. I would like to bring to your attention that the following resolution was passed at our international executive board meeting in Miami this morning, and it states:

> Whereas, the 100,000 members of the Allied Industrial Workers of America, (AFL–CIO) are to be found in many different industries and many different jobs; and
>
> Whereas, the members of the Allied Industrial Workers of America, (AFL–CIO), like all workers, should not be left out in the cold because of inequities in the operation of private pension plans; and
>
> Whereas, the private pension plans in the United States need supervision and standards need to be set for their effective operation,
>
> Therefore be it resolved, that the International Executive Board of the Allied Industrial Workers of America (AFL–CIO), on this 15th day of February, 1973, endorses the provisions of the Williams-Javits Bill, especially as they relate to vesting, funding, federal insurance of pension plans, portability, and fiduciary standards and disclosures; and
>
> Be it further resolved, that a copy of this Resolution shall be sent to the Senate Committee on Labor and Public Welfare and that the research director, Pensions and Insurance of the International Union shall submit whatever appropriate information he can to the committee to aid in the passage of this bill.

Our international union does not often make legislative appearances. The reason why we are here today is primarily because of the difficulty that the bill encountered last year. We would like to see it passed because we feel that our members are in need of the kind of protection which S. 4 grants.

I point out in my statement that our international union has adopted the national industrial group pension plan, which is developed by the Industrial Union, Department of AFL–CIO as our international plan. We feel that the provisions of the national industrial group pension plan set good basic minimum standards for all pension plans.

As you may note, in terms of some of the provisions of the IUD plan, they encompass some of the ideas that are in S. 4; namely, in terms of portability, in terms of termination protection especially.

We welcome S. 4 and also we would like to point out though that we do not feel that S. 4 will solve all the problems as far as retirees are concerned.

The Social Security Administration pointed out that the average annual retirement income for retirees was somewhere in the neighborhood of $1,600 a year. And we do not feel this is anywhere adequate enough to provide the benefits for retirees, so we look forward to expanding social insurance and also the idea that these perhaps should come through general revenues rather than through the payroll tax as it has been currently financed.

We have cited a couple of examples in here. If I just take one moment about some of our experiences with pension plans. Provisions for

disability requirements generally parallel requirements for vesting. We had an employee in one of our plans who received a disability injury. Let me preface this. In order to be entitled to disability retirement in this particular plan, the employee needed to be age 50 and have at least 10 years of service. Well this particular employee had 22 years of service. but he was 2 weeks shy of attaining age 50 on the day he was disabled. So this made him ineligible to receive the disability pension.

We felt as far as this particular plan was concerned that these requirements were too stringent, and as a matter of fact we had a strike at that particular plant to try to get it changed.

The CHAIRMAN. He had 22 years of service?

Mr. DONOIAN. He had 22 years of service, and he was 2 weeks shy of being age 50 at the time the disability took place.

The CHAIRMAN. Did he have any vested right that became payable at age 60 or 65?

Mr. DONOIAN. No; same provision obtained there also.

The CHAIRMAN. In other words he was wholly shut out of any benefit?

Mr. DONOIAN. Yes. So that is why we feel that vesting should take place much sooner than in this kind of situation. I would say that the IUD plan which I mentioned before provides for 100-percent vesting after 10 years. We feel this is at least a basic kind of measure.

S. 4 provides 30-percent vesting after 8 years. We feel this is a good provision.

The CHAIRMAN. Just describe for our record the industrial areas where Allied Industrial Workers are.

Mr. DONOIAN. We are in about 20 different States, primarily in the Midwest we have contracts with a number of automotive parts and allied areas, such as Fruehauf Corp. We have most of their plants. We have Briggs & Stratton, Harley-Davidson, manufacturer of motorcycles, and a number of AMF plants. We have a General Electric plant in Kentucky. We have a number of food processing plants.

The CHAIRMAN. Was this an amalgam of other unions put together?

Mr. DONOIAN. Originally this was the old UAW–A. F. of L. We became Allied Industrial Workers at the merger. We adopted a new name.

The CHAIRMAN. Anything further?

Mr. DONOIAN. That is all.

The CHAIRMAN. Thank you very much.

(The prepared statement of Mr. Donoian follows:)

Statement of Harry A. Donoian on behalf of International Union, Allied Industrial Workers of America, (AFL-CIO), and Gilbert Jewell, International President

My name is Harry A. Donoian and I am Research Director - Pensions and Insurance for the International Union, Allied Industrial Workers of America, (AFL-CIO). This statement is being filed with the Senate Subcommittee on Labor on behalf of International President Gilbert Jewell, who could not be here because of a meeting of the International Executive Board. Our union represents some 100,000 members in 20 different states who work in many different industries and many different jobs.

The International Executive Board of the Allied Industrial Workers of America, (AFL-CIO) passed the following resolution today in support of S-4, the Retirement Income Security for Employees Act of 1973:

Resolution of International Executive Board
Allied Industrial Workers of America, (AFL-CIO)

WHEREAS, the 100,000 members of the Allied Industrial Workers of America, (AFL-CIO) are to be found in many different industries and many different jobs; and

WHEREAS, the members of the Allied Industrial Workers of America, (AFL-CIO), like all workers, should not be left out in the cold because of inequities in the operation of private pension plans; and

WHEREAS, the private pension plans in the United States need supervision and standards need to be set for their effective operation,

THEREFORE BE IT RESOLVED, that the International Executive Board of the Allied Industrial Workers of America (AFL-CIO), on this 15th day of February, 1973, endorses the provisions of the Williams-Javits Bill, especially as they relate to vesting, funding, federal insurance of pension plans, portability, and fiduciary standards and disclosures; and

BE IT FURTHER RESOLVED, that a copy of this Resolution shall be sent to the Senate Committee on Labor and Public Welfare and that the Research Director, Pensions and Insurance of the International Union shall submit whatever appropriate information he can to the committee to aid in the passage of this bill.

The Need for Standards and Supervision

Private pension plans cover many and complex work situations. It is our feeling that the parties engaged in collective bargaining should have the widest latitude in terms of devising pension plans which best meet the needs of the workers involved. On the other hand, with over 35 million employees covered by private pension plans and more than $137 billion in assets as of 1970, the need for federal concern is quite apparent. We must not, however, assume that by providing standards and supervision, that all of the needs of America's retirees will be satisfied. Far from it.

Ralph Nader and Kate Blackwell, in their book You and Your Pension, hold that there is a failure in the private pension plan system which results in an extra tax burden falling on the citizenry because of the doubtful nature of the pension plans. This "failure" means increased tax burdens because of higher welfare costs for elderly persons who do not receive pensions. The implication is: reform the pension "system" and most retirees will be in good shape.

That kind of thinking is a delusion. A recent Social Security study showed that workers covered by private pension plans typically had held white collar or blue collar jobs in manufacturing, transportation, public utilities and finance industries. A 1968 BLS survey showed that "a substantial majority of the workers in the private sector are not participating in private pension plans". This study also showed that "workers who were employed in small, non-union establishments at relatively low levels of pay were the least likely to be participating in a retirement plan."

Let us review briefly what we think the role of the private pension plan is - not what it is supposed to be. Let us also look into some of our experiences to underline our feelings toward pension plans, what we think a good basic pension plan should have, and what we view to be the remedy toward solving the problems of retired persons.

Purpose of Private Pension Plans

Pension plans are like beauty. It depends upon who is viewing them in order to determine their primary purpose. For example, Mr. Otto Kinzel, Chairman of the New York State Pension Committee, has held that "any expert in the employee benefits field would agree that the purpose of any pension plan is to provide a retirement benefit for employees with long and faithful service so as to enable them to retire at or near age 65 with some measure of security."

A concise statement of the trade union position is the following from Pension Plans Under Collective Bargaining, an AFL-CIO publication. "A pension plan is not ... a conditional or discretionary gift by the employer rather, it is current wages withheld to pay a life annuity on retirement - a group savings plan with insurance or risk-sharing features required by the terms of the contract."

Nader and Blackwell hold that "an equitable and well-functioning private pension system is not the ultimate in civic happiness, but it will go a long way toward assuring it."

Can private pension plans be all of these things? Or is it just one of these things?

In the first place, to speak about private pension plans constituting a system is just plain wrong. Pension plans are established on the basis of a particular group of workers. Let us say that we have a group of 100 employees who currently have no pension plan and that we desire to establish one for them. How would we go about it? First, we would need to take a complete census of the workers in the group, obtaining their ages, sexes, length of service with the company, and the turnover of employees within that particular unit.

On the basis of this information, an actuary would determine the cost of a pension plan for these employees on the basis of certain assumptions: mortality rates, the interest rate or funds invested in the plan, and projected expenses for the operation of the plan. These assumptions would be derived from the experience of other group pension plans. Thus, the

pension plan for these 100 employees would have nothing to do with the pension plans of other employees; they would be in no way interrelated except for the fact that some of the same actuarial assumptions had been used.

It is impossible, therefore, to speak of a pension plan system since all pension plans stand fundamentally on their own and on the experience within their particular group. Indeed, the benefits and expenses of any pension plan are functions of the experience of that plan.

Let us assume that the employer agrees to make a 10¢ an hour contribution for a pension plan for our group of 100 employees. We find that the average age of this group is 40 years old and that they have, on the average, 15 years of service. We find in another group of 100 employees without a pension plan that their average age is 30 years old with an average of 5 years of service. The 10¢ an hour contribution can buy a better pension plan for the second group than it can for the first group because there is less past service that has to be paid for and there will be a longer time to finance the benefits for the second group before payments must be made.

If there is no system of pension plans, then the purpose of private pension plans varies from one pension plan to another. There is no single purpose for all pensions. Indeed, the purpose of a pension plan may vary from time to time; it may have one purpose at the time of establishment and still another as time passes on and workers become older, or the size of the plant changes, or whatever else changes. Also, the same pension plan may have different meanings to each side of the bargaining table.

For example, management typically takes the position that pension plans should be a reward for long and faithful service to the company and it therefore limits vesting rights. That is, an employee must work a substantial length of time in order to have a deferred right to a pension plan if he leaves the employ of the company. On the other hand, this union and most other unions, we believe, consider pensions deferred wages, so we wish to have vesting take place earlier than the employer.

Some AIW Experiences

Everybody seems to have their "horror stories" about private pension plans. It is not our intention to give to this committee some horror stories; rather to briefly describe some experiences we think show both the random nature of private pension plans and the need for S-4.

One of our local unions was engaged in contract negotiations last year with a major U.S. corporation. One of the key issues in negotiations was improvement of the pension plan including liberalization of vesting rights.

Eventually, negotiations reached an impasse and the plant was struck. The strike went on for some six weeks and was eventually lost when the company moved in and started dismantling machinery to move to another plant. The reason the company did not wish to improve the pension plan was because this would represent a significant enlargement of its financial obligations. Vesting, by the way, in this situation was attained only after the employee had 10 years of service and had reached age 50.

Here is an example of how this vesting requirement worked against one long-time employee of this corporation. Vesting requirements and requirements for disability retirement are generally the same. Thus, if an employee needs 10 years service and age 50 in order to be vested, then he needs 10 years service and age 50 in order to qualify for disability requirement. One of the employees of this corporation in our bargaining unit was disabled on March 18, 1970 and has been unable to work. This employee was born on March 29, 1920, so that even though he has worked over 20 years for this company, he has no rights to either disability retirement nor to a vested pension at age 65.

In negotiating for a small employee unit last year, we found that the owner of the company wished to establish a corporate trust to cover the pension obligations of the company, which had fewer than 100 employees. We argued that a pension plan financed through an insurance company would be cheaper for the employer and that this would enable him to provide higher benefits with the same expenditure. The employer, however, was adamant and as a kind of trade-off for benefits provided in the pension plan, we agreed to this procedure. We would feel more secure in this situation if we had the fiduciary standards provided for in S-4.

In 1968, Litton Industries closed its Royal Typewriter Division in Springfield, Missouri during the course of the strike which this union had against the company. The National Labor Relations Board has pending before it an unfair labor practice suit which we have filed against Litton for its many collective bargaining abuses during the course of negotiations there.

In terms of the issue of pensions, Litton took a number of improper actions. For example, on numerous occasions it refused to supply to the union committee financial information concerning the status of the pension fund. It increased the assumed rate of return on invested funds from the usual 4.5 or 5% to an incredible 7%; the asset value of the fund was so increased that Litton was able to reduce its contributions. In addition, no pension benefits have been paid to any of the 375 vested participants.

We wonder, parenthetically in view of these actions, if Roy Ash, the former head of Litton Industries, is the person to be trusted with the pension funds of federal employees. We think this particular case certainly underscores the need for fiduciary standards.

AIW Pension Plan Standards

On July 24, 1971, the International Executive Board of the Allied Industrial Workers of America (AFL-CIO), adopted the National Industrial Group Pension Plan as its international union plan. The National Industrial Group Pension Plan was developed by the Industrial Union Department of the AFL-CIO and was established in 1968.

We adopted this plan as our international plan because we felt that it provided a means of getting relatively low cost benefits to our smaller sized locals and because this plan provided good sound benefits which we feel to be basic to a pension plan. These benefits include:

1. Eligibility for normal retirement after accumulation of 10 service units;

2. Provision for early retirement after accumulation of 10 service units;
3. Disability retirement after accumulation of 10 service units;
4. Joint and survivors option;
5. Vesting in accordance with the following:

   10 years - 50%
   11 years - 60%
   12 years - 70%
   13 years - 80%
   14 years - 90%
   15 years - 100%

6. No maximum number of service units;
7. Termination protection (which is a feature to be found in a minority of pension plans);
8. Portability; and
9. Opportunity to earn more than one service unit a year by working more than 1800 hours in a calendar year.

We mention the National Industrial Group Pension Plan because it encompasses a number of the features in S-4 and to show our commitment to these principles.

Conclusion

It is the position of the Allied Industrial Workers of America (AFL-CIO that S-4 is an important and necessary piece of legislation which deserves favorable action by the Congress and the President. However, we must not be deluded into thinking that the passage of S-4 will solve all of the ills of America's future retirees. The Social Security Administration reports that in 1970 the average benefit per beneficiary was $1,654, or $138 a month. We noted earlier that beneficiaries of private pension

plans tend to include a large number of highly paid white collar employees so that most people are receiving substantially less than these amounts.

Naturally, labor unions and this union will be in the forefront to increase pension benefits. But large pension payments can never be viewed as being a substitute for adequate social insurance. We feel that Social Security needs to be substantially revised and put on a more equitable basis. This should be through the use of income taxes rather than payroll taxes which John Brittain of the Brookings Institution has shown to be highly regressive in their effects. But perhaps that's another story.

We urge again, the passage of S-4, the Retirement Income Security for Employees Act of 1973. We think that simple justice demands it.

HAD:jz
opeiu#9/afl-cio

February 22, 1973

Senator Harrison Williams
Senate Labor Subcommittee
Room 4230
New Senate Office Building
Washington, D.C. 20510

Dear Senator Williams:

It was a pleasure for me to testify in front of the Senate Labor Subcommittee last week in support of S-4, the Retirement Income Security for Employees Act of 1973.

I would like to bring to your attention and have amended for the record something which appeared in my statement which was presented to the Senate Labor Subcommittee on Feb. 15, 1973.

On Page 9, the following appears regarding the provisions of the National Industrial Group Pension Plan:

"5. Vesting in accordance with the following:

10 years - 50%
11 years - 60%
12 years - 70%
13 years - 80%
14 years - 90%
15 years - 100%

This vesting schedule is incorrect. The following should be inserted instead:

"5. There is 100% vesting after the accumulation of 10 service units."

Thank you for your attention. We hope that S-4 will be passed this year.

Very truly yours,

HAD:jz
opeiu#9/afl-cio

Harry A. Donoian
Research Director
Pensions & Insurance

The CHAIRMAN. That concludes this morning's hearing.

We will return tomorrow morning at 9:30.

Thank you.

(Whereupon at 12:45 p.m. the hearing was recessed to reconvene Friday, February 16, 1973, at 9:30 a.m.)

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT, 1973

FRIDAY, FEBRUARY 16, 1973

U.S. SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:35 a.m., in room 4232, Dirksen Building, Hon. Harrison Williams, chairman, presiding.

Present: Senators Williams, Javits, and Schweiker.

Committee staff members present: Mario T. Noto, special counsel; Michael R. Schoenenberger, associate counsel; and Michael Gordon, minority counsel.

The CHAIRMAN. The Subcommittee on Labor will now come to order.

Our hearing this morning, as you know, is concerned with S. 4, the retirement income security bill for workers. We are in our 2d day of hearings.

This legislation before us is very similar to the legislation that had clear passage through this committee last year, after 3 years of studies and development. It was approved by committee toward the end of the session.

There was a referral to another committee, and after that referral, the time had run out for the session. So we had to come back this year to see this legislation enacted.

Yesterday's hearing moved us a great way toward executive session on this bill.

This hearing today will, I am sure, round out what we need to again present in executive session. Then S. 4 will go over to the floor of the Senate where the leadership indicated it was most anxious for early action on this pension reform legislation.

Our first witness this morning will be Cyril Brickfield, American Association of Retired Persons.

We had hoped that Mr. Bernard Nash could also be here, but he has been called to service in the reserves. So rather than both the director and the counsel, we have just the counsel.

We are glad to have you back.

STATEMENT OF CYRIL F. BRICKFIELD, LEGISLATIVE COUNSEL, AMERICAN ASSOCIATION OF RETIRED PERSONS, ACCOMPANIED BY JAMES M. HACKING; E. H. CRAWLEY, LEXINGTON, KY.; AND HERMAN NELSON, MILACA, MINN.

Mr. BRICKFIELD. Thank you very much, Mr. Chairman. I have two witnesses with me, and I would like, with your permission, to have them up here at the table.

The CHAIRMAN. We would be very pleased to have them. We have your statement, Mr. Brickfield. Proceed in any way you wish.

Mr. BRICKFIELD. Mr. Chairman, I am Cyril F. Brickfield, the legislative counsel to the National Retired Teachers Association and the American Association of Retired Persons, affiliated, nonprofit organizations representing a combined membership of over 5 million older Americans.

Our executive director, Mr. Bernard E. Nash, was scheduled to testify this morning but is unable to be here because of 2 weeks active military duty as a captain in our Naval Officers Reserve Corps.

I am accompanied today by Mr. James Hacking of my staff and by Mr. E. H. Crawley of Lexington, Ky., and Mr. Herman G. Nelson of Milaca, Minn., each of whom is a member of AARP.

Mr. Chairman, I have two prepared statements. One is by Mr. Nash. It contains an in-depth discussion of the provisions of the bill. I would ask permission that this be incorporated as part of the record of this hearing.

The CHAIRMAN. It will be printed in full.

Mr. BRICKFIELD, In addition to that, Senator, I have my own statement which I would like to read in part. But with your permission, I would like it printed in full in the record of this hearing.

The CHAIRMAN. That will be included in full also at the conclusion of your testimony.

Mr. BRICKFIELD. To begin with, Senator, we believe that a pension system, if it is going to contribute effectively to alleviating the problem of insufficient income for older persons, must be a system that is a reliable one. In order to have a reliable system, we feel that Federal regulation is necessary and that such Federal regulation must adopt minimum standards of performance, so that these private pension systems may be secure. We believe that S. 4 would provide such standards and would achieve effective reliability, especially with respect to eligibility, vesting, funding, portability, insurance, fiduciary duties, and disclosure.

We testified at length last year and submitted much evidence. But part of the rationale for our support, Senator, comes from the many thousands of letters which we receive from people who are our members. These letters set forth personal experiences that illustrate the abuses inherent in the system. Our members recite how they were frustrated and how they lost the pension payments which they expected to receive.

I have set forth in my testimony some three letters which I would like to read. I feel those letters as well as my statement point up the need for remedies in this vital area.

I would direct the chairman's attention and the committee's attention to page 4 of my statement, second paragraph. Before reading however, I would like the subcommittee to recall the unique problem of the Elgin pensioners, whose situation was effectively described to you yesterday by Mr. Gordon Howard. Many of that group of 1,100 pensioners are members of the American Association of Retired Persons. They, themselves, formed a special committee to fight Elgin's court action in New York City, but they have little or no money. They called me at AARP headquarters asking if we could obtain a lawyer in New York who would take their case without charge for the pur-

pose of obtaining a delay in the proceedings, so the matter at least could be studied by the Pensioners' Committee. Fortunately I secured the assistance of a New York law firm which appeared specially yesterday and without charge in the New York court seeking a continuance. This legal effort was successful in that the presiding judge, rather than granting the petition of Elgin National Industries to terminate the trust fund, decided to take no immediate action but to hold, instead, a full hearing on the merits of the motion for a continuance.

Moreover, our associations had originally arranged to have Mr. Howard appear with us today; however, as you know, he appeared yesterday with Senator Stevenson. Our associations are pleased to have been able to assist in bringing the situation of the Elgin Co., pensioners to the attention of this subcommittee. We felt that their experience, while unique, should be taken into account in making constructive amendments to the bill. The suggested amendments to S. 4 proposed, in the alternative, by Senator Stevenson, enjoy the enthusiastic support of our associations.

Now, Mr. Chairman, I would like to read the letters that I mentioned earlier. The consent of the authors has already been obtained. These letters will illustrate that aspect of the need for pension reform that confronts our associations directly—the human aspect.

The first letter is from a Mr. Vasco da Silva of Bradenton, Fla., received November 22, 1972. He wrote as follows:

> I read an article in the American Association of retired persons news bulletin. The article stated that U.S. Senator Jacob K. Javits and other senators were advocating legislation to protect workers pension benefits. I was a member of the International Brotherhood of Electrical Workers Union Local 3, New York for 13 years and 8 months. In order to be eligible for pension benefits I must have 20 years membership. Taking my age into consideration I would be 72 years of age in order to get 20 years membership. Since I retired in August 1972 at the age of 65, I do think that I am entitled to a percentage of my pension for the 13 years and 8 months in the union.
>
> This money was paid into the union pension fund to my account by contributing contractors for whom I worked. I can't see 13 years and 8 months go down the drain.
>
> Enclosed you will find a letter from the union in reply to my application for pension. I hope the American Association of Retired Persons can help me or workers like myself who have found themselves in this predicament. This will go a far way to help with Social Security payments.

Had the vesting schedule of section 202(a)(1) of S. 4 been in effect before Mr. Da Silva's retirement, it is probable that he would be receiving today a percentage of the pension of which he feels deprived.

The second letter is from a Mr. Albert J. Rich of San Mateo, Calif., received January 10, 1973, wherein he states:

> I am writing in the hope that you may help in advising me how I may acquire a pension which I am entitled to, but have been refused.
>
> For thirty years, I was a member of the AFL–CIO. In 1964 I took a withdrawal card, which I have renewed, up to date, and moved from New York City to my present address. I was a liquor salesman in New York and was a member of the Liquor Salesman's Union Local No. 2. In California I continued selling liquor. I now became a member of the Liquor Salesman's Union Local 109 affiliated with the Teamsters. Paid the initiation fee and received no seniority. I must now be employed for fifteen years before I will be entitled to a pension.
>
> Many thanks for giving this matter your kind attention.

Had S. 4's vesting schedule and the portability program of sections 301–306 been in effect when Mr. Rich moved to California, perhaps he would now be comfortably retired. It is indeed unfortunate that there

is still no central mechanism available to facilitate the transfer of pension credits within the same industry.

Since Mr. Rich still has substantial attachment to the labor force, he may yet benefit from the retroactive vesting protection of section 202, especially if his health or other factors cause him to retire after its effective date but prior to his completion of 15 years of service with the union in California. Our associations are pleased to note section 202(a)'s provision for retrospective vesting credit for workers age 45 and older for it obviates a problem about which we expressed concern in our testimony before the subcommittee last June—the lack of benefit that would be derived by older workers from a vesting schedule which would operate only prospectively.

The third letter is from a Mrs. Ethel T. Jenkins of Lake Havasu City, Ariz., received February 2, 1972, wherein she wrote:

> They have done it again! You recently had a meeting, "Council on the Aged." Can something be done to companies who take forty years of a man's service; merge after a pension plan had been put into effect, and now the new company, American Can, who absorbed Printing Corporation of America, have as of December 31st, 1971 cut off his pension completely.
>
> The man is my brother now 70, in poor health, and depended upon his pension for his existence.
>
> We of the AARP are numerous. Are we powerful enough to curtail such action by these corporate vultures?
>
> You have my permission to use or publish this letter if necessary.
>
> This man paid into a pension fund, and was assured he had security to the end of his life.

Had the funding provisions of section 210 and 211 and the plan termination insurance provisions of section 401–406 been in effect, this hardship might not have arisen. No amount of statistical data can adequately measure or describe the individual hardships worked upon the helpless victims of the present, insensitive, often capricious system.

To further corroborate the findings of this subcommittee's statistical reports, Mr. Chairman, I shall, with the permission of the subcommittee, introduce in turn Mr. E. H. Crawley and Mr. Herman G. Nelson, each of whom desires to relate, briefly, to the members here this morning, his personal experience with a private plan. Mr. Crawley, do you want to begin.

Mr. CRAWLEY. I am E. H. Crawley. I was employed by the Shell Oil Co. for nearly 20 years beginning in 1937.

In 1938 the company established a pension plan which was an employer contributory plan and in which all the employees were allowed to participate. In order to receive normal retirement benefits under the plan, the employees had to have a total of 80 points—that is age and years of service had to total 80. For early disability retirement benefits, the worker had to have 70 points. My employment with the company was involuntarily terminated on April 1956. I was 50 years old at that time. I never received any benefits from that plan.

I understand that under the vesting standard in the bill that is before this subcommittee, the vesting standard of the Shell Oil plan in which I participated would not qualify. The enactment of this bill will do much to make the benefits under private plans truly a form of deferred compensation on which the employee can rely.

Mr. BRICKFIELD. You have heard of the rule of 50. In this man's company, they had the rule of 80. It was a combination of his years,

plus periods of service, that had to total 80 before he would be eligible for a pension. It was just impossible for him to reach it. He was involuntarily terminated. He lost out completely, but thanks to the provisions of this bill which we would hope would become law with its early vesting provisions, others like him may yet be protected.

The CHAIRMAN. What is the situation at that company now? Is it the same as it was during your period of employment?

Mr. CRAWLEY. I think substantially so. I do not know of any changes—I may be wrong.

The CHAIRMAN. How long did you work with Shell?

Mr. CRAWLEY. Twenty years.

The CHAIRMAN. You were employed when?

Mr. CRAWLEY. 1937. The pension plan went in, I am pretty sure, in 1938.

The CHAIRMAN. You retired in 1958?

Mr. CRAWLEY. 1956.

Mr. BRICKFIELD. He involuntarily retired.

Mr. CRAWLEY. April 1956.

The CHAIRMAN. When you retired, just before that termination came, did you think you had established any pension rights?

Mr. CRAWLEY. At least twice a year for the 19½ years that I was with Shell, we would have a meeting or dinner, and they would go to the blackboard and try to get us to decide how we wanted the money spent, whether to be given to us, or to us and our families—it was drummed into my ears all my life, vested guaranteed pension rights.

The CHAIRMAN. Did they use those words?

Mr. CRAWLEY. Yes, sir.

The CHAIRMAN. What did you feel you had to do in terms of years on the job to make sure you got the benefit when you retired?

Mr. CRAWLEY. I didn't have to do anything.

The CHAIRMAN. Did you think you had a right to the benefit——

Mr. CRAWLEY. Unquestionably. I would not have stayed working for the company in the prime years of my life if I had any idea at all that I would not receive my pension rights, because I was doing a million dollars worth of business a year in road asphalt.

The CHAIRMAN. There was nothing at the end of the line?

Mr. BRICKFIELD. Here he was, Senator, almost 20 years of active service, and then forced out at 50 years of age, 50 and 20 total 70 points. He would have had to work until age 60 under the plan. He never got a chance to do it.

Our next witness, Senator, is Mr. Herman Nelson, a former employee of Minneapolis Moline Corp. Back in 1963 I think, Minneapolis Moline was absorbed by the White Motor Co. They manufacture trucks, light buses, and so forth. I will ask Mr. Nelson to make his presentation.

Mr. NELSON. I am Herman G. Nelson. From May 17, 1942 to March 6, 1964, I was employed by Minneapolis Moline Co., first as an engine lathe operator, in the company's Hopkins plant machine shop.

When first employed, my rate of pay was 69 cents per hour.

About 1950, Minneapolis Moline established its first pension plan. The plan was integrated with social security and designed to provide the difference between the worker's monthly social security benefit and $100 a month.

On March 6, 1964, I retired from the company at age 63. At age 65, I began having benefits from the company's plan at the rate of $47 per month. In 1967, the amount of my retirement benefits was increased, because of union negotiations, to about $90 a month and then, in 1970 to $103 a month. My wife and I welcomed these increases especially since our property taxes had risen from $61 in 1964 to over $300.

Since August 1, 1972, I have been receiving a reduced pension benefit of $48.

Other former employees of the company experienced similar reductions. For example, there is Frank Stepanck, who worked for the company for 39 years, and who retired on September 30, 1971 with a monthly pension of $391. His was reduced to $91. Jerry Strachota, having worked for the company for 52 years, retired in the early 1960's with a monthly pension of $74.50. His was reduced to $3.

It seems to me that employers should not be allowed to promise what they have not adequately provided for. I hope that this bill that is before this subcommittee will prevent employers from building up the expectations of employees by promising what they can't deliver. Thank you.

The CHAIRMAN. You did not make that quite clear. Now this situation in Minneapolis Moline, Senator Mondale was out there, and he of course understands the details of what happened there. What were the reasons for these unbelievable reductions in benefits?

Mr. NELSON. Well they had, I suppose, what would be something like insurance to each individual who was retired. I suppose they had an insurance policy for each one. That is what I was led to understand. I do not know what hapened after I left there. When these increases came in, that probably took off of the amount——

The CHAIRMAN. You started out by saying that the plan at its inception was to provide on retirement a benefit that would, together with social security, equal a certain amount of income per month?

Mr. NELSON. $100.

The CHAIRMAN. Now over a period of time, was that principle continued, that the pension would be the difference between a given amount and what social security benefits were at that point?

Mr. NELSON. Just a short time.

The CHAIRMAN. Then did it go on straight benefit, not tied to social security?

Mr. NELSON. Yes.

The CHAIRMAN. Without getting into the details of how the benefit was computed, the problem here was the lack of funding, the money was not there to pay the benefits? In this last example you mentioned the benefit went down to $4 a month.

Mr. NELSON. $3.

The CHAIRMAN. You are right. Now this legislation before us provides for termination insurance. The plan at Moline was terminated when they went in with White Motors, was it not?

Mr. NELSON. Yes. That fund was there before White Motors took it over.

The CHAIRMAN. Thank you, Mr. Nelson.

Mr. BRICKFIELD. Senator, I had one other gentleman who was to make a presentation here this morning. He is an elderly man, and

is not well. But I have his statement, which I would very much like to read because at the end of it our associations, would like to suggest an amendment to the bill, which we would like the committee to consider.

With your permission, I would like to proceed in that fashion. This situation, Senator, deals with a plan which was financed solely by the employees, as distinguished from the employers making the contribution.

Mr. Castles was a lifetime member, about 50 years, of the International Printing Pressmen and Assistants Union of North America. He joined the union around 1917. He learned the trade as a pressman with Eureka Specialty Printing Co., Scranton, Pa. He subsequently worked for the Hughes Publishing Co. in East Stroudsburg, Pa., for 1 year and then with the Government Printing Office for 31 years.

Mr. Castles recalls that he paid into the union plan, from the time of its inception, over a period of at least 30 years until the plan was terminated about 1960.

Mr. Castles further recalls that the amount of his contribution was $1.50 a month and that upon retirement he was supposed to draw about $42 a month in pension benefits. In the years just preceding the termination of the plan, the amount of the pension benefit to be paid therefrom was reduced to $38 a month.

In a conversation with a Mr. Allen at the International Printing Pressman's Union, we were informed that at some point it became clear that an increase in the amount of employee contributions would have been necessary to sustain the plan.

However, we were told that the union membership rejected, in three referendums, the option to meet the increasing retirement benefit demands being made upon the union plan by increasing the level of contributions. This led the union leadership to recommend, at the union convention in 1960, that the plan should be terminated. The recommendation was adopted and the convention decided to terminate the plan.

The assets remaining in the original plan were paid out to pensioners and shortly exhausted. Mr. Castles, who was not yet retired when the original plan was terminated, never received a pension and was never returned the amounts he had contributed to the plan.

Our associations are aware that the terminated plan was established and maintained by an employee organization and financed solely by contributions from its members. We are also aware that plans such as this are exempted from the requirements of titles II, III, and IV of S. 4 with respect to vesting, funding, portability, and plan termination insurance.

While it may be the policy of S. 4 to cover and protect only persons who are, or will be, beneficiaries of major pension plans and while it may also be that union plans, such as the one in which Mr. Castles participated, are at the present time generally small in size and coverage and under the control of only local unions, it seems to us unwise to incorporate into the exception of subsection 104(b)(7) of the bill language that is overly broad and susceptible to abuse in the future.

If the intent behind this particular exception is to exclude from the minimum standards of titles II, III, and IV small local union plans solely financed from membership contributions, our associations recommend that some arbitrary limit be imposed to define specifically

the size of the plans intended to be exempted in order to avoid this exemption from being used in the future as a loophole for avoidance.

I would like to call your attention to page 21 of the bill, if I may, section 104 (b)(7) reads that this act shall not apply to any pension plan or profit-sharing plan if such plan is established or maintained by an employee organization.

Now here we are talking about a union plan where only the employees make the contribution. The bill S. 4 does not cover or protect the participants in such a plan. I guess it is intended that the bill cover small unions which have their own small plan. However, the broad language of this bill exempts a union plan of any size.

There is no limitation as to how big or how small the plan should be or how many members need be in the plan. What we would like to suggest is that some form of limitation be written into the bill, and by way of precedent or guidance, we would draw the committee's attention to page 20, line 20, whereby they talk of other plans which do not cover more than 25 participants.

We would like to suggest an amendment on page 21, around lines 9, 10, and 11 that some form of numerical limitations be placed on number of participants in the plans that are exempted from provisions of this bill.

That is my testimony, sir.

The CHAIRMAN. I do not have any questions. Senator Javits was called away. Gentleman, thank you very much.

(The prepared statements of Mr. Nash and Mr. Brichfield follow, respectively.)

PREPARED STATEMENT

BERNARD E. NASH, EXECUTIVE DIRECTOR

NATIONAL RETIRED TEACHERS ASSOCIATION

AND

AMERICAN ASSOCIATION OF RETIRED PERSONS

BEFORE THE

SUBCOMMITTEE ON LABOR

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

THE RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT OF 1973

FEBRUARY 16, 1973

NRTA-AARP STATEMENT WITH RESPECT TO FEDERAL REGULATION OF THE PRIVATE RETIREMENT BENEFIT SYSTEM

I am Bernard E. Nash, Executive Director of the National Retired Teachers Association and the American Association of Retired Persons, affiliated, nonprofit organizations representing a combined membership of over five million older Americans.

Our Associations appreciate the opportunity granted by the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, to appear here today for the purpose of presenting, on behalf of older persons in general and our membership in particular, our comments with respect to the justification for Federal regulation of private retirement benefit system and the impediments to the enactment of the Retirement Income Security For Employees Act of 1973 (S.4).[1]

I. Introductory Remarks

Heretofore, the performance of this country's private retirement benefit system has been demonstrably inadequate. With intolerable frequency, this system has failed to provide expected benefits to retirees.

Our Associations are convinced that if this system is ever to contribute effectively to the amelioration of the pernicious and persistent problem of insufficient income among our older citizens, it must become a reasonably reliable source of supplemental retirement income. We further believe that such reasonable reliability can only be predicated upon the enactment of comprehensive, Federal regulatory legislation that mandates minimum performance standards to which each private pension and profit-sharing plan must conform.

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1 S.4, 93d Cong., 1st Sess. (1973).

The Retirement Income Security For Employees Act of 1973 would provide such minimum standards with respect to eligibility, vesting, funding, portability, insurance, fiduciary duties and disclosure and should, thereby, effectively achieve an acceptable degree of reliability. Our Associations support the comprehensive approach adopted in this bill and firmly believe that its enactment will assist in assuring that the performance of the private retirement benefit system will be commensurate with its promise.

We are convinced that the abuses and inadequacies inherent in the present system cannot be corrected through the pursuit of a piecemeal, haphazard legislative approach. This, we believe, was the major deficiency of S. 3012[2] and its companion H.R. 12272[3] which were introduced on behalf of the Administration during the 92nd Congress. Enacted standards which result in the expansion of employee coverage under private pension plans and the liberalization of vesting requirements under such plans will maximize the probability of private pension receipt by future retirees only if such standards are reinforced by an adequate funding standard and a reinsurance program. As we said last June, in our pension reform testimony before this Subcommittee:

> "Any legislation enacted by the Congress that includes standards for coverage and vesting but fails to include requirements for funding and insurance will be a legislative gesture designed more to assuage worker discontent than to provide retirement benefits."[4]

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2 S.3012, 92d Cong., 1st Sess. (1971).

3 H.R. 12272, 92d Cong. 1st Sess. (1971).

4 Hearings on S.3598 before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 92d Cong., 2d Sess., Pt. 1, at 158 (1972).

II. The Justification for Pension Reform Legislation

A. The System's Inadequate Protection of the Worker

The inadequate performance of the private retirement benefit system has been well documented in the exhaustive statistical analyses[5] of private plans undertaken by this Subcommittee pursuant to Senate resolutions in both the 91st[6] and 92nd[7] Congresses. Those statistical studies found that the present system failed to provide a reasonable degree of pension security for the present generation of retirees. For example, about 13% of the plans studied did not provide for any vesting of benefits.[8] 8% of plans having vesting pensions expressed as a combination of age and service required at least age 50 and 20 years of service for a vesting right.[9] Of the plans which contained only a service requirement for vesting, over one-fourth required more than 15 years of service to qualify.[10] Moreover, while a majority of pension plans were found to be well-funded, a significant minority were found to be sustantially under-funded.[11] The studies projected that the past and current inadequacy of protection is likely to continue as increasing numbers of workers enter upon their retirement years unless remedial legislation is enacted.

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5 Subcommittee on Labor of the Senate Committee on Labor and Public Welfare 92d Cong., 1st Sess., Preliminary Report of the Private Welfare and Pension Plan Study (Comm. Print 1971); Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 92d Cong., 2d Sess., Statistical Analysis of Major Characteristics of Private Pension Plans (Comm. prints 1972)(hereinafter referred to as Statistical Analysis).

6 S. Res. 360, 91st Cong., 2d Sess. (1970).

7 S. Res. 35, 92d Cong., 1st Sess. (1971); S. Res. 235, 92d Cong., 2d Sess. (1972).

8 _Statistical Analysis_, at 37.

9 _Id._

10 _Id._

11 _Id._ at 38.

With the Subcommittee's projection and with the persuasive statistical rationale therefor, our Associations concur. But our concurrence is, in part at least, based on the emperical evidence we have received over the years in the form of correspondence from our membership, among whom are many whose private pension expections have been frustrated by the very abuses and inadequacies documented in those statistical reports. Repeatedly, members will describe how the private pension, for which they worked so long and on which they based so much of their expectation for that added degree of income security necessary for a reasonably comfortable retirement life, was lost because of unreasonable vesting schedules, inadequate funding, corporate liquidations or reorganizations, breaches of fiduciary duties and other inadequacies.

Excerpts from a random sampling of the correspondence of the NRTA-AARP Legislative Division will illustrate the aspect of the need for reform of the private retirement benefit system that confronts our Associations directly. Mr. Vasco Da Silva of Bradenton, Florida, wrote as follows:

> "I was a member of the International Brotherhood of Electrical Workers Union Local 3, New York for 13 years and 8 months. In order to be eligible for pension benefits I must have 20 years membership. Taking my age into consideration I would be 72 years of age in order to get 20 years membership. Since I retired in August 1972 at the age of 65, I do think I am entitled to a percentage of my pension for the 13 years and 8 months in the Union. This money was paid into the union pension fund to my account by contributing contractors for whom I worked."

Had the vesting schedule of section 202(a)(1) of S.4 been in effect before Mr. Da Silva's retirement, he probably would be receiving today

a percentage of the pension of which he feels deprived.

Mr. Albert J. Rich of San Mateo, California, in a letter dated December 26, 1972, wrote as follows:

> "For thirty years, I was a member of the AFL-CIO. In 1964 I took a withdrawal card, which I have renewed up to date, and moved from New York City to my present address. I was a liquor saleman in New York and a member of the Liquor [S]alesmans' [sic.] union local.... In California I continued selling liquor. I now became [sic.] a member of the Liquor [S]alesman's [sic.] [U]nion local... affiliated with the Teamsters. [I] [p]aid the initiation fee and received no seniority. I must now be employed for fifteen years before I will be entitled to a pension."

Had S.4's portability program of sections 301-306 and its vesting scheduled been in effect when Mr. Rich moved to California, perhaps he would now be able to enjoy a comfortable retirement. It is indeed unfortunate that there is still no central mechanism available to facilitate the transfer of pension credits within the same industry. Since Mr. Rich still has substantial attachment to the labor force, he may still benefit from the retroactive vesting protection of section 202(a), especially if his health or other factors cause him to retire after its effective date but before his completion of 15 years of service with the Union in California.

Our Associations are pleased to note section 202(a)'s provision for retrospective vesting credit for workers age 45 and older. This provision would obviate a problem about which we expressed concern in our testimony last June, - the lack of benefit that would be derived by older workers from an early vesting standard which operates only prospectively. In recognition of the vesting problem confronting the older worker, we suggested at that time that:

> "The Congress ... consider the merits and cost feasibility of utilizing for a term of ten or fifteen years, the 'rule of 50' approach [to vesting] in conjunction with an enacted early vesting standard similar to that proposed by H.R. 1269, S. 2 or S.3598, in order to aid those workers who are presently nearing retirement and who would not otherwise benefit from the vesting standard favored by our Associations because of inability to meet the ten or fifteen year service requirement. At the end of the appropriate term of years, the 'rule of 50' alternative would be phased out, leaving the vesting of employees' benefits dependent solely upon the satisfaction of the minimum, statutorily established service requirement and eliminating age as a factor in determining the vesting of pension benefits."[12]

Mrs. Ethel T. Jenkins of Lake Havasu City, Arizona, in a letter dated January 20th, 1971, stated in part:

> "Can't something be done to companies who [sic] take forty years of a man's service; merge after a pension plan had been put into effect, and soon the very company who absorbed ... Printing Corporation of America have [sic.] as of December 31, 1971 cut off his pension completely.
>
> "The man is my brother, now 70, in poor health, and depended [sic] upon his pension for his existence."

Had the funding provisions of sections 210 and 211 and the plan termination insurance provisions of sections 401-406 of S.4 been in effect at that time, this hardship might not have arisen. No amount of statistical data can adequately measure or describe the individual hardships worked upon the helpless victims of the present, insensitive, and often capricious, system.

In the light of the findings of the Subcommittee's statistical

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12 Hearings on S. 3598 before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 92d Cong., 2D Sess. pt. 1, at 170 (1972).

analysis and the corroborating, emperical evidence that has come to the attention of our Associations through our membership correspondence, we are without doubt that the performance of the private retirement benefit system is in need of the Federal regulation embodied in S.4. But other reasons also contribute to our adherence to this position of support.

B. The Extent of the Federal Government's Interest.

One of the factors that have contributed to the expansion of, and continuing improvement in, the private retirement benefit system has been the extensive income tax subsidies offered by the Federal Government, through I.R.C. §§402, 403 and 501, to pension, stock bonus and profit sharing plans which meet the requirements of I.R.C. §401. The Revenue Act of 1921,[13] providing an exemption from current taxation of the income of a trust created by an employer as part of a stock bonus or profit sharing plan for the exclusive benefit of employees, marked the advent of a continuous Federal policy of favorable income tax treatment of qualified plans. Today, the Internal Revenue Code extends preferential treatment to employer pension, stock bonus, profit sharing, and bond purchase plans, provided such plans inure to the exclusive benefit of employees and their beneficiaries.[14] Subject to specific limitations, contributions to qualified plans, which constitute the bulk of private plans today, are deductible by the employer[15] and excludable from the current income of the employee.[16] Until distributed to plan

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13 THE REVENUE ACT OF 1921, 42 Stat. 227 (1921).
14 I.R.C. §401(a)(2).
15 I.R.C. §404.
16 I.R.C. §§402(a), 403(a)

beneficiaries, the accumulated earnings and appreciation of plan assets are exempt from Federal income taxation.[17] Moreover, even employees with nonforfeitable, vested interest under such plans realize no income until distribution is made[18] and then at preferential rates.[19] In 1968, for example, while private pension contributions by employers were aggregating 9.4 billion dollars,[20] and while payments from such plans were aggregating over 5 billion,[21] the loss to the Federal Treasury from this combination of tax concessions was almost 4 billion.[22]

In the light of the statistically documented inadequacies in the performance of the private retirement benefit system, a continuation of the present policy of preferential Federal income tax treatment of qualified plans would only be justified if effective regulatory legislation were enacted. It is absurd to perpetuate a substantial, annual revenue loss by continuing to treat preferentially plans which perform inadequately and ineffectively, the primary ends which that preferential treatment was designed to induce. The additional revenue that would be derived through the revocation of those tax concessions could,perhaps, be used in a more effective manner to provide retirement benefits.

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17 I.R.C. §501(a).
18 I.R.C. §§72, 401(a), 403(a).
19 I.R.C. §72(a),(c),(d),(n).
20 "Employee-Benefit Plans in 1968," 33 Social Security Bulletin 43 (Table 5(April, 1970).
21 Id.
22 Staff of the Treasury Department and the Joint Committee on Internal Revenue Taxation for use by the House Committee on Ways and Means, Estimates of Federal Tax Expenditures 5 (Preliminary Comm. Print, October 4, 1971)(Table 1).

Since the Federal Government has a substantial economic interest in the private retirement benefit system, it has the right to mandate minimum standards of performance with respect to vesting, funding and plan termination insurance. Since the Federal Government's annual economic investment is incurred for the benefit of the worker, and since the worker has not benefitted therefrom as expected, the Federal Government must exercise that right.

C. The Accumulated Reserve Assets of the Private Retirement Benefit System.

To further justify the enactment of Federal legislation designed to regulate more closely the performance of the private retirement benefit system, our Associations, in their presentation before this Subcommittee last June stated:

> "[P]rivate plans have accumulated reserve assets of over 130 billion dollars, which amount is expected to increase to 225 billion by 1980. ... [T]he private pension system [has become] a significant source of financial power, the economic impact of which directly or indirectly affects the daily life of each citizen."[23]

These accumulated reserve assets represent a substantial fund of underregulated investment capital. Under present law, contributions, even those made to trusts which qualify under I.R.C. §401 (a), may be used by trustees agreement within the limitations of the trust agreement and local law. Indeed, Reg.§1.401-1(b)(5) states:

> "No specific limitations are provided in section 401(a) with respect to investments which may be made by the trustees of a [qualifying] trust."

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23 Hearings on S.3598 before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 92d Cong., 2d Sess., pt. 1, at 164 (1972).

Moreover, in the case of a qualified trust which provides benefits to employees, some or all of whom are "owner-employees" within the meaning of I.R.C. §401(c)(3), although the trustee is required by I.R.C. §401(d)(1) to be a bank, that paragraph specifically provides that a person (including the employer) other than a bank may be granted, under the trust instrument, the power to control the investment of trust assets, either by directing investments or by disapproving proposed investments.

Of course, I.R.C. §503 provides for the forfeiture of the tax-exempt status of an otherwise qualified trust if an investment made by trustees constitutes a transaction prohibited by I.R.C. §503(b). Of greater interest, however, is I.R.C §401(f)(1)(C)(i)(ii) which limits the investment of the funds of custodial accounts, which are treated as qualified trusts, to regulated investment company stock or to annuity, endowment or life insurance contracts issued by insurance companies.

Neither the Labor-Management Relations Act[24] nor the Welfare and Pension Plan Disclosure Act[25] has added significantly to the Internal Revenue Code's minimal regulation of the investments of, or performance by, the private retirement benefit system. The Labor-Management Relations Act provides certain guidelines designed to prevent the diversion of employee funds through collusion between labor and management administrators. The Welfare and Pension Plan Disclosure Act, which was amended in 1962 to make theft, embezzlement, bribery and kickbacks Federal crimes if they occur in connec-

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24 LABOR-MANAGEMENT RELATIONS ACT, 61 Stat. 136, 157(1947), 29 U.S.C. §186 (1964).

25 WELFARE AND PENSION PLAN DISCLOSURE ACT OF 1958, 72 Stat. 997, 29 U.S.C. §§301-09 (1964).

tion with welfare and pension plans, relies on disclosure of information to plan participants as the principal means of policing plan operation and administration.

The combination of the aforementioned Federal statutes and the fiduciary performance standards existing under local law may, perhaps, be sufficient to prevent the more egregious instances of speculation and self-dealing. However, since the aggregate investment policies pursued in the investment of pension trust funds have a discernible impact upon the economy and since the Federal Government has assumed ultimate responsibility for the performance of that economy, the Federal Government has a right to regulate those trust funds and the plans of which they are a part. Moreover, since the accumulation of such funds is to facilitate the payment of benefits to employees during their retirement, and since the Federal Government, as a guardian of the public welfare, has a duty to assure that those employees will have a reasonable prospect of receiving such benefits, it has the right to regulate the manner in which those funds are appropriated to that end.

The Retirement Income Security for Employees Act would not only mandate minimum performance standards to which pension and profit sharing plans must conform, but would significantly expand the regulation of the trust funds forming a part of such plans in order to assure that those performance standards are met. The principal instruments of regulation adopted by the bill are disclosure and more stringent fiduciary standards. For example, section 101(a)(4) would authorize the Secretary of Labor to conduct inquiries reasonably necessary to ascertain violations of the Welfare and

Pension Plan Disclosure Act. Section 101(b) would authorize the Secretary to prescribe rules and regulations to govern standards and qualifications for actuaries performing services under the Act and to establish reasonable limitations on actuarial assumptions.

Section 505 would amend the Welfare and Pension Plan Disclosure Act to require that plan descriptions be comprehensive and written in a language calculated to be understood by the average participant. Section 506 would require that an independent accountant's opinion of the plan's financial condition, based on the results of an annual audit, be included in the annual financial report and that more detailed information, especially with respect to party-in-interest transactions and actuarial assumptions, be included. Section 510 would establish a uniform, prudent man standard for fiduciary conduct and would prohibit the investment of more 10% of a pension fund's assets in employer securities.

III. Cost Consequences and Flexibility

Our Associations hope that the effect of enacted Federal standards will be to raise those existing pension and profit-sharing plans which are found to be deficient to minimally acceptable levels. However, we recognize that the resources available for the funding of private plans are limited and that these limited resources must be utilized to fund not only the increased obligations which would result from more liberal vesting provisions, but also those which result from the granting of past service credit and higher benefit levels. The choice of statutory standards must be made with care

and deliberation so as to minimize any retardation in the improvement of existing plans and any disincentive to the establishment of new ones. We believe that the standards contained in the Retirement Income Security for Employees Act have been calculated to achieve this optimum result. Seldom has a need for remedial legislation been so exhaustively and systematically documented and seldom has a bill been so carefully formulated and perfected to respond to the dimensions of that need on the basis of sound statistical analysis and cost projections.

Of the performance standards that would be prescribed under S.4, the most costly will probably be the graduated vesting standard of section 202. Obviously, the more liberally a statutory vesting formula protects employee benefits, the more expensive the formula will be. However, not only was this particular vesting standard determined to be feasible with respect to cost when applied prospectively, but it was also determined to be feasible with respect to cost when applied retrospectively for participants age 45 and older. The selection of the particular graduated vesting schedlue of section 202 and the application of that schedule retrospectively to protect older workers were made on the basis of reasonable cost projections supplied by Grubbs & Company of Baltimore, Maryland.[26] Assuming that the selection of the vesting standard on the basis of a calculated cost impact is representative of the manner in which other features of S.4 were selected, the bill, if enacted, should indeed achieve optimum results. Furthermore, flexibility in the applications of the vesting and funding standards should further

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26 S. Rep. No. 1150, 92d Cong., 2d Sess. 149. (1972).

temper the cost consequences in individual cases.

Numerous instances of the flexibility for which this bill provides are readily apparent. For example, under section 201 as an exception to the more liberal and, therefore, more costly general rule, any plan which provides 100 per cent immediate vesting upon entry into the plan may restrict participation to those who have attained the age of 30 or 3 years of service whichever first occurs. Under section 202, plans with vesting schedules determined by the Secretary to be at least as liberal as that required by the act will be exempted from compliance with that section. Under section 210, in the case of a plan having an experienced deficiency which cannot be removed within the required five year period without exceeding the allowable limits for tax deductions under I.R.C. §404, the Secretary is empowered to grant additional time to permit removal within allowable deduction limitations. Section 216 authorizes the Secretary to defer in whole or in part, the application of the vesting standard upon a showing of substantial economic injury. Section 217 would authorize the Secretary to grant variances from the funding schedule in individual cases upon a showing of inability to make the otherwise required contribution. Our Associations believe that because of the degree of flexibility incorporated into this bill, instances of substantially adverse cost impact resulting from the application of the performance standards contained in this bill should be few and relatively isolated.

The burden of statistically projecting, persuasively substantial, adverse consequences of the enactment of S. 4 is, in

our opinion, squarely upon those who continue to oppose comprehensive pension reform and continue to presage such consequences.

IV. The Politics of Pension Reform

Our Associations hope that comprehensive pension reform legislation will emerge from the legislative process of the 93rd Congress during its 1st session. We are, however, cognizant of serious impediments. The enactment of an effective and comprehensive bill will require a substantial commitment and considerable cooperation from the various committees of the Senate and House having legislative jurisdiction in this area.

In order to preclude the sacrifice of the promise of comprehensive pension reform to further jurisdictional disputes between Congressional committees, our Associations urge that the labor and tax-writing committees in both Senate and House be amenable to reasonable compromise to facilitate enactment. Retirement income protection for the worker requires cooperation, not quibble.

The Retirement Income Security for Employees Act of 1973 would attempt to effect comprehensive pension reform through a separate statute administered through the Department of Labor rather than through Internal Revenue Code amendments administered through the Internal Revenue Service. While the former approach is apparently preferred by the Senate Committee on Labor and Public Welfare and the House Committee on Education and Labor, the latter is apparently preferred by the Senate Committee on Fiance and the House Committee on Ways and Means. To our Associations either approach is feasible.

If necessary to facilitate the enactment of this needed legislation, perhaps some satisfactory combination of these two approaches could be utilized. The initial determination with respect to registration and qualification for income tax purposes could be delegated to the Internal Revenue Service with subsequent enforcement and investigatory powers delegated to the Department of Labor. Such a division of administrative, investigative and enforcement responsibilities will, of course, require a cooperative effort by the interested agencies, as, for example, with respect to the promulgation of regulations pursuant to the law. However, the problems of dual administration do not appear so difficult as to defy reasonable solution. The only foreseeable alternative, which is unacceptable to our Associations, is further delay in the enactment of comprehensive pension reform legislation.

V. Coverage, Exemptions and Considerations

Should the Retirement Income Security for Employees Act of 1973 be enacted without significant modification, an acceptable level of retirement income protection would have been extended to this Nation's labor force, subject, however, to the exceptions of section 104(b). The position of our Associations presented before this Subcommittee last June with respect to S. 3598 implied support for the extension of the minimum standards of that bill to all pension plans except where stated expressly to the contrary. For example, we expressly stated that the minimum funding standard and insurance provisions should not apply to plans administered by the

state and local governments, their agencies and instrumentalities.[27] The rationale for the enactment of such funding and insurance provisions with respect to private employer established plans did not, we believed, apply to such public employee plans and could not, therefore, justify any such extension.

We did, however, imply that the minimum vesting standard of S.3598 should be made applicable to state and local government plans and those of their agencies and instrumentalities. Our position was motivated by the existing situation with respect to teacher retirement systems. As we stated in our statement submitted for the record of the hearings before the General Subcommittee on Labor of the House Committee on Education and Labor with respect to H.R. 10216, The Mobile Teacher Retirement Assistance Act of 1972:

> "Under present state and local teacher retirement systems, the teacher who moves from one state to another is usually penalized by the loss of earned retirment benefit credits. This loss results ultimately in a reduced and often inadequate level of income during the retirement years. The loss of service credits results from the absence of early vesting provision in the state system from which the teacher moves and from the absence of provisions under the system in the new state which allowscredit for years of service in another state.
>
> "Because the resources available for funding teacher retirement benefits are limited, the states tend to utilize available resources to increase retirement benefit levels rather than to liberalize vesting provisions. This tendency is understandable, since it rewards the teacher who serves within a single state's educational system for a substantial part of his teaching career. To the extent that limited resources are used to fund increased obligations resulting from liberalized vesting provisions, the teacher who serves for all or most of his teaching career within a particular state's educational system is deprived of potentially higher retirement benefits.

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27 See Hearings on S.3598 before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 92d Cong., 2d Sess., pt. 1, at 177, 178 (1972).

> "It is apparent that the states, acting on their own, are either unable or disinclined to deal effectively with the reality of teacher mobility and the consequent loss of service credits that results in reduced retirement benefits. It is further apparent that the individual states lack any broad national concern with eliminating impediments to the movement of experienced teachers, or those with special skills, into areas of the country where they are needed. Because the problem of improving portability of service credits among the state teacher retirement systems is essentially interstate, and because the federal government has an interest, not shared by the individual states, in removing this impediment to teacher mobility, the federal government should take the initiative in providing a solution. Otherwise, many thousands of teachers with long careers of service, divided between two or more states, will approach retirement with deplorably inadequate retirement income, despite lifetimes of service to American education.
>
> "Our Associations feel that some form of federal [action] is both advisable, from the point of view of improving the nationwide quality of education, and necessary, from the point of view of preventing reduced and inadequate retirement income for the mobile teacher."[28]

Moreover, the adverse consequences of mobility affect not only teachers but other public employees of state and local governments as well. Our Associations believe that the problem could be substantially ameliorated by an extension of the vesting standard of S.4 to cover such employees. As of 1971, at least fifteen state teacher retirement systems would have failed to qualify with respect to vesting had this bill been in effect.[29]

Our Associations recognize that pension reform already has enough powerful and well-organized opponents. We can, therefore,

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28 Hearings on H.R. 10216 before the General Labor Subcommittee of the House Committee on Education and Labor, 92d Cong., 2d Sess., 62-63 (1972).

29 NATIONAL EDUCATION ASSOCIATION, TEACHER RETIREMENT SYSTEMS (1972).

appreciate the legislative, political and practical considerations that probably dictated exempting from the coverage of S.3598 and its successor S.4, plans established or maintained by the government of a state or a political subdivision thereof or by any of their agencies of instrumentalities and plans established or maintained by an employee organization and administered and financed solely by member contributions. However, we continue to believe that the situation presently existing with respect to public employee plans, other than those established or maintained by the Federal Government, merits an extension of the vesting standard; we shall, therefore, continue to adhere to our position until such time as such an extension is accomplished or otherwise becomes unnecessary. Moreover, in the interim, we would hope that the staff of the Subcommittee would undertake a systematic study of the problem and an appraisal of the cost consequences of such an extension.

VI. Conclusion.

If a reasonable degree of retirement income protection is to be provided for the American working man and woman, effective, comprehensive Federal regulation, such as would be effected through the enactment of the Retirement Income Security for Employees Act of 1973, will be needed. The National Retired Teachers Association and the American Association of Retired Persons, therefore, urge that this bill be favorably reported by this Subcommittee without delay to the full Committee, and by the full Committee to the Senate as the first steps to speedy enactment by the Congress. Our Associations further urge that the Subcommittee undertake a study of the extent of the

loss of service credit due to mobility among public employees, other than Federal employees, and attempt to determine, as a possible remedy, the efficacy and cost feasibility of a future extension of the vesting standard of S.4 to retirement benefit plans under which such employees are covered. Our Associations are anxious to cooperate fully with the Subcommittee and its staff in attempting to achieve these ends.

TESTIMONY OF

CYRIL F. BRICKFIELD, LEGISLATIVE COUNSEL

NATIONAL RETIRED TEACHERS ASSOCIATION

AND

AMERICAN ASSOCIATION OF RETIRED PERSONS

BEFORE THE

SUBCOMMITTEE ON LABOR

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

THE RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT OF 1973

FEBRURARY 16, 1973

STATEMENT OF MR. CYRIL F. BRICKFIELD
LEGISLATIVE COUNSEL TO THE NATIONAL RETIRED TEACHERS ASSOCIATION AND
THE AMERICAN ASSOCIATION OF RETIRED PERSONS

MR. CHAIRMAN:

I am Cyril F. Brickfield, Legislative Counsel to the National Retired Teachers Association and the American Association of Retired Persons, affiliated, non-profit organizations representing a combined membership of over five million older Americans. I am accompanied today by Mr. James M. Hacking of my staff and by Mr. E. H. Crawley of Lexington, Kentucky, and Mr. Herman G. Nelson of Milaca, Minnesota, each of whom is a member of AARP. Mr. James Castles, an AARP member from Arlington, Virginia, has unfortunately been prevented by illness from appearing with us today.

Other business requiring the personal attention of Mr. Bernard E. Nash, our Executive Director, has precluded his being here this morning; he has, however, asked me to extend to the members of this Subcommittee his apologies and to request, subject to their approval, the inclusion of his prepared statement in the record of this hearing.

Heretofore, the performance of this country's private retirement benefit system has been demonstrably inadequate. With intolerable frequency, this system has failed to provide expected benefits to retirees.

Our Associations are convinced that if this system is ever to contribute effectively to the amelioration of the pernicious and persistent problem of insufficient income among our older citizens, it must become a reasonably reliable source of supplemental retirement income. We further believe that such reasonable reliability can only be predicated upon the enactment of comprehensive, federal regulatory legislation that mandates minimum performance standards to which each private pension and profit-sharing plan must conform.

The Retirement Income Security for Employees Act of 1973 (S.4)[1] would provide such minimum standards with respect to eligibility, vesting, funding, portability, insurance, fiduciary duties and disclosure and should, thereby, effectively achieve such reasonable reliability.

Our Associations believe that the abuses and inadequacies inherent in the present system cannot be corrected through the pursuit of a piecemeal, haphazard, legislative approach. This, we believe, was the major deficiency of S.3012, The Individual Retirement Benefit Act of 1971,[2] which was introduced on behalf of the Administration during the 92d Congress. Enacted standards which result in the expansion of employee coverage under private pension plans and the liberalization of vesting requirements under such plans will maximize the probability of private pension receipt only if such standards are reinforced by an adequate funding standard and a reinsurance program. As we said last June, in our pension reform testimony before this Subcommittee:

> "Any legislation enacted by the Congess that includes standards for coverage and vesting but fails to include requirements for funding and insurance will be a legislative gesture designed more to assuage worker discontent than to provide retirement benefits."[3]

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1 S. 4, 93d, Cong., 1st Sess. (1972).

2 See S.3012, 92d Cong., 1st Sess. (1971); S.374, 93d Cong., 1st Sess. (1973).

3 Hearings on S. 3598 Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 92d Cong., 2d Sess., pt 1, at 158 (1972).

Our Associations support the comprehensive approach of the Retirement Income Security For Employees Act and believe that its enactment will assist in assuring that the performance of the private retirement benefit system will be commensurate with its promise. We are, therefore, here, Mr. Chairman, to comment on the justification for this bill, to urge its enactment, and to offer the complete cooperation of our Associations in facilitating that enactment.

The inadequate performance of the private retirement benefit system has been well documented in the exhaustive statistical analysis[4] of private plans undertaken by this Subcommittee pursuant to Senate resolutions in both the 91st[5] and 92nd[6] Congress. Those statistical studies found that the present system has failed to provide a reasonable degree of pension security for the present generation of retirees and projected that this inadequacy is likely to continue as increasing numbers of workers enter upon their retirement years unless remedial legislation is enacted. This Subcommittee and its staff are to be commended for the comprehensiveness and quality of those studies and for securing a realistic cost analysis[7] of the proposed vesting schedule.

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4 Subcommittee on Labor of the Senate Commitee on Labor and Public Welfare, 92d Cong., 1st Sess., Preliminary Report of the Private Welfare and Pension Plan Study (Comm. Print 1971); Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 92d Cong., 2d Sess., Statistical Analysis of Major Characteristics of Private Pension Plans (Comm. Print 1972).

5 S. Res. 360, 91st Cong., 2d Sess. (1970).

6 S. Res. 35, 92d Cong. 1st Sess. (1971); S. Res. 235, 92d Cong., 2d Sess. (1972).

7 Grubbs and Company, Study of the Cost of Mandatory Vesting Pensions Prepared for the Senate Subcommittee on Labor (September 11, 1972).

With the Subcommittee's projection and with the persuasive statistical rationale therefor, Our Associations concur. But our agreement is, in part, based on the evidence we have received in the form of correspondence from our own membership, among whom are many whose private pension expectations have been frustrated by the very abuses and inadequacies documented in those statistical reports. Repeatedly, members will describe how the private pension, for which they worked so long and on which they based so much of their expectation for that added degree of income security necessary for a reasonably comfortable retirement life, was lost because of unreasonable vesting scheduled, inadequate funding, corporate liquidations or reorganizations, breaches of fiduciary duties and other inadequacies.

With the permission of the Subcommittee, Mr. Chairman, I would like to read excerpts from three such letters elected at random from the correspondence of my Legislative Division. Before I do, however, I would like to recall to the Subcommittee's attention, the unique problem of the Elgin pensioners, whose situation was effectively described to you yesterday by Mr. Gordon Howard. Many of that group of 1100 pensioners are members of the American Association of Retired Persons. They, themselves, formed a special committee to fight Elgin's court action but they have little or no money. They called me at AARP headquarters asking if we could obtain a lawyer in New York who would take their case without charge for the purpose of obtaining a delay in the proceedings, so the matter at least could be studied by the Pensioners' Committee. Our Association secured the assistance of a New York law firm which appeared specially yesterday and without charge in the New York Court seeking a continuance. This legal effort was successful in that the presiding judge, rather than granting the petition of Elgin National Industries to terminate the trust fund, decided to take no immediate action but to hold, instead, a full

hearing on the merits of the motion for a continuance.

Moreover, our Associations had originally arranged to have Mr. Howard appear with us today; however, as you know, he appeared yesterday with Senator Stevenson. Our Associations are pleased to have been able to assist in bringing the situation of the Elgin Company pensioners to the attention of this Subcommittee. We felt that their experience, while unique, should be taken into account in making constructive amendments to the bill. The suggested amendments to S.4 proposed, in the alternative, by Senator Stevenson, enjoy the enthusiastic support of our Associations.

Now, Mr. Chairman, I would like to read those excerpts from our correspondence that I mentioned earlier. The consent of the authors has already been obtained. These excerpts will illustrate that aspect of the need for pension reform that confronts our Associations directly - the human aspect.

The first letter is from a Mr. Vasco Da Silva of Bradenton, Florida (received November 22, 1972), wherein he wrote:

> "I read an article in the American Association of retired persons news bullentin. The article stated that U.S. Senator Jacob K. Javits and other Senators were advocating Legislation to protect workers pension benifits. I was a member of the International Brotherhood of Electrical Workers Union Local 3, New York for 13 years and 8 months. In order to be eligible for pension benefits I must have 20 years membership. Taking my age into consideration I would be 72 years of age in order to get 20 years membership. Since I retired in August 1972 at the age of 65, I do think that I am entitle to a percentage of my pension for the 13 years and 8 months in the Union.
>
> "This money was paid into the Union pension fund to my account by contributing Contractors for whom I worked. I can't see 13 years and 8 months go down the drain.
>
> "Enclosed you will find a letter from the Union in reply to my application for Pension. I hope the American Association of Retired Persons can help me or workers like myself who has found themselves in this predicament. This will go a far way to help with Social Security payments."

Had the vesting schedule of section 202(a)(1) of S.4 been in effect before Mr. Da Silva's retirement, it is probable that he would be receiving today a percentage of the pension of which he feels deprived.

The second letter is from a Mr. Albert J. Rich of San Mateo, California (received January 10, 1973), wherein he states:

> "I am writting in the hope that you may help in advising me how I may acquire a pension which I am entitled to, but have been refused.
>
> "For thirty years, I was a member of the A.F. of L-C.I.O. In 1964 I took a withdrawal card, which I have renewed, up to date, and moved from New York City to my present address. I was a liquor salesman in New York and was a member of the Liquor salesman's union local union no. 2. In California I continued selling liquor. I now became a member of the liquor salesmans union local 109 affiliated with the Teamsters. Paid the initiation fee and received no seniority. I must now be employed for fifteen years before I will be entitled to a pension.
>
> "Many thanks for giving this matter your kind attention."

Had S.4's vesting schedule and the portability program of sections 301-306 been in effect when Mr. Rich moved to California, perhaps he would now be comfortably retired. It is indeed unfortunate that there is still no central mechanism available to facilitate the transfer of pension credits within the same industry.

Since Mr. Rich still has substantial attachment to the labor force, he may yet benefit from the retroactive vesting protection of section 202, especially if his health or other factors cause him to retire after its effective date but prior to his completion of 15 years of service with the Union of California. Our Associations are pleased to note section 202(a)'s provision for retrospective vesting credit for workers age 45 and older for it obviates a problem about which we expressed concern in our testimony

before the Subcommittee last June[8]- the lack of benefit that would be derived by older workers from a vesting schedule which would operate only prospectively.

The third letter is from a Mrs. Ethel T. Jenkins of Lake Havasu City, Arizona (received February 2, 1973), wherein she wrote:

> "They have done it again! You recently had a meeting, "Council on the Aged." Can something be done to companies who take forty years of a man's service; merge after a pension plan had been put into effect, and now the new company, American Can, who absorbed Printing Corporation of America, have as of Dec. 31st 1971 cut off his pension completely.
>
> "The man is my brother now 70, in poor health, and depended upon his pension for his existence.
>
> "We of the AARP are numerous. Are we powerful enough to curtail such action by these corporate vultures?
>
> "You have my permission to use or publish this letter if necessary.
>
> "This man paid into a pension fund, and was assured he had security to the end of his life."

Had the funding provisions of section 210 and 211 and the plan termination insurance pensions of section 401-406 been in effect, this hardship might not have arisen. No amount of statistical data can adequately measure or describe the individual hardships worked upon the helpless victims of the present, insensitive, often capricious system.

To further corroborate the findings of this Subcommittee's statistical reports, Mr. Chairman, I shall, with the permission of the Subcommittee, introduce in turn Mr. E. H. Crawley and Mr. Herman G. Nelson, each of whom

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8 Hearings on S.3598 before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 92nd Cong., 2d sess., pt. at 176 (1972).

desires to relate, briefly, to the members here this morning, his personal experience with a private plan.

MR. E. H. CRAWLEY -

THANK YOU MR. CRAWLEY.

Our next witness is Mr. Herman Nelson - a former employee of Minneapolis Moline Corporation. As I am sure the Subcommittee is aware[9] that in January of 1972, the White Motor Company of which Minneapolis Moline was a part, announced the phasing out of that division's facilities because of the declining volume of farm implement sales. The White Motor Corporation had acquired Minneapolis Moline Corporation in January, 1963, at which time two pension plans were in effect covering Minneapolis Moline union and salaried employees.

At the time of termination, both pension plans were substantially underfunded. Consequently, the employees and retirees of Minneapolis Moline were adversely affected. Mr. Nelson will describe his working experience with that company and the consequences to him of the termination of the plan under which he was covered.

MR. HERMAN NELSON -

THANK YOU MR. NELSON.

MR. CHAIRMAN, although as I explained earlier, our third witness, Mr. James Castles, has been unable to attend this morning's hearings because of illness, I would like to present, on his behalf, his experience with a pension

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9 Hearings before the Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 92nd Cong., 2d Sess., pt. 2, 655-922 (1972).

plan established by the International Printing Pressman and Assistance Union of North America. I believe the Committee may profit from his experience.

Mr. Castles was a lifetime member (about 50 years) of the International Printing Pressmen and Assistants Union of North America. He joined the union around 1917. He learned the trade as a pressman with Eureka Specialty Printing Company, Scranton, Pa. He subsequently worked for the Hughes Publishing Company in East Strasberg, Pa., for one year and then with the Government Printing Office for 31 years.

Mr. Castles recalls that he paid into the union plan, from the time of its inception, over a period of at least 30 years until the plan was terminated about 1960.

Mr. Castles further recalls that the amount of his contribution was $1.50 a month and that upon retirement he was supposed to draw bout $42.00 a month in pension benefits. In the years just preceding the termination of the plan, the amount of the pension benefit to be paid therefrom was reduced to $38.00 a month.

In a conversation with a Mr. Allen at the International Printing Pressmen's Union, we were informed that at some point it became clear that an increase in the amount of employee contributions would have been necessary to sustain the plan.

However, we were told that the union membership rejected, in three referenda, the option to meet the increasing retirement benefit demands being made upon the union plan by increasing the level of contributions. This led the union leadership to recommend, at the union convention in 1960, that the plan should be terminated. The recommendation was adopted and the convention decided to terminate the plan.

The assets remaining in the original plan were paid out to pensioners and shortly exhausted. Mr. Castles, who was not yet retired when the original plan was terminated, never received a pension and was never returned the amounts he had contributed to the plan.

Our Associations are aware that the terminated plan was established and maintained by an employee organization and financed soley by contributions from its members. We are also aware that plans such as this are exempted from the requirements of Titles II, III and IV of S.4 with respect to vesting, funding, portability and plan termination insurance.

While it may be the policy of S.4 to cover and protect only persons who are, or will be, beneficiaries of major pension plans and while it may also be that union plans, such as the one in which Mr. Castles participated, are at the present time generally small in size and coverage and under the control of only local unions, it seems to us unwise to incorporate into the exception of subsection 104(b)(7) of the bill language that is overly broad and susceptible to abuse in the future. If the intent behind this particular exemption is to exclude from the minimum standards of Titles II, III and IV small local union plans solely financed from membership contributions, our Associations recommend that some arbitrary limit be imposed to define specifically the size of the plans intended to be exempted in order to avoid this exemption from being used in the future as a loophole for avoidance.

We note that subsection 104(b)(4) exempts pension and profit-sharing retirement plans, covering not more than 25 participants from the provisions of Titles II, III and IV of the bill. We see no reason why an analogous type of recommendation could not be incorporated into the language of subsection 104(b)(7). We further note that union democracy alone, even with respect to small local plans into which union employees contribute, may not be sufficient to protect the interests of the minority, especially since union democracy

seems to have deprived Mr. Castles of even a return of the amounts he had contributed over time to his plan. We note that under subsection 211 of the bill, pertaining to the discontinuance of plans, assets of terminating plans are to be distributed first to non-retired participants in the plan the amount of contributions made by them. Obviously union democracy cannot always be relied upon to adhere to the order of priority established by section 211.

CONCLUSION

In light of the findings of this Subcommittee's statistical analysis, the empirical evidence that has come to our attention through our membership correspondence, and the testimony of these witnesses, our Associations are without doubt that the performance of the private retirement benefit system is in need of the federal regulation embodied in S.4 if a reasonable degree of retirement income security is to be provided for the American working man and woman. Seldom, if ever, has a need for remedial legislation been so exhaustively and sytematically documented, and seldom, if ever, has a bill been so carefully formulated and perfected on the basis of sound statistical analysis and cost projections. The Retirement Income Security For Employees Act has been calculated to achieve the optimum result - to improve the overall equity and performance of the private retirement benefit system and to promote, rather than inhibit, its future growth. Our Associations therefore urge that this bill be favorably reported without delay to the full Committee, and by the full Committee to the Senate as the first steps to its speedy enactment by the Congress. As previously stated, our Associations are anxious to cooperate with this Subcommittee and its staff to facilitate that enactment.

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The CHAIRMAN. Our next witness is Prof. Merton C. Bernstein, College of Law, Ohio State University. Good morning, Professor. We have your press release and we have your statement. Which shall we work from?

STATEMENT OF PROF. MERTON C. BERNSTEIN, COLLEGE OF LAW, OHIO STATE UNIVERSITY

Mr. BERNSTEIN. I thought I would hit the highlights of the statement. The press release does not include anything that is not in the statement. I will not use up my limited time by telling the committee who I am. You were very gracious in your introduction of me last spring.

I have been working in this field, counting my work with the Railroad Retirement Subcommittee of the Senate Labor Committee, since 1958. Now to the substance.

On April 1, 1971, America read that the day before Senators Williams and Javits released a study on private pension plan benefits and forfeitures. It reported at page 5:

> Out of a sample covering a total of 6.9 million pension plan participants since 1950, 253,118 or 4 percent have received any, any kind of . . . retirement benefit. . . ."

That revelation shocked the American public into a demand for private pension reform. S. 4 is cosponsored by dozens of Senators because the public demands that private pensions pay off not to a mere handful but to most participants.

Last February the Senate Subcommittee on Labor released its interim report. It declared:

> . . . 92 percent of all participants who left plans which required 11 or more years of service for vesting and 73 percent of all participants in the plans with ten years or less for vesting . . . did not qualify benefits.

It ought to be pointed out that few plans are more generous than 10 year vesting.

S. 4—INADEQUATE VESTING

S. 4 does little to change that shocking outcome. Assuming enactment this year, for an employee now aged 42 full vesting can occur no sooner than age 60 and can easily be delayed until he or she is 65—normal retirement age in most cases. Years worked prior to the effective date would not count toward mandatory vesting. Employees with 10, 20, or even 30 years of service still could be separated without vesting rights.

The measure works this way. Section 202 requires that covered plans provide vesting of 30 percent after 8 years of credited service. (The first year's employment or all years before age 25 may be ignored). Thereafter each year of subsequent employment results in the vesting of an additional 10 percent of benefits earned so that after 15 years of service, 100 percent of an employee's credits would be vested.

But—and it's a big but—such vesting begins for those now 42 or under only for the years worked after the act's effective date. By section 701 that effective date occurs 3 years after enactment. So the bill provides for 11-year vesting—not 8-year vesting.

That 11-year vesting can be stretched out to 16-year vesting, and that fits like a glove the situation described by the subcommittee report

when it said that 92 percent of the plan participants with formulas of that sort had nothing to show for their service.

Now I suggest to this committee that it has done a marvelous job of telling the American people what is the matter with pension plans. It has mobilized public concern on a very wide scale. It has defined for the American people the problem. The problem is that eligibility provisions of plans work against eligibility for the great majority of plan participants. They are waiting for this committee to cure, to ameliorate significantly, the problems it has publicized, the problems it has demonstrated.

The bill unfortunately will not do that. I think that is a waste of your tremendous efforts. I think you are quitting before the game has barely begun.

S. 4 VISITING CAN BE DELAYED ANOTHER 5 YEARS

A close reading of section 216(a), and especially section 216(b) indicated that the vesting formula can be delayed not only for the 3 years after enactment, but for 5 years after that.

In my testimony I analyze the language of that provision. It is extremely broad. Section 216(b), which purports to define the circumstances under which deferral occurs, has a wide-open invitation, because the definition enumerates four circumstances, themselves not too difficult to satisfy, but says that the circumstances permitting deferral of vesting are not limited to those four.

So the deferral could easily make what is advertised as 8-year vesting into 16-year vesting, and for those 42 and under today, assuming the immediate enactment of this bill that means that they would be 58 before they would have 30 percent of their benefits vested, and only for those years up to the effective date, which would be for 8 years, not 16 years after enactment. That is what the language of this measure provides.

If you did not intend it to be that way, change it.

In 216(c) it says that where the plan is collectively bargained, the union must join in the application for deferral. That may seem like a safeguard. But, Senator, the record is quite clear, although not widely known that many large unions, including the AFL–CIO, have opposed mandatory vesting. In the views of the Advisory Committee on Labor Management Relations, attached to the Cabinet Committee Report in 1965. Anthony Boyle of the United Mine Workers, David Dubinsky of the International Ladies Garment Workers Union, Joseph Keenan of the IBEW, and George Meany all contributed statements in opposition to mandatory vesting of the kind recommended by the committee, which was graded vesting starting at 10 years and progressing to full vesting after 25 years, a provision not measurably different from what you propose in S. 4.

So we can fully expect that union after union will join in applications to defer the vesting provisions.

Now I think this measure is not being closely attended by those who are affected—I listened to the testimony this morning. Just as an example, the gentleman who was here and said that after 20 years he was given the gate without anything to show for it. The statement was made by the representative of AARP, that had your measure been in

effect at the time, he would have had a vested benefit. The point is it was not. We would have to look at this measure, how it would work were it enacted; were it enacted and he were under 45, he could very well not achieve vesting, because with an 8-year delay, which is easily permissible under this bill, he would only have 7 years of service, of creditable service. And all the years before age 45 would be down the drain.

The application for deferral does not require direct employee representation. I think that is a serious omission, especially where there is not a union present. We must understand that quite frequently union interests do not coincide with employee interests, and I would urge this committee if it does nothing else to make that on the application for deferral employees must be given notice and have an opportunity to participate directly. Certainly in the absence of a union, they ought to have that kind of representation and that opportunity to intercede.

"Due weight" under this bill is given to what the parties to the collective agreement decide on the question of deferral. Absolutely no due process is given to employees.

The Advisory Council in S. 4 provides for direct representation by unions, five union representatives, five management representatives, one representative each from the field of insurance, corporate trust, actuarial counseling, investment counseling, and accounting, and "six representatives from the general public." Under the current reporting act, the general public has been represented by professors from business schools and law schools. While I have great respect for these professions, I seriously question whether that is adequate representation. I may say that apparently the only provision that was changed, from S. 3598 in response to my testimony last year deals with the Advisory Committee. I pointed out 13 out of 16 were special interest representatives; so the public was given three more, and then the overall total was changed, five were added to the overall numbers, so that the percentage of interest group representatives did not change appreciably.

S. 4 AND THOSE OVER 45—THE PERIL OF FIRING

For those over 45 at the effective date—and for many people the effective date will not necessarily occur at that age—45—for the people who will be 45 in 1976, it can be deferred 5 years so those people may have to be 50 in order to begin to qualify for the protection available.

Now, in those 3 to 5 years of deferral, there can be a tremendous slaughter of innocents. One does not have to be imaginative, to appreciate, that employers will separate employees to prevent them from obtaining vested rights. Your subcommittee records documents that occurrence again and again and again.

There is no protection for people not represented by unions against discrimination of that sort. For white collar and middle management people, especially, there should be special concern over the lack of protection during those years of deferrals. Their jobs and pension credits can be wiped out without a trace.

PREFERENCE FOR THOSE 45 AND OVER INVITES AGE DISCRIMINATION

The provisions which give preferential treatment to those who are 45 or 50, when title II becomes effective, operate to discriminate against older workers.

My witness here is Senator Javits. Testifying before the Ways and Means Committee last May, he said that:

We think the rule of 50 is the least desirable of vesting standards. The rule of 50 is certainly some improvement over no vesting at all as in present law, but it really delivers very little and carries age discrimination with it.

I say amen. That is exactly right. Not only does it mean that employees who are older will have difficulty being employed, S. 4 gives a positive financial incentive to fire workers who are in their 40's before the effective date. I think that is most unwise at a time older workers are having trouble in holding onto work.

This committee several years ago passed out a measure to ban discrimination based on age and employment. That measure is not very effective because that kind of discrimination is really rather subtle, both in the hiring and in the separation phases.

This measure gives an incentive that will provide additional discrimination against older employees, and I suggest it is a mistake.

NO HELP TO WIDOWS

One of the areas in which social security is most inadequate, despite constant improvements, is in its provision for widows. There is absolutely nothing in S. 4 that would require plans to improve their coverage for widows. I would request that the committee take a look at the white paper of the British conservative government issued in October 1971, which proposes that private plans be required to provide 50 percent survivor benefits for women.

There is no area of greater need after eligibility than in providing survivor benefits for women, who are poorest of the poor and the oldest of the old.

S. 4 CONTAINS NO HELP FOR WOMEN EMPLOYEES

In addition, nothing in this measure does anything realistic to relieve against the actual discrimination in practice against women. Where women are employed, most of them are married, they have family responsibilities which take them in and out of the labor market, they cannot begin to meet the vesting requirements of present plans and nothing in this measure helps them appreciably.

For example, in the retail trade the mean service is well below 8 years service, 11 years, 16 years service, whichever you take as the measure of vesting under this measure. It is no more generous than 11 and it goes up to 16.

PALTRY BENEFITS UNDER S. 4

I have worked out the benefits that would be payable under S. 4. Under two varying sets of assumptions, one of which I set out in my prepared statement—and while I was here I passed the time working out another set of assumptions. Under one set off assumptions, assuming that the measure would work perfectly for those who are young now, who are age 22 at enactment and assuming 3 percent inflation which is extremely conservative, and half of what the inflation rate has been for the last several years, the benefits for such an employee if he just make it or she makes it just right, has only 8-year jobs, and gets right under another plan, and get 8 more years of credited service, that

would result in a pension benefit worth in today's dollars less than $1 a day. For an employee who achieved three bouts of 12 years, and that would practically perfect timing between 26 and 63, the benefit would come to less than $500 a year in current dollars.

For even the most enthusiastic exponent of half-a-loaf doctrine, I think that must surely be regarded as a crumb.

S. 4 STRETCHES OUT FUNDING

The funding requirement—I remember sitting here, Senator Williams, and enjoying your examination of several witnesses on the question of funding last spring. You were critical of the lack of funding in the administration proposal. I would point out two factors.

One, that S. 4's purported 30-year funding requirement, which is entirely prospective, would really be 33-year funding because it does not begin until the effective date 3 years hence, and that too is deferable for 5 years. In fact, I would urge the committee and the staff to take a close look at that language, because, as my statement indicates, it does not limit deferrals to only the first 5 years, but it permits deferrals for any year's payment for 5 years. So it could go on and on and on. After 5 consecutive contribution waivers, the Secretary might be able—would have the authority to order plan termination.

SECRETARY'S POWER TO ORDER PLAN TERMINATION INADEQUATE

I earnestly suggest to you that you enlarge this authority, because if a plan is having such heavy going financially, there is a very strong chance it is separating employees at a great rate, and then it may get out of trouble financially, but the employees have lost their credit or many of their credits.

This committee has dramatized many problems, and one is when there are acquisitions and mergers, there are wholesale separations of employees, but not plan termination. After one works in this field for a while, he realizes that sometimes there is something worse than a plan terminating, and that is the plan not terminating, because plan termination is supposed to require vesting of all credits. Employees who undergo large-scale separations without plan termination may very well lose out.

I urge you to enlarge that discretion of the Secretary to order plan termination.

DEFERRAL OF FUNDING MAY CAUSE TROUBLE

Another part about the 5-year deferral, which I would urge you to do—I worked this out, it is not in my testimony, but I worked it out that morning between 6 and 7—if you had 5 successive years of deferral and a plan was working on level benefit funding, in the sixth year, the employer would be required to make almost double contribution, a 180-percent contribution.

Now if the employer is in trouble those first few years and he gets the deferrals, actually it is like taking out more and more credit. One becomes less and less able to repay, which is an additional reason for giving the Secretary the power to terminate, order earlier termination.

S. 4'S CLEARINGHOUSE WILL NOT WORK AND INADEQUATE FIDUCIARY STANDARDS

I would refer the committee to my testimony last year, as to why the clearinghouse proposal will not work, as to why the fiduciary standards are inadequate. I would point out that, under the Labor-Management Reporting and Disclosure Act, there is an absolute ban on union officers of any financial dealings with their organization, an absolute ban. Mike Gordon is shaking his head "no," but if one reads 501(a) one must say there is an absolute ban on self-dealing. I suggest to you there are far smaller funds and far fewer advantageous transactions available to union officers with regular union funds, far less advantageous than there would be for employer representatives and union representatives in regard to pension funds.

I think only an absolute ban on self-dealing will protect employee rights.

I would point out in successful litigation, in the *Blankenship* case which, Senator Williams, you helped build the record for, with the kind of hanky-panky going on with the Mine Workers fund, the complainants show 20 years of improper fund investment—lack of investment really. Twenty years of self-dealing, the court gave relief only for the 3 years preceding the complaint. Closing the barn door in this field is next to impossible. Technically it is extremely difficult, recovering funds is extremely difficult.

Unfortunately the fiduciary standards proposed will not change the ability to make recoveries in the *Blankenship* kind of situation.

PROPOSED BARGAINING RIGHTS FOR RETIREES

I would like to close with a new proposal, which I urge the committee to consider. It grows out of, in part, the Elgin situation which is going to be the new Studebaker scandal. If one looks at the Elgin situation and asks how come there was this fantastic surplus? Look at the benefit schedule and you will see.

People with 46 years of service getting benefits of $86 a month. People with 25 years of service, getting $20 a month. Of course the fund had too much money.

The committee knows that, in 1971, the Supreme Court of the United States in refusing to uphold a ruling of the National Labor Relations Board said that under the National Labor Relations Act, retirees were not employees and that bargaining for employee retirement benefits was not a mandatory subject of bargaining. This adds another weakening to the inadequacy of private plans as they operate today.

I would urge upon this committee to propose an amendment to the National Labor Relations Act, giving bargaining rights to representatives selected by retirees. That could include the union that represents the employees under the plan, but if that union does not enjoy the confidence of the retirees then they ought to be able to select their own representative directly and in a secret NLRB election. There should be mandatory bargaining obligation placed upon the employer to deal with those retirees.

It does not mean he has to budge, but it does mean there will have to be bargaining, and the retirees ought to be given the rights that employees have under the Norris Laguardia Act to make known their grievances. Then perhaps some measure of relief will come to those who are already retired. Because under your measure, even when termination insurance works at its best, what is purchased for employees is a paid-up life insurance, is a paid-up annuity which is subject to erosion by inflation. Retirees ought to have a mechanism for dealing with that kind of problem.

Thank you for your time.

The CHAIRMAN. Thank you very much, Professor Bernstein. Just one or two points.

We have been greatly helped by your profound statement. We appreciated last year's testimony before this committee.

Let me first ask about our problem in dealing with this anticipatory firing prior to vesting of benefits under the retirement plan. We have seen all the harsh stories. We know what they are all about. They do come to this committee.

Now we have provided in many laws against discrimination in hiring, age, sex, and so forth.

You are suggesting, and philosophically I could not agree more, that we provide against firing on the basis of approaching years. You are a professor of law. You know how hard the proof is in other discriminatory cases. What would be the language of protection there?

Mr. BERNSTEIN. I have a suggestion for you, Senator. Under most collective bargaining agreements employees are protected against discharge or discipline without cause. For those without such protection, make such protection a statutory right, provide the machinery with public hearing officers to administer those rights, and you would go a long way to prevent this kind of abuse.

I would make that for managerial employees as well. I do not think the solution is difficult. Indeed in the year 1973 it is about time that employees generally enjoy the right not to be fired without cause in the United States of America. I do not think that that is legally difficult at all.

Philosophically I think it would be thoroughly acceptable by the American people. I think they are more than ready for it.

The CHAIRMAN. There is always a cause for the firing. If the boss does not like the employee, that is a cause.

Mr. BERNSTEIN. No, sir. It is not a cause in collective bargaining agreements. I have sat as arbitrator in many cases——

The CHAIRMAN. How do you spell out that this is wrong under the cause test?

Mr. BERNSTEIN. The National Labor Relations Board and arbitrators have been dealing with that problem by the tens of thousands over the years. By and large I would say that while their batting average is not absolutely perfect, they do quite a good job of preventing employers from separating people for bogus causes.

The CHAIRMAN. You do not believe it would be better to try to hit this with a rifle shot rather than buckshot?

Mr. BERNSTEIN. I do not think that is buckshot. I think it is something that ought to be done independently.

The theme of my testimony last June was that if you cannot really effectively perform the pension system—reform the pension system,

why not say it, and get on with putting these $150 billion and this $10 billion every year in contributions and this $3 billion in foregone taxes where it will do some good, where it will be honestly administered in the social security plan.

If the argument is it is not possible to put together an effective pension plan, because it will not go down, somebody ought to say that the king has no clothing.

The CHAIRMAN. If the vesting provisions in S. 4 prevail, as they do not today in so many situations, and if this firing does take place after vesting, then firing of the older worker would not be the problem it is today. Do you agree with that?

Mr. BERNSTEIN. I did not follow that question.

The CHAIRMAN. If earlier vesting has been established by law, there would not be the same problem that we have now where vesting follows only after 25 years and 55 years of age.

Mr. BERNSTEIN. I do not know that that is the case. I think committees of Congress ought to really look into it.

I heard, I did not allege that it is true, but I have heard and I think it bears inquiry, that under the Keogh plans which require vesting after 3 years of service, that the slaughter of innocents is tremendous. I think Congress before it continues to enlarge upon the Keogh plans, the self-employed plans, they really ought to investigate what is happening to that 3-year vesting provision.

My understanding is that in many, many cases people are separated. I think if you made the vesting period early enough, it might become uneconomic to fire people.

The CHAIRMAN. You are a professor of law, and this is not a law question—this is an economic question—but have you thought about in economic terms what the industry could realistically accept now in its own situation in terms of a percentage of payroll that would go to the funding of pension plans?

Mr. BERNSTEIN. Senator, my approach has been somewhat different than that, because I disagree with the assumption implicit in the question. I have been urging this position. Again I would refer to Senator Javits' testimony before the Ways and Means Committee where he said it is a mistake to put the whole cost on the last employer. I have been saying that for years.

I said it last June, it is a mistake to put the whole cost on the last employer. What employers worry about, what I was taught from Samuelson's "Economics" is that it is unit labor cost that is significant. If every year or almost every year of an employee's working life were to pay off in a small benefit—this would be under a money purchase system—to fund any given level of benefits in any year would cost less than it does today. It would bring plans within the reach of many small employers. That is why I have been urging this committee—and when you chaired the Senate Special Committee on Aging—I urged that committee to consider it, and I think that committee did a splendid job in preparing for the work of this subcommittee—what is required is, among other things, a national pension plan that is easily installed for small employers and provides yearly coverage at low cost.

Now if you do it that way, the unit cost is small, and more employers can participate. I am not saying that the overall cost is not more. The overall cost would be more obviously. You do not get somethting for nothing.

But the year-by-year cost which I think for employers is the absolutely significant factor would be reduced, and that is what I would urge.

I think that too many people have been buffaloed by the argument that it cost too much. I have never heard the argument, Senator, that there is not enough money to pay actuaries, who service plans. I have never heard the argument that there is not enough money to pay bankers for the services they provide. I have never heard the argument that there is not enough money for lawyers. I have not heard the argument that there is not enough money for accountants.

The only ones for whom there is not enough money are beneficiaries. I think a system which fully meets the needs of those people that work to administer and install a plan, but work so inadequately for those who are supposed to benefit from plans is badly designed.

I think the American people by the tens of millions need and want and will support an ambitious pension program. I think that they want more than you are providing. They will support you in it. Make the fight.

The CHAIRMAN. Senator Javits.

Senator JAVITS. Professor Bernstein, we will, of course review all your statements and the way in which you read this bill. You testified before. We went over a good deal of what was done in this bill before.

You are a lawyer, just like I am, and we are staffed with competent attorneys. You will agree that you are not God and that your interpretation is not the last one, will you not?

Mr. BERNSTEIN. Quite naturally.

Senator JAVITS. You talk, however, as if you were.

We will look it over very carefully.

I am very serious about the possibility of there being any other construction than what we intended. You will stimulate us, as our chairman has said, to reexamine those sections to which you called attention, such as the 5-year waiver section, which we believe is quite limited in its availability.

We will examine it very carefully, and any other parts of the bill that you have criticized from the point of view of perhaps meaning something other than what we think it means.

What I am inteersted in is this basic part of your position. Do you feel that we should mandate our retirement plans? You must understand that the whole posture of this bill is that these are plans which are either agreed on in collective bargaining or utilized by employers as a way to attract employees. I just wonder whether you feel that we can simply write a plan for everyone, and then make employers and employees abide by it?

Mr. BERNSTEIN. Senator, I think that it is reasonably well established by others that taxes foregone under pension plans cost the U.S. Treasury $3 billion a year. If you take $3 billion a year and charge interest on it, you will see that it amounts to an enormous amount of money.

Senator JAVITS. The $3 billion plus 6-percent interest, as I calculate it, is $3,180 million. It is not an enormous sum of money; $3 billion or $3,180 million.

Mr. BERNSTEIN. That is each year.

Senator JAVITS. That is OK.

Mr. BERNSTEIN. Each year. And this whole system works on private pension plan system and it is supposed to work on reserves. They have enormous reserves. They, in addition, have something on the order of $150 billion or $180 billion of reserves of which are being amplified at the rate of $10 billion a year. What is the interest rate produced there? Those are reserves. That is not the amount that is being paid out yearly. That is an enormous sum of money.

I think it is incumbent upon the Congress of the United States to protect employee interests in those vast sums. The $150 to $180 billion that is already on hand and the $10 billion which is being newly contributed supposedly each year, plus the $3 billion that is foregone in taxes, that is a lot of money. I think it should be that the Congress ought to make sure it is not being wasted. That money would do a lot more good in social security than it is doing in private pension plans.

Do not mistake me. I have believed right along that there ought to be a public and private system. But the private system must justify itself on accuracy of performance. If it is inadequate, then under our system, it ought to be scratched. That is what the competitive system is all about.

You have all that other money to deal with, and I think have a responsibility to deal with it. I do not think you have to mandate that plans be universal.

Senator JAVITS. Professor Bernstein, I find your answer very strangely confused, if you will forgive me.

On the one hand you say we should not mandate plans. On the other hand you say we should dispose of existing resources properly. On the one hand you say you have a duty to see that the $10 billion which comes in annually plus the interest on that money is used properly. On the other hand you tell us you want a private system which means that the $10 billion plus interest can be cut off tomorrow by the system being ended.

Now which is it?

Are you for a mandatory system for the future? We know what to do about conservation of existing resources. That is not our bill. We are talking about an ongoing system. I am trying to get very clearly what is the essence of your recommendation to us?

Do you want a mandated pension system which is called "private", but really is not, because it is mandated; a "private" system means a system which is negotiated between union and employer, or in which the employer offers something as a fringe benefit to his worker. Anything else is a mandatory system.

If you want a mandatory system, I think it is a very legitimate position, and we should understand it.

But I do not understand moving back and forth between the two.

Mr. BERNSTEIN. I am used to dealing in alternatives. I would say the alternative is if you cannot do better than S. 4, then you ought to seriously consider withdrawing the tax subsidy and having the same funds devoted to social security.

Senator JAVITS. That is very clear. I understand that answer. You say if we cannot do better than S. 4, that is, if we cannot work out a

system that you would consider better than S. 4, then we ought to junk the private plans. S. 4 attempts to reform a system without inhibiting the establishment or continuance of a private pension plan. In that sense, S. 4 has a limitation, but all your suggestions break through that limitation, in my opinion. In other words, what you are asking us to do with S. 4 would make it highly unlikely that "private" pension plans would be continued or established.

If that is so, then it leads ipso facto to the making over of the present private pension system into a public system, to wit, a mandatory system. Then we would have all the inhibitions and all the problems of the social security system; the worker today and the employer today are rebelling against us right now at the size of social security taxes.

It seems to us we are hitting our heads against that ceiling right now. You advise us to break through it.

Mr. BERNSTEIN. I would like to respond to each of your questions. One, it is a myth that mandatory vesting will discourage the establishment of plans for this reason. In order for managers to get pension plan benefits themselves, under the tax laws there must be in operation a plan for rank and file employees. The people who negotiate or establish these plans unilaterally are not going to forgo their cushy benefits, when the price of them is to have benefits for rank and file employees. That they do not work out for rank and file employees is what we are talking about here.

They are not going to give up these benefits, not a bit. They are not going to stop these plans. They are not going to stop introducing these plans, because stockholder-employees and managers depend upon these plans for their benefits. That is myth No. 1.

Myth No. 2 is there is, indeed, resistance for the first time, I believe, to the rate of payroll tax under social security. That difficulty would be relieved marvelously by the introduction into the social security system of $13 billion more a year that is now going into this inefficient use.

Senator JAVITS. You assume, I take it, a compulsory payment of $13 billion from the employer alone?

Mr. BERNSTEIN. No; not necessarily that. When the Welfare and Pension Plan Disclosure Act was reported out by this committee, Senator Douglas' reports said again and again and again that the contributions made to pension plans are not employer money. That is another myth. It is employee money.

Senator JAVITS. I did not say it was the employer's money. I said it was paid by the employer.

Mr. BERNSTEIN. It is money that has to be paid out as part of the wage bill——

Senator JAVITS. It will be cranked into the price—will it be cranked into your price?

Mr. BERNSTEIN. No more than the present contributions are cranked into the price. It would be a substitution.

Senator JAVITS. Is it not a fact that only one-half of the workers are covered today?

Mr. BERNSTEIN. That is right. That is a grave deficiency.

Senator JAVITS. Does that not knock your argument galley west that they have to do it, because they want to enjoy these cushy benefits themselves?

Mr. BERNSTEIN. No. The major difficulty that small employers have is in installing these, because they have to pay the actuaries, pay the lawyers, pay the accountants. They have got to go through the whole business of qualifying a plan. If you had a large-scale dependable plan with low installation costs, more small companies would obtain pension coverage. I have suggested again and again that such a plan could be under private offices, and I have urged the pension industry in the country to come to Congress and say give us the opportunity to combine with regulation, to combine to put together a plan of this sort, so that coverage could be spread, and it would be.

But you have to overcome these installation costs. It cost an employer with 10 employees about the same to install a plan as it does an employer with 100 employees, just to get it going. Also, they do not have the time, they do not have the expertise.

A man with a small shop does not have the time to go through what it takes to qualify an individual plant. He does not know enough. He needs too many expensive experts to do this. This committee could provide a mechanism to overcome that thinness of coverage. It could do it.

Senator JAVITS. Professor Bernstein, I think we get your point. It would be pointless to our continuing to argue very diverse views. It is my judgment that S. 4 is a measurable advance. In fact, Mr. Chairman, I would like to submit a memorandum to show how far ahead it is of the advances in other countries in similar plans, including Canada, which was the landmark country.

(The memorandum referred to follows:)

MEMORANDUM OF SENATOR JACOB K. JAVITS CONCERNING ADEQUACY OF PENSION PROTECTION PROVIDED BY S. 4

In his prepared testimony, Professor Merton C. Bernstein levels the charge that S. 4 prescribes "plastic surgery" but no cure.

While S. 4 may not be the utopian solution that Professor Bernstein advocates, it should be noted that it is stronger than any legislation purporting to reform existing plans that has been enacted in any country in the world that has a private pension system remotely resembling that of the United States.

To cite a few examples:

(1) The vesting proposals in S. 4, as well as the funding and reinsurance proposals, are much stronger than those contained in the landmark Canadian laws that were enacted in 1965. Canadian law failed to provide for any kind of reinsurance program and indeed there is no reinsurance program in existence in Canada even at the present time. In addition, unlike S. 4, the Canadian law failed to give any prior service credit for vesting in benefit credits accrued prior to enactment of that law. Indeed, insofar as I can ascertain the matter, no vesting law enacted in any country of the world has provided as much prior service protection as S. 4.

(2) The funding and reinsurance proposals are stronger than any proposal enacted in the Scandanavian countries or which have been proposed elsewhere. Specifically, that feature of S. 4 which reinsures vested credits earned prior to enactment of law has no counterpart in the guarantee programs of the Scandanavian countries which only insure vested credits prospectively.

(3) Fiduciary provisions are as strong and in some instances tougher and more comprehensive than those found in Canada and Great Britain. In some countries, as in Finland, which is frequently cited as a model for private pension regulation, there are no fiduciary requirements whatsoever.

In summary, there is no basis in fact for arguing that S. 4 represents a mirage of reform. Instead it represents substantial landmark reform which at the same time is practically attainable.

In addition, Professor Bernstein's testimony contains numerous errors of fact and distortions regarding the provisions in S. 4. For example, Professor Bern-

stein asserts in his testimony that S. 4 requires vesting for those *under* 45 "only for the years worked after the Act's effective date." Yet Sec. 202(a) requires all plans to provide vesting "with respect to service on or after the effective date of this Title" and Sec. 202(a)(2) only excludes *benefit* credit prior to the Act for workers under age 45. As the Committee report (92–1150) specifically states at pages 30 and 31:

"Accordingly, full retrospective vesting credit will be applicable only to workers who are age 45 upon the effective date of the vesting provisions. This age criterion is representative of at least ½ of a working lifetime. It recognizes the risks of older workers who are more vulnerable to job changes or layoffs and have less opportunity to achieve adequate vesting in plans of other employers.

At the same time, the formula chosen is fair to younger employees. Section 202 requires that workers under age 45 on the effective date of the vesting title will be given retrospective credit for vesting schedule purposes in benefits earned after the effective date of the vesting title.

To illustrate how the vesting schedule would apply, assume two workers, each with 15 years of service on the effective date of the title but the first worker is age 45 on the effective date and the second worker is age 40 on the effective date. The first worker would be 100% fully vested in 15 years of benefits accrued during that period of time. The second worker would be 100% fully vested in benefits earned by reason of service after the effective date of the title. The Committee believes this approach will give the younger worker ample time to earn adequate amounts of vested credits."

While reasonable men may differ as to whether full benefit credit should be given for pre-enactment service, regardless of a worker's age—and I am not unsympathetic to this viewpoint—it is clear that Professor Bernstein has misread both the language and the intent of S. 4.

Professor Bernstein also implies that the provision in S. 4, Sec. 216, which provides for a five year deferral toward compliance with the vesting requirement is automatic and that every plan in the country would be entitled to such a five year deferral. Sec. 216 on the other hand makes it clear that such a deferral can only be provided by the Secretary in the event the plan is able to make a specific showing that compliance with the vesting requirements would result in "substantial economic injury" to a contributing employer or employers and "to the interests of the participants or beneficiaries in the plan".

The term "substantial economic injury" is defined in Sec. 216(b) as including: "(1) a substantial risk to the capability of voluntarily continuing the plan exists, (2) the plan will be unable to discharge its existing contractual obligations for benefits, (3) a substantial curtailment of pension or other benefit levels or the levels of employees' compensation would result, or (4) there will be an adverse effect on the levels of employment with respect to the work force employed by the employer or employers contributing to the plan".

According to actuarial cost data furnished to this Subcommittee by the actuarial firm of Grubbs & Co., it is quite clear that at least 77 percent of all pension plan beneficiaries covered by plans subject to S. 4 would be unable to make the showing required by Sec. 216 for a five year deferral because the additional cost factor derived from compliance with the vesting requirement would not be substantial. Thus, at the very most, a relatively small percentage of plans would be in a posture to contend that the additional costs of compliance with vesting *are* substantial, and even then, in order to receive a five year deferral, it would have to be demonstrated that the criteria outlined in Sec. 216(b) were met. This is a far cry from the contention that the five year deferral provision is automatic.

Finally, just to cite one more example of distortion, Professor Bernstein states that the fiduciary standards in S. 4 are inadequate because the Secretary of Labor is granted authority to exempt certain transactions from the prohibitions against self-dealing. Professor Bernstein asserts that this is tantamount to the authority in the Internal Revenue Code that authorizes self-dealing when the transaction is for "adequate consideration". Professor Bernstein also asserts that there is an absolute bar against self-dealing in the case of union funds subject to Sec. 501(a) of the Labor-Management Reporting and Disclosure Act of 1959.

Sec. 15(b)(2)(I), however, authorizes the Secretary of Labor to provide an exemption from an otherwise prohibited transaction when the Secretary finds that to do so "is consistent with the purposes of this Act and is in the interests of the funds or classes of funds and the participants and beneficiaries". There is nothing in S. 4 which directs the Secretary to provide an exemption from self-

dealing solely on the basis that the transaction involved is for "adequate consideration".

It is to be noted that the authority granted to the Secretary is virtually identical to the authority granted to the SEC under the Investment Companies Holding Act where certain "insider" transactions are prohibited unless the SEC provides a specific exemption. Moreover, contrary to Professor Bernstein's assertion, Sec. 501(a) of the Labor-Management Reporting and Disclosure Act does not constitute an absolute bar on self-dealing by union officials since that provision specifically states that union officials are required to manage and invest union funds in accordance with the provisions of the union's constitution and by-laws and if the union's constitution and by-laws specifically direct certain investments of union funds which otherwise might be regarded as a conflict of interest, it is doubtful that the prohibitions in Sec. 501(a) could be enforced. It is instructive to note that, unlike S. 4, which grants specific authority to the Secretary of Labor to enforce the prohibition against self-dealing, Sec. 501(a) of the Labor-Management Reporting and Disclosure Act can only be enforced by private suit brought by a union member. Accordingly, Sec. 501(a) is hardly an appropriate analogy.

More important, it is unwise to assert the need for an absolute bar on all forms of conflicts of interest, regardless of the circumstances. For example, it may be completely justifiable for a union pension plan to invest funds in low cost housing for its members. Yet an absolute bar on "conflict of interest dealings" might well prevent this kind of socially responsible and desirable investment policy. What is so terrible about permitting the Secretary of Labor to authorize these and similar arrangements, if he finds that the interests of the beneficiaries would be served thereby, and the arrangements are otherwise in keeping with the law?

Professor Bernstein is, of course, entitled to his viewpoint, regardless of whether his interpretations of the bill are correct or adequate. Obviously, there will always be those who believe that anything short of a complete remodeling of the private plans along the lines of social security is deficient. Nevertheless, it should be pointed out that literally millions of plan participants would be adequately protected under the provisions of S. 4 if it should become law. Unfortunately, there will be no protection for anyone under a bill which may be perfect by some standards but which can not be enacted now—and perhaps can never be enacted.

Senator JAVITS. I think the basic difference, Mr. Chairman, is between whether we wish to continue a private pension system as "private," or whether we simply wish to make an expansion of the social security system, which I think—whether Professor Bernstein wills it or not—is the fundamental thrust of his ideas. I don't believe employers need to establish plans for rank and file in order to benefit top management—they can always enter into individual or pay-as-you-go arrangements. Anyhow, we welcome the idea, and I think it demonstrates how open a forum this really is.

Mr. BERNSTEIN. I would like to add, if I may, very briefly one personal word. Since we first met in Des Moines in 1956, at the American Veterans Committee's first convention, Senator Javits, I have been one of your great admirers. Your openmindedness has always been one of your great attractions to me. I take heart in the fact that last year you told the Secretary of Labor that you and he had an irreconcilable difference on the rule of 50, and then you came back in S. 4 with something very much like the rule of 50. So I know you are open to persuasion.

Senator JAVITS. We do not think it is at all like the rule of 50, and you cannot wish it on us by such a specious line of argument.

The CHAIRMAN. Senator Schweiker.

Senator SCHWEIKER. I have no questions.

The CHAIRMAN. Thank you very much.

(The prepared statement of Mr. Bernstein follows:)

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TESTIMONY OF MERTON C. BERNSTEIN* BEFORE THE U.S. SENATE SUBCOMMITTEE ON LABOR

February 16, 1973

On April 1, 1971 America read that the day before Senators Williams and Javits released a study on private pension plan benefits and forfeitures. It reported (at page 5):

> "Out of a sample covering a total of 6.9 million [pension plan] participants since 1950, 253,118 or 4 percent have received any any kind of . . . retirement benefit. . . ."

That revelation shocked the American public into a demand for private pension reform. S. 4 is co-sponsored by dozens of senators because the public demands that private pensions pay off not to a mere handful but to most participants.

Last February the Senate Subcommittee on Labor released its Interim Report. It reported:

> ". . . 92% of all participants who left plans which required 11 or more years of service for vesting and 73% of all participants in the plans with 10 years or less for vesting . . . did not qualify benefits." (St. p. 15).

It should be added that the bulk of plans have vesting requiring 10 or more years of service.

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*Professor of Law, Ohio State University; author of "The Future of Private Pensions" (1964).

S. 4 does little to change that shocking outcome. Assuming enactment this year, for an employee now aged 42 full vesting can occur no sooner than age 60 and can easily be delayed until he (or she) is 65 - normal retirement age in most cases. Years worked prior to the effective date would not count toward mandatory vesting. Employees with 10, 20 or even 30 years of service still could be separated without vested rights.

The measure works this way. Section 202 requires that covered plans provide vesting of 30% after 8 years of credited service. (The first year's employment or all years before age 25 may be ignored.) Thereafter each year of subsequent employment results in the vesting of an additional 10% of benefits earned so that after 15 years of service, 100% of an employee's credits would be vested.

The Mirage of Vesting for Those Now 42 and Under

BUT - and it's a big but - such vesting begins for those now 42 or under only for the years worked after the act's effective date. By section 701 that effective date occurs three years after enactment. So the bill provides for 11 year vesting - not 8 year vesting.

The announcement that shocked the nation only two years ago was that 92% of participants under plans with similar formulas had nothing to show for their service. Today, S. 4 puts forward such a vesting formula and calls it pension reform.

But the proposed vesting formula is even weaker than appears at second glance. Under section 216 the Secretary of Labor may defer the effective date of the vesting provisions for up to 5 years. A close reading of section 216(a) and especially

section 216(b) show that the conditions for deferral are easily met. Section 216(a) allows deferral if the mandated change would "result in increasing the cost" to contributing employers so that "substantial economic injury would be caused to such employer or employers and to the interests of the participants or beneficiaries in the plan." So far the test sounds exacting. But subsection(b) defines "substantial economic injury" so that it includes, but is not limited to, a showing that:

> (1) a substantial risk to the capability of voluntarily continuing the plan exists, (2) the plan will be unable to discharge its existing contractual obligations for benefits (3) a substantial curtailment of pension or other benefit levels or the levels of employees' compensation would result, or (4) there will be an adverse effect on the levels of employment with respect to the work force employed by the employer or employers contributing to the plan.

Assuming the rare plan that does not already have equal, indeed better, vesting provisions than those mandated, the required vesting would increase costs whenever it confers benefits that would be lost without it by any substantial groups. In such a case, conditions (2) and (3) of subsection 216(b) would seem to be easily satisfied. The breadth of the discretion conferred by the terms "but is not limited to" would enable the employer to plead inability to make increased contributions for any conceivable business reason; the poorer the plan, the greater the cost of the improvement and hence the easier it would be to demonstrate substantial economic injury. And without additional contributions, such plans would be unable to pay for the benefits due - thereby readily satisfying (2); in the alternative, under the same conditions, benefits would have to be curtailed. In sum, even where the proposed vesting provisions would have some bite,

they would be relatively easy to defer for five years.

Nor is the provision of section 216(c) requiring that where plans are collectively bargained the union must join in the application any appreciable safeguard. Just recall the labor members of the President's Advisory Committee on Labor-Management Policy who opposed the Cabinet Committee Report's recommendation of graded vesting that started after 10 years' service gradually moving to full vesting after 25 years of employment. They were W. Anthony Boyle of the United Mine Workers, David Dubinsky of the International Ladies Garment Workers Union, Joseph D. Keenan of the IBEW and - not least - George Meany, President of the AFL-CIO. Except for the UMW these officials and their successors have not changed their stance. Other unions - such as the Amalgamated Clothing Workers - also oppose mandatory vesting. So, one may expect deferral applications joined by unions and when they come section 216(c)(2) makes sure that the Secretary gives "due weight to the experience, technical competence and specialized knowledge of the parties . . ." No provision is made to give the employees and members notice or a chance to be heard. "Due weight" may be given "the parties" but due process for employees and members is not required by the bill.

Of course, in the absence of a union, the employer alone makes the application for deferral. No provision is made for <u>any</u> employee representation.

<u>Advisory Council - No Employees - No Retirees</u>

This exclusion of employees and the dominant position accorded interest groups is echoed in the provisions for the Advisory

Council on Employee Welfare and Pension Benefit Plans. Composed of 21 members, they would be: five union representatives; five management representatives; one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, and accounting; and "six representatives from the general public." Under current law public members generally have been law and business school professors. Where are the employees? Where are the retirees?

Vesting Prospects for Those 45 and Over

(a) Illusory Protection

Title II also provides that employees 45 and over on the effective date of that title shall be vested with all years of service, even those occurring prior to passage. The vesting formula follows the same 8 year-30% pattern progressing by 10% increments to 100% after 15 years of employment under the plan (but permitting the exclusion of years before age 25). This formula would improve current single employer plan coverage very little - but would accomplish some slight improvement. According to BLS data most such plans provide full vesting after 10 years or 15 years of service.

BUT - another big but - section 701 provides that that effective date cannot arrive before 1976. The Senate Subcommittee on Labor has documented cases of employee separations just shy of achieving pension credit vesting. In the interim, employees within scoring distance under the pension plan can be put out of the game. In the absence of collective bargaining agreements, that can be done with impunity. The special vulnerability of white collar and middle management executives is a matter of

special concern. Again, the five year deferral is available to delay the onset of vesting so that the age 45 - vesting provision may be put off until 1981 - providing 8 years for the separation of those otherwise close to vesting - almost a decade for the slaughter of innocents.

For the very reason that the over-45 provision potentially has more utility than provisions for those under 45, it will more readily meet the standards for the five year deferment.

(b) Discrimation Against Older Workers

Last May and June, Senator Javits vigorously opposed the Administration's rule of 50 under which 50% vesting would take place when an employee's age and service (after age 30) equalled 50. In other words, the earliest vesting would be 50% at age 40 with no year credited until two years after enactment. In the Senate hearings, "Retirement Income Security for Employees Act, 1972," Senator Javits repeatedly pointed out during the testimony of Secretary Hodgson that the predecessor to S. 4 provided earlier and fuller vesting than the Admnistration proposal. (See pages 102-106, June 20, 1972) However, S. 4 is less liberal on vesting than the Administration bill of last session which Senator Javits opposed. Senator Javits made the additional and important point there and in the House Ways and Means Committee hearings, "Tax Proposals Affecting Private Pension Plans" that:

> We think the rule of 50 is the least desirable of vesting standards. . . .
>
> The rule of 50 is certainly some improvement over no vesting at all as in present law, but it really delivers very little--and carries age discrimination with it. A 50-year-old job applicant would vest almost immediately (even if the plan adopted the 3-year waiting period permitted by sec. 2(a), and the proposed amended version

of sec. 401(a)12(A) (ii) of the Code). Yet a 20-year-old job applicant would not vest for 15 years--a substantial incentive not to hire the 50-year-old but to hire the 20-year-old instead. Fifty-year-olds already have enough difficulty finding new employment; why make things worse for them?

Further, this rule tends to put all the burden of providing full pension benefits on the last employer, by making it most unlikely that an employee would ever vest anything under the pension plans of employers during his early years of employment.

Early vesting, on the other hand (that is to say, early and "age-neutral" vesting) like that contained in our bill, would generate several pensions for mobile employees: several small pensions, no doubt, but when combined at retirement age, that could be enough; and it would take the burden off the last employer of providing complete pension benefits after only a short period of work.

It was for that reason that I proposed in my own bill the requirement of "deferred graded vesting" --10 percent after 6 years, and 10 percent more each year thereafter until full vesting after 15 years. This graded system has the further advantage of avoiding the inevitable situation where a worker is laid off, or becomes disabled, or changes jobs just a few days before he vests, because under this system a worker may "just miss" something, but what he misses is just a little bit more than what he just received. That, in my judgment, is a much fairer vesting system, and this committee ought to give it most serious consideration rather than the rule of 50.

(House Hearings, pp. 203-204, May 8, 1972)

S. 4 is subject to precisely the same criticism that Senator Javits leveled at H.R. 12272 last May and June. The 45 and over vesting provision will promote discrimination against older employees. S. 4 provides an economic incentive to firing older employees and to not hiring them between the date of its enactment and for possibly as long as 8 years thereafter.

Inadequate Protection for Women as Employees and Widows

The poorest of the elderly poor are widows. They live longer than men and have fewer income resources. Despite steady improvements, Social Security benefits do not provide and will not provide a standard of living above the poverty level for the bulk of widows. So, according to the latest available data in October 1972 new awards to widows and widowers averaged $1725 a year. No area of Social Security benefit more desperately needs supplementation in cash benefits. Yet in no area do private pensions do a poorer job. Few plans provide straight out survivor benefits. While many offer joint and survivor options, they are intricate, often must be exercised substantially before retirement age and operate to reduce none-too-handsome benefits to retirees while they live. Little wonder that (according to what evidence there is) they are not often exercised under private plans. S. 4 does nothing for this beleaguered group. (Compare the 1971 British Conservative Government's proposal requiring widows benefits of 50% of the husband-retiree's benefits).

And no group of employees has less chance to achieve vesting as practiced and proposed than women employees because they tend to be in the labor market episodically and so do not achieve long unbroken service. Yet they and their spouses need retirement income to substitute for work income if they are to avoid a drop in living standards. It is high time that we realize that the vaunted American standard of living frequently depends upon two wage or salary earners in one family - one of them usually a woman.

Paltry Benefits Under S. 4 Vesting

The Labor Subcommittee has documented the modesty of benefits

payable under pension plans. While something is better than nothing, the amounts that would be salvaged under S. 4's vesting schedule is paltry.

Most single employer plans already provide for vesting after 10 or 15 years' service, often with an age requirement of 40 or 45. Those plans vest all service after a waiting period. S. 4 has a waiting period as exacting as most and to vest all service one will have to be between 45 and 50 - so far S. 4 constitutes no improvement except in those few plans without any vesting. S. 4 does not improve upon 15 year vesting requirements. For those over 42 and younger it offers no advantage over 10 year vesting plans because it requires at the least 11 years of service after enactment and may often require 16 for the start of vesting. On top of that, it would vest no years of service prior to 1984 and possibly not until 1989 - and then it would not require vesting of credits for years worked prior to that moving target - the effective date.

Let us see what effect that has upon benefits. Whereas most current plans with vesting vest 100% of the value of credits, after 8 years under S. 4 (for those over 45 to 50), 50% of the benefit earned would vest. For example in a plan that provides a benefit of $3 a month for a year of service, the benefit formula under S. 4 for 10 years' credits would be 50% of 10 X 3 - or $15 a month - or $180 a year - not a very impressive amount. At 8 years of service the formula would be 8 X 3 X 30% - roughly $8 a month or $96 a year.

Those amounts might be significant if they could be earned at successive jobs - but they cannot readily be.

For the youngest worker at enactment to whom the measure might affect - one who is 22, S. 4 would work this way. At age 25 (1976) service would begin to be credited. At age 33 (1984) he would achieve a vested benefit - worth $8 a month when he is 65. Assume he is separated from one job then and luckily gets another pension-covered job that lasts 8 years and pays a benefit of $5 a month per year of service - and is separated at age 41 with a benefit worth $13 - payable at 65. And the cycle repeats between 41 and 49 for a benefit worth $15; and yet again 49-58 - for a benefit of $20 a month. Thereafter the formula won't work before age 65. By the year 2006 he will be drawing a benefit of $572/ a year. At a modest assumption of 3% simple inflation annually (half the rate that we have experienced for many years) that benefit would be worth $336 - or less than one dollar a day.

Even the most enthusiastic exponent of the half-a-loaf doctrine surely must regard that as a crumb.

Inadequate Funding

S. 4 purports to require plan funding over a 30 year period. Again section 701 delays that requirement for 3 years and, in addition, section 217 permits delay for up to five additional years. Indeed, section 217(a) can be read to mean that any annual contribution may be spread over a five year period by the Secretary. Of course, once such a deferral occurs, subsequent ability to contribute probably would be impaired.

When an employer is in such bad shape that it cannot make the required payments, it often will be jettisoning employees as well. In such circumstances, employees may be better served by plan termination - for that vests all credits earned. But the Secretary is empowered to order plan termination only after granting five consecutive contribution waivers. That protection may - probably would - come too late. The official with supervisory power over plans ought to be empowered to act more flexibly than S. 4 provides in section 217(b).

S. 4's Clearing House Will Not Work

As in S. 3598, the proposed clearing House will not work. So long as it is voluntary the employer has no incentive to pay out money representing vested credits. On the contrary, as I pointed out to this Committee on June 21, 1972, the employer has a positive financial incentive to keep the money in his own fund where it can earn interest or dividends to reduce his required contributions.

This is a shame because clearing house portability is absolutely necessary to offset the erosion of the value of benefits between the time they are earned and when they are paid.

It is simply absurd to limit the Clearing House Fund to savings bank and savings and loan deposits. No other pension fund in the United States operates under such a stringent limitation.

Inadequate Fiduciary Standards

As in S. 3598, the fiduciary standards are inadequate. Section 501(a) of the Labor Management Reporting and Disclosure Act absolutely bans financial dealings by union officials with

their unions. With far larger funds at stake, S. 4 permits 10% of any fund to be used to purchase company stock and, while seeming to ban self-dealing authorizes the Secretary to permit it. Under Treasury regulations such a ban has been effectively negated by permitting dealings at arms length and at market prices. But it is not possible to police the dealings of 40,000 funds. And, as the United Mineworkers litigation shows, remedies often come too late and amount to too little - in the Blankenship case relief was granted only for the last three years although 20 years of fund mishandling were proven.

Only a complete ban on self-dealing would protect employee interests.

Bargaining Rights for Retirees - A Proposal

The 1971 Supreme Court decision in Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157, crystallized a problem that had existed for some time. In response to the erosion of benefit values after retirement, quite a few unions have sought increases in such benefits - with varying success. (See Appendix to Brief Amicus Curiae of the National Council of Senior Citizens in Pittsburgh Plate Glass describing a few adjustments of this nature in 1969 and 1970.) One employer response has been to reject the demand for bargaining but to make adjustments nonetheless. Information about practice is sparse.

But the Supreme Court decision has added yet another weakness to private pension plans. The Court held that retirees are not "employees" within the meaning of that term under the National Labor Relations Act and that changes in pension benefits for those already retired is not a mandatory subject of bargaining under that Act.

On the one hand the decision reduces the value of plans to retirees and employees (some of whom will be retirees) by enabling employers to refuse to bargain on the subject with union representatives. On the other hand, it removes the limitations on employee action from retirees so that they well may engage in picketing and other means of publicizing their dissatisfaction with pension benefit levels. Such action has not yet begun (although some UMW applicants for retirement benefits did picket). When the elderly learn about this possibility, considerable disruption could result.

Most importantly there should be an affirmative procedure through which the retirees can press their claims.

Therefore I propose amendment of the National Labor Relations Act to require employers to bargain about pensions with representatives chosen for that purpose by the retirees themselves. The representative would be selected through an NLRB election in units appropriate for the purpose. The representative might be the union which represents active employees or any other organization chosen by a majority of retirees voting. The retirees should have the same protection for their activities as are accorded active employees under the Norris-LaGuardia Act.

The resulting bargaining could be tri-partite - company, union, and retiree representatives. In the event of disagreement, the company, union and retirees would have the same options that companies and unions now have when they bargain without reaching agreement.

Retirees would have a means to seek redress and to assure that their interests are protected. They should not be required

to have their fate decided by others who have not earned their confidence.

Conclusion

S. 4 is reform and provides employee security in name only. It does not begin to cure the ills that the Labor Subcommittee's investigations publicized to the shock of the entire nation. Reform to the citizenry means preventing the abuses you found.

The Subcommittee diagnosed the condition as malignant cancer. S. 4 prescribes plastic surgery but no cure.

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Supplemental Statement of Merton C. Berstein

Senate Committee Witness Finds
Williams-Javits Pension Bill Vesting
Yields Small Benefits; Urges
Employee Protection Against Discharge

Assuming 1973 enactment of the Williams-Javits pension bill, an employee aged 40 in 1976 could look forward to pension benefits of as little as 99¢ a month payable in 2001, a Labor Subcommittee witness told the Subcommittee in a supplementary statement. Addressing himself to the vesting schedule the Subcommittee's counsel told him was intended by the drafters, Ohio State Law Professor Merton C. Bernstein, analysed its results in operation upon a moderately good plan. His illustrations ranged from no benefits (where the bill's provision for deferring operation for 5 years is used) to a benefit of $24.00 a month (payable toward the end of the century) for an employee separated after 15 years' service.

Noting the Subcommittee's findings that

> For every two employees who received a benefit, one employee with more than 15 years of service forfeited. For every one employee who received a benefit, one employee with more than ten years of service forfeited, nearly three employees with more than five years of service forfeited, while 16 employees with five years service or less forfeited.

He observed: "Inasmuch as the great bulk of separations take place well before service of 15 and 16 years, the vesting formula of S. 4 would result in miniscule benefits even to that small minority to whom it might apply." The witness also analysed the effect of the proposed vesting formula upon womens' pension prospects and found it unhelpful.

Professor Bernstein observed that during his oral testimony (not his February 16 prepared statement) he had urged statutory

protection against discharge without cause as a means of enabling older employees to achieve pension benefits. "If real vesting is to be achieved such protection is indispensable for those without the shield of a collective bargaining agreement.

(Full text of the statement is attached.)

Supplemental Statement on S. 4

by

Merton C. Bernstein*

Submitted to the

U.S. Senate

Subcommittee on Labor

February 21, 1973

Proposal of Statement to Discuss Sponsors' Version of Vesting Requirements

In my appearance before the Committee on February 16, I stressed S. 4's Title II vesting provisions, emphasizing the provisions enabling long delay of effective vesting. After my appearance, Michael Gordon, Minority Counsel, and I had an extensive discussion in which he asserted that the sponsors did not intend such deferral. Instead, he insisted, the language of Section 202(a)(2) did not defer vesting for those under 45 at the Title's effective date three to eight years after enactment. (In effect he contends that Section 202(a) and 202(a)(1) have separate requirements and that only (a)(1)'s are delayed by (a)(2). Considering that the two passages consist of a non-stop sentence that reading is a bit strained. And the pattern intended (described below) does not fit "vesting" as it is practiced in the United States. Moreover, in innumerable discussions with others about the bill, including assistants of sponsors, the interpretation I placed on the bill was never contested.

The Intended Operation of the Vesting Provisions

It seems reasonable to assume that the sponsors will rework the bill language and committee report to make clear the described

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* Professor of Law, Ohio State University

intent. The resulting vesting provisions, while not so obviously defective as depicted in my February 16 testimony, still fall far short of a substantial remedy to the shortcomings dramatized by the Subcommittee over the past two years. They could work in the following fashion with the following results.

Assuming enactment in 1973, Title II would take effect in 1976. For any employee under age 45 at that third anniversary date, all years of service would count toward the percentage of vesting but would apply for benefit purposes only to years worked subsequent to that anniversary date. So, an employee with 7 years of credited service in 1976 if separated 1 year later would achieve a vested right to a benefit of 30% of the benefit creditable for the first year after the effective date. If that benefit were $3 a month (a common and moderately "good" benefit by current standards) the employee would have a claim for a benefit of 99 cents payable at normal retirement age no earlier than 1996. If separated after two years but before three years from the 3rd anniversary date of enactment, 40% of 2 years' benefit would vest, namely $2.40 payable no earlier than 1996. (For an employer aged 40 in 1976, the benefit usually would go into payment status at age 65--or in 2001.) For separation 3 years after the 1976 anniversary date, 50% of 3 years benefit would be payable--or $4.50 in 1996 or thereafter. For separation after 4 years, the amount would be 60% of 4 years' benefit--$7.20; after 5 years--70% of 5 years benefit--$10.50 and so on until separation after 8 years subsequent to the effective date 100% of the benefit for each year worked subsequent to 1976 would be payable. So after 8 years such service, the employee would have a vested claim to a benefit at 65 of $24.0[illegible] month. [illegible] years of service prior to the 1976 effective date do not count toward a benefit.

But some would do even worse. An employee under 45 when Title II becomes effective with fewer than 7 years' service would obtain a vested benefit based upon all years subsequent to the anniversary date but if separated before eight years total service would obtain nothing. The progression from 30% to 100% benefits would start later and so at any given year, S. 4 would yield even smaller benefits than those just described in the preceding paragraph.

Some plan participants would do better than described--but the amounts salvaged would remain unimpressive. For example, an employee with 11 years' service at the 1976 effective date who was separated more than one year but less than two years later would obtain a benefit of 60% of $3.00--or $1.80. If separated more than five years but less than 6 years later, that employee would obtain a vested right to a benefit of $15.00 a month (5 years x $3.00 x 100%). Again, the 11 years prior to 1976 would yield no benefits.

Indeed, it is possible that even the employee last described would get nothing for his or her 16 years' service because Title II is subject (as I described in my February 16 testimony) to a five year moratorium. However, Mr. Gordon tells me that the words of Section 216(a) "may defer . . . applicability of the requirements of part A of this title for a period not to exercise five years from the effective date of Title II" means that years prior to 1981 would count for vesting but not for benefits. While that is a possible reading, it seems at the least questionable. Redrafting would seem desirable if the intended effect is to be accomplished.

Moreover, the study confined itself to plans existing in 1950 and extant 20 years later. Under shorter-lived plans, larger proportions of employees would have been separated with brief rather than long

tenure. (For an example of job tenure in a short-lived plant see pp. 93-94, my book, The Future of Private Pensions (1964). It closed in under 6 years. Almost half the men had begun their jobs the year before.)

The Subcommittee's March 31, 1971 report gave this description of its study findings:

> For every two employess who received a benefit, one employee with more than 15 years of service forfeited. For every one employee who received a benefit, one employee with more than ten years of service forfeited, nearly three employees with more than five years of service forfeited, while 16 employees with five years service or less forfeited.

Inasmuch as the great bulk of separations take place well before service of 15 and 16 years, the vesting formula of S. 4 would result in miniscule benefits even to that small minority to whom it might apply.

Vesting for short-tenure employees is urgent because they will tend to have the least steady employment, least steady earnings, least savings. Once separated from a pension-covered job their chances of subsequent pension-covered employment are reduced as are their chances for long tenure on such jobs. Last in, first out tends to be the rule, expecially for older employees.

The Vesting Formula's Impact Upon Women

As noted in my June testimony, women tend to have shorter job tenure than men. (E.g., in wholesale and retail trade median job tenure of women over age 45 was 4.9 years; between 24 and 44 it was 1.5 years.) In large part this results from the family roles of women, who so often must care for young children and infirm family members. Until passage of the Civil Rights Act of 1964, blatant discrimination against women led to their separation in time of recession, even when collective agreements apparently provided protection.

In the recent past, as reports on the 1970 Census show, women have entered many higher pay jobs in larger numbers; these are the jobs most likely to afford pension plan coverage. It follows that their job tenure in these newly opened areas will be briefer than male counterparts.

Contrary to frequent assertions, women work in order to enable themselves and their families to enjoy decent standares of living. Indeed, as my book reported in 1964, famillilies in which women worked enjoyed a substantially higher median income ($6214) than families in which the wife did not ($4983). At those levels, it is quite clear that the vaunted American standard of living depends upon a working wife. As I noted (pp. 179-180), wives' earnings tend not to result in an OASDI substitute in retirement years. Hence, if pensions are to do their job of supplementation, there is special urgency to redesign plans to yield benefits to working wives. Vesting that begins--barely begins to afford vesting in the eighth year of employment will not accomplish that goal.

Section 202(b) would relieve employees from satisfying the continuous service requirements so common in plans today except that to qualify for 30% vesting at eight years, three of the years may be required to be served continuously. Subsection (c) gives the Secretary power to prescribe standards for computing a year of covered service and breaks in service. (However, it omits earnings as a possible measure or factor and that may be unfortunate for those working on commission, for example.) Depending upon how that power is used, those provisions can provide more protection than employees now have.

However, it should be recognized that exercise of this authority will mean that many who work part-time and part-year (as so many women do) will take more years to qualify for minimal vesting than men who typically work more steadily and more generally work full

time or at least those have been the patterns of the past. Conceivably then, work over a period of 10, 12 or more years may be necessary before many women employees will achieve even the miniscule benefit yield accorded those with 9 years' service.

So much work--and so much statute--with so little to show for it.

Protection for Employees Over 45 at the Measure's Effective Date

My February 16 testimony stressed the employer incentive to fire those who would achieve vested credits on the statutes' effective date for all of their service (those aged 45 and over and with 8 and more years' service at that time). Chairman Williams asked how this might be averted, agreeing that the Subcommittee had established many instances of firing shortly before vesting requirements were satisfied.

I proposed that the measure give statutory protection against discharge without good cause. I do hope that this proposal will receive serious consideration. Such protection is one of the finest products of collective bargaining. When made enforceable through the grievance-arbitration procedure it brings the rule of law into the work place and protects against arbitrary treatment. Experience shows that it works. Not the least of its effects is the discouragement of arbitrary employer disciplinary action--a protection especially needed by managerial employees. The more valuable the impending vested rights, the greater the need for protection.

In order for such a regime to work, it must employ not only true neutrals but specialists whose services are readily available inexpensively. This argues for adjudication of charges of violation before Administrative Law Judges and not the courts, which shouldbe involved only for limited review to insure due process

process for all concerned and that the decisions were supported by substantial evidence.

If real vesting is to be achieved such protection is indispensable for those without the shield of a collective bargaining agreement.

The CHAIRMAN. Next we have two partners from the firm of Towers, Perrin, Forster & Crosby.

STATEMENTS OF CHARLES D. ROOT AND MARIO LEO, PARTNERS, TOWERS, PERRIN, FORSTER & CROSBY

Mr. ROOT. I think I will start off by saying that we come not to bury the system, but to praise it and not to criticize unduly your S. 4 bill, but to support it, because the one thing this country needs in our judgment is pension legislation. It needs it now.

Also I am going to add one other extemporaneous comment. We may not be as erudite as some of the other witnesses, but we are going to be briefer.

I am Charles D. Root. With me is Mario Leo, head of our research department.

We had the privilege of testifying before your committee on the 28th of June, last year, on S. 3598. We also spent part of a day with your staff discussing our views in greater detail as they were re-writing the bill, which amended version was resubmitted in the latter days of the last Congress. We requested the opportunity to appear again, and recognizing the time pressures we will be as brief as possible.

Before starting on some of the extemporaneous comments I wanted to make, I want to comment on some of the testimony of the prior witnesses. You asked the question of Professor Bernstein, Senator Williams: "How much would be reasonable to expect companies to pay for their retirement programs"? I have the greatest respect for professors, but I do not think he answered the question.

The CHAIRMAN. I recognize he is a professor of law, not an economist.

Mr. ROOT. I would be very happy to try and answer that question. I would think at least 3 to 5 percent of payroll is a reasonable expectation for an employer to be contributing to a retirement program. Many of our clients are contributing substantially more than that, in the area of 10 percent to 15 percent or in some cases higher.

Another thing I would like to comment on, because the Elgin case has been mentioned here and the Minneapolis Moline case, both of those problems that were developed in those cases would not have happened if the IRS had enforced its own laws.

When a plan is curtailed, or a company closes out a unit or plant, or cuts back substantially in employment, that is supposed to be regarded as a partial termination and vesting of benefits is supposed to result. The trouble is, that has not been enforced and that is one of the reasons we need this law because the IRS is not enforcing its own rules. I think it can be spelled out more clearly here and enforced much more easily.

Professor Bernstein developed a host of criticisms, and as I indicated, I intend to comment more than criticize. I think it is perfectly proper to realize that you cannot correct years of abuse, over night. I think we have got to move rather slowly. I think we want to correct the abuses that are there. A very, very small percentage of the plans in the country are being abused. I think we ought to correct them.

I find I agree with Professor Bernstein in the area of vesting. Our position is that vesting should take place on all credited service effec-

tive immediately—and actually this is one of the areas that we changed just slightly. Before we said there ought to be a 5-year transition period in moving into that vesting provision. Now we have switched that to 3 years.

We think 3 years is long enough to require compliance with the provisions of your act. We would like to suggest that however vesting is developed, whether it is the rule of 50 or whether it is your 8 years, that all service be counted, all accrued credits will be included, and that vesting be required and mandated within 3 years—no longer than 3 years after the effective date of the act, provided the person has the required years of service already in total, so abuses that Professor Bernstein referred to would not be possible. The employee does not have to produce this service after the effective date of the act.

Professor Bernstein had suggested survivor benefits for the widows. I suppose he also means widowers. Again it is a question of what do we do first, and where are the priorities. I think pension benefits have to be secured before we start securing widow's benefits.

He also made the point that small employers need a lot of experts, and that is not so. One of the main thrusts of our testimony, is that small employers ought to have this protection because they probably are the employees who need it most. Small employers can buy prototype plans from insurance companies and banks and get actuarial, legal, and various other services relatively inexpensively. I think they need this protection.

I know you, Senator Williams, were concerned about the reporting requirements in our testimony. When you read it, you will see this is another area we have changed. We have said, small employers should not be required to go through quite as much of the disclosure requirements as the larger employer. But as far as funding and mandated vesting are concerned the small employer should have that same requirement that the larger employer has.

Now in our prior testimony, we first gave strong support to pension legislation, and in that we were joined by 65 of our large client companies. But essentially we supported only disclosure, fiduciary responsibility, and vesting. As far as minimum funding and plan termination insurance were concerned, we said they needed more study.

In the 7-plus months since we were here last, we have given both of those subjects a great deal of study. We appointed four of our directors to a committee with instructions to hammer out a well thought out, carefully conceived practical position on pension legislation. The four of us, our senior actuary, the head of our Atlanta office, the head of our San Francisco office, and I met several times in several all-day sessions to develop what we would refer to from our standpoint as good, sound, responsible and responsive legislation on pensions. I am happy to say that that position now supports both minimum funding and plan termination insurance, albeit on a somewhat more modest basis than suggested in S. 4.

Although we took the position last June that vesting should be on all accrued benefits, past and future, and still do, we are suggesting that minimum funding and plan termination insurance be on a future service basis only, putting the greatest emphasis on minimum funding where it ought to be put, making the requirement in plan termination insurance somewhat less meaningful. Copies of our full position, I

hope, are before you. Our apologies—my apologies that they were not here in advance. But we have some pretty strong-minded people in our company, and our position was undergoing change right up until noon yesterday.

I have asked Mario Leo to describe briefly our position on minimum funding and plan termination insurance, because this supplements and is different than our prior testimony last June.

Mr. Leo. Thank you. The purpose of our recommendations on funding and plan termination insurance is to help achieve one of the basic policy objectives of S. 4. That is to protect basic vested benefits of plan participants against possible loss due to plan termination. Our proposals differ somewhat from S. 4, but they are designed to satisfy certain criteria which we believe the members of the subcommittee and the majority of the members of the public will agree are appropriate.

The Chairman. Is that in the prepared statement we have? You are reading from handwritten notes. Is this in the prepared statement?

Mr. Leo. The actual proposals are in the material. The criteria were not developed until late last evening. I did not have an opportunity to get them typed. The criteria were not put in final form until late last night, and they are not typed and not before the committee. The actual proposals are.

When I get to the actual proposals——

Mr. Root. We will see you have them typewritten.

Mr. Leo. These criteria are the following.

One, proposals in these areas should not attempt to solve immediately all the potential problems which may develop because of existing funding inadequacies, but rather should focus on preventing expansion of such inadequacies and continuance of inadequate funding for basic pension benefit promises made to employees in the future.

Proposals should not jeopardize existing asset allocation provisions with respect to accrued benefits and costs, promises which have already been made to employees are based on funds already contributed in their behalf. This jeopardy can be avoided if mandated funding and insurance apply only to future benefit accruals for which an employer or his employees have made necessary plan contributions.

Third, funding and plan termination insurance should be limited so that they do not discourage further liberalization of benefits provided under the private system.

Fourth, proposals in these areas should be coordinated so that they assure responsible funding for basic benefit promises and do not encourage reliance on a Federal insurance program to bail out employers or unions which have made benefit promises which are unrealistic in terms of plan assets accrued to date and future contributions they are willing to make.

Fifth, legislative proposals should have teeth in them so that conformance should be assured.

Sixth, government intrusion into the private pension system should be kept within reasonable parameters, so that new layers of bureaucratic control are not added to those which are now operative.

Seventh, proposals in these areas should have no impact—I would like to reemphasize this—proposals in these areas should have no

impact on the overwhelming majority of pension plans which have been and continue to be soundly funded.

There are thousands and thousands of companies in the United States, many of which we are happy to have as clients, who have very soundly funded plans, they have happy employees who have retired from those companies, and the benefits are being paid in full as promised. The employees have no complaints whatsoever as to the operation of those private pension plans.

We would disagree strongly with Professor Bernstein's contention that the private pension plan system is inefficient. It has certain inadequacies, which we will acknowledge. Every human system has inadequacies. We would like to work with the subcommittee to help remedy those inadequacies. We agree very strongly with Senator Javits that the committee should not address itself to replacing the private pension system with a mandated system. The private systems provide continuance of salaries and wages paid to employees. I do not think Congress would presume to set full wage and salary levels for all American workers. Therefore, I do not see why they should presume to set full pension levels for American workers.

Based on these criteria, we developed the following proposals for funding and plan termination insurance. These proposals are detailed on page 8 of the outline which is attached to our summary. Under our basic funding proposal, employers would be required to contribute each year at least the minimum credited benefit for each participant. I will describe that in a moment.

Essentially a participant's minimum benefit credit would equal the actual plan contributions made under a money purchase plan, or minimum benefits credited under a fixed benefit plan. But the mandated funding requirements would not apply to accrued benefits or plan contributions to the extent they exceed a minimum level.

That minimum level for money purchase plans would equal 3 percent of each participant's earning subject to social security tax, and for fixed benefit plans a benefit of three-quarters of 1 percent of the employee's earnings each year subject to social security tax. This would apply to each year in the future. It would be somewhat similar to the $500 cap which is included in S. 4, but it would be built up year by year, for every year of future service, so that the minimum benefit credits are fully funded year by year, and the employer is given the responsibility to fully fund for those minimum benefit credits. It will automatically adjust upward as the social security tax base adjusts upward. In no event will a participant's minimum benefit credit be less than provided by his own contributions.

In addition, the employer would contribute each year, or over a short amortization period, any fund inadequacies which develop and which would endanger payment of these minimum benefit credits. No contributions, however, would be required in any year in which the market value of the pension fund exceeds the single premium liability for all accrued benefits under the plan.

I do not think we want to force the situations where employers are compelled to adopt unduly liberal asumptions because of restrictive funding requirements. If the employer fails to make minimum contributions, his plan would be terminated and a lien would be placed against the company's assets for the deficiency.

In the area of plan termination insurance, which ties in very closely with the recommendations we have made for mandating funding, and is predicated again on the seven basic criteria we have set forth earlier, essentially the legislatively vested portion, the portion of the minimum pension credit to which the employee has attained legislatively vested rights would be assured against loss in the event of plan termination.

The possibility of this insurance being paid is small for the following reasons: (1) minimum benefit credits would accrue only for service after the effective date of the act, (2) the employer would be required to fund minimum benefit credits adequately, (3) mandated allocation of plan assets in event of termination (as set forth in our testimony) would give priority to minimum benefit contributions before insurance is paid, and (4) there would be a lien against assets of the company for any fund deficiencies relating to minimum benefit credits.

We think a necessary attribute of any successful insurance scheme is that you very precisely define what you want to insure. You are not trying to insure for moneys which have never been contributed in the past by employers, and you should cover only those unusual contengencies, those rare contingencies which involve catastrophic consequencies to small groups of people. You should cover these in a responsible manner.

In the small number of cases when insurance would be payable, an appropriate assessment would be levied on all qualified pension plans to cover the amount of insurance.

Please notice that our insurance proposals are designed to assure the integrity of funds contributed for vested minimum benefit credits. They are not designed to insure asset inequities attributable to failure to fund previous benefit commitments properly, nor would they tax soundly funded plans in order to bail out those plans which have made benefit promises in the past which are extravagant when measured against actual fund accumulations to date and current funding levels.

Thank you.

Mr. Root. The key parts of our position are that we do think you ought ot fund minimum benefits, and we do think that you should insure only that portion of the funded benefits that are vested.

Now I have two other brief points I want to make in conclusion.

First, we feel strongly as before—and I mentioned this already—that all employees should have the protection of this act, regardless of the employer's size, including State and municipal employees and religious and labor organizations.

Professor Bernstein touched on that, as did one of the other witnesses this morning. The fact is that employees of small employers probably need this protection more than employees of large ones. Therefore, we take exception in S. 4 to the exclusion of employers of 25 or less employees, and the exclusion of city and State employees.

Finally, we think it is important to get a good basic bill on the books. You have our support and the support I would hasten to add, I am sure, of 1,200 of the really responsible corporations in this country.

We appreciate the opportunity of being here. It has been a real privilege to appear before you the second time.

Thank you very much.

The CHAIRMAN. Thank you very much. Senator Schweiker?

Senator SCHWEIKER. Thank you, Mr. Chairman.

I just want to say I am glad to have you back. In addition to being constituents from Pennsylvania, you are also one of the really nationally recognized authorities and firms in the field. We are delighted to have your very positive and constructive attitude on this.

I do not, as you mentioned in your opening statement that this time you are testifying in favor of funding and insurance provisions of the bill. I am delighted to see this, because coming from you people I think it means a lot.

I wonder if you would give us any benefit of your views, as to what coalesced your thinking or reasons were for doing that.

Mr. ROOT. I will try. Perhaps Mario can supplement my comments. There were many of us in our company who were unhappy with the position that we did not support plan termination insurance and minimum funding in the first place. The complications are absolutely immense, as you well know, and your staff knows, as they started to try to write the law to cover this. Actuarial assumptions and actuarial methods will have to be clearly outlined. Although actuarial science is a precise science, it would take a great deal of effort to mandate and spell out these things in the law.

We also were not as aware—we deal with pretty select corporate clients—because we have not seen any of this abuse among our clients.

Senator SCHWEIKER. Your clientele would tend to have the better plans in the country. I think that is a pretty valid observation.

Mr. ROOT. It is, yes. We have not had first-hand exposure to some of these abuses. But in the hearings you held, Senator Schweiker, in Philadelphia, it certainly brought this home very clearly. Philadelphia-based companies, like Horn & Hardart, Inc., and Lee Tire & Rubber, and so on. Those were real abuses. But there have also been some abuses even in a city such as Rochester, where we have one of our largest and oldest and most important clients, Eastman Kodak Co. There just is not a company in the country that is more—I started to say generous, it isn't generous, because companies do not do these things out of a feeling of generosity, they do them out of a feeling of good business. That is one of the reasons Kodak has been so successful, its benefit plans have been so good.

You do not hear any Kodak employees complaining about their benefits and not getting them. There, right in Rochester, is the Hicock Manufacturing Co., a flagrant case of abuse. This morning we heard of a merger of Minneapolis Moline and White Motors. Those things should never have been allowed, and actually if IRS had enforced the law now on the books, that might not have happened.

The Elgin situation, the same thing.

Now those situations had not come to our attention to the degree that they have come to our attention since. There were those of us originally who felt we ought to have this in the bill in the first place, so we are now unanimous in supporting the provision that we ought to have plan termination insurance, we ought to have minimum funding. We ought to do it on a modest basis to start with. We ought to put the greatest emphasis on minimum funding, and hope that plan ter-

mination insurance will not be very onerous or difficult to write into the bill.

Mr. LEO. I think you very aptly summarized the reasons for our changing or extending our position. One of the major concerns we had which we do not think is resolved by plan termination insurance proposals in S. 4, but are resolved by our proposal, is that insurance could be used as a crutch by employers that are not funding their plans properly or insurance would result in penalizing all qualified plans which are soundly funded to take care of those which are not soundly funded. I think you will see in our insurance proposals we very carefully circumscribe the amount of insurance, and we carefully provided for funds to be set aside to cover the insured benefits. We do not have any quantum leaps and liabilities which the employer has not funded for.

So we think what we have developed here is a very responsible insurance scheme which most employers hopefully would accept. We are somewhat concerned with the proposal in S. 4. We think in some respects it attempts to do too much. It is easy to talk about insuring with the power of the Federal Government behind everything.

We are looking for something which a private pension system would support—would resolve its own problems. So we very carefully circumscribed the amount of insurance, and limited it by providing for adequate funding and for assessment against private plans in order to cover any funding deficiencies.

Mr. ROOT. Mr. Woodcock of the UAW, when he testified last June, in effect, said that any pension legislation without minimum funding or plan termination insurance would be a sham. I think I agree with him. I think it ought to be included in the bill.

I do say one thing though that concerns me a great deal in the bill, and it touches on this point. That is, the most flagrant abuses that have to be corrected are in multiemployer plans. Although they are included in the provisions of S. 4, there is always the possibility that the Secretary could give some exception to those plans, as we read the language. I would hope that maybe we read it incorrectly and that that is not possible, but you see these are plans for the most part with a bargained cents-per-hour contribution and a bargained dollar-per-month type benefit. Anybody who is familiar with actuarial science will know that you cannot tie those two ends of the spectrum down. Most corporate plans provide benefits and then put in sufficient amounts of money to fund those benefits.

Nobody can tell ahead of time exactly how much that is going to be. That is what actuaries do, try and guess those amounts. Some companies with money purchase type plans put in a fixed amount of contribution and then let the benefit be whatever it will be. But these multiemployer plans have done something that is mathematically impossible. They have said this is the amount you are going to contribute, and this is the amount of benefits you are going to get, and I can assure you, as I sit here today, that those plans are not being properly funded for the promises they have made. This is one of the most flagrant areas of abuse in this country today in our judgment.

Mr. LEO. The second area would be State municipal plans. In Philadelphia, the city is being sued to contribute enough to support

its own municipal system, and the city of New York pension plan certainly is not properly funded. The State and municipal plans do not have constraints placed upon them with respect to benefit promised that a private corporation has. A private corporation has to contribute funds currently to back up its pension promises to employees. However inadequate those funding contributions are in specific situations, in the vast majority of cases an employer is restrained in granting wild benefit promises to employees, because he realizes sooner or later he is going to have to pay for them.

Municipal employees in New York City have benefits which are far in excess of anything we ever hope to achieve.

Mr. Root. There has been some progress in this area. A judge in Philadelphia ruled the city was going to have to actuarily fund its pension promises, and it is going to bankrupt the city to do it. They are at the crossroads right now to find out whether they are going to do it or cut back benefits. There are not the funds there that are necessary to supply those promises.

Senator Schweiker. I think that is very helpful to us. You are very clearly telling us that here are two troubled areas where we have to deal with. if we really want to get a national pension reform program.

I think we will certainly pay a great deal of heed to your information. I also want to say we appreciate your candor as well as your very constructive approach to this problem, and your accompanying technical expertise.

Thank you very much.

The Chairman. Thank you, gentlemen. It has been most helpful. We appreciate it greatly.

(The prepared statement of Towers, Perrin, Forster, & Crosby, a partnership, follows:)

TPF/C TESTIMONY ON THE PROPOSED RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT, S. 4 PRESENTED TO THE SUBCOMMITTEE ON LABOR OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

February 16, 1973

Attached is a summary of our position on proposed pension legislation, supplementing and adding to our testimony as delivered to this Committee on June 28, 1972.

First, we strongly support, as we did in our testimony of June 28, 1972, responsible pension plan legislation.

In our June 28 testimony we indicated that the subject of minimum funding and plan termination insurance needed a good deal more study before either should be legislated. Since our June 28 testimony we have given a good deal of thought and study to both of these subjects and are now prepared to support the inclusion of some form of both in any proposed legislation. Our suggested approach is a more cautious first step than the proposal contained in S. 4. It puts the greatest emphasis on the minimum funding requirements and suggests plan termination insurance only for part of the legislated vested benefits which may accrue after the effective date of the Act.

This whole area is extremely complex and raises a host of administrative questions and problems of equity between plans, those well funded and those poorly funded. Despite these complications we think a modest start should be made in both of these areas and have suggested practical ways that we think that can be done.

The other two changes in our position as of June 28 are relatively minor:

1. We favored a five-year transition period to meet the requirements of the Act in our prior testimony. We now agree with the Committee and feel that a three-year transition period for compliance is sufficient. Five years would be postponing compliance in many of these areas for too long a period.

2. In our prior testimony we took no position on investment in employer securities except as that might be affected by the prudent man investment rule. We now feel that it would be proper to put some kind of a limit on pension plan investment in an employer's securities and assets and have suggested a limit of 20% of fund assets on such investments.

The following indicates the areas of significant differences which we have with the provisions of your Bill S. 4.

VESTING

Here as before we are recommending 50% vesting on the rule of 50 with a minimum of 5 years of service and covering all credited benefits. We think this is simpler, fairer and more responsive to the needs than the arrangement provided in S. 4.

As before, we are also suggesting that the vesting be limited to just pension benefits and not include any ancillary benefits such as death benefits or survivor benefits. S. 4 is not at all clear as to whether these ancillary benefits are included or not in the vesting requirement.

We are also in favor of conditional vesting under contributory plans which is consistent with the position we took in our testimony of June 28. S. 4 does not contain any such provision.

MINIMUM FUNDING

In the area of minimum funding, as we've already indicated, we think minimum funding requirements would be in order for all benefits accrued after the effective date of the Act up to certain modest limits, requiring also an additional funding contribution if the market value of the funds on hand were to ever drop below the value of the mandated funded benefits.

We think this approach is simpler than the one included in S. 4, would not penalize or discourage generous pension benefit levels under private plans, and would produce more equitable funding requirements.

PLAN TERMINATION INSURANCE

Here we are suggesting that that part of the benefit accrued after the effective date of the Act that is required to be funded and that is vested be insured.

COVERAGE

The Act excludes state or political sub-divisions and labor and religious organizations and has further excluded all employers of fewer than 25 employees. We

think all employers should be included under the provisions and protection of the Act regardless of size, including state and municipal employees and labor and religious organizations. We see no sound reason for their exclusion from the protection of the Act.

PORTABILITY

Your bill again contains the voluntary provisions for portability and we would recommend against any such legislated provisions as being unnecessary and administratively expensive.

TAX DEDUCTIBLE EMPLOYEE CONTRIBUTIONS

Your bill makes no recommendation in this area. We continue to support the deductibility each year of an amount equal to the lesser of 10% of basic earnings or $1,500 and we also support liberalization of the tax deductible contribution permitted for self-employed individuals under HR-10 plans. We do recognize, however, that there is a substantial potential loss of tax revenue which may have serious implications.

DISCLOSURE AND FIDUCIARY RESPONSIBILITY

Essentially we support the disclosure and fiduciary responsibility provisions of S. 4 although you will see when you review our position that we have suggested several significant but still relatively minor variations.

We are also encouraged by recent action of the Internal Revenue Service in being much more aggressive in enforcing a determination of plan termination in the event of sharp curtailments of staff as a result of cut back in operations,

or merger or sale, purchase of a unit, or a plant closing. These are all areas where the protection of the individual employee requires careful enforcement of existing IRS rules and regulations.

Finally and most importantly, as we indicated earlier, we do support the need for legislation in the private pension sector and we suggest that getting a good basic bill would be a very important first step. If for no other reason, we need a federal law to supersede the present and potential state laws which seem to be blossoming forth in various states.

SUMMARY OF TPF/C POSITION
ON PROPOSED PENSION LEGISLATION

I. PURPOSE OF LEGISLATION

To strengthen and improve the private pension system by protecting and expanding the rights of individual participants under pension and profit sharing plans.

II. SCOPE OF LEGISLATION

Federal legislation should apply to all individual employer and multi-employer pension and profit sharing plans which are qualified under section 401 of the Internal Revenue Code, and state and municipal plans.

III. ON DISCLOSURE AND FIDUCIARY RESPONSIBILITY

We support amending the Welfare and Pension Plans Disclosure Act in a manner which:

(a) assures that administrators and trustees of pension plans and funds observe the highest standards of fiduciary responsibility;

(b) relies on the "prudent man" rule as a sufficient standard for the investment of funds;

(c) provides for forthright, positive, continuing disclosure of essential provisions and operations to employees and government authorities; and

(d) simplifies and standardizes the forms and information required by various government agencies.

Our specific recommendations on disclosure follow:

1. Disclosure to employees terminating with vested benefits:

A requirement that a statement be given to every terminated vested employee describing his rights, the amount of the vested benefit, when payable, by whom, under what circumstances, and what further action will be required of him in order to receive such vested benefits. In addition, the employer must make a bona fide attempt to advise the vested terminated employee of his rights six months prior to the date on which he would be first eligible for benefits. If the employer is unable to locate the employee, the employer would be required to notify the Social Security Administration so that Social Security can inform the former employee to advise his former employer of his address.

2. Disclosure to all active employees who are covered by the plan:

A requirement that an employer publish annually a brief statement summarizing:

(a) The eligibility requirements for normal retirement benefits, early retirement benefits, vesting of benefits, and for any other benefits provided by the plan

(b) The benefit formulas

(c) The options available and any notice period required

(d) Any substantive changes in the plan during the prior year

(e) Where the employee can get full details of the plan

3. Disclosure to all active and retired employees who are covered by the plan:

A requirement that the employer disclose annually:

(a) Information as to who is responsible for investing the fund, and who are the trustees, custodians and/or insurors of the fund

(b) A summary balance sheet as of the close of the last plan year showing the value of investments by major categories as used for cost purposes

(c) A summary of the income and outgo of the fund during the prior plan year showing:

Income

- Employee contributions
- Employer contributions
- Interest and dividend income
- Net realized gain or loss in sale of assets

Outgo

- Benefits paid to retired employees and beneficiaries
- Fees, commissions, and other expenses paid and to whom

(d) A statement of:

- Market value of the fund as of the beginning and end of the plan year
- Present value of benefits* payable and the number of retired participants and their beneficiaries
- Present value of benefits* accrued by and the number of active participants eligible for retirement
- Present value of vested benefits* and the number of vested active and terminated participants

* The benefits above are to be determined on a single premium basis as though the plan were terminated, and the interest rate, mortality basis and any provision for expenses used to determine the above present values shall be stated.

Note: These requirements may have to be modified in certain cases, e.g., for certain insured contracts.

4. Disclosure to the Labor Department:

The present Act should be amended to simplify the filing requirements so as to cover essentially the following:

(a) Initial disclosure and disclosure following a substantive plan amendment:

- Identification of the plan and those responsible for its administration
- Documents - plan, trust agreement, union agreements, etc.

(b) Annual reports:

- Copies of disclosure to active and retired employees as described in (2) and (3) above

- Details regarding all transactions involving parties of interest,including investments under pension plans in company securities, and leasebacks, etc.
- Statements from the auditor and actuary concerning the fund and plan liabilities
- Details regarding expenses charged to the fund for administering the plan or fund

(c) A copy of all material filed with the Labor Department to be available for inspection at locations reasonably available to all employees.

5. Fiduciary responsibility:

(a) Investments to be according to the prudent man rule

(b) Limit for pension plans (not profit sharing type plans) of 20% of total fund assets that may be invested in securities or assets of the employer, with an appropriate transition period for existing plans

(c) Prohibition against certain persons acting as fiduciaries or trustees, as detailed, for example, in S. 4

(d) Fund is for exclusive use of plan participants

(e) Listing of prohibited transactions as detailed, for example, in S. 4.

IV. VESTING

We recommend that legislated vesting provide the following minimum vesting requirement:

1. Participants would be immediately and fully vested to 100% of their own plan contributions, plus interest, if any, at the rate and under the conditions provided by the plan.

2. For employer contributions in a money purchase or profit sharing type plan, or for pensions accrued under a unit credit or final pay type plan, participants would vest to pension credits as follows:

   - 50% when age plus service equals 50, plus 10% for each complete year thereafter to 100% five years thereafter, but with a requirement of:
     - a minimum of five years of service before the vesting schedule applies, and
     - compliance by all existing plans within three years of the effective date of Act.

Mandated vesting requirements would apply to pension benefits only, with the pension benefits payable on a life only basis and payable at the normal

retirement age specified in the plan, but no later than age 65. There would be no mandated vesting with respect to ancillary plan benefits (e.g., death, disability, or other incidental benefits) or to special rights available to active plan participants (e.g., early retirement based on special factors). We recommend that in pension plans which required or require employee contributions, legislated vesting be conditional on the agreement by the participant to leave his own contributions in the plan.

V. FUNDING

Our specific recommendations in this area follow:

1. Employer must fund each year at least the "minimum credited benefit" for each participant. The "minimum credited benefit" for each year of plan participation after the effective date of the legislated funding requirement provisions of the Act would equal the greater of (a) or (b) below:

   (a) for money purchase plans, the lesser of (i) employer contributions made on the participant's behalf in such year, or (ii) 3% of such participant's wages subject to Social Security Tax for such year;

   or

   for fixed benefit type plans, the lesser of (i) the increase in the participant's accrued pension credit in such year,

or (ii) .75% of the participant's wages received in such year which are subject to Social Security Tax;

(b) the benefit which can be provided by the participant's plan contributions.

The minimum funding requirements under (a) above could be waived for employee groups which typically experience high turnover, e.g., employees who are under age 25 or have completed less than one year of service.

2. The employer would be required to contribute each year the sum of:

(a) any excess of the present value of the "minimum credited benefits" accrued to date over the market value of the funds, and

(b) the present value of "minimum credited benefits" expected to be credited during the ensuing year, offset by the value of any contributions by participants;

provided, however, that for this purpose no contribution need be made for any year to the extent the market value of the fund at the beginning of that year exceeds 100% of the single premium liability for all estimated accrued benefits under the plan as of the end of such year.

3. Failure to meet the minimum funding requirement would result in a plan termination, unless the company promptly contributes the deficiency or adopts an amortization schedule acceptable to the IRS to fund such deficiency. In the event of such plan termination, a lien shall be made against the company's assets for the outstanding minimum funding contribution as constituting unpaid wages.

VI. PENSION PLAN TERMINATION INSURANCE

Details of our proposal in this area follow:

1. Plan Termination Insurance would cover the portion of each participant's "minimum credited benefits" which has been vested in accordance with the legislatively required vesting provisions.

2. In the event of plan termination, plan assets would be allocated in accordance with the following priority to provide pension benefits:

   (a) pension which can be provided for each participant based on the accumulation of his own contributions to the plan plus any interest credited under the plan;

   (b) any excess of each participant's vested "minimum credited benefits" for future service over the pension provided in (a);

(c) any excess of the benefits for each active participant at or over normal retirement age and for retired participants and their beneficiaries over the pension provided in (a) and (b);

(d) any excess of the benefits for each participant eligible to retire early over the pension provided in (a) and (b);

(e) any excess of the vested benefits for each participant over the pension provided in (a) and (b); and

(f) any excess of the benefits for each participant over the benefits provided in (a), (b) and (e).

3. The amount of "insurance" in any year would equal the excess, if any, of the single premium liability for the benefits in 2(a) and (b) above, over the market value of plan assets.

For this purpose, the single premium liability would be based on unit purchase rates guaranteed by an insurance company or as promulgated periodically by the Treasury Department.

4. The program would be a loss assessment rather than a prepaid premium insurance program with assessments to be made only as needed to cover insurance for actual plan terminations. The cost of insurance is to be provided by assessing pension plans in an appropriate manner, such as on the basis of number of pension plan participants.

VII. PORTABILITY

Legislated vesting proposals would seem to us to remove the need for any legislated portability. Portability schemes would be an unnecessary and expensive additional complication.

VIII. TAX DEDUCTIBLE EMPLOYEE CONTRIBUTIONS

TPF/C supports the deductibility of employee contributions either to an employer-sponsored plan or to an individual-regulated savings/retirement plan up to an amount each year equal to the lesser of 10% of basic earnings or $1,500. In order to achieve equity and simplicity, this deduction should be granted regardless of participation in a qualified pension or profit sharing plan.

IX. STATE LAWS

Federal laws should supersede all state laws pertaining to pension plans.

X. JURISDICTION

1. Secretary of Labor would have responsibility for enforcing Disclosure Act requirements.

2. Secretary of the Treasury (IRS) would have responsibility for all other areas.

XI. CONCLUSION

We agree with many legislators and others that legislation is needed now in the private pension plan area. The proposals we have made above would apply uniformly to all qualified plans and plans for state and municipal employees; except that plans covering fewer than 25 employees would continue to be exempted from federal disclosure requirements. As outlined above, the Funding and Plan Termination Insurance proposals do not apply to profit sharing plans.

We recognize that the proposal for tax deductible employee contributions could result in loss of substantial tax revenue to the federal government, and are willing to concede that this may not be a propitious time for this legislation. However, legislation covering at least the areas of Disclosure, Fiduciary Responsibility, and Vesting should be enacted promptly. We also favor early enactment of the Funding and Plan Termination Insurance proposals set forth above.

The CHAIRMAN. We will recess for 5 minutes.

(Short recess.)

The CHAIRMAN. We will reconvene. Our next witness is Donald S. Grubbs, vice president and actuary, National Health & Welfare Retirement Association.

Mr. Grubbs, we appreciate your helping us.

STATEMENT OF DONALD S. GRUBBS, VICE PRESIDENT AND ACTUARY, NATIONAL HEALTH & WELFARE RETIREMENT ASSOCIATION

Mr. GRUBBS. I am vice president and actuary of the National Health & Welfare Retirement Association. I am speaking as an independent consulting actuary, as one who is engaged by the Senate Subcommittee on Labor to make a study of the costs of the vesting provisions of this bill and other proposals.

I am also a fellow of the Society of Actuaries and member of the American Academy of Actuaries.

This study included the vesting provisions now included in Senate bill S. 4, as well as several alternative vesting provisions.

Before beginning my study, I had read statements from some who favored the legislation saying that almost everyone was losing his pension, but that the problem could be corrected at negligible cost. Statements from others opposing the legislation said that very few people were losing their accrued pensions but to correct that negligible problem might create cost increases that would drive employers out of business. Clearly, both statements are wrong. There is a definite relationship between the magnitude of the problem being corrected and the cost of correcting it. My objective was to be objective and to produce a study that would stand up under careful examination by those on all sides of the issue.

How much does any pension plan cost? The ultimate cost of any pension plan is the sum of benefits paid plus the cost of administering the plan less any investment income earned on the pension fund. The actuary's job is to estimate what these ultimate expenses are going to be and to determine an amount to be set aside year by year in order to meet the ultimate costs. If vesting is added to the plan, the ultimate benefits being paid will be larger and therefore the amount to be set aside today to meet those ultimate costs needs to be larger.

In trying to find the ultimate costs we were immediately faced with a maze of problems. First, the ultimate costs depend upon the provisions in individual pension plans and there is an infinite variety of these. They vary in determining who is eligible to receive a benefit, when he is eligible, how much his benefit will be and what vesting he has under the present plan provisions. Then the costs depend upon the employer's distribution of employees by sex, age, years of service and compensation, and there is tremendous variety in this, ranging from a hamburger stand hiring mostly teenagers to a railroad having most employees with more than 20 years of service. Then the costs depend upon future experience of rates of mortality and disability, of rates of investment income, of employee turnover and future salary increases. Particularly in rates of turnover there is a wide range of

experience. Thus, there is no single average cost of this legislation that has anything, but a wide range of costs.

To try to solve this problem I sought data from actual pension plans. Based upon the data received, I developed seven different model distributions of employees, each representing different combinations of age and service and sex and salary level. These represent multi-employer plans as well as single employer plans with considerable variety in the type of employment. For each of these seven groups I received actual rates of termination of employment based upon both age and years of service. These termination rates included in my report range from very high to quite moderate.

For each model costs were determined for a variety of pension plan provisions including different levels of present vesting. Costs were determined for both present employees and new employees, with different levels of funding of their plans. A computer program was developed to determine the costs of these various combinations, and the increase in costs if the plans were amended to comply with various vesting provisions, including those of S. 4. Altogether costs were determined for 840 different combinations of plan provisions and data.

In my opinion, the range of costs and increase in costs shown in this report represent the vast majority of actual pension plans in the United States. There will still exist a small percentage of plans with characteristics such that they do not fall within the range of costs presented in the study.

What were the results? The results are presented in 30 tables in the report and in one summary table. For this testimony I have extracted the summary of costs related to S. 4. The right hand column of the table summarizes the results for all plans combined. It shows that pension plans in the United States presently cost from 1.8 to 11.9 percent of pay. If these plans were amended to comply with the vesting provisions of S. 4 the increase in cost would range from 0 to 1.2 percent of pay. A second way to express the increase in cost, rather than as a percentage of payroll, is to present it as a percentage of the cost of the plan before amendment. The increase in cost as a percent of the present plan cost ranges from 0 to 44 percent.

This is a very wide range. Let's narrow it a little bit to see who has what increase. The column next to the right represents pension plans which currently have liberal vesting provisions, provisions generally as liberal as those required by S. 4. Twenty-one percent of all pension plan members are presently covered under such plans with liberal vesting. For plans covering this 21 percent of employees there is virtually no increase at all, since these plans already meet the standard.

Fifty-six percent of pension plan members in the United States are covered under plans that have some vesting provision prior to becoming eligible for early or normal retirement, but not as good as required under S. 4. A typical plan in this group might give full vesting for employees over age 45 with 15 or more years of service. To amend these plans to conform with the vesting provisions of S. 4 would increase their costs from 0.1 to 0.2 percent of covered payroll. This is an increase of from 1 to 6 percent of the present cost of these plans.

Looking at the group with moderate vesting and those with liberal vesting combined, we see that pension plans covering 77 percent of

pension plan members would have a cost increase of 0.2 percent of pay or less.

The remaining plans cover 23 percent of pension plan members who presently have no vesting at all. It is for this group that the legislation is most needed. It should be noted that almost all cost figures that have been publicly discussed regarding this legislation apply only to the 23 percent of employees covered under plans with no vesting now. The cost increase for this group would range from 0.2 to 1.2 percent of pay. This cost increase is from 5 to 44 percent of the present pension plan costs.

In addition to showing that most of the cost increase is for pension plan that currently have no vesting, the report shows that the biggest cost increase is for those plans that have very high turnover. Employers who already have good vesting or who have low turnover already have the highest pension costs, and these employers would have little or no increase. It is the employers who have very high turnover and little or no vesting now, who presently have very low pension costs, who would have the biggest increase, raising their costs toward those employers who have liberal vesting and low turnover. Thus the provisions of this bill will tend to make pension plan costs more equal among employers with the same benefit formula.

This report presents pension plan costs as a percentage of total compensation for all plan members, and this is common practice. But it would be a mistake to think that a pension plan actually has costs for all members. Ultimately a pension plan only has costs for members who receive benefits. If a particular pension plan has indicated costs of 4 percent of total payroll, it may really have a cost averaging 6 percent of pay for those members who ultimately receive a benefit and 0 percent of pay for employees who terminate their employment with no vested benefit. If addition of a vesting provision increases the cost of that plan from 4 to 4.4 percent of total payroll, it has done so by increasing the number of members for whom there is a cost averaging 6 percent, perhaps more or less for these additional members, and decreasing the number of members for whom there is a 0 percent cost. Thus the addition of vesting does not increase the cost for plan members for whom there is already a cost, but rather it adds a cost for members who had no cost previously.

(Table referred to in Mr. Grubb's statement follows:)

RANGE OF INCREASE IN PENSION PLAN COSTS

FOR MANDATORY VESTING PROVISIONS

SENATE BILL S.4

	PRESENT VESTING: NONE	PRESENT VESTING: MODERATE	PRESENT VESTING: LIBERAL	ALL PLANS
Percentage of Pension Plan Members Covered Under Such Plans	23%	56%	21%	100%
Range of Present Plan Cost as a Percent of Payroll	1.8%-10.4%	2.2%-11.8%	2.2%-11.9%	1.8%-11.9%
Range of Increase in Cost as a Percent of Payroll				
30% at 8 years graded, past service vested for members age 45 and over	0.2%-1.2%	0.1%-0.2%	0.0%-0.0%	0.0%-1.2%
Range of Increase in Cost as a Percent of Present Plan Cost				
30% at 8 years graded, past service vested for members age 45 and over	5%-44%	1%-6%	0%-1%	0%-44%

The CHAIRMAN. Thank you very much, Mr. Grubbs. I regret that Dr. Winklevoss could not be here. I do not know what the problem is. I understand he was tied up.

At any rate, he did a study for the Department of Labor. We have that. I had hoped we could have an exchange here with both of you gentlemen to get the differences. What are the differences that you found with your work and Mr. Winklevoss's and how do you compare your findings with those of his study?

Mr. GRUBBS. I have reviewed Dr. Winklevoss' study, and we have discussed it informally, for comparison. We used somewhat different techniques, but we came out at almost the same end point.

There is a remarkable similarity in the costs that we have. Let me point out two differences.

One, in my calculations I directly took account of what we call a salary scale, expected future increases in pay which we know are going to be there. In his determination he did not do that directly, but in his report he indicated there are such increases. He indicated adjustments that should be made in his calculations for that purpose.

When you adjust his numbers by what he says it is an appropriate adjustment for salary scales, you hit almost exactly where I was.

Then one other thing regards the rule of 50. I show the rule of 50 as having some lower costs than Senate bill S. 4, and he shows them about equal. The difference is that when he is talking about the rule of 50, he is thinking of its long-range effect, when it will cover all past and future service; whereas I am looking at the rule of 50 as it affects today, having no past service credit whatsoever as it was introduced in the House of Representatives.

The CHAIRMAN. Have you estimated the cost of the reinsurance provisions under S. 4?

Mr. GRUBBS. I have not made any direct calculations of that. There are two parts of that cost, as you know. One is the contribution the employer would make to the fund itself.

The second is the payment that might be required of an employer to reimburse the fund, if the fund had to make payments regarding one of his pension plans. The first part, the premium, depends upon the unfunded value of vested pensions. I have calculated that unfunded value for a large number of pension plans. Perhaps for half of all pension plans there is no unfunded value of vested pensions. These plans were fully funded.

Of course it is proper that the cost of this provision should be funded spread on an unfunded vested benefit, so this half of employers would not have any cost here.

The other half do have an unfunded value of vested pensions. Though we do not have any specific cost figures, my feeling is it will be a negligible thing. Apart from what the initial premium is, ultimately it is going to depend upon what benefits are paid.

The other parts of this legislation, first the requirement that benefits be soundly funded, and second the requirement that the employer who terminates a plan, if he is not bankrupt, has to reimburse the fund, will substantially reduce the possible amounts being paid by the fund, and I think make the ultimate premiums negligible.

But the other part of the cost, the amount that must be reimbursed by an employer who discontinues a plan, could be substantial. And

perhaps the most effective part of the bill will be that this will cause employers not to discontinue plans with substantial unfunded vested liabilities because they are aware they would have to pick up their liability if they did.

The CHAIRMAN. We find that there will be increased costs that arise out of the vesting, funding, and reinsurance provisions of this bill. You have a background of professional work as a consultant to employers, as I understand it.

You can answer the question from a position of experience and authority. How do you view these cost increases rising out of the three provisions that are the core of this bill?

Mr. GRUBBS. One of those you mentioned we had not discussed, the funding provisions. The funding provisions of this bill will not cost any employer 10 cents if he does not discontinue his plan. The ultimate cost of a pension are the benefits that are paid. The employer has a choice between putting in a dollar this year or a dollar-plus interest next year.

So we may by the funding provision affect the timing of employer contributions. He may put in more this year, but if he does, he saves money next year. It is for this reason that many employers come to consulting actuaries, as I was for 15 years, and ask what the most money they can put in this plan and deduct. It is good business to do that, if you have profits and if you have cash available. So the funding has no ultimate cost.

If we look at this cost overall for a typical employer, it needs to be put into the context of his total wage cost. These wage costs are going up through inflation, through increases in the average wage of employees, by a little over 4 percent a year. This is long-term trend.

Here we have seen that for most employers this bill would increase those costs in 1 year perhaps a tenth or two-tenths of percent of pay. This means in a certain year when this bill becomes effective, an employer would find that instead of his total salary and wage costs going up 4 percent, they might go up 4.1 or 4.2 percent.

Now I know that employers are generally against any cost increase, and that is understandable. But this is not a magnitude of cost increase that need worry employers.

Senator JAVITS. Is that not especially true when it can be converted into a tremendous asset with the worker, as a fringe benefit that really means something. We have now an almost cynical disregard by workers of their pension plan because of the fact that in so many cases, not too many people who have retired have ever gotten anything.

Mr. GRUBBS. Many employers, of course, already have provisions as good as this bill is calling for. This I think will accelerate a little bit the trend toward early vesting. We have seen the trend.

What it is going to do is to effect an irresponsible minority of employers. I think those employers who have been soundly funding their plans, who have been improving their vesting, are going to look at this quite positively.

The CHAIRMAN. Thank you. Senator Javits.

Senator JAVITS. Thank you very much, Mr. Grubbs. It is very enlightening, and you have rendered an outstanding, fine service.

I wish to express my appreciation. The only question I had, I have already asked.

The CHAIRMAN. Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman. I think a study is most helpful. I just want to ask one question about it. As I understand what you are saying from the survey of the plans you studied about 23 percent of them will have to make substantial changes involving cost increases of a fairly sizable nature to meet the standards of S. 4. Is that roughly what you are saying?

Mr. GRUBBS. Yes.

Senator SCHWEIKER. My question is: In terms of your sample and the sample that you had to work with from the Labor Committee, are you reasonably certain it is accurate nationally, or is it the best you can do with the sample you had?

Mr. GRUBBS. This 23 percent figure was based on statistics gathered by the Department of Labor under the Federal Disclosure Act.

Senator SCHWEIKER. So this canvassed the whole field at the present time, you are saying?

Mr. GRUBBS. Yes.

Senator SCHWEIKER. Of plans that had to comply with disclosure requirements?

Mr. GRUBBS. Yes.

Senator SCHWEIKER. So it should really be in fact accurate in terms of your general analysis?

Mr. GRUBBS. Yes. With respect to the magnitude of the cost increases, I think the range that we have in this report represents the overwhelming majority of employers.

Senator SCHWEIKER. Contrarywise, what we are also saying is that roughly 67 percent of the present plans will have only modest changes to make to comply with new laws, that is corollary conclusions——

Mr. GRUBBS. Seventy-seven percent.

Senator SCHWEIKER. Seventy-seven percent. I am sorry; yes, will be a little affected except for some modest changes?

Mr. GRUBBS. Yes.

Senator SCHWEIKER. That is all. Thank you very much.

The CHAIRMAN. Thank you very much. We are going to include in the record at this point your prepared statement along with the study of the cost of mandatory vesting provisions proposed for private pension plans. This study was prepared for the subcommittee and submitted to us in February by Mr. Grubbs.

(The information referred to follows:)

TESTIMONY BY DONALD S. GRUBBS, JR. BEFORE THE SENATE SUBCOMMITTEE ON LABOR
February 16, 1972

The Subcommittee on Labor engaged me to make a study to determine the range of costs to private pension plans resulting from compliance with the minimum vesting requirements under several proposed minimum vesting standards. This included the vesting provisions now included in Senate Bill S.4. Before beginning my study I had read statements from some who favored the legislation saying that almost everyone was losing his pension, but that the problem could be corrected at negligible cost. Statements from others opposing the legislation said that very few people were losing their accrued pensions but to correct that negligible problem might create cost increases that would drive employers out of business. Clearly, both statements are wrong. There is a definite relationship between the magnitude of the problem being corrected and the cost of correcting it. My objective was to be objective and to produce a study that would stand up under careful examination by those on all sides of the issue.

How much does any pension plan cost? The ultimate cost of any pension plan is the sum of benefits paid plus the cost of administering the plan less any investment income earned on the pension fund. The actuary's job is to estimate what these ultimate expenses are going to be and to determine an amount to be set aside year by year in order to meet the ultimate costs. If vesting is added to the plan, the ultimate benefits being paid will be larger and therefore the amount to be set aside today to meet those ultimate costs needs to be larger.

In trying to find the ultimate costs we were immediately faced with a maze

of problems. First, the ultimate costs depend upon the provisions in individual pension plans and there is an infinite variety of these. They vary in determining who is eligible to receive a benefit, when he is eligible, how much his benefit will be and what vesting he has under the present plan provisions. Then the costs depend upon the employer's distribution of employees by sex, age, years of service and compensation, and there is tremendous variety in this, ranging from a hamburger stand hiring mostly teenagers to a railroad having most employees with more than twenty years of service. Then the costs depend upon future experience of rates of mortality and disability, of rates of investment income, of employee turnover and future salary increases. Particularly in rates of turnover there is a wide range of experience. Thus, there is no single average cost of this legislation that has any meaning, but a wide range of costs.

To try to solve this problem I sought data from actual pension plans. Based upon the data received, I developed seven different model distributions of employees, each representing different combinations of age and service and sex and salary level. These represent multi-employer plans as well as single employer plans with considerable variety in the type of employment. For each of these seven groups I received actual rates of termination of employment based upon both age and years of service. These termination rates included in my report range from very high to quite moderate.

For each model costs were determined for a variety of pension plan provisions including different levels of present vesting. Costs were determined for both present employees and new employees, with different levels of funding of their plans. A computer program was developed to determine the costs of

these various combinations, and the increase in costs if the plans were amended to comply with various vesting provisions, including those of Senate Bill S.4. Altogether costs were determined for 840 different combinations of plan provisions and data.

In my opinion, the range of costs and increase in costs shown in this report represent the vast majority of actual pension plans in the United States. There will still exist a small percentage of plans with characteristics such that they do not fall within the range of costs presented in the study.

What were the results? The results are presented in 30 tables in the report and in one summary table. For this testimony I have extracted the summary of costs related to Senate Bill S.4. The right hand column of the table summarizes the results for all plans combined. It shows that pension plans in the United States presently cost from 1.8% of pay to 11.9% of pay. If these plans were amended to comply with the vesting provisions of Senate Bill S.4 the increase in cost would range from 0% of pay to 1.2% of pay. A second way to express the increase in cost, rather than as a percentage of payroll, is to present it as a percentage of the cost of the plan before amendment. The increase in cost as a percent of the present plan cost ranges from 0% to 44%.

This is a very wide range. Let's narrow it a little bit to see who has what increase. The column next to the right represents pension plans which currently have liberal vesting provisions, provisions generally as liberal as those required by Senate Bill S.4. 21% of all pension plan members are presently covered under such plans with liberal vesting. For plans covering this 21% of employees there is virtually no increase at all, since these

plans already meet the standard.

56% of pension plan members in the United States are covered under plans that have some vesting provision prior to becoming eligible for early or normal retirement, but not as good as required under Senate Bill S.4. A typical plan in this group might give full vesting for employees over age 45 with 15 or more years of service. To amend these plans to conform with the vesting provisions of Senate Bill S.4 would increase their costs from 0.1% to 0.2% of covered payroll. This is an increase of from 1% to 6% of the present cost of these plans.

Looking at the group with moderate vesting and those with liberal vesting combined, we see that pension plans covering 77% of pension plan members would have a cost increase of 0.2% of pay or less.

The remaining plans cover 23% of pension plan members and presently have no vesting at all. It is for this group that the legislation is most needed. It should be noted that almost all cost figures that have been publicly discussed regarding this legislation apply only to the 23% of employees covered under plans with no vesting now. The cost increase for this group would range from 0.2% of pay to 1.2% of pay. This cost increase is from 5% to 44% of the present pension plan costs.

In addition to showing that most of the cost increase is for pension plans that currently have no vesting, the report shows that the biggest cost increase is for those plans that have very high turnover. Employers who already have good vesting or who have low turnover already have the highest pension costs, and these employers would have little or no increase. It is the employers who have very high turnover and little or no vesting now, who presently have very low pension costs, who would have the biggest increase,

raising their costs toward those employers who have liberal vesting and low turnover. Thus the provisions of this bill will tend to make pension plan costs more equal among employers with the same benefit formula.

This report presents pension plan costs as a percentage of total compensation for all plan members, and this is common practice. But it would be a mistake to think that a pension plan actually has costs for all members. Ultimately a pension plan only has costs for members who receive benefits. If a particular pension plan has indicated costs of 4.0% of total payroll, it may really have a cost averaging 6% of pay for those members who ultimately receive a benefit and 0% of pay for employees who terminate their employment with no vested benefit. If addition of a vesting provision increases the cost of that plan from 4.0% to 4.4% of total payroll, it has done so by increasing the number of members for whom there is a cost averaging 6% (perhaps more or less for these additional members), and decreasing the number of members for whom there is a 0% cost. Thus the addition of vesting does not increase the cost for plan members for whom there is already a cost, but rather it adds a cost for members who had no cost previously.

93d Congress 1st Session } COMMITTEE PRINT

STUDY OF THE COST OF MANDATORY VESTING PROVISIONS PROPOSED FOR PRIVATE PENSION PLANS

PREPARED FOR THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE UNITED STATES SENATE

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STUDY OF THE COST OF MANDATORY VESTING PROVISIONS

Prepared for Senate Subcommittee on Labor by Donald S. Grubbs, Jr., Fellow of the Society of Actuaries, Fellow of the Conference of Actuaries in Public Practice, Member of the American Academy of Actuaries, September 11, 1972

STUDY OF THE COST OF MANDATORY VESTING PROVISIONS

1. Basis for Study

The Senate Subcommittee on Labor was authorized by Senate Resolution 235, 92nd Congress, 2nd Session, to continue its study of private pension plans, with particular attention to the various cost factors which affect employers and plans. As part of this study, the Subcommittee contracted to obtain certain pension plan cost estimates from the actuarial firm of Grubbs and Comhpany, Baltimore, Maryland. The study was made to determine the range of estimated costs to private pension plans resulting from compliance with minimum vesting requirements under several proposed minimum vesting standards.

2. Summary of Methods and Assumptions

Data was collected from actual pension plans and used to construct seven model distributions of employees. The distribution of employees by sex, age, years of service and rates of compensation were based directly on those for seven actual pension plans. The actual rates of termination of employment for each plan were used in the study. Assumptions were made about the plan provisions, rates of disablement, mortality, retirement age, investment return and increases in compensation. The various assumptions used are described in detail in the report and were carefully selected to be representative of actual experience under pension plans in the United States.

For each model distribution costs were calculated under four different benefit formulas. For each model and benefit formula costs were determined for plans which currently have (a) no vesting provisions, (b) a liberal vesting provision and (c) a moderate vesting provision. For each combination costs were calculated for (a) present employees under fully funded plans, (b) present employees under unfunded plans, and (c) new employees. And for each of these various combinations the increase in pension plan costs was determined under the four alternative minimum vesting standards described in section three, below.

3. Summary of Findings

Private pension plans contain endless variety. They contain variety in their plan provisions, including existing vesting provisions, in the extent of their funding, in the distributions of employees they cover by age, sex and years of service, in their rates of termination of employment of plan participants, in rates of investment return on their funds, and in many other factors. Each of these variations results in differences of costs. Thus the cost of private pension plans covers a wide range. And the increase in cost to comply with the vesting provisions of the proposed legislation also covers a wide range. The report endeavors to determine the range of those costs for the large

majority of plans. There will still exist a small percentage of plans with characteristics such that they do not fall within the range of costs presented in this study.

Costs were determined under four different schedules of vesting requirements. Under the first schedule an employee would be 30% vested in his accrued pension after 8 years of service, and the vesting would increase 10% per year until 100% vesting was reached after 15 years of service. Service prior to the effective date would be counted in determining elligibility for vesting, but benefits accrued based on such past service would not be required to be vested. If such past service were not counted for eligibility, the increase in pension plan costs would initially be slightly less than those shown in the report.

The second vesting schedule is like the first, except that all past service benefits would also be subject to the vesting requirements.

The third vesting schedule is like the first, except that, for employees age 45 or over on the effective date, all past service benefits would also be subject to the vesting requirements.

The fourth vesting schedule is the "Rule of 50" under which an employee's accrued benefit is 50% vested when his age plus service equals 50 years, but not prior to 3 years of service, and the vesting percentage increases 10% for each of the following 5 years. The Rule of 50 does not apply to past service benefits based on service prior to the effective date.

The range of increase in pension plan costs under each of the four vesting schedules is summarized in the table on page 6. The table shows costs separately for plans with no present vesting provisions, plans with moderate present vesting provisions, and plans with liberal present vesting provisions, as well as all plans combined.

23% of pension plan members are now covered under plans with no vesting prior to eligibility for early or normal retirement. The annual long term cost for most of these plans, before being amended to conform with the proposed legislation, ranges from 1.8% to 10.4% of pay. The increase in long term cost to amend these plans to conform with each of the proposed vesting schedules is shown in the top portion of the table as a percentage of payroll, and is shown in the bottom portion of the table as a percentage of the pension plan cost before amendment.

21% of pension plan members are now covered under pension plans with full vesting after 10 years service or less, with no age requirement. The annual long term cost for most of these more liberal plans, before being amended to conform with the proposed legislation, ranges from 2.2% to 11.9% of pay.

The remaining 56% of pension plan members are covered under plans with some moderate vesting provision, but less liberal than full vesting after 10 years service. The annual long term cost for most of these plans, before being amended to conform with the proposed legislation, ranges from 2.2% to 11.8% of pay.

Plans with liberal vesting at present have the highest present costs, but would have only a negligible increase. Plans with no vesting at present have the lowest present costs and would have the highest increase, bringing their costs up toward comparable plans with liberal vesting provisions at present.

Of those plans which do have an increase in cost, those with low turnover presently have the highest cost and would have the smallest increase. Those with high turnover have the lowest present cost and

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would have the largest increase, bringing them up toward the cost of comparable plans with low turnover.

Termination rates used in this study reflect a wide range of experience, but do not reflect the results of layoffs of large numbers of employees. While such layoffs increase the cost of vested pensions, the total cost of the pension plan as a percentage of pay is usually reduced by such an event.

This report presents pension plan costs as a percentage of total compensation for all plan members, and this is common practice. But it would be a mistake to think that a pension plan actually has costs for all members. Ultimately a pension plan only has costs for members who receive benefits. If a particular pension plan has indicated costs of 4.0% of total payroll, it may really have a cost averaging 6% of pay for those members who ultimately receive a benefit and 0% of pay for employees who terminate their employment with no vested benefit. If addition of a vesting provision increases the cost of that plan from 4.0% to 4.4% of total payroll, it has done so by increasing the number of members for whom there is a cost averaging 6% (perhaps more or less for these additional members), and decreasing the number of members for whom there is a 0% cost. Thus the addition of vesting does not increase the cost for plan members for whom there is already a cost. but rather it adds a cost for members who had no cost previously.

The full findings of the study and the basis on which it was conducted are described in the report.

RANGE OF INCREASE IN PENSION PLAN COSTS FOR MANDATORY VESTING PROVISIONS

[In percent]

	Present vesting: None	Present vesting: Moderate	Present vesting: Liberal	All plans
Percentage of pension plan members covered under such plans	23.0	56.0	21.0	100.0
Range of present plan cost as a percent of payroll	1.8–10.4	2.2–11.8	2.2–11.9	1.8–11.9
Range of increase in cost as a percent of payroll:				
1. 30 percent at 8 years, graded, no past service benefits vested	.2– .6	0– .2	0	0– .6
2. 30 percent at 8 years, graded, all past service benefits vested	.2– 1.4	.1– .3	0	0– 1.4
3. 30 percent at 8 years, graded, past service vested for members age 45 and over	.2– 1.2	.1– .2	0	0– 1.2
4. Rule of 50, no past service benefits vested	.2– .7	0– .3	0– .2	0– .7
Range of increase in cost as a percent of present plan cost:				
1. 30 percent at 8 years, graded, no past service vested	3.0–25.0	0– 6.0	0– 1.0	0–25.0
2. 30 percent at 8 years, graded, all past service vested	5.0–53.0	1.0– 8.0	0– 1.0	0–53.0
3. 30 percent at 8 years, graded, past service vested for members age 45 and over	5.0–44.0	1.0– 6.0	0– 1.0	0–44.0
4. Rule of 50, no past service vested	3.0–28.0	0–12.0	0– 5.0	0–28.0

4. Measures of Pension Cost

This report considers four aspects of the cost of pension plans. The distinction of these four aspects needs to be kept in mind in reading the report. The four measures of pension cost, frequently referred to throughout the report, are as follows:

(1) *Original Plan Cost.*—The annual cost of the plan before being revised to conform with the proposed legislation, expressed as a percent of compensation.

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(2) *Plan Cost Increase.*—The increase in Original Plan Cost resulting from amending the plan to conform with the proposed legislation, expressed as a percent of compensation.

(3) *Revised Plan Cost.*—The annual cost of the plan after being revised to conform with the proposed legislation, expressed as a percent of compensation. The Revised Plan Cost equals the Original Plan Cost plus the Plan Cost Increase.

(4) *Vesting Cost Ratio.*—The ratio of the Revised Plan Cost to the Original Plan Cost A vesting cost ratio of 1.04, for example, would indicate the Revised Plan Cost is 4% greater than the Original Plan Cost.

5. Plan Provisions

Pension plan costs depend upon the provisions of the plan relating to eligibility for membership, the types of benefits available, eligibility for benefits, the amount of benefits provided, and other features. The plan provisions assumed in the cost calculations are discussed in detail in Appendix 1. Appendix 1 also explains how variations from these plan provisions would affect the costs shown in this report.

The vast majority of pension plans in the United States fall into several main categories, and the cost for each category was calculated separately. Costs are shown for four separate assumptions regarding plan provisions.

Plan A represents final average pay pension plans in which the benefits are determined as a percentage of compensation during a few years just prior to retirement. Specifically it assumed a benefit of 1% of pay for each year of service, based upon the average pay during the final five years of employment. The vast majority of final average pay plans have benefit formulas within a range of approximately half this amount to twice this amount. The Original Plan Cost, Plan Cost Increase, and Revised Plan Cost are directly proportional to the amount of benefits, so that these three measures would be twice as much for a plan providing benefits of 2% of pay as one providing benefits of 1% of pay, and similarly a plan providing only ½% of pay would have these three measures only half that shown. However the Vesting Cost Ratio is not affected by the level of benefits, so that the Vesting Cost Ratio shown represents all levels of benefits.

Plan B represents career average pay plans (sometimes called unit credit plans), under which a unit of pension benefit is credited during each year of employment based upon the compensation during that year. Thus such plans, if not amended, are based on compensation during all years of employment. Specifically Plan B was based upon a benefit of 1% of each year's compensation. The benefit formulas of career average pay plans in the United States range from a level approximately half this amount to twice this amount. Thus the Original Plan Cost, Plan Cost Increase, and Revised Plan Cost for career average pay plans which are not amended would range from half to twice the cost shown in this report, but the Vesting Cost Ratio would be the same regardless of the level of benefits. As discussed in Appendix 1, the overwhelming majority of career average pay plans are amended from time to time to update past service benefits, basing them on more current pay. Because of these amendments, career

average pay plans tend to approximate final average pay plans more nearly than they approximate true career average pay plans which are never amended. Therefore the long term cost of vesting for career average pay plans is generally better represented by the costs shown for Plan A, the final average pay plan, than by Plan B. Thus Plan B does not represent many pension plans in the United States.

Plan C represents pension plans where the benefits are not directly related to compensation, such as a pension plan providing monthly benefits of $5.00 multiplied by the years of service. In order to translate the cost of such plans into a percentage of compensation for the purpose of this report, it was necessary to assume a ratio between the monthly benefit being provided and the amount of monthly compensation. For this purpose it was assumed that the benefit provided per year of service was ¾% of monthly compensation. The monthly benefit per year of service is shown below on this assumption for various pension plans, based upon the average monthly compensation of the members of each plan.

Average monthly compensation of plan members:	*Monthly benefit per year of service*
$300	$2.25
400	3.00
500	3.75
600	4.50
700	5.25
800	6.00
900	6.75
1,000	7.50

The vast majority of pension plans with benefits not related to pay actually provide benefits ranging between half and twice the level of benefits assumed. Thus such plans would have Original Plan Costs, Plan Cost Increases and Revised Plan Costs from half to twice those shown in this report, but the Vesting Cost Ratios would be the same as those shown, regardless of the level of benefits. Such plans are amended to increase benefits from time to time and the amendments have an important effect upon Vesting Cost Ratios, since such amendments increase benefits for active employees, but almost never for terminated vested employees. The higher the rate of increase in benefits in the future, the lower will be the Vested Cost Ratio. Plan C assumed that the plans would be amended to increase the benefit level an average of 4% a year. This rate of increase is much lower than that experienced during the past twenty years, but is a conservative estimate of increases in the future. If actual amendments continue to increase benefits faster than 4%, the Vesting Cost Ratios will be lower than those shown in this report.

Plan D is the same as Plan C except that it assumes that there will never be any future increases in benefits in the plan. This assumption must be regarded as unrealistic. Plan D costs are not applicable to actual pension plans in the United States, but are presented for comparative purposes only. They can give an indication of how the Plan C costs would be affected if the rate of future increase in benefits is more or less than the 4% assumed.

In addition to the formula for determining benefits, the other pension plan provision with a major effect upon the cost of vesting is the existing plan provision with respect to vesting. The study de-

termined costs for plans which presently have three different levels of vesting. These were as follows:

(1) No vesting.

(2) Full vesting after attainment of age 45 and completion of 15 years of service.

(3) Full vesting after 10 years of service, regardless of age.

23% of pension plan members are covered under plans with no vesting at all prior to eligibility for early or normal retirement. 21% have full vesting upon 10 years of service or less with no age requirement, and are generally represented by our third vesting assumption. The remaining 56% have vesting provisions less liberal than full vesting after 10 years, and the majority of this 56% have vesting at least as liberal as our second assumption of full vesting after age 45 and 15 years of service. Plans with more liberal existing vesting provisions have a higher Original Plan Cost, a lower Plan Cost Increase and a lower Vesting Cost Ratio than other plans.

Note that the Plan Cost Increase and Vesting Cost Ratios are indications of the change in plan costs as the result of amending the plan to conform with the minimum vesting requirements of the proposed legislation. For plans which already have vesting provisions, these cost measures only show the increased cost of the liberalization of vesting, and do not include the cost of the vesting provisions the plans already have.

The other pension plan provisions assumed in the study are generally representative of most pension plans in the United States, but there is a good deal of variety. The plan provisions assumed, the differences from these assumptions which exist in actual practice and the effect of those differences are discussed in Appendix 1. For the vast majority of pension plans, the differences from the plan provisions assumed (excluding the benefit formula and vesting provisions discussed above) will not have a major effect upon the costs shown in this report.

6. DATA

To have valid results it is essential that the calculations be based upon a variety of distributions of employees and a variety of rates of termination of employment generally representative of the range of such varieties among private pension plans throughout the United States.

Data was collected from private pension plans for two purposes. One of these was to provide a basis for the model population which serve as the data base for the study. The second purpose was to provide a basis for the actuarial assumptions used with respect to rates of terminations of employment and to some extent with respect to rates of increase in compensation. Data received from seven pension plans served as a basis to construct seven model populations, each consisting of 10,000 employees with its own distribution of employees and their compensation by sex, age and years of service. The distribution of employees and compensation in each model are shown by sex, age and service in Appendix 6. The data is described in Appendix 2. In my opinion the seven models contain sufficient variety as to be generally representative of the majority of pension plans in the United States. I believe the majority of pension plans, for any particular benefit for-

mula, would have costs ranging between the highest and lowest shown in this report.

Neither I nor anyone else has the data to determine what the cost would be for an average plan in the United States. Even if the cost for such an average plan were known, it would not matter much to the individual plan which might have costs considerably different from those of the average plan.

7. Actuarial Assumptions

The ultimate cost of a pension plan is the sum of the benefits actually paid, plus the cost of administering the plan, less an investment income received. To determine the cost of the pension plan the actuary must make certain assumptions about the future experience with respect to rates of mortality, disablement, termination of employment, age at retirement, interest to be earned on the fund, and other matters. It is the actual experience rather than the actuarial assumptions that determine the cost of the plan. The actuarial assumptions are used to estimate what the actual experience will be, and therefore must be realistic as possible. Assumptions of a conservative nature may be satisfactory for actuarial valuations used to determine contributions to the plan, but for the purpose of this study it was important to obtain actuarial assumptions which are as realistic as possible.

The actuarial assumptions used in the calculations are described in Appendix 3, which discusses how actual deviations from the assumptions may affect the costs shown in this report.

The actuarial assumption which has the most effect upon the additional cost for vesting is the assumption regarding rates of termination of employment (commonly called "turnover rates" or "withdrawal rates"). In actual practice these termination rates vary greatly from plan to plan. Termination rates vary significantly by years of service as well as by age. Only termination rates which take account of both age and service (called "select and ultimate" tables) can correctly determine the additional costs of vesting under pension plans. For each of the seven pension plans used to develop the 7 models, termination rates based upon both age and years of service were obtained. Thus each model was used only with termination rates that had been experienced by the underlying plan. Applying a variety of termination rates to a particular model would be inappropriate, because different termination rates would not result in the same distribution of employees by age and years of service. To my knowledge this is the first such study which has ever determined vesting costs based upon distributions of employees for actual pension plans and their actual rates of termination of employment related to age and years of service for those particular plans. While this added considerably to the time and effort involved in conducting the study, it was considered essential to get reliable results.

The termination rates used are shown in Appendix 5 and discussed in Appendix 3. The termination rates of the 7 models exhibit considerable range from high to low termination rates. It is expected that the majority of pension plans in the United States would have termination rates falling within this range.

The other actuarial assumptions used are discussed in detail in Appendix 3. In my opinion all of the assumptions used are realistic and represent experience that might be expected to actually occur under pension plans.

8. Cost Increase for Present Employees—No Past Service

As indicated earlier, costs were determined under four different schedules of vesting requirements. Under the first schedule an employee would be 30% vested in his accrued pension after 8 years of service, and the vesting would increase 10% per year until 100% vesting was reached after 15 years of service. Service prior to the effective date would be counted in determining eligibility for vesting, but benefits accrued based on such past service would not be required to be vested. If such past service were not counted for eligibility, the increase in pension plan costs would initially be slightly less than those shown in the report.

The increase in cost for liberalized vesting is different for present employees than for new employees. For present employees, the vesting cost ratio varies with the extent to which the accrued liability is funded. Tables 1A, 1B and 1C show costs for present employees covered under plans in which the accrued liability is fully funded. Tables 2A, 2B and 2C show costs for present employees under plans in which the accrued liability is completely unfunded. The costs for present employees in plans with various levels of funding fall somewhere within the range represented by these two sets of tables.

Table 1A shows cost for fully funded pension plans which currently have no vesting. Plans with benefits directly related to pay are generally represented by Plan A and plans with benefits not related to pay are represented by Plan C, while Plans B and D generally do not represent actual pension plans and are presented for comparative purposes only.

Under Plan A (benefits directly related to pay) the Original Plan Cost ranges from 2.60% to 4.57% of pay. The Plan Cost Increase ranges from 0.22% to 0.56% of pay. This Plan Cost increase represents the long term increase for present employees which would be expected to result from the vesting provisions of the proposed legislation. The Revised Plan Cost for Plan A ranges from 3.14% to 4.79% of pay. The Vesting Cost Ratio ranges from 1.05 to 1.22. These Vesting Cost Ratios mean that in the long run the required employer contributions for present employees would be expected to range from 5% higher to 22% higher for a plan meeting the vesting requirements of the proposed legislation than for one with no vesting whatsoever presently.

The groups which have the highest Original Plan Cost, generally because of lower termination rates, have the lowest Plan Cost Increase and the lowest Vesting Cost Ratio. The range in Revised Plan Costs is narrower than the range in Original Plan Costs. Thus vesting provisions tend to equalize pension costs as a percent of pay between employers, by giving more cost increase to those employers with high turnover and presently low pension costs.

For Plan C, representing plans with benefits not directly related to pay, the Plan Cost Increases range from 0.18% to 0.45% of pay and the Vesting Cost Ratio ranges from 1.05 to 1.25.

Table 1A, discussed above, represents only part of the 23% of plans with no vesting, the part in which the accrued liability is fully funded.

Table 1B shows costs for present employees for fully funded plans that currently have full vesting on attainment of age 45 and completion of 15 years of service. The Original Plan Cost ranges from 2.97% to 4.75% of pay for Plan A and from 2.14% to 3.47% of pay for Plan C, somewhat higher than for the Original Plan Costs shown in Table 1A for plans with no vesting at all. The Plan Cost Increase ranges from 0.04% to 0.11% of pay under Plan A and from 0.04% to 0.10% of pay under Plan C, generally less than ¼th as much as the Plan Cost Increase for plans with no vesting at present. The Revised Plan Costs shown in Table 1B are approximately equivalent to those shown in Table 1A for plans with no current vesting. The Vesting Cost Ratio ranges from 1.01 to 1.04 under Plan A and from 1.01 to 1.05 under Plan C, substantially lower than for plans with no present vesting.

Table 1C shows the increase in cost for present employees covered under fully funded plans which now have full vesting after 10 years of service. Table 1C represents that part of the 21% of plans with present vesting this liberal in which the accrued liability is fully funded. Original Plan Costs range from 3.09% to 4.82% of pay under Plan A and 2.23% to 3.52% of pay under Plan C, somewhat higher than for those for plans with less liberal vesting. The Plan Cost Increase for these plans is negligible.

Comparing plans with different levels of present vesting shown in Table 1A, 1B and 1C, plans which currently have no vesting or which have less liberal vesting would tend to have their costs raised toward the cost of plans which currently have liberal vesting. Thus the provisions of the bill would tend to equalize the costs as a percent of pay among employers with the same levels of benefits.

All of the above discussion refers to plans which have the accrued liability fully funded, and in which no contribution for past service is required. Tables 2A, 2B and 2C are comparable tables except that they apply to plans in which the accrued liability is completely unfunded. The Original Plan Cost of such plans is substantially higher than for plans that are fully funded, because of the necessary past service funding payment. The Plan Cost Increase as a percentage of compensation is the same for these plans as for plans which are fully funded. Because the Plan Cost Increase is the same while the Original Plan Cost is much higher for unfunded plans, the Vesting Cost Ratios are substantially lower for unfunded plans.

Many plans will actually have their accrued liability partly funded and will fall somewhere between the costs shown in Tables 1A, 1B and 1C for fully funded plans and those shown in Tables 2A, 2B and 2C for completely unfunded plans.

Table 2A shows costs for unfunded plans with no present vesting. The Original Plan Cost ranges from 6.20% to 10.43% of pay under Plan A and from 4.41% to 7.85% of pay under Plan C. Plan Cost Increases are the same as those shown in Table 1A and range from 0.22% to 0.56% of pay under Plan A and from 0.18% to 0.45% of pay in Plan C. The Vesting Cost Ratio ranges from 1.03 to 1.08 for Plan A and from 1.03 to 1.09 for Plan C.

Table 2B shows costs for completely unfunded plans with present vesting after age 45 and 15 years of service. It shows the Plan Cost

Increase ranges from 0.04% to 0.11% of pay and the Vesting Cost Ratio ranges from 1.00 to 1.02 under Plan A and Plan C.

Table 2C shows costs for completely unfunded plans with present vesting after 10 years of service. For this group the increase in cost of the proposed legislation is negligible.

9. Cost Increase for New Employees

All of the costs shown in Section 8 above relate to present employees, some with many years of past service. This section 9 shows costs for new employees hired after the effective date of the proposed legislation. At the time the proposed legislation became effective, all employees would be "present employees" and costs would be represented by Section 8 above. Gradually more and more of the employees would be new employees with costs represented by this Section 9. Thus there would be a gradual shift in costs between those presented in the previous section of the report and those presented in this section.

Table 3A shows costs for new employees in a plan with no vesting at present. The Original Plan Cost ranges from 2.60% to 4.57% of pay under Plan A and from 1.79% to 3.32% of pay under Plan C. The Plan Cost Increase ranges from 0.24% to 0.57% of pay under Plan A and from 0.20% to 0.43% of pay under Plan C. The Vesting Cost Ratio ranges from 1.05 to 1.22 under Plan A and from 1.06 to 1.24 under Plan C.

Generally groups with a higher Original Plan Cost have a lower Plan Cost Increase and lower Vesting Cost Ratio. The proposed legislation would generally produce a larger increase in cost for employers with high turnover and low present costs, raising their cost toward plans of employers with low turnover and higher plan costs. Thus improved vesting tends to equalize plan costs between employers for any particular level of benefits.

Table 3B shows costs for new employees covered under plans which currently have vesting after age 45 and 15 years of service. It shows that the Plan Cost Increase ranges from 0.06% to 0.16% of pay under Plan A and from 0.05% to 0.13% under Plan C and the Vesting Cost Ratio ranges from 1.01 to 1.05 under Plan A and from 1.01 to 1.06 under Plan C.

Table 3C shows costs for new employees covered under plans which currently have full vesting after 10 years of service. It shows that Plan Cost Increase under these plans would be negligible.

10. Cost Increase for Present Employees To Include Vesting of Past Service Benefits

Costs discussed in Section 8 and shown in Tables 1A, 1B, 1C, 2A, 2B and 2C were based upon minimum vesting requirements only with respect to benefits accrued after the effective date of the legislation. They did not include any requirements with respect to benefits based on service prior to the effective date of the legislation.

This Section 10 discusses costs if such past service benefits for all employees is covered by this legislation. These cost are shown in Tables 4A, 4B, 4C, 5A, 5B and 5C.

Tables 4A, 4B and 4C are comparable to Tables 1A, 1B and 1C and show the costs for plans in which the accrued liability is fully funded. Tables 5A, 5B and 5C are comparable to Tables 2A, 2B and 2C and show the costs for plans in which the accrued liability is completely unfunded. The Original Plan Costs in Tables 4A, 4B, 4C, 5A, 5B and 5C are identical to the Original Plan Costs in Tables 1A, 1B, 1C, 2A, 2B and 2C respectively.

The increase in cost would have been about 2.0 times as high for present employees if the vesting provision applied to past service as well as future service. There would be no difference in costs for new employees.

11. Cost Increase for Present Employees To Include Vesting of Past Service Benefits for Employees Age 45 and Over

This Section 11 discusses costs if past service benefits only for employees age 45 and over on the effective date is covered by this legislation. These costs are shown in Tables 6A, 6B, 6C, 7A, 7B and 7C.

Tables 6A, 6B, and 6C are comparable to Tables 4A, 4B, and 4C and show the costs for plans in which the accrued liability is fully funded. Tables 7A, 7B and 7C are comparable to Tables 5A, 5B and 5C and show the costs for plans in which the accrued liability is completely unfunded.

The increase in cost of requiring past service vesting is approximately 1.6 times the increase in cost of not requiring any past service vesting. This compares with 2.0 times as high if past service benefits were vested for all members instead of only those age 45 and over.

12. Cost Increase for "Rule of 50"

The increase in costs under the Rule of 50 are shown in Tables 8A, 8B, 8C, 9A, 9B, 9C, 10A, 10B and 10C. These are comparable to Tables 1A, 1B, 1C, 2A, 2B, 2C, 3A, 3B and 3C respectively. The Rule of 50 does not provide for any vesting of past service benefit.

Compared to the increase in cost under the 30%/8 years rule with no past service, the Rule of 50 has slightly higher cost. The increase in cost under the 30%/8 years rule with past service credits is somewhat higher than the Rule of 50 for current employees, but would be slightly lower than the Rule of 50 for new employees.

13. Conclusion

This study demonstrates the wide range of pension plan costs prior to enactment of the proposed legislation, and the wide range in increase in costs from passing such legislation. These costs are summaarized in the table on page 6.

Respectfully submitted.

Donald S. Grubbs, Jr., F.S.A., M.A.A.A.

Table 1A

INCREASE IN COSTS FOR PRESENT EMPLOYEES
PLANS WITH ACCRUED LIABILITY FULLY FUNDED
PRESENT VESTING: NONE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	4.07%	0.33%	4.40%	1.08
	2	4.21	0.31	4.52	1.07
	3	2.60	0.56	3.16	1.22
	4	4.57	0.22	4.79	1.05
	5	2.87	0.34	3.21	1.12
	6	3.84	0.24	4.08	1.06
	7	2.67	0.47	3.14	1.18
B Career Average Pay	1	1.98%	0.24%	2.22%	1.12
	2	2.08	0.23	2.31	1.11
	3	1.59	0.46	2.05	1.29
	4	2.96	0.17	3.13	1.06
	5	1.77	0.28	2.05	1.16
	6	2.22	0.19	2.41	1.09
	7	1.61	0.40	2.01	1.25
C Not % of Pay	1	2.44%	0.26%	2.70%	1.11
	2	2.61	0.26	2.87	1.10
	3	1.79	0.45	2.24	1.25
	4	3.32	0.18	3.50	1.05
	5	2.01	0.29	2.30	1.14
	6	2.73	0.21	2.94	1.08
	7	2.22	0.40	2.62	1.18
D Not % of Pay No Future Increases	1	0.82%	0.19%	1.01%	1.23
	2	0.90	0.18	1.08	1.20
	3	0.74	0.35	1.09	1.47
	4	1.64	0.14	1.78	1.09
	5	0.84	0.23	1.07	1.27
	6	1.09	0.17	1.26	1.16
	7	0.88	0.32	1.20	1.36

Table 1B

INCREASE IN COSTS FOR PRESENT EMPLOYEES
PLANS WITH ACCRUED LIABILITY FULLY FUNDED
PRESENT VESTING: AGE 45 and 15 YEARS SERVICE

Plan		Group	Plan Cost % of Compensation Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A	Final Pay	1	4.35%	0.07%	4.42%	1.02
		2	4.49	0.04	4.53	1.01
		3	3.08	0.07	3.15	1.02
		4	4.75	0.04	4.79	1.01
		5	3.07	0.11	3.18	1.04
		6	4.09	0.05	4.14	1.01
		7	2.97	0.04	3.01	1.01
B	Career Average Pay	1	2.13%	0.06%	2.19%	1.03
		2	2.24	0.04	2.28	1.02
		3	1.94	0.06	2.00	1.03
		4	3.08	0.03	3.11	1.01
		5	1.90	0.10	2.00	1.05
		6	2.38	0.04	2.42	1.02
		7	1.81	0.04	1.85	1.02
C	Not % of Pay	1	2.61%	0.07%	2.68%	1.03
		2	2.79	0.04	2.83	1.01
		3	2.14	0.06	2.20	1.03
		4	3.47	0.04	3.51	1.01
		5	2.16	0.10	2.26	1.05
		6	2.92	0.04	2.96	1.01
		7	2.47	0.04	2.51	1.02
D	Not % of Pay No Future Increases	1	0.90%	0.07%	0.97%	1.08
		2	0.99	0.04	1.03	1.04
		3	0.95	0.06	1.01	1.06
		4	1.72	0.03	1.75	1.02
		5	0.93	0.10	1.03	1.11
		6	1.20	0.04	1.24	1.03
		7	1.01	0.04	1.05	1.04

Table 1C

INCREASE IN COSTS FOR PRESENT EMPLOYEES
PLANS WITH ACCRUED LIABILITY FULLY FUNDED
PRESENT VESTING: 10 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost % of Compensation: Plan Cost Increase	Plan Cost % of Compensation: Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	4.46%	0.01%	4.47%	1.00
	2	4.56	0.00	4.56	1.00
	3	3.18	0.01	3.19	1.00
	4	4.82	0.01	4.83	1.00
	5	3.25	0.02	3.27	1.01
	6	4.20	0.00	4.20	1.00
	7	3.09	0.00	3.09	1.00
B Career Average Pay	1	2.21%	0.01%	2.22%	1.00
	2	2.29	0.00	2.29	1.00
	3	2.03	0.01	2.04	1.00
	4	3.13	0.01	3.14	1.00
	5	2.05	0.02	2.07	1.01
	6	2.47	0.00	2.47	1.00
	7	1.92	0.00	1.92	1.00
C Not % of Pay	1	2.71%	0.01%	2.72%	1.00
	2	2.85	0.00	2.85	1.00
	3	2.23	0.01	2.24	1.00
	4	3.52	0.01	3.53	1.00
	5	2.31	0.01	3.22	1.00
	6	3.01	0.00	3.01	1.00
	7	2.59	0.00	2.59	1.00
D Not % of Pay No Future Increases	1	0.97%	0.01%	0.98%	1.01
	2	1.04	0.00	1.04	1.00
	3	1.02	0.01	1.03	1.00
	4	[illegible]	[illegible]	[illegible]	[illegible]
	5	1.04	0.01	1.05	1.01
	6	1.28	0.00	1.28	1.00
	7	1.10	0.00	1.10	1.00

Table 2A

INCREASE IN COSTS FOR PRESENT EMPLOYEES
PLANS WITH ACCRUED LIABILITY COMPLETELY UNFUNDED
PRESENT VESTING: NONE

Plan		Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A	Final Pay	1	9.69%	0.33%	10.02%	1.03
		2	9.47	0.31	9.78	1.03
		3	6.79	0.56	7.35	1.08
		4	7.61	0.22	7.83	1.03
		5	6.20	0.34	6.54	1.05
		6	9.38	0.24	9.62	1.03
		7	10.43	0.47	10.90	1.05
B	Career Average Pay	1	4.70%	0.24%	4.94%	1.05
		2	4.61	0.23	4.84	1.05
		3	3.95	0.46	4.41	1.12
		4	4.84	0.17	5.01	1.04
		5	3.73	0.28	4.01	1.08
		6	5.34	0.19	5.53	1.04
		7	6.26	0.40	6.66	1.06
C	Not % of Pay	1	6.16%	0.26%	6.42%	1.04
		2	6.05	0.26	6.31	1.04
		3	4.78	0.45	5.23	1.09
		4	5.59	0.18	5.77	1.03
		5	4.41	0.29	4.70	1.07
		6	6.83	0.21	7.04	1.03
		7	7.85	0.40	8.25	1.05
D	Not % of Pay No Future Increases	1	2.95%	0.19%	3.14%	1.06
		2	2.89	0.18	3.07	1.06
		3	2.76	0.35	3.11	1.13
		4	3.10	0.14	3.24	1.05
		5	2.29	0.23	2.52	1.10
		6	3.99	0.17	4.16	1.04
		7	4.85	0.32	5.17	1.07

Table 2B

INCREASE IN COSTS FOR PRESENT EMPLOYEES
PLANS WITH ACCRUED LIABILITY COMPLETELY UNFUNDED
PRESENT VESTING: AGE 45 and 15 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	10.27%	0.07%	10.34%	1.01
	2	10.02	0.04	10.06	1.00
	3	7.61	0.07	7.68	1.01
	4	7.92	0.04	7.96	1.01
	5	6.60	0.11	6.71	1.02
	6	9.82	0.05	9.87	1.00
	7	11.73	0.04	11.77	1.00
B Career Average Pay	1	5.01%	0.06%	5.07%	1.01
	2	4.93	0.04	4.97	1.01
	3	4.54	0.06	4.60	1.01
	4	5.04	0.03	5.07	1.01
	5	4.00	0.10	4.10	1.03
	6	5.62	0.04	5.66	1.01
	7	7.04	0.04	7.08	1.01
C Not % of Pay	1	6.53%	0.07%	6.60%	1.01
	2	6.44	0.04	6.48	1.01
	3	5.47	0.06	5.53	1.01
	4	5.84	0.04	5.88	1.01
	5	4.73	0.10	4.83	1.02
	6	7.19	0.04	7.23	1.01
	7	8.87	0.04	8.91	1.00
D Not % of Pay No Future Increases	1	3.19%	0.07%	3.26%	1.02
	2	3.13	0.04	3.17	1.01
	3	3.20	0.06	3.26	1.02
	4	3.26	0.03	3.29	1.01
	5	2.50	0.10	2.60	1.04
	6	4.23	0.04	4.27	1.01
	7	5.59	0.04	5.63	1.01

Table 2C

INCREASE IN COSTS FOR PRESENT EMPLOYEES
PLANS WITH ACCRUED LIABILITY COMPLETELY UNFUNDED
PRESENT VESTING: 10 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	10.41%	0.01%	10.42%	1.00
	2	10.10	0.00	10.10	1.00
	3	7.76	0.01	7.77	1.00
	4	8.00	0.01	8.01	1.00
	5	6.83	0.02	6.85	1.00
	6	9.94	0.00	9.94	1.00
	7	11.87	0.00	11.87	1.00
B Career Average Pay	1	5.11%	0.01%	5.12%	1.00
	2	4.99	0.00	4.99	1.00
	3	4.65	0.01	4.66	1.00
	4	5.10	0.01	5.11	1.00
	5	4.20	0.02	4.22	1.00
	6	5.72	0.00	5.72	1.00
	7	7.17	0.00	7.17	1.00
C Not % of Pay	1	6.65%	0.01%	6.66%	1.00
	2	6.52	0.00	6.52	1.00
	3	5.53	0.01	5.54	1.00
	4	5.91	0.01	5.92	1.00
	5	4.92	0.01	4.93	1.00
	6	7.29	0.00	7.29	1.00
	7	9.00	0.00	9.00	1.00
D Not % of Pay No Future Increases	1	3.30%	0.01%	3.31%	1.00
	2	3.20	0.00	3.20	1.00
	3	3.30	0.01	3.31	1.00
	4	3.33	0.01	3.34	1.00
	5	2.67	0.01	2.68	1.00
	6	4.33	0.00	4.33	1.00
	7	5.71	0.00	5.71	1.00

Table 3A

INCREASE IN COSTS FOR NEW EMPLOYEES
PRESENT VESTING: NONE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A. Final Pay	1	4.07%	0.39%	4.46%	1.10
	2	4.21	0.35	4.56	1.08
	3	2.60	0.57	3.17	1.22
	4	4.57	0.24	4.81	1.05
	5	2.87	0.36	3.23	1.13
	6	3.84	0.34	4.18	1.09
	7	2.67	0.41	3.08	1.15
B. Career Average Pay	1	1.98%	0.23%	2.21%	1.12
	2	2.08	0.21	2.29	1.10
	3	1.59	0.43	2.02	1.27
	4	2.96	0.17	3.13	1.06
	5	1.77	0.27	2.04	1.15
	6	2.22	0.24	2.46	1.11
	7	1.61	0.30	1.91	1.19
C. Not % of Pay	1	2.44%	0.26%	2.70%	1.11
	2	2.61	0.23	2.84	1.09
	3	1.79	0.43	2.22	1.24
	4	3.32	0.20	3.52	1.06
	5	2.01	0.20	2.29	1.10
	6	2.73	0.27	3.00	1.10
	7	2.22	0.36	2.58	1.16
D. Not % of Pay No Future Increases	1	0.82%	0.15%	0.97%	1.18
	2	0.90	0.14	1.04	1.16
	3	0.74	0.27	1.01	1.36
	4	1.64	0.12	1.76	1.07
	5	0.84	0.19	1.03	1.23
	6	1.09	0.18	1.27	1.17
	7	0.88	0.21	1.09	1.24

Table 3B

INCREASE IN COSTS FOR NEW EMPLOYEES
PRESENT VESTING: AGE 45 and 15 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	4.35%	0.11%	4.46%	1.03
	2	4.49	0.07	4.56	1.02
	3	3.08	0.09	3.17	1.03
	4	4.75	0.06	4.81	1.01
	5	3.07	0.16	3.23	1.05
	6	4.09	0.09	4.18	1.02
	7	2.97	0.11	3.08	1.04
B Career Average Pay	1	2.13%	0.08%	2.21%	1.04
	2	2.24	0.05	2.29	1.02
	3	1.94	0.08	2.02	1.04
	4	3.08	0.05	3.13	1.02
	5	1.90	0.14	2.04	1.07
	6	2.38	0.08	2.46	1.03
	7	1.81	0.10	1.91	1.06
C Not % of Pay	1	2.61%	0.09%	2.70%	1.03
	2	2.79	0.05	2.84	1.02
	3	2.14	0.08	2.22	1.04
	4	3.47	0.05	3.52	1.01
	5	2.16	0.13	2.29	1.06
	6	2.92	0.08	3.00	1.03
	7	2.47	0.11	2.58	1.04
D Not % of Pay No Future Increases	1	0.90%	0.07%	0.97%	1.08
	2	0.99	0.05	1.04	1.05
	3	0.95	0.06	1.01	1.06
	4	1.72	0.04	1.76	1.02
	5	0.93	0.10	1.03	1.11
	6	1.20	0.07	1.27	1.06
	7	1.01	0.08	1.09	1.08

Table 3C

INCREASE IN COSTS FOR NEW EMPLOYEES
PRESENT VESTING: 10 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	4.46%	0.02%	4.48%	1.00
	2	4.56	0.01	4.57	1.00
	3	3.18	0.01	3.19	1.00
	4	4.82	0.01	4.83	1.00
	5	3.25	0.03	3.28	1.01
	6	4.20	0.01	4.21	1.00
	7	3.09	0.01	3.10	1.00
B Career Average Pay	1	2.21%	0.01%	2.22%	1.00
	2	2.29	0.01	2.30	1.00
	3	2.03	0.01	2.04	1.00
	4	3.13	0.01	3.14	1.00
	5	2.05	0.03	2.08	1.01
	6	2.47	0.01	2.48	1.00
	7	1.92	0.01	1.93	1.01
C Not % of Pay	1	2.71%	0.00%	2.71%	1.00
	2	2.85	0.00	2.85	1.00
	3	2.23	0.01	2.24	1.00
	4	3.52	0.01	3.53	1.00
	5	2.31	0.02	2.33	1.01
	6	3.01	0.01	3.02	1.00
	7	2.59	0.01	2.60	1.00
D Not % of Pay No Future Increases	1	0.97%	0.01%	0.98%	1.01
	2	1.04	0.01	1.05	1.01
	3	1.02	0.01	1.03	1.01
	4	1.77	0.01	1.78	1.01
	5	1.04	0.03	1.07	1.03
	6	1.28	0.01	1.29	1.01
	7	1.10	0.01	1.11	1.01

Table 4A

INCREASE IN COSTS FOR PRESENT EMPLOYEES INCLUDING PAST SERVICE VESTING
PLANS WITH ACCRUED LIABILITY FULLY FUNDED
PRESENT VESTING: NONE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	4.07%	0.71%	4.78%	1.17
	2	4.21	0.63	4.84	1.15
	3	2.60	0.95	3.55	1.37
	4	4.57	0.38	4.95	1.08
	5	2.87	0.62	3.49	1.22
	6	3.84	0.55	4.39	1.14
	7	2.67	1.42	4.09	1.53
B Career Average Pay	1	1.98%	0.40%	2.38%	1.20
	2	2.08	0.37	2.45	1.18
	3	1.59	0.69	2.28	1.43
	4	2.96	0.26	3.22	1.09
	5	1.77	0.44	2.21	1.25
	6	2.22	0.37	2.59	1.17
	7	1.61	0.90	2.51	1.56
C Not % of Pay	1	2.44%	0.49%	2.93%	1.20
	2	2.61	0.45	3.06	1.17
	3	1.79	0.73	2.52	1.41
	4	3.32	0.31	3.63	1.09
	5	2.01	0.49	2.50	1.24
	6	2.73	0.44	3.17	1.16
	7	2.22	1.14	3.36	1.51
D Not % of Pay No Future Increases	1	0.82%	0.34%	1.16%	1.41
	2	0.90	0.31	1.21	1.34
	3	0.74	0.52	1.26	1.70
	4	1.64	0.22	1.86	1.13
	5	0.84	0.38	1.22	1.45
	6	1.09	0.34	1.43	1.31
	7	0.88	0.85	1.73	1.97

Table 4B

INCREASE IN COSTS FOR PRESENT EMPLOYEES INCLUDING PAST SERVICE VESTING
PLANS WITH ACCRUED LIABILITY FULLY FUNDED
PRESENT VESTING: AGE 45 and 15 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation			Vesting Cost Ratio
		Original Plan Cost	Plan Cost Increase	Revised Plan Cost	
A Final Pay	1	4.35%	0.13%	4.48%	1.03
	2	4.49	0.08	4.57	1.02
	3	3.08	0.12	3.20	1.04
	4	4.75	0.07	4.82	1.01
	5	3.07	0.21	3.28	1.07
	6	4.09	0.10	4.19	1.02
	7	2.97	0.12	3.09	1.04
B Career Average Pay	1	2.13%	0.09%	2.22%	1.04
	2	2.24	0.05	2.29	1.02
	3	1.94	0.11	2.05	1.06
	4	3.08	0.05	3.13	1.02
	5	1.90	0.18	2.08	1.09
	6	2.38	0.08	2.46	1.03
	7	1.81	0.11	1.92	1.06
C Not % of Pay	1	2.61%	0.11%	2.72%	1.04
	2	2.79	0.07	2.86	1.03
	3	2.14	0.11	2.25	1.05
	4	3.47	0.06	3.53	1.02
	5	2.16	0.18	2.34	1.08
	6	2.92	0.09	3.01	1.03
	7	2.47	0.12	2.59	1.05
D Not % of Pay No Future Increases	1	0.90%	0.10%	1.00%	1.11
	2	0.99	0.07	1.06	1.07
	3	0.95	0.09	1.04	1.09
	4	1.72	0.05	1.77	1.03
	5	0.93	0.16	1.09	1.17
	6	1.20	0.09	1.29	1.08
	7	1.01	0.11	1.12	1.11

Table 4C

INCREASE IN COSTS FOR PRESENT EMPLOYEES INCLUDING PAST SERVICE VESTING
PLANS WITH ACCRUED LIABILITY FULLY FUNDED
PRESENT VESTING: 10 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation: Origianl Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	4.46%	0.01%	4.47%	1.00
	2	4.56	0.01	4.57	1.00
	3	3.18	0.02	3.20	1.01
	4	4.82	0.01	4.83	1.00
	5	3.25	0.03	3.28	1.01
	6	4.20	0.01	4.21	1.00
	7	3.09	0.01	3.10	1.00
B Career Average Pay	1	2.21%	0.01%	2.22%	1.00
	2	2.29	0.00	2.29	1.00
	3	2.03	0.01	2.04	1.00
	4	3.13	0.01	3.14	1.00
	5	2.05	0.03	2.08	1.01
	6	2.47	0.01	2.48	1.00
	7	1.92	0.01	1.93	1.01
C Not % of Pay	1	2.71%	0.00%	2.71%	1.00
	2	2.85	0.00	2.85	1.00
	3	2.23	0.01	2.24	1.00
	4	3.52	0.01	3.53	1.00
	5	2.31	0.02	2.33	1.01
	6	3.01	0.01	3.02	1.00
	7	2.59	0.01	2.60	1.00
D Not % of Pay No Future Increases	1	0.97%	0.01%	0.98%	1.01
	2	1.04	0.01	1.05	1.01
	3	1.02	0.01	1.03	1.01
	4	1.77	0.00	1.77	1.00
	5	1.04	0.03	1.07	1.03
	6	1.28	0.01	1.29	1.01
	7	1.10	0.01	1.11	1.01

Table 5A

INCREASE IN COSTS FOR PRESENT EMPLOYEES INCLUDING PAST SERVICE FUNDING
PLANS WITH ACCRUED LIABILITY COMPLETELY UNFUNDED
PRESENT VESTING: NONE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	9.69%	0.71%	10.40%	1.07
	2	9.47	0.63	10.10	1.07
	3	6.79	0.95	7.74	1.14
	4	7.61	0.38	7.99	1.05
	5	6.20	0.61	6.81	1.10
	6	9.38	0.54	9.92	1.06
	7	10.43	1.42	11.85	1.14
B Career Average Pay	1	4.70%	0.40%	5.10%	1.09
	2	4.61	0.37	4.98	1.08
	3	3.95	0.69	4.64	1.17
	4	4.84	0.25	5.09	1.05
	5	3.73	0.45	4.18	1.12
	6	5.34	0.37	5.71	1.07
	7	6.26	0.90	7.16	1.14
C Not % of Pay	1	6.16%	0.48%	6.64%	1.08
	2	6.05	0.46	6.51	1.08
	3	4.78	0.74	5.52	1.15
	4	5.59	0.31	5.90	1.06
	5	4.41	0.50	4.91	1.11
	6	6.83	0.45	7.28	1.07
	7	7.85	1.14	8.99	1.15
D Not % of Pay No Future Increases	1	2.95%	0.34%	3.29%	1.12
	2	2.89	0.30	3.19	1.10
	3	2.76	0.53	3.29	1.19
	4	3.10	0.22	3.32	1.07
	5	2.29	0.37	2.66	1.16
	6	3.99	0.33	4.32	1.08
	7	4.85	0.84	5.69	1.17

Table 5B

INCREASE IN COSTS FOR PRESENT EMPLOYEES INCLUDING PAST SERVICE FUNDING
PLANS WITH ACCRUED LIABILITY COMPLETELY UNFUNDED
PRESENT VESTING: AGE 45 and 15 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	10.27%	0.13%	10.40%	1.01
	2	10.02	0.08	10.10	1.01
	3	7.61	0.13	7.74	1.02
	4	7.92	0.07	7.99	1.01
	5	6.60	0.21	6.81	1.03
	6	9.82	0.10	9.92	1.01
	7	11.73	0.12	11.85	1.01
B Career Average Pay	1	5.01%	0.09%	5.10%	1.02
	2	4.93	0.05	4.98	1.01
	3	4.54	0.10	4.64	1.02
	4	5.04	0.05	5.09	1.01
	5	4.00	0.18	4.18	1.05
	6	5.62	0.09	5.71	1.02
	7	7.04	0.12	7.16	1.02
C Not % of Pay	1	6.53%	0.11%	6.64%	1.02
	2	6.44	0.07	6.51	1.01
	3	5.41	0.11	5.52	1.02
	4	5.84	0.06	5.90	1.01
	5	4.73	0.18	4.91	1.04
	6	7.19	0.09	7.28	1.01
	7	8.87	0.12	8.99	1.01
D Not % of Pay No Future Increases	1	3.19%	0.10%	3.29%	1.03
	2	3.13	0.06	3.19	1.02
	3	3.20	0.09	3.29	1.03
	4	3.26	0.06	3.32	1.02
	5	2.50	0.16	2.66	1.06
	6	4.23	0.09	4.32	1.02
	7	5.59	0.10	5.69	1.02

Table 5C

INCREASE IN COSTS FOR PRESENT EMPLOYEES INCLUDING PAST SERVICE FUNDING
PLANS WITH ACCRUED LIABILITY COMPLETELY UNFUNDED
PRESENT VESTING: 10 YEARS SERVICE

		Plan Cost % of Compensation			Vesting
Plan	Group	Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Cost Ratio
A Final Pay	1	10.41%	0.00%	10.41%	1.00
	2	10.10	0.01	10.11	1.00
	3	7.76	0.01	7.77	1.00
	4	8.00	0.01	8.01	1.00
	5	6.83	0.03	6.86	1.00
	6	9.94	0.01	9.95	1.00
	7	11.87	0.01	11.88	1.00
B Career Average Pay	1	5.11%	0.01%	5.12%	1.00
	2	4.99	0.00	4.99	1.00
	3	4.65	0.02	4.67	1.00
	4	5.10	0.01	5.11	1.00
	5	4.20	0.02	4.22	1.00
	6	5.72	0.01	5.73	1.00
	7	7.17	0.01	7.18	1.00
C Not % of Pay	1	6.65%	0.01%	6.66%	1.00
	2	6.52	0.00	6.52	1.00
	3	5.53	0.01	5.54	1.00
	4	5.91	0.00	5.91	1.00
	5	4.92	0.03	4.95	1.01
	6	7.29	0.01	7.30	1.00
	7	9.00	0.01	9.01	1.00
D Not % of Pay No Future Increases	1	3.30%	0.01%	3.31%	1.00
	2	3.20	0.01	3.21	1.00
	3	3.30	0.01	3.31	1.00
	4	3.33	0.00	3.33	1.00
	5	2.67	0.03	2.70	1.01
	6	4.33	0.01	4.34	1.00
	7	5.71	0.01	5.72	1.00

Table 6A

INCREASE IN COSTS FOR PRESENT EMPLOYEES
INCLUDING PAST SERVICE VESTING FOR MEMBERS AGE 45 AND OVER
PLANS WITH ACCRUED LIABILITY FULLY FUNDED
PRESENT VESTING: NONE

Plan	Group	Original Plan Cost	Plan Cost % of Compensation: Plan Cost Increase	Plan Cost % of Compensation: Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	4.07%	0.53%	4.60%	1.13
	2	4.21	0.50	4.71	1.12
	3	2.60	0.83	3.43	1.32
	4	4.57	0.30	4.87	1.07
	5	2.87	0.51	3.38	1.18
	6	3.84	0.43	4.27	1.11
	7	2.67	1.17	3.84	1.44
B Career Average Pay	1	1.98%	0.32%	2.30%	1.16
	2	2.08	0.31	2.39	1.15
	3	1.59	0.63	2.22	1.40
	4	2.96	0.22	3.18	1.07
	5	1.77	0.39	2.16	1.22
	6	2.22	0.31	2.53	1.14
	7	1.61	0.73	2.34	1.45
C Not % of Pay	1	2.44%	0.38%	2.82%	1.16
	2	2.61	0.37	2.98	1.14
	3	1.79	0.65	2.44	1.36
	4	3.32	0.25	3.57	1.08
	5	2.01	0.41	2.42	1.20
	6	2.73	0.35	3.08	1.13
	7	2.22	0.94	3.16	1.42
D Not % of Pay No Future Increases	1	0.82%	0.28%	1.10%	1.34
	2	0.90	0.27	1.17	1.30
	3	0.74	0.48	1.22	1.65
	4	1.64	0.19	1.83	1.12
	5	0.84	0.33	1.17	1.39
	6	1.09	0.28	1.37	1.26
	7	0.88	0.73	1.61	1.83

Tab. 6B

INCREASE IN COSTS FOR PRESENT EMPLOYEES
INCLUDING PAST SERVICE VESTING FOR MEMBERS AGE 45 AND OVER
PLANS WITH ACCRUED LIABILITY FULLY FUNDED
PRESENT VESTING: NONE

		Plan Cost % of Compensation			Vesting
		Original	Plan Cost	Revised	Cost
Plan	Group	Plan Cost	Increase	Plan Cost	Ratio
A Final Pay	1	4.35%	0.08%	4.43%	1.02
	2	4.49	0.05	4.54	1.01
	3	3.08	0.09	3.17	1.03
	4	4.75	0.05	4.80	1.01
	5	3.07	0.17	3.24	1.06
	6	4.09	0.07	4.16	1.02
	7	2.97	0.07	3.04	1.02
B Career Average Pay	1	2.13%	0.06%	2.19%	1.03
	2	2.24	0.04	2.28	1.02
	3	1.94	0.08	2.02	1.04
	4	3.08	0.04	3.12	1.01
	5	1.90	0.14	2.04	1.07
	6	2.38	0.06	2.44	1.03
	7	1.81	0.06	1.87	1.03
C Not % of Pay	1	2.61%	0.08%	2.69%	1.03
	2	2.79	0.05	2.84	1.02
	3	2.14	0.09	2.23	1.04
	4	3.47	0.04	3.51	1.01
	5	2.16	0.14	2.30	1.06
	6	2.92	0.06	2.98	1.02
	7	2.47	0.07	2.54	1.03
D Not % of Pay No Future Increases	1	0.90%	0.07%	0.97%	1.08
	2	0.99	0.05	1.04	1.05
	3	0.95	0.08	1.03	1.08
	4	1.72	0.04	1.76	1.02
	5	0.93	0.13	1.06	1.14
	6	1.20	0.06	1.26	1.05
	7	1.01	0.07	1.08	1.07

Table 6C

INCREASE IN COSTS FOR PRESENT EMPLOYEES
INCLUDING PAST SERVICE FUNDING FOR MEMBERS AGE 45 AND OVER
PLANS WITH ACCRUED LIABILITY FULLY FUNDED
PRESENT VESTING: NONE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	4.46%	0.01%	4.47%	1.00
	2	4.56	0.00	4.56	1.00
	3	3.18	0.01	3.19	1.00
	4	4.82	0.00	4.82	1.00
	5	3.25	0.02	3.27	1.01
	6	4.20	0.00	4.20	1.00
	7	3.09	0.01	3.10	1.00
B Career Average Pay	1	2.21%	0.01%	2.22%	1.00
	2	2.29	0.00	2.29	1.00
	3	2.03	0.01	2.04	1.00
	4	3.13	0.01	3.14	1.00
	5	2.05	0.02	2.07	1.01
	6	2.47	0.01	2.48	1.00
	7	1.92	0.00	1.92	1.00
C Not % of Pay	1	2.71%	0.00%	2.71%	1.00
	2	2.85	0.00	2.85	1.00
	3	2.23	0.01	2.24	1.00
	4	3.52	0.01	3.53	1.00
	5	2.31	0.02	2.33	1.01
	6	3.01	0.00	3.01	1.00
	7	2.59	0.01	2.60	1.00
D Not % of Pay No Future Increases	1	0.97%	0.01%	0.98%	1.01
	2	1.04%	0.00%	1.04	1.00
	3	1.02	0.01	1.03	1.01
	4	1.77	0.00	1.77	1.00
	5	1.04	0.02	1.06	1.02
	6	1.28	0.00	1.28	1.00
	7	1.10	0.01	1.11	1.01

Table 7A

INCREASE IN COSTS FOR PRESENT EMPLOYEES
INCLUDING PAST SERVICE VESTING FOR MEMBERS AGE 45 AND OVER
PLANS WITH ACCRUED LIABILITY COMPLETELY UNFUNDED
PRESENT VESTING: NONE

		Plan Cost % of Compensation			Vesting
Plan	Group	Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Cost Ratio
A Final Pay	1	9.69%	0.52%	10.21%	1.05
	2	9.47	0.49	9.96	1.05
	3	6.79	0.83	7.62	1.12
	4	7.61	0.30	7.91	1.04
	5	6.20	0.51	6.71	1.08
	6	9.38	0.43	9.81	1.05
	7	10.43	1.18	11.61	1.11
B Career Average Pay	1	4.70%	0.33%	5.03%	1.07
	2	4.61	0.32	4.93	1.07
	3	3.95	0.63	4.58	1.16
	4	4.84	0.22	5.06	1.05
	5	3.73	0.39	4.12	1.10
	6	5.34	0.30	5.64	1.06
	7	6.26	0.73	6.99	1.12
C Not % of Pay	1	6.16	0.38%	6.54%	1.06
	2	6.05	0.37	6.42	1.06
	3	4.78	0.65	5.43	1.14
	4	5.59	0.25	5.84	1.04
	5	4.41	0.42	4.83	1.10
	6	6.83	0.36	7.19	1.05
	7	7.85	0.94	8.79	1.12
D Not % of Pay No Future Increases	1	2.95%	0.28%	3.23%	1.09
	2	2.89	0.27	3.16	1.09
	3	2.76	0.49	3.25	1.18
	4	3.10	0.19	3.29	1.06
	5	2.29	0.33	2.62	1.14
	6	3.99	0.27	4.26	1.07
	7	4.85	0.73	5.58	1.15

Table 7B

INCREASE IN COSTS FOR PRESENT EMPLOYEES
INCLUDING PAST SERVICE VESTING FOR MEMBERS AGE 45 AND OVER
PLANS WITH ACCRUED LIABILITY COMPLETELY UNFUNDED
PRESENT VESTING: AGE 45 and 15 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	10.27%	0.08%	10.35%	1.01
	2	10.02	0.05	10.07	1.00
	3	7.61	0.10	7.71	1.01
	4	7.92	0.05	7.97	1.01
	5	6.60	0.16	6.76	1.02
	6	9.82	0.07	9.89	1.01
	7	11.73	0.07	11.80	1.01
B Career Average Pay	1	5.01%	0.07%	5.08%	1.01
	2	4.93	0.04	4.97	1.01
	3	4.54	0.08	4.62	1.02
	4	5.04	0.04	5.08	1.01
	5	4.00	0.15	4.15	1.04
	6	5.62	0.06	5.68	1.01
	7	7.04	0.07	7.11	1.01
C Not % of Pay	1	6.53%	0.08%	6.61%	1.01
	2	6.44	0.05	6.49	1.01
	3	5.41	0.07	5.49	1.01
	4	5.84	0.04	5.88	1.01
	5	4.73	0.14	4.87	1.03
	6	7.19	0.06	7.25	1.01
	7	8.87	0.07	8.94	1.01
D Not % of Pay No Future Increases	1	3.19	0.07%	3.26%	1.02
	2	3.13	0.05	3.18	1.02
	3	3.20	0.07	3.27	1.02
	4	3.26	0.04	3.30	1.01
	5	2.50	0.13	2.63	1.05
	6	4.23	0.06	4.29	1.01
	7	5.59	0.06	5.65	1.01

Table 7C

INCREASE IN COSTS FOR PRESENT EMPLOYEES
INCLUDING PAST SERVICE VESTING FOR MEMBERS AGE 45 AND OVER
PLANS WITH ACCRUED LIABILITY COMPLETELY UNFUNDED
PRESENT VESTING: 10 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	10.41%	0.00%	10.41%	1.00
	2	10.10	0.01	10.11	1.00
	3	7.76	0.01	7.77	1.00
	4	8.00	0.01	8.01	1.00
	5	6.83	0.03	6.86	1.00
	6	9.94	0.00	9.94	1.00
	7	11.87	0.00	11.87	1.00
B Career Average Pay	1	5.11%	0.01%	5.12%	1.00
	2	4.99	0.00	4.99	1.00
	3	4.65	0.01	4.66	1.00
	4	5.10	0.01	5.11	1.00
	5	4.20	0.02	4.22	1.00
	6	5.72	0.00	5.72	1.00
	7	7.17	0.01	7.18	1.00
C Not % of Pay	1	6.65%	0.01%	6.66%	1.00
	2	6.52	0.00	6.52	1.00
	3	5.53	0.01	5.54	1.00
	4	5.91	0.00	5.91	1.00
	5	4.92	0.03	4.95	1.01
	6	7.29	0.01	7.30	1.00
	7	9.00	0.01	9.01	1.00
D Not % of Pay No Future Increases	1	3.30%	0.00%	3.30%	1.00
	2	3.20	0.00	3.20	1.00
	3	3.30	0.01	3.31	1.00
	4	3.33	0.00	3.33	1.00
	5	2.67	0.03	2.70	1.01
	6	4.33	0.01	4.34	1.00
	7	5.71	0.01	5.72	1.00

Table 8A

INCREASE IN COSTS FOR PRESENT EMPLOYEES FOR RULE OF 50
PLANS WITH ACCRUED LIABILITY FULLY FUNDED
PRESENT VESTING: NONE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	4.07%	0.32%	4.39%	1.08
	2	4.21	0.31	4.52	1.07
	3	2.60	0.60	3.20	1.23
	4	4.57	0.24	4.81	1.05
	5	2.87	0.39	3.26	1.14
	6	3.84	0.26	4.10	1.07
	7	2.67	0.48	3.15	1.18
B Career Average Pay	1	1.98%	0.23%	2.21%	1.12
	2	2.08	0.22	2.30	1.11
	3	1.59	0.50	2.09	1.31
	4	2.96	0.19	3.15	1.06
	5	1.77	0.33	2.10	1.19
	6	2.22	0.21	2.43	1.09
	7	1.61	0.40	2.01	1.25
C Not % of Pay	1	2.44%	0.25%	2.69%	1.10
	2	2.61	0.25	2.86	1.10
	3	1.79	0.48	2.27	1.27
	4	3.32	0.20	3.52	1.06
	5	2.01	0.33	2.34	1.16
	6	2.73	0.22	2.95	1.08
	7	2.22	0.40	2.62	1.18
D Not % of Pay No Future Increases	1	0.82%	0.18%	1.00%	1.22
	2	0.90	0.18	1.08	1.20
	3	0.74	0.38	1.12	1.51
	4	1.64	0.15	1.79	1.09
	5	0.84	0.27	1.11	1.32
	6	1.09	0.18	1.27	1.17
	7	0.88	0.33	1.21	1.38

Table 8B

INCREASE IN COSTS FOR PRESENT EMPLOYEES FOR RULE OF 50
PLANS WITH ACCRUED LIABILITY FULLY FUNDED
PRESENT VESTING: AGE 45 and 15 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation			Vesting Cost Ratio
		Original Plan Cost	Plan Cost Increase	Revised Plan Cost	
A Final Pay	1	4.35%	0.06%	4.41%	1.01
	2	4.49	0.04	4.53	1.01
	3	3.08	0.12	3.20	1.04
	4	4.75	0.06	4.81	1.01
	5	3.07	0.16	3.23	1.05
	6	4.09	0.06	4.15	1.01
	7	2.97	0.05	3.02	1.02
B Career Average Pay	1	2.13%	0.05%	2.18%	1.02
	2	2.24	0.03	2.27	1.01
	3	1.94	0.11	2.05	1.06
	4	3.08	0.06	3.14	1.02
	5	1.90	0.15	2.05	1.08
	6	2.38	0.05	2.43	1.02
	7	1.81	0.04	1.85	1.02
C Not % of Pay	1	2.61%	0.06%	2.67%	1.02
	2	2.79	0.04	2.83	1.01
	3	2.14	0.10	2.24	1.05
	4	3.47	0.05	3.52	1.01
	5	2.16	0.14	2.30	1.06
	6	2.92	0.06	2.98	1.02
	7	2.47	0.04	2.51	1.02
D Not % of Pay No Future Increases	1	0.90%	0.05%	0.95%	1.06
	2	0.99	0.04	1.03	1.04
	3	0.95	0.09	1.04	1.09
	4	1.72	0.05	1.77	1.03
	5	0.93	0.14	1.07	1.15
	6	1.20	0.05	1.25	1.04
	7	1.01	0.04	1.05	1.04

Table 8C

INCREASE IN COSTS FOR PRESENT EMPLOYEES FOR RULE OF 50
PLANS WITH ACCRUED LIABILITY FULLY FUNDED
PRESENT VESTING: 10 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	4.46%	0.01%	4.47%	1.00
	2	4.56	0.01	4.57	1.00
	3	3.18	0.04	3.22	1.01
	4	4.82	0.02	4.84	1.00
	5	3.25	0.06	3.31	1.02
	6	4.20	0.01	4.21	1.00
	7	3.09	0.01	3.10	1.00
B Career Average Pay	1	2.21%	0.01%	2.22%	1.00
	2	2.29	0.01	2.30	1.00
	3	2.03	0.04	2.07	1.02
	4	3.13	0.02	3.15	1.01
	5	2.05	0.06	2.11	1.03
	6	2.47	0.01	2.48	1.00
	7	1.92	0.01	1.93	1.01
C Not % of Pay	1	2.71%	0.01%	2.72%	1.00
	2	2.85	0.01	2.86	1.00
	3	2.23	0.03	2.26	1.01
	4	3.52	0.02	3.54	1.01
	5	2.31	0.05	2.36	1.02
	6	3.01	0.01	3.02	1.00
	7	2.59	0.01	2.60	1.00
D Not % of Pay No Future Increases	1	0.97%	0.01%	0.98%	1.01
	2	1.04	0.01	1.05	1.01
	3	1.02	0.04	1.06	1.04
	4	1.77	0.02	1.79	1.01
	5	1.04	0.05	1.09	1.05
	6	1.28	0.01	1.29	1.01
	7	1.10	0.01	1.11	1.01

Table 9A

INCREASE IN COST FOR PRESENT EMPLOYEES FOR RULE OF 50
PLANS WITH ACCRUED LIABILITY COMPLETELY UNFUNDED
PRESENT VESTING: NONE

Plan		Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A	Final Pay	1	9.69%	0.32%	10.01%	1.03
		2	9.47	0.31	9.78	1.03
		3	6.79	0.60	7.39	1.09
		4	7.61	0.24	7.85	1.03
		5	6.20	0.39	6.59	1.06
		6	9.38	0.26	9.64	1.03
		7	10.43	0.48	10.91	1.05
B	Career Average	1	4.70%	0.23%	4.93%	1.05
		2	4.61	0.22	4.83	1.05
		3	3.95	0.50	4.45	1.13
		4	4.84	0.19	5.03	1.04
		5	3.73	0.33	4.06	1.09
		6	5.34	0.21	5.55	1.04
		7	6.26	0.40	6.66	1.06
C	Not % of Pay	1	6.16%	0.25%	6.41%	1.04
		2	6.05	0.25	6.30	1.04
		3	4.78	0.48	5.26	1.10
		4	5.59	0.20	5.79	1.04
		5	4.41	0.33	4.74	1.07
		6	6.83	0.22	7.05	1.03
		7	7.85	0.40	8.25	1.05
D	Not % of Pay No Future Increases	1	2.95	0.18	3.13	1.06
		2	2.89	0.18	3.07	1.06
		3	2.76	0.38	3.14	1.14
		4	3.10	0.15	3.25	1.05
		5	2.29	0.27	2.56	1.12
		6	3.99	0.18	4.17	1.05
		7	4.85	0.33	5.18	1.07

Table 9B

INCREASE IN COSTS FOR PRESENT EMPLOYEES FOR RULE OF 50
PLANS WITH ACCRUED LIABILITY COMPLETELY UNFUNDED
PRESENT VESTING: AGE 45 and 15 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost % of Compensation: Plan Cost Increase	Plan Cost % of Compensation: Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	10.27%	0.06%	10.33%	1.01
	2	10.02	0.04	10.06	1.00
	3	7.61	0.12	7.73	1.02
	4	7.92	0.06	7.98	1.01
	5	6.60	0.16	6.76	1.02
	6	9.82	0.06	9.88	1.01
	7	11.73	0.05	11.78	1.00
B Career Average Pay	1	5.01%	0.05%	5.06%	1.01
	2	4.93	0.03	4.96	1.01
	3	4.54	0.11	4.65	1.02
	4	5.04	0.06	5.10	1.01
	5	4.00	0.15	4.15	1.04
	6	5.62	0.05	5.67	1.01
	7	7.04	0.04	7.08	1.01
C Not % of Pay	1	6.53%	0.06%	6.59%	1.01
	2	6.44	0.04	6.48	1.01
	3	5.47	0.10	5.57	1.02
	4	5.84	0.05	5.89	1.01
	5	4.73	0.14	4.87	1.03
	6	7.19	0.06	7.25	1.01
	7	8.87	0.04	8.91	1.00
D Not % of Pay No Future Increases	1	3.19%	0.05%	3.24%	1.02
	2	3.13	0.04	3.17	1.01
	3	3.20	0.09	3.29	1.03
	4	3.26	0.05	3.31	1.02
	5	2.50	0.14	2.64	1.06
	6	4.23	0.05	4.28	1.01
	7	5.59	0.04	5.63	1.01

Table 9C

INCREASE IN COSTS FOR PRESENT EMPLOYEES FOR RULE OF 50
PLANS WITH ACCRUED LIABILITY COMPLETELY UNFUNDED
PRESENT VESTING: 10 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	10.41%	0.01%	10.42%	1.00
	2	10.10	0.01	10.11	1.00
	3	7.76	0.04	7.80	1.01
	4	8.00	0.02	8.02	1.00
	5	6.83	0.06	6.89	1.01
	6	9.94	0.01	9.95	1.00
	7	11.87	0.01	11.88	1.00
B Career Average Pay	1	5.11%	0.01%	5.12%	1.00
	2	4.99	0.01	5.00	1.00
	3	4.65	0.04	4.69	1.01
	4	5.10	0.02	5.12	1.00
	5	4.20	0.06	4.26	1.01
	6	5.72	0.01	5.73	1.00
	7	7.17	0.01	7.18	1.00
C Not % of Pay	1	6.65%	0.01%	6.66%	1.00
	2	6.52	0.01	6.53	1.00
	3	5.53	0.03	5.56	1.01
	4	5.91	0.02	5.93	1.00
	5	4.92	0.05	4.97	1.01
	6	7.29	0.01	7.30	1.00
	7	9.00	0.01	9.01	1.00
D Not% of Pay No Future Increases	1	3.30%	0.01%	3.31%	1.00
	2	3.20	0.01	3.21	1.00
	3	3.30	0.04	3.34	1.01
	4	3.33	0.02	3.35	1.01
	5	2.67	0.05	2.72	1.02
	6	4.33	0.01	4.34	1.00
	7	5.71	0.01	5.72	1.00

Table 10A

INCREASE IN COSTS FOR NEW EMPLOYEES FOR RULE OF 50
PRESENT VESTING: NONE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	4.07%	0.38%	4.45%	1.09
	2	4.21	0.35	4.56	1.08
	3	2.60	0.66	3.26	1.25
	4	4.57	0.29	4.86	1.06
	5	2.87	0.51	3.38	1.18
	6	3.84	0.39	4.23	1.10
	7	2.67	0.43	3.10	1.16
B Career Average Pay	1	1.98%	0.22%	2.20%	1.11
	2	2.08	0.21	2.29	1.10
	3	1.59	0.51	2.10	1.32
	4	2.96	0.22	3.18	1.07
	5	1.77	0.41	2.18	1.23
	6	2.22	0.28	2.50	1.13
	7	1.61	0.34	1.95	1.21
C Not % of Pay	1	2.44%	0.25%	2.69%	1.10
	2	2.61	0.23	2.84	1.09
	3	1.79	0.50	2.29	1.28
	4	3.32	0.24	3.56	1.07
	5	2.01	0.40	2.41	1.20
	6	2.73	0.30	3.03	1.11
	7	2.22	0.40	2.62	1.18
D Not % of Pay No Future Increases	1	0.82%	0.14%	0.96%	1.17
	2	0.90	0.14	1.04	1.16
	3	0.74	0.34	1.08	1.46
	4	1.64	0.17	1.81	1.10
	5	0.84	0.30	1.14	1.36
	6	1.09	0.21	1.30	1.19
	7	0.88	0.25	1.13	1.28

Table 10B

INCREASE IN COSTS FOR NEW EMPLOYEES FOR RULE OF 50
PRESENT VESTING: AGE 45 and 15 YEARS SERVICE

Plan	Group	Plan Cost % of Compensation: Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	4.35%	0.11%	4.46%	1.03
	2	4.49	0.08	4.57	1.02
	3	3.08	0.18	3.26	1.06
	4	4.75	0.11	4.86	1.02
	5	3.07	0.32	3.39	1.10
	6	4.09	0.14	4.23	1.03
	7	2.97	0.14	3.11	1.05
B Career Average Pay	1	2.13%	0.08%	2.21%	1.04
	2	2.24	0.05	2.29	1.02
	3	1.94	0.16	2.10	1.08
	4	3.08	0.10	3.18	1.03
	5	1.90	0.29	2.19	1.15
	6	2.38	0.12	2.50	1.05
	7	1.81	0.14	1.95	1.08
C Not % of Pay	1	2.61%	0.09%	2.70%	1.03
	2	2.79	0.06	2.85	1.02
	3	2.14	0.15	2.29	1.07
	4	3.47	0.09	3.56	1.03
	5	2.16	0.26	2.42	1.12
	6	2.92	0.12	3.04	1.04
	7	2.47	0.15	2.62	1.06
D Not % of Pay No Future Increases	1	0.90%	0.07%	0.97%	1.08
	2	0.99	0.05	1.04	1.05
	3	0.95	0.13	1.08	1.14
	4	1.72	0.09	1.81	1.05
	5	0.93	0.22	1.15	1.24
	6	1.20	0.11	1.31	1.09
	7	1.01	0.12	1.13	1.12

Table 10C

INCREASE IN COSTS FOR NEW EMPLOYEES FOR RULE OF 50
PRESENT VESTING: 10 YEARS SERVICE

Plan	Group	Original Plan Cost	Plan Cost Increase	Revised Plan Cost	Vesting Cost Ratio
A Final Pay	1	4.46%	0.02%	4.48%	1.00
	2	4.56	0.02	4.58	1.00
	3	3.18	0.09	3.27	1.03
	4	4.82	0.05	4.87	1.01
	5	3.25	0.15	3.40	1.05
	6	4.20	0.04	4.24	1.01
	7	3.09	0.04	3.13	1.01
B Career Average Pay	1	2.21%	0.02%	2.23%	1.01
	2	2.29	0.01	2.30	1.00
	3	2.03	0.08	2.11	1.04
	4	3.13	0.06	3.19	1.02
	5	2.05	0.15	2.20	1.07
	6	2.47	0.04	2.51	1.02
	7	1.92	0.03	1.95	1.02
C Not % of Pay	1	2.71%	0.01%	2.72%	1.00
	2	2.85	0.01	2.86	1.00
	3	2.23	0.07	2.30	1.03
	4	3.52	0.05	3.57	1.01
	5	2.31	0.12	2.43	1.05
	6	3.01	0.04	3.05	1.01
	7	2.59	0.03	2.62	1.01
D Not % of Pay No Future Increases	1	0.97%	0.02%	0.99%	1.02
	2	1.04	0.01	1.05	1.01
	3	1.02	0.07	1.09	1.07
	4	1.77	0.04	1.81	1.02
	5	1.04	0.12	1.16	1.12
	6	1.28	0.04	1.32	1.03
	7	1.10	0.03	1.13	1.03

APPENDIX 1

Plan Provisions

The provisions of pension plans in the United States regarding eligibility for benefits and the amount of benefits are so varied that it would be impossible to calculate the cost effect of the proposed legislation on each of them. Therefore the cost effects were determined for some common types of pension plans. This appendix summarizes the provisions assumed for the plans for which calculations were made. It also mentions common variations from these assumptions and the approximate effect upon the calculated costs of these variations.

1. Normal Retirement Age

The normal retirement age is the first age at which employees may retire voluntarily and receive the full retirement income without any reduction for early retirement. It was assumed that the normal retirement age is age 65 in all cases. Age 65 is by far the most common normal retirement age for pension plans today. Some plans set the normal retirement age as age 65 and completion of a certain number years of service, usually 5, 10 or 15 years. Because almost all employees are hired at age 50 or under when they would have 15 or more years of service prior to reaching age 65, the normal retirement age is 65 for the overwhelming majority of employees under such plans, and the assumption that all such employees retire at 65 has a negligible effect upon the costs shown.

A few plans have a normal retirement higher than age 65 such as age 68 or age 70. Under such plans the Original Basic Plan Cost would be lower than for plans with normal retirement at age 65, but the Vesting Cost Ratios are expected to be close to those for plans with normal retirement age 65.

Some plans have a normal retirement age lower than age 65. Such plans would have Original Plan Costs which are higher than plans with normal retirement age 65, but it is estimated that the Vesting Cost Ratios would be somewhat lower than for plans with normal retirement age 65.

Under some plans with normal retirement age 65 employees may defer their actual retirement to a later date, and enough employees may actually do this so that the average retirement age under the plan may be age 66 or age 67. However the benefits for terminated vested employees will normally begin at age 65. There is a tendency toward earlier retirement and a decline in the amount of deferred retirement after age 65. To the extent that there is deferred retirement, the cost of benefits payable on normal retirement may be lower, while the cost for vesting remains the same resulting in the Vesting Cost Ratios being higher.

2. Early Retirement Benefits

Most pension plans allow employees to retire prior to the normal retirement date with reduced pensions. All costs in this study assume that an early retirement benefit of actuarially equivalent value would be available at age 60 and completion of 10 years of service.

The table below, published by the U.S. Department of Labor, Bureau of Labor Statistics, in the Monthly Labor Review, July 1970, shows the extent of early retirement provisions in pension plans. 87% of pension plans have some early retirement provisions while 13% have none prior to normal retrirement. Of those having some early retirement provisions 63% allow early retirement at age 55, 12% allow it at an earlier age and 24% a higher age, generally age 60. The majority of those with early retirement provisions also require minimum years of service from 5 years to 15 years, although some require more or less than this. The average plan would seem to have early retirement at about age 55 and 15 years of service. Because most employees are hired before age 40 and would meet the service requirements by age 55, such a provision is somewhat more liberal than the age 60 assumption used in our study.

Table 2. Earliest age and associated service at which workers can acquire a nonforfeitable benefit right under the normal early, or vesting provisions of private pension plans, 1969

Plan provision and minimum service requirement [1]	Percent distribution	Percent of active workers in plans with— Total	No age requirement	Age requirement: Total	40 or less	Over 40 and under 50	50 and under 55	55 and under 60	60 and under 62	62 and under 65	65 and over
Normal retirement, early retirement, and vesting	100	100	42	58	19	4	9	10	5	2	9
Less than 5 years	2	100	38	62	5	-	3	32	11	-	11
5 to 10	37	100	67	33	15	4	3	5	3	1	2
11 to 15	36	100	20	80	36	5	15	12	3	3	5
16 to 20	17	100	28	62	1	5	10	16	8	3	30
More than 20 years	8	100	52	48	(2)	(2)	7	9	17	2	13
Normal retirement	100	100	6	94	-	-	-	3	8	14	69
Less than 5 years	21	100	-	100	-	-	-	-	3	2	95
5 to 10	35	100	-	100	-	-	-	-	1	33	66
11 to 15	16	100	-	100	-	-	-	(2)	3	5	92
16 to 20	18	100	1	99	-	-	-	12	30	2	55
More than 20 years	11	100	50	50	-	-	-	7	16	10	18
Early retirement and vesting	91	100	46	54	21	5	10	11	5	2	-
Less than 5 years	1	100	43	57	5	-	4	36	11	-	-
5 to 10	36	100	68	32	16	4	3	5	3	1	-
11 to 15	34	100	21	79	38	5	16	12	3	3	-
16 to 20	11	100	43	57	2	8	15	20	9	3	-
More than 20 years	7	100	61	37	(2)	1	6	10	17	2	-
Early retirement	87	100	9	91	-	-	3	63	20	4	-
Less than 5 years	9	100	1	99	(2)	2	4	71	22	-	-
5 to 10	25	100	(2)	100	(2)	-	1	69	27	2	-
11 to 15	23	100	(2)	100	-	1	2	73	17	7	-
16 to 20	12	100	1	99	-	-	3	64	19	13	-
More than 20 years	18	100	43	57	-	-	7	37	11	1	-
Vesting	77	100	51	49	25	5	8	10	-	-	-
Less than 5 years	1	100	82	18	12	-	6	-	-	-	-
5 to 10	34	100	74	26	17	5	3	2	-	-	-
11 to 15	30	100	26	74	44	5	19	6	-	-	-
16 to 20	9	100	43	57	2	9	16	29	-	-	-
More than 20 years	2	100	66	34	1	2	13	19	-	-	-
Deferred full vesting	67	100	50	50	27	6	9	9	-	-	-
Less than 5 years	(2)	100	93	7	7	-	-	-	-	-	-
5 to 10	29	100	73	27	17	5	7	3	-	-	-
11 to 15	26	100	24	76	50	6	13	7	-	-	-
16 to 20	9	100	43	57	2	9	16	30	-	-	-
More than 20 years	2	100	66	34	1	2	13	19	-	-	-
Deferred graded vesting	10	100	62	38	9	3	4	22	-	-	-
Less than 5 years	(2)	100	67	33	19	-	13	-	-	-	-
5 to 10	5	100	77	23	15	2	6	-	-	-	-
11 to 15	4	100	40	60	1	3	1	54	-	-	-
16 to 20	(2)	100	69	31	-	31	-	-	-	-	-
More than 20 years	-	-	-	-	-	-	-	-	-	-	-

[1] The term service as used in this table is defined to include preparticipation service. The distribution includes 1,010 plans, with 2.3 million workers, that provide vested rights as shown in the table only in the event of involuntary separation (including continuous layoff), almost all of these plans also provide for the attainment of nonforfeitable rights, prior to normal retirement, in the event of voluntary separation. In such cases, the eligibility requirements are typically more stringent than those for involuntary separation. Plans which provide for special early retirement essentially those providing for early retirement at the employer's request with an unreduced or higher than normal retirement benefit are excluded from this table.

[2] Less than 0.5 percent.

NOTE: Because of rounding, sums of individual items may not equal totals.

For some pension plans with no early retirement provision at all, the Original Plan Cost would be somewhat less than those shown for a plan with early retirement at age 60, and the Plan Cost Increase and Vesting Cost Ratio somewhat greater than those shown.

Plans which allow early retirement before age 60 would have Original Plan Costs higher than plans with early retirement at age 60, but the Plan Cost Increase and Vesting Cost Ratio would be somewhat less than those shown.

Early retirement provisions providing actuarially reduced benefits have an increased cost because early retirement acts like vesting to preserve some benefits which might otherwise be forfeited if the individual's employment terminated with no benefit prior to the normal retirement age.

Some plans provide early retirement benefits which are greater than those determined to be actuarially reduced. Such plans would have a higher Original Plan Cost than plans actuarially equivalent benefits, but the Plan Cost Increase would remain the same and the Vesting Cost Ratio would be less.

3. DISABILITY BENEFITS

The costs shown in this report assume that the pension plan has no special provision for benefits payable upon disability. Many plans actually do have such provisions. The existence of such provisions increases the Original Plan Cost, but decreases the Plan Cost Increase and Vesting Cost Ratio.

4. VESTING PROVISIONS

The study determined costs for plans with three different levels of vesting prior to enactment of the proposed legislation. These were:

(1) No vesting,

(2) Full vesting after attainment of age 45 and completion of 15 years service,

(3) Full vesting after 10 years of service, regardless of age.

The above table shows that 23% of members are covered under pension plans with no vesting at all prior to eligibility for early or normal retirement. Of the 77% with some vesting provision 21% have full vesting upon 10 years of service or less with no age requirement, and are generally represented by our third vesting assumption. The remaining 56% with full vesting have vesting provisions less liberal than full vesting after 10 years, and the majority of this 56% have vesting at least as liberal as our second assumption of full vesting after age 45 and 15 years of service.

Plans with more liberal vesting provisions have a higher Original Plan Cost, a lower Plan Cost Increase, and a lower Vesting Cost Ratio than other plans.

5. DEATH BENEFITS

The study determined costs for plans with no death benefits. Some pension plans provide death benefits prior to retirement, but most do not.

The existence of death benefits in a plan would generally not affect the amount of the Plan Cost Increase, but because the Original Plan Cost of a plan with death benefits is somewhat higher to start with, the Vesting Cost Ratio for such a plan would be lower than those shown.

6. ELIGIBILITY FOR MEMBERSHIP

The study assumed employees would become members of a pension plan immediately upon hire. 78% of plan members are now covered under pension plans which provide for immediate participation in the plans upon employment. 22% of members are covered under pension plans with minimum age and service requirements for eligibility, ranging from less than 1 year of service and no age requirement to 5 years of service and age 35. The average for plans with participation requirements is about age 25 and 1 year of service. S. 3598 would require eligibility of no more than age 21 and 6 months of service. The difference in costs between a plan allowing immediate participation and one requiring 6 months of service and age 21 is very small.

7. AMOUNT OF BENEFIT UNDER PLAN A, FINAL AVERAGE PAY PLAN

The final average pay plan (Plan A) assumed that the benefit would be 1% of the average compensation during the last five years of employment multiplied by the employee's number of years of service, with no maximum years of service. The vast majority of final average pay plans have benefit formulas within a range of approximately half this amount to twice this amount. The Original Plan Cost, Plan Cost Increase and Revised Plan Cost are directly proportional to the amount of benefit, so that these three measures would be twice as much for a plan providing benefits of 2% of pay as one providing benefits of 1% of pay, and similarly a plan providing only ½% of pay would have three cost measures only half of that shown. However the Vesting Cost Ratio would not be changed by the percent of benefit.

The majority of pension plans based upon a final average pay formula are integrated with social security, i.e., they provide a larger benefit with respect to compensation above the social security wage base than compensation below that point. For example, a plan may provide for a pension of ¾% of the first $9,000 of annual earnings plus 1¼% of annual earnings over $9,000, multiplied by years of service. Under such plans, as compensation rates increase, the percentage increase in projected benefits for employees earnings more than the wage base is greater than the percentage increase in compensation itself. This has the same effect as a steeper salary scale (discussed in Appendix 2) and results in slightly lower Vested Cost Ratios than shown in this report.

Some final average pay plans base benefits on the highest 5 consecutive years of employment during the last 10 years, or highest 5 consecutive years during the entire working career of the employee. In most situations the difference in cost between this and a plan based upon the final 5 years is negligible, since for the vast majority of employees the final 5 years are the highest paid.

Some plans base benefits on a final ten year average pay rather than a final five year average. These plans would have slightly lower Original Plan Costs and Plan Cost Increase and a slightly higher Vesting Cost Ratio than those shown in this report.

8. AMOUNT OF BENEFIT UNDER PLAN B, CAREER AVERAGE PAY PLAN

The career average (also called unit credit) pay plan assumed that the benefit would be 1% of the total compensation earned during each year of employment. The vast majority of career average pay plans have benefit formulas within a range of approximately half this amount to twice this amount. Such plans would have Original Plan Costs, Plan Cost Increases, and Revised Plan Costs ranging from half to twice those shown, but the Vesting Cost Ratio would be the same as those shown for plans with larger or smaller benefits.

Many career average pay plans are integrated with social security, which has the same effect in these plans as it has for final average pay plans.

When a career average pay plan is first put into effect or when an amendment is made increasing the benefit formula, benefits for service prior to the effective date are often based upon current pay rather than the lower levels of pay of those prior years, but the percentage of benefits for past service is often lower than the percentage of benefit for future service. This combination may result in benefits for past service being more or less than they would have been if the future service formula had been in effect during all years of past employment. While this would not affect the plan cost for new employees, it would make the cost of existing employees somewhat different than those shown in the report which assumed that benefits were based upon the same benefit formula for all years of service and were based upon actual compensation during all years of service.

Career average pay plans have the problem that benefits credited for earlier years of service when employees were paid at lower compensation rates are not appropriately related to current pay. Most employers solve this problem by amending such plans from time to time to update past service benefits basing them upon current compensation. Most career average plans have tended to make such updating at least once every ten years. The net effect of a career average plan with such updatings is that it more nearly approximates a final average pay plan than a true career average pay plan. Thus as a practical matter there are very few career average pension plans which are actually career average plans, and most could have their costs better represented by the figures shown for final average pay plans.

9. AMOUNT OF BENEFIT UNDER PLANS NOT DIRECTLY RELATED TO COMPENSATION

Many pension plans covering hourly paid employees do not relate the amount of benefit to the amount of compensation. Such a plan, for example, may provide a monthly retirement income of $5.00 per year of service. In order to translate the cost of such plans into a percentage of payroll it was assumed that the benefit formula was ¾% of monthly compensation. A schedule of this would be as follows:

Average monthly compensation of plan members:	Monthly benefit per year of service
$300	$2.25
400	3.00
500	3.75
600	4.50
700	5.25
800	6.00
900	6.75
1,000	7.50

The vast majority of pension plans with benefits not related to pay actually provide benefits ranging between half and twice the level of benefits assumed. Thus such plans would have Original Plan Costs, Plan Cost Increases and Revised Plan Costs from half to twice those shown, but the Vesting Cost Ratio would be the same as those shown regardless of the level of benefits.

Calculations for benefits not related to compensation were done on two bases. Plan C assumed that the benefit formula would increase 4% per year. Plan D assumed that the benefit formula would never change. Plan D represents the traditional way of determining costs for such plans, and is an appropriate way to determine such costs and liabilities in the annual actuarial valuation for such plans. But if one wants to know the long term costs of such plans it is altogether unrealistic to assume that benefit formulas will not increase.

In their June 19, 1972 *Newsletter*, Kwasha Lipton, Inc. reported that for the three years 1968 through 1971 the average monthly earnings in the auto industry increased 23%, while the normal retirement benefit for the average employee with 30 years of service increased 32%, or around 10% per year. In the steel industry they reported that wages were up 28% in the 3 years, while pension benefits were increased by 39%. In the rubber industry they reported that earnings increased by 21% while pensions increased by 41% in the three years. In the electrical industry their reported increase was 22% in the earnings and 37% in normal retirement benefits.

It should not be expected that in the long run pension benefits will continue to increase at 10% per year or more. Eventually pension benefits can be expected to retain a constant ratio to wages and thus there will be a trend for pension benefits to increase by the same percentage as wages each year. The average weekly earnings in all manufacturing industries rose an average of 4.4% during the last ten years, 4.1% during the last 20 years, 5.4% during the last 30 years, and 4.9% during the last 40 years. Thus the assumption of a 4% annual increase in wages, and in benefits under pension plans not related directly to compensation, would appear to be a moderate assumption in the light of past experience. It is therefore my opinion that Plan C with such increases included is a realistic projection of the costs of such plans, and that Plan D is an inappropriate determination of such costs. However the costs of Plan D were included for comparative purposes. They enable one to estimate what the cost would be if the rate of increase were more or less than the 4% assumed.

10. YEARS OF CREDITED SERVICE

It was assumed that benefits would be credited for all years of service. Many pension plans do credit benefits for all years of service.

Others limit the years of credited service to some maximum such as 30 years or 40 years. From a cost viewpoint, a plan providing 1% of pay per year of service with a maximum of 30 years of service is equivalent to a plan providing a slightly lower percentage of pay using all years of credited service.

In some plans the benefit is not directly related to years of service. In such a plan any employee retiring after 20 or more years of service might receive a benefit of $100 monthly or might receive a benefit related to pay such as 30% of pay. Such plans are approximately equivalent to plans where the benefit is related to years of service with the benefit per year equal to the total benefit divided by the average number of years of service. For example, in a plan providing a benefit of 30% of pay, if the average employee retires after 30 years of service, this is approximately equivalent to a plan providing 1% pay per year of service.

11. EMPLOYEE CONTRIBUTIONS

The costs shown in this report are for plans with no employee contributions, where the entire cost is paid by the employer. 79% of workers are covered under non-contributory plans, while 21% are covered under contributory plans. Under contributory plans, upon termination of employment prior to retirement, an employee is usually permitted to withdraw all of his own contributions, usually with interest. But if he chooses to withdraw his own contributions, he normally forfeits any vested right to a deferred pension. Experience shows that many employees with vested rights under contributory pension plans do request a refund of their own contributions upon termination of employment and thus forfeit their vested rights. To the extent this experience continues, the Plan Cost Increase and Vesting Cost Ratio for contributory plans may be substantially less than the amounts shown in this report.

APPENDIX 2

Description of Data

The costs of pension plans vary greatly with the distribution of employees and their compensation by sex, age, and years of service. They also vary with the various actuarial assumptions, discussed in Appendix 3.

The purpose of this project is to determine the range of estimated cost of private pension plans resulting from minimum statutory vesting requirements. Therefore it was desirable to base the calculations on a variety of distributions of employees generally representative of the range of such varieties among private pension plans throughout the United States.

Data was collected from private pension plans for two purposes. One of these was to provide a base for the model populations which serve as the data base for the study. The second purpose was to provide a basis for the actuarial assumptions used.

There is a definite relationship between the distribution of employees and the turnover rates included in the actuarial assumptions. For example, most railroads have employees who are generally older, long-service employees and have very low rates of termination of employment even for employees with such age and service. Most carry-out restaurant chains have very young short-service employees with very high rates of termination employment, even when compared with the young short-service employees of other industries. To apply termination rates based upon one distribution of employees to another distribution of employees which is not similar could result in severe distortion of costs. Therefore this study used data only for pension plans which could provide the detailed termination rates appropriate for the study discussed in Appendix 3.

Very few pension plans in the United States have made the kind of detailed study of termination rates which this project required if the results were to be valid. The author of this report sought data from the majority of consulting actuarial offices in the United States as well as from a number of major corporations. Primarily because very few pension plans have such records, we were able to obtain appropriate data for only seven pension plans.

We received data from several other pension plans, but for one reason or another the data was not in a form that could be used in this study. This included data for some plans which did not have termination rates related to both age and service, some of which did not give a sufficient breakdown of the termination rates by age and service, and some plans based upon public employee retirement systems which are outside the scope of this study.

The data for the seven groups with appropriate termination rates served as a basis for seven model populations, each consisting of 10,000 employees with its own distribution of employees and their compensa-

tion by sex, age and years of service. The distribution of employees and compensation in each model are shown by sex, age and service in Appendix 6. The distribution of employees in each of the seven models is almost exactly proportional to the distribution of employees in the underlying data. Data were grouped for convenience. For example, in Group 1 employees hired between ages 20 and 24 were assumed to be hired at age 22 in the model, and employees with from 3 to 7 years of service were assumed to have 5 years of service.

Groups 1 and 2 provided salary data which are used directly in the models of groups 1 and 2. The remaining groups did not provide salary data. For these groups it was assumed that the present monthly compensation was $500 at age 17, increasing 1% per year to $767 at age 60, and the same amount of $767 at ages 61 through 64. This is an assumption regarding the present level of monthly salary, which is different from the assumption regarding future increases in compensation as discussed in the actuarial assumptions in Appendix 3. For the purpose of this study the dollar amount of compensation does not matter, but the relative amount for employees of different ages and years of service does matter since costs are determined as a percentage of salary. If all employees earned 50% more, the dollar cost of a final average pay plan or career average pay plan would be 50% higher but the costs as a percentage of pay would be the same. The 1% differential in pay by age is typical of many plans, but other groups have a steeper differential in pay by age. Groups with a steeper differential in pay by age would have somewhat lower Vesting Cost Ratios than those shown in this report.

Although data was included from only 7 different pension plans they seem to represent a wide variety of sources as well as rates of termination of employment. Two of the 7 plans are multiple employer plans covering union employees. The other 5 plans cover employees of a single employer, one a utility, one a manufacturing firm, one in the petroleum industry and two publishers. The two union plans covered only hourly paid employees while the 5 single employer plans covered both salaried and hourly employees.

Three of the groups include data separately for male and female employees. Two of the plans covered only male employees. Two other groups with more than 80% males each combined data for males and females and were treated as being all male in our study. This latter assumption had a very minor effect upon the plan costs. The author is appreciative of the various actuaries and corporation officials who were helpful in providing data for the study.

In my opinion the majority of pension plans in the United States would have Original Plan Costs and Plan Cost Increases ranging between those of the highest cost group and those of the lowest cost group shown in this report for the same benefit formula. In my opinion, the Vesting Cost Ratios, which do not depend upon the level of benefits, for the large majority of pension plans in the United States would fall between the extremes of Vesting Cost Ratio for the plans shown in this report.

Neither I nor anyone else has data to determine what the costs would be for an *average* plan in the United States. Even if the cost for such an average plan were known, it would not matter much to the individual plan which might have costs considerably different from those of the average plan.

APPENDIX 3

Description of Actuarial Assumptions

In order to determine the costs of a pension plan the actuary must make certain assumptions about future experience with respect to rates of mortality, disablement, rates of termination of employment, age at retirement, interest to be earned on the fund and other matters. For purposes of actuarial valuation to determine the cost of an individual plan an actuary may make broad assumptions which are appropriate in the aggregate in order to get a reasonable estimate of the costs. Many such valuations are done on the basis of actuarial assumptions which are much more conservative than might be expected from a realistic viewpoint, and such assumptions may be appropriate for the purpose for which they are used. But such assumptions would not be appropriate for this study.

The ultimate cost of a pension plan is the sum of the benefits actually paid, plus the costs of administering the plan, less any investment income received. It is the actual experience rather than the actuarial assumptions which determine the cost of the plan. For example, under a number of pension plans, the annual actuarial valuations are done assuming no turnover whatsoever. On that basis the addition of vesting provisions would have no effect on the calculated costs. But such a plan actually would have additional costs by adding vesting which would be reflected in benefits paid eventually to more people, and would be reflected in the amount of "actuarial gains and losses" appearing in future years. Thus it was essential for the purpose of this study to make actuarial assumptions as realistic as possible.

The following discussion describes the actuarial assumptions used and indicates the effect of actual experience differing from the assumptions used.

1. TERMINATION OF EMPLOYMENT

The most important assumption in determining the additional cost for vesting provisions is the rate of termination of employment, commonly called turnover rates or withdrawal rates. Most actuarial valuations are based upon termination rates which vary by attained age only and do not take account of years of service. In actuality rates of termination vary significantly by years of service as well as by age. A 40-year-old employee who was hired at age 39 has a much higher probability of terminating his employment than a 40-year-old employee who was hired at 25. But very few pension plans in the United States have made studies to determine what the actual rates of termination of employment are in relation to both age and years of service. I was able to obtain data in appropriate form for the

study from only 7 such pension plans throughout the country, and there appear to be very few other pension plans which have made such studies.

Making such studies of rates of termination of employment by age and years of service (called "select and ultimate" tables by actuaries) requires considerable time and expense by the actuary, which is one reason why such studies have not been made for many plans. Another reason is that smaller pension plans do not have a sufficiently large volume of data to produce reliable results that do not unduly reflect chance variations.

Rates of termination vary somewhat with economic circumstances from year to year and this variation is greater in some industries than in others. The seven studies included in this report covered periods ranging from one year to 5 years within the time period between 1958 and 1971, a period which included a variety of economic circumstances.

For use in our study it was necessary to have rates of termination of employment which included disablement but excluded deaths. Some of the termination rates received included both death and disability and these were adjusted to exclude deaths. In a few cases the resulting rates of termination, assumed to include rates of disablement, were less than the rates of disablement otherwise assumed, and in those cases the termination rates were increased to equal the disablement rates. Some of the termination rates excluded both deaths and disablements and these were adjusted by adding rates of disablement.

There is a very minor cost effect of employees who elect early retirement benefits which are actuarially equivalent to the accrued benefit. For this reason it was assumed there would be no terminations of employment other than by death at ages 60 through 64, when employees are assumed to be eligible for early retirement. Because of the minor effect of early retirements during this period this assumption had a minor effect upon the costs reported.

The termination rates received from the various plans were in some cases unadjusted crude rates and in other cases had been graduated. In either case the rates were used as received with the adjustments noted above and with some graduation as required to provide termination rates at ages and durations not shown.

The termination rates included in the study are a direct reflection of the termination rates received from the various pension plans. The termination rates used are shown in Appendix 5.

2. RATES OF DISABLEMENT

As indicated above, assumed rates of termination of employment include rates of disablement. Rates of disablement used are the average rates for the years 1960 through 1964 experienced under the Federal Old Age Survivors and Disability Insurance systems (reported in Actuarial Note No. 58 by Robert J. Myers and Francisco Bayo, published August 1969 by the Social Security Administration).

3. MORTALITY

Rates of Mortality were assumed to be those of 1971 Group Annuity Mortality Table without projection. This table was based upon a 1964 through 1968 inter-company group annuity experience study of pension plan members retiring on or after the normal retirement date. The mortality rates determined from the study were reduced to take acount of the expected improvement in mortality between 1966 and 1971. The rates were further reduced moderately to add an element of conservatism. Thus the 1971 Group Annuity Mortality Table has slightly lower rates of mortality than those currently being experienced by pension plan participants.

In the past there has been a tendency for mortality rates to decrease. Further improvements in medical science and health care facilities would tend to make these rates continue to decrease somewhat. However it is possible that a deteriorating environment will tend to make the mortality rate increase, perhaps dramatically.

It has been demonstrated by Daniel F. McGinn (*Transactions of the Society of Actuaries*, Vol. XVIII, Part 1 pp. 194–196) that a moderate change in mortality rates has little bearing on Vesting Cost Ratios. Therefore any moderate deviations from the mortality rates assumed would have a negligible effect the Vesting Cost Ratios indicated.

Separate tables were used for male and female workers, except that two groups more than 80% male were considered to be 100% male. This assumption had a negligible effect on the Vesting Cost Ratios.

The cost calculations were based upon termination rates that included disablement rates and it was assumed that disabled employees would receive the same vested pensions as other terminated employees. This is valid where no special disability benefits exist, and the effect of special disability benefits was discussed in Appendix 1. At this point it is noted that it was assumed that all terminated employees, including disabled employees, would have the same mortality rates as employees who do not terminate their employment prior to age 65. Since disabled employees tend to have higher mortality rates than other employees, the calculated Plan Cost Increase and Vesting Cost Ratios might be expected to actually be slightly lower than those calculated and shown in this report.

The probability of a nuclear war cannot be measured, but such an event would make the mortality assumption and other assumptions used in this report entirely inappropriate. This report does not indicate what pension costs might be in such an event, not because we could rule out such a possibility, but because the impact of such an event is incalculable.

Similarly this report does not take account of possible extreme changes in the world, such as those envisaged in projections sponsored by the Club of Rome and performed at the Massachusetts Institute of Technology. Again, the probability of such events occuring is undetermined and the cost impact upon pension plans is beyond the possibility of determining. Thus this study has limited itself to cost projections which might be valid in a world with conditions similar to those which now exist.

4. AGE AT ACTUAL RETIREMENT

It was assumed that all members not terminating their employment prior to age 65 would retire at age 65, the assumed normal retirement date under the model plan.

As mentioned above, the effect of early retirement is very minor. Under some plans some employees defer their retirement past age 65. The effect of such deferment of retirement would be to reduce somewhat the Original Plan Cost, leave unchanged the Plan Cost Increase, and increase the Vesting Cost Ratio of such plans.

5. RATE OF INVESTMENT RETURN

It was assumed that the assets of the pension fund would have an investment return of 6% per annum. Future rates of investment return both under fixed dollar investments such as bonds and mortgages and under common stocks are unknown. The majority of pension fund assets of private pension funds are invested in common stocks and other equity investments, but some plans have most or all of their investments in fixed dollar investments. There is great variety in investment return. Daniel F. McGinn has demonstrated that, although an increase in investment return will greatly reduce the Original Pension Cost and the Pension Cost Increase, it will have very little effect upon the Vesting Cost Ratio. (*Transactions of the Society of Actuaries*, Vol. XVIII, Part 1, pp. 196–197).

6. SALARY SCALE

Increases in compensation can be divided into two major components. The first consists of increases related to age and years of service, which are often based upon experience, merit increases and promotions. These are elements which cause an individual employee's pay to rise in relation to the pay of new beginning employees or to the average employee. The second element of increase in compensation is inflation in wage rates, the increase in the average compensation of all employees.

It was assumed that the present distribution of compensation of employees in each of the groups by age and service represents the first element, related to age and service. As discussed in Appendix 2, the data for groups 1 and 2 included actual compensation of employees involved. For groups 3 through 7, where compensation information was not provided, it was assumed that the rate of compensation increased 1% a year prior to age 60 and did not increase after age 60.

The second element of salary increase, the inflationary element, was assumed to be 4% a year. This would appear to be slightly conservative in relation to long term past experience. For example, the average annual increase in average weekly earnings in all manufacturing industries in the United States was 4.4% during the last 10 years, 4.1% during the last 20 years, 5.4% during the last 30 years, and 4.9% during the last 40 years (based on U.S. Bureau of Labor Statistics information reported in Standard & Poor's *Trade and Securities Statistics*). Some other groups of employees are slightly higher and some slightly lower, but not dissimilar.

The two elements of increase in compensation were added to get the total rate of increase in compensation. The resulting salary scale is shown in Appendix 5.

Salaries scales were used only in computation of costs under Plan A and Plan B, whose benefits are directly related to pay. The 4% annual increase in compensation and benefits was used in determining benefits under Plan C.

7. CONCLUSION

In total the author believes the actuarial assumptions used in this report are realistic with some element of conservationism and are appropriate for the purpose used.

APPENDIX 4

Actuarial Methods

Costs were determined using the entry age normal cost method, which spreads costs uniformly over the working career of employees. Under Plan A and Plan B the current cost (or normal cost) was determined as a level annual percentage of payroll from the date of employment to the date of retirement. Under Plan C, in which it was assumed that the benefit schedule would increase 4% annually to keep pace with wages generally increasing 4% annually, the current cost was determined as a level annual percent of such increasing compensation from the date of employment to the date of retirement. Under Plan D, under which benefits are not related to compensation and there is no assumption regarding increase in benefits or increase in compensation, the current cost is determined as a level annual cost in dollars from the date of employment to the date of retirement.

The accrued liability of a pension plan may be thought of as the accumulated costs of all prior years. It is the amount that would be in the pension plan today if the plan had always been in effect and if the current cost had been paid in all prior years and if the actuarial assumptions had been exactly realized. Looking at it from another vantage point, the accrued liability is the amount which is needed, together with future current costs, to pay the future expected benefits to present plan members.

With respect to new employees there is no accrued liability and all costs consist only of the current cost. With respect to existing employees costs were calculated on two bases, first assuming that the accrued cost was fully funded and therefore only the current costs needed to be paid, and second assuming that the accrued liability was completely unfunded and that it would be amortized by payments over a forty year period in addition to payments for the current costs.

Forty years is the minimum period for funding unfunded liabilities in accordance with Opinion 8 of the Accounting Principle's Board of the American Institute of Certified Public Accountants, and is the minimum period for funding unfunded liabilities under S. 3598.*

For existing plan members vesting provisions under S. 3598 would apply to benefits earned after the effective date of the act. Therefore it is appropriate that such costs related only to future service benefits be funded as level annual costs between the current attained age and the member's retirement date, under the attained age normal cost method. The attained age normal cost method was used for such increases in cost.

In the author's opinion the methods used as described above are those that are most appropriate for the study.

*S. 4 introduced by Senators Williams and Javits on Jan. 4, 1973, has a minimum funding period of 30 years.

APPENDIX 5

Termination and Salary Factors

Annual Rates of Termination of Employment
Per 1000 Employees Including Disablements but Excluding Deaths
For Illustrative Age and Service Combinations

Completed Years of Service		Group 1		Group 2		Group 3	Group 4	Group 5	Group 6	Group 7	
		Males	Females	Males	Females	Males	Males	Males	Males	Males	Females
	Age at Hire:	22	22	20	20	22	22	20	22	22	22
0		168	366	294	292	557	421	331	381	313	401
1		99	310	187	250	428	251	208	161	240	397
5		22	163	87	192	176	86	128	51	92	211
10		11	81	22	105	65	30	96	31	70	116
15		8	40	10	54	38	15	45	23	40	79
20		6	20	6	24	29	10	38	20	30	54
25		5	10	5	11	24	7	30	13	25	54
30		8	6	6	17	20	8	12	8	21	26
35		14	10	11	17	18	14	12	14	14	10
	Age at Hire:	32	32	30	30	32	32	30	32	32	32
0		156	248	217	287	489	268	291	371	237	306
1		81	189	149	212	269	159	193	151	180	266
5		25	68	49	79	111	55	114	63	40	79
10		13	36	8	22	41	19	72	33	30	54
15		8	23	7	10	24	9	35	21	25	54
20		8	18	6	12	20	8	14	10	21	26
25		14	13	11	14	18	14	14	14	14	10
	Age at Hire:	42	42	40	40	42	42	40	42	42	42
0		136	197	198	204	450	178	262	343	162	257
1		67	119	111	149	214	106	153	148	174	139
5		24	50	60	49	88	36	91	57	25	54
10		15	35	12	15	33	12	60	15	21	26
15		14	29	11	14	19	14	28	15	14	10
	Age at Hire:	52	52	52	52	47	52	50	47	52	52
0		136	197	221	188	323	72	206	330	162	130
1		67	119	145	136	168	43	147	150	174	178
5		24	50	80	92	69	15	98	60	14	10

Salary Scale Factors
Ratio of Monthly Compensation to Monthly Compensation at Date of Hire
For Illustrative Age and Service Combinations

Years of Service		Group 1		Group 2		Groups
		Males	Females	Males	Females	3-7
	Age at Hire:	22	22	20	20	22
0		1.000	1.000	1.000	1.000	1.000
5		1.803	1.551	1.597	1.394	1.276
10		2.679	2.043	2.240	1.751	1.629
20		4.235	3.157	4.034	2.992	2.653
30		7.082	5.290	6.745	5.208	4.322
40		11.704	7.445	10.611	8.134	6.907
At Age 65		13.166	8.374	13.489	9.896	7.769
	Age at Hire:	32	32	30	30	32
0		1.000	1.000	1.000	1.000	1.000
5		1.597	1.471	1.553	1.359	1.276
10		2.446	1.926	2.065	1.713	1.629
20		3.138	2.947	3.344	2.832	2.653
30		4.674	4.253	5.118	4.706	4.240
At Age 65		5.797	4.669	6.226	5.726	4.769
	Age at Hire:	42	42	40	40	42
0		1.000	1.000	1.000	1.000	1.000
5		1.402	1.424	1.453	1.324	1.276
10		1.654	1.810	1.776	1.649	1.629
20		2.198	2.616	2.791	2.825	2.603
At Age 65		2.409	2.876	3.600	3.438	2.928
	Age at Hire:	52	52	52	52	52
0		1.000	1.000	1.000	1.000	1.000
5		1.271	1.394	1.217	1.217	1.276
10		1.660	1.689	1.480	1.482	1.597
At Age 65		1.595	1.861	1.665	1.667	1.796

APPENDIX 6

Data Listing

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 1
01	1	18		26,815	53	
			1	42,485	77	
			2	42,841	75	
			5	137,363	186	
			10	54,964	57	
			15	109,915	106	
			20	99,505	92	
			25	97,518	84	
			30	98,395	75	
			35	25,348	18	
			40	65,225	49	
01	1	18		800,374	872	
01	1	22		93,782	161	
			1	141,555	221	
			2	140,930	205	
			5	387,696	449	
			10	167,600	159	
			15	346,081	323	
			20	238,689	212	
			25	404,382	348	
			30	146,265	115	
			35	73,468	53	
			40	49,703	35	
01	1	22		2,190,151	2,281	
01	1	27		46,652	70	
			1	65,469	88	
			2	62,118	79	
			5	171,278	184	
			10	64,760	56	
			15	180,759	163	
			20	142,252	127	
			25	260,060	222	
			30	45,216	39	
			35	22,167	18	
01	1	27		1,060,731	1,046	
01	1	32		13,840	19	
			1	19,728	25	
			2	18,713	23	
			5	41,122	43	
			10	13,240	11	
			15	26,423	24	
			20	26,955	26	
			25	41,689	39	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 2
			30	10,497	10	
01	1	32		212,207	220	
01	1	37		7,665	10	
			1	11,259	14	
			2	9,890	12	
			5	17,362	18	
			10	4,586	4	
			15	8,860	9	
			20	7,327	8	
			25	8,945	9	
01	1	37		75,894	84	
01	1	42		5,565	7	
			1	8,326	10	
			2	6,447	8	
			5	9,162	10	
			10	2,665	3	
			15	3,393	4	
			20	3,190	4	
01	1	42		38,748	46	
01	1	47		4,037	5	
			1	4,934	6	
			2	3,059	4	
			5	4,139	5	
			10	890	1	
			15	801	1	
01	1	47		17,856	22	
01	1	52		2,919	4	
			1	3,694	5	
			2	2,163	3	
			5	2,288	3	
			10	618	1	
01	1	52		11,882	16	
01	2	18		99,618	242	
			1	146,328	328	
			2	132,344	284	
			5	306,788	547	
			10	106,794	163	
			15	178,218	115	
			20	74,524	103	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 3
			25	88,098	118	
			30	40,153	49	
			35	15,174	17	
			40	44,022	56	
01	2	18		1,232,061	2,022	
01	2	22		116,500	250	
			1	146,446	295	
			2	114,988	222	
			5	204,369	344	
			10	72,054	112	
			15	80,281	124	
			20	94,669	141	
			25	101,834	145	
			30	49,405	65	
			35	23,396	30	
			40	15,898	22	
01	2	22		1,019,840	1,750	
01	2	27		31,726	64	
			1	39,129	76	
			2	32,169	61	
			5	57,320	97	
			10	28,119	44	
			15	46,805	72	
			20	53,735	81	
			25	66,034	96	
			30	21,418	31	
			35	9,545	14	
01	2	27		386,000	636	
01	2	32		14,389	30	
			1	19,565	39	
			2	20,103	39	
			5	40,585	70	
			10	24,340	39	
			15	35,788	56	
			20	35,476	55	
			25	37,080	57	
			30	11,322	18	
01	2	32		238,648	403	
01	2	37		10,101	21	
			1	17,421	35	
			2	17,984	35	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 4
			5	38,8C4	67	
			10	17,387	28	
			15	21,748	35	
			20	19,199	31	
			25	13,452	22	
01	2	37		156,096	274	
01	2	42		9,292	19	
			1	15,52C	31	
			2	16,000	31	
			5	30,335	53	
			10	9,568	16	
			15	10,749	18	
			20	7,592	13	
01	2	42		99,056	181	
01	2	47		5,769	12	
			1	9,955	20	
			2	9,696	19	
			5	15,579	28	
			10	3,396	6	
			15	3,993	7	
01	2	47		48,388	92	
01	2	52		4,211	9	
			1	7,29C	15	
			2	7,086	14	
			5	8,040	15	
			10	1,067	2	
01	2	52		27,694	55	
01			TOTAL	7,615,626	1C,000	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 1
02	1	17	00	9,400	22	
			01	3,299	7	
			02	2,538	5	
			05	11,098	19	
			10	16,779	24	
			15	29,910	38	
			20	10,011	11	
			25	27,225	31	
			30	7,080	6	
			35	2,564	2	
			40	24,717	23	
			45	16,435	15	
02	1	17		161,056	203	
02	1	20	00	211,856	447	
			01	81,321	158	
			02	91,232	169	
			05	408,652	657	
			10	334,287	466	
			15	354,151	464	
			20	200,692	230	
			25	234,094	245	
			30	175,484	169	
			35	53,037	53	
			40	91,605	87	
02	1	20		2,236,411	3,145	
02	1	25	00	113,766	217	
			01	58,113	101	
			02	73,454	124	
			05	223,809	329	
			10	304,365	369	
			15	292,756	346	
			20	201,524	216	
			25	105,784	112	
			30	99,492	104	
			35	74,357	71	
02	1	25		1,547,424	1,989	
02	1	30	00	34,044	58	
			01	17,061	27	
			02	21,644	34	
			05	73,408	98	
			10	129,898	153	
			15	114,385	134	
			20	80,617	90	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 2
			25	61,872	67	
			30	33,966	36	
02	1	30		566,899	697	
02	1	35	00	16,835	28	
			01	9,147	14	
			02	11,066	16	
			05	35,449	48	
			10	71,414	88	
			15	54,687	71	
			20	37,793	46	
			25	32,291	36	
02	1	35		268,682	347	
02	1	40	00	9,682	16	
			01	5,027	8	
			02	6,230	9	
			05	20,825	29	
			10	39,948	53	
			15	26,755	37	
			20	18,659	24	
02	1	40		127,126	176	
02	1	44	00	4,373	7	
			01	2,530	4	
			02	2,835	4	
			05	8,143	12	
			10	11,539	16	
			15	6,819	10	
			20	2,246	3	
02	1	44		38,485	56	
02	1	48	00	3,663	6	
			01	2,537	4	
			02	2,766	4	
			05	5,450	9	
			10	6,158	9	
			15	2,596	4	
02	1	48		23,170	36	
02	1	52	00	2,083	3	
			01	1,048	2	
			02	1,187	2	
			05	2,258	4	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE
			10	1,216	2	
02	1	52		7,792	13	
02	2	17	00	8,161	20	
			01	4,971	11	
			02	6,259	13	
			05	17,297	34	
			10	7,390	13	
			15	4,399	7	
			20	1,320	2	
			25	3,927	6	
			30			
			35			
			40	2,369	3	
			45	2,150	3	
02	2	17		58,243	112	
02	2	20	00	124,746	287	
			01	67,771	147	
			02	68,430	144	
			05	166,298	334	
			10	63,236	123	
			15	44,326	82	
			20	20,775	35	
			25	37,325	57	
			30	10,468	15	
			35	1,360	2	
02	2	20		604,735	1,226	
02	2	25	00	50,045	112	
			01	26,082	55	
			02	29,378	61	
			05	66,572	133	
			10	44,474	85	
			15	42,121	79	
			20	24,338	42	
			25	35,731	55	
			30	7,353	11	
			35	4,154	6	
02	2	25		330,248	639	
02	2	30	00	27,761	62	
			01	14,582	31	
			02	15,887	33	
			05	48,510	97	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 4
			10	53,379	103	
			15	54,310	102	
			20	28,360	49	
			25	24,111	38	
			30	4,579	7	
02	2	30		271,479	522	
02	2	35	00	17,806	40	
			01	9,730	21	
			02	11,393	24	
			05	42,726	87	
			10	57,198	112	
			15	48,274	92	
			20	20,299	36	
			25	12,631	21	
02	2	35		220,057	433	
02	2	40	00	10,695	24	
			01	7,032	15	
			02	8,706	18	
			05	32,494	67	
			10	37,223	75	
			15	21,284	40	
			20	10,977	19	
02	2	40		128,411	258	
02	2	44	00	5,328	12	
			01	2,754	6	
			02	3,344	7	
			05	11,026	24	
			10	9,702	21	
			15	4,279	8	
			20	1,096	2	
02	2	44		37,529	80	
02	2	48	00	3,636	8	
			01	2,701	6	
			02	2,765	6	
			05	7,247	17	
			10	4,718	11	
			15	1,055	2	
02	2	48		22,122	50	
02	2	52	00	1,312	3	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 5
			01	878	2	
			C2	1,350	3	
			05	2,919	7	
			10	1,229	3	
02	2	52		7,688	18	
02			TOTAL	6,657,557	10,000	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS
03	1	22		468,666	891
			1	177,885	335
			2	94,872	177
			6	359,910	645
			12	163,984	277
			17	141,816	228
			22	122,298	187
			27	105,798	154
			32	91,098	126
			37	78,936	104
			42	65,962	86
03	1	22		1,871,225	3,210
03	1	27		294,216	533
			1	124,992	224
			2	74,316	132
			6	213,304	364
			12	97,032	156
			17	84,366	129
			22	72,622	106
			27	62,901	87
			32	53,889	71
			37	45,253	59
03	1	27		1,123,091	1,861
03	1	32		216,920	374
			1	93,760	160
			2	65,120	110
			6	205,128	333
			12	93,522	143
			17	81,066	118
			22	70,131	97
			27	59,961	79
			32	49,855	65
03	1	32		935,463	1,479
03	1	37		204,490	286
			1	93,632	152
			2	69,042	111
			6	248,184	383
			12	112,668	164
			17	97,605	135
			22	84,249	111
			27	69,797	91
03	1	37		979,667	1,433
03	1	42		160,891	251

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 10
			1	82,296	127	
			2	66,708	102	
			6	230,178	338	
			12	104,835	145	
			17	90,321	119	
			22	75,166	98	
03	1	42		810,395	1,180	
03	1	47		129,408	192	
			1	69,462	102	
			2	37,098	54	
			6	195,910	274	
			12	89,562	118	
			17	74,399	97	
03	1	47		595,839	837	
03			TOTAL	6,315,680	10,000	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 11
04	1	22		358,206	681	
			1	120,537	227	
			2	83,080	155	
			5	157,320	285	
			10	146,740	253	
			15	146,400	240	
			20	112,175	175	
04	1	22		1,124,458	2,016	
04	1	27		247,296	448	
			1	79,236	142	
			2	51,233	91	
			5	191,400	330	
			10	177,510	291	
			15	174,352	272	
			20	135,474	201	
04	1	27		1,056,501	1,775	
04	1	32		218,080	376	
			1	83,212	142	
			2	61,568	104	
			5	185,440	304	
			10	170,506	266	
			15	170,522	253	
			20	133,104	188	
04	1	32		1,022,432	1,633	
04	1	37		138,470	227	
			1	67,760	110	
			2	52,248	84	
			5	211,530	330	
			10	196,134	291	
			15	192,576	272	
			20	149,544	201	
04	1	37		1,008,262	1,515	
04	1	42		124,354	194	
			1	50,544	78	
			2	54,936	84	
			5	157,042	233	
			10	146,556	207	
			15	144,336	194	
			20	108,914	142	
04	1	42		786,682	1,132	
04	1	47		126,712	188	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 12
			1	83,763	123	
			2	44,655	65	
			5	174,168	246	
			10	159,216	214	
			15	154,167	201	
04	1	47		742,681	1,037	
04	1	52		109,740	155	
			1	41,470	58	
			2	32,535	45	
			5	130,200	175	
			10	118,885	155	
04	1	52		432,830	588	
04	1	57		77,376	104	
			1	33,840	45	
			2	24,288	32	
			5	94,341	123	
04	1	57		229,845	304	
04			TOTAL	6,403,691	10,000	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS
05	1	20		116,905	227
			1	89,440	172
			2	92,050	175
			3	82,836	156
			7	123,096	223
			12	64,960	112
			17	45,750	75
			22	48,716	76
			27	12,806	19
			32	14,160	20
			37	5,952	8
05	1	20		696,671	1,263
05	1	25		175,825	325
			1	134,015	245
			2	167,256	303
			3	194,184	348
			7	229,100	395
			12	143,350	235
			17	134,610	210
			22	87,620	130
			27	26,904	38
			32	17,112	23
			37	3,068	4
05	1	25		1,313,044	2,256
05	1	30		122,335	215
			1	93,150	162
			2	121,220	209
			3	174,042	297
			7	226,920	372
			12	208,966	326
			17	203,548	302
			22	92,748	131
			27	23,808	32
			32	11,505	15
05	1	30		1,278,242	2,061
05	1	35		80,730	135
			1	61,004	101
			2	82,960	136
			3	127,512	207
			7	240,375	375
			12	233,878	347
			17	204,612	289
			22	58,032	78

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 14
			27	9,971	13	
05	1	35		1,099,074	1,681	
05	1	40		62,271	99	
			1	47,625	75	
			2	71,151	111	
			3	104,976	162	
			7	237,922	353	
			12	232,932	329	
			17	136,152	183	
			22	22,243	29	
05	1	40		915,272	1,341	
05	1	45		46,931	71	
			1	36,018	54	
			2	55,942	83	
			3	70,143	103	
			7	191,160	270	
			12	134,664	181	
			17	66,729	87	
05	1	45		601,587	849	
05	1	50		31,924	46	
			1	24,535	35	
			2	34,692	49	
			3	39,325	55	
			7	111,600	150	
			12	52,923	69	
05	1	50		294,999	404	
05	1	55		18,980	26	
			1	14,003	19	
			2	23,808	32	
			3	15,040	20	
			7	36,816	48	
05	1	55		108,647	145	
05			TOTAL	6,307,536	10,000	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 15
06	1	22		144,124	274	
			1	92,394	174	
			2	106,664	199	
			3	97,380	180	
			7	195,924	348	
			12	124,912	211	
			17	139,328	224	
			22	101,370	155	
			27	81,066	118	
			32	58,563	81	
			37	33,396	44	
			42	42,952	56	
06	1	22		1,218,073	2,064	
06	1	27		178,296	323	
			1	114,390	205	
			2	108,659	193	
			3	134,284	236	
			7	239,760	405	
			12	197,174	317	
			17	170,694	261	
			22	205,413	299	
			27	220,515	305	
			32	136,620	180	
			37	42,952	56	
06	1	27		1,748,757	2,780	
06	1	32		82,940	143	
			1	50,982	87	
			2	77,552	131	
			3	111,826	187	
			7	200,906	323	
			12	174,618	267	
			17	192,360	280	
			22	265,341	367	
			27	283,866	374	
			32	81,302	106	
06	1	32		1,521,693	2,265	
06	1	37		83,570	137	
			1	49,856	81	
			2	57,846	93	
			3	89,947	143	
			7	174,618	267	
			12	132,591	193	
			17	188,703	261	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 16
			22	184,437	243	
			27	90,506	118	
06	1	37		1,052,114	1,536	
06	1	42		59,613	93	
			1	40,176	62	
			2	40,548	62	
			3	77,998	118	
			7	132,591	193	
			12	103,389	143	
			17	108,537	143	
			22	42,952	56	
06	1	42		605,804	870	
06	1	47		33,700	50	
			1	21,111	31	
			2	30,228	44	
			3	56,214	81	
			7	89,652	124	
			12	94,116	124	
			17	23,777	31	
06	1	47		348,798	485	
06			TOTAL	6,495,239	10,000	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 17
07	1	18		2,020	4	
			1	2,040	4	
			3	5,200	10	
			7	2,164	4	
			12	7,397	13	
			17	11,960	20	
			22	11,322	18	
			27	9,915	15	
			32	9,716	14	
			37	40,150	55	
			42	23,010	30	
07	1	18		124,894	187	
07	1	22		26,300	50	
			1	25,488	48	
			3	69,789	129	
			7	76,005	135	
			12	107,152	181	
			17	217,078	349	
			22	141,918	217	
			27	135,339	197	
			32	148,215	205	
			37	172,293	227	
			42	28,379	37	
07	1	22		1,147,956	1,775	
07	1	27		48,576	88	
			1	46,314	83	
			3	128,594	226	
			7	215,488	364	
			12	265,594	427	
			17	419,214	641	
			22	219,840	320	
			27	193,041	267	
			32	238,326	314	
			37	137,293	179	
07	1	27		1,912,280	2,909	
07	1	32		34,220	59	
			1	32,816	56	
			3	90,298	151	
			7	145,548	234	
			12	220,398	337	
			17	353,805	515	
			22	231,360	320	
			27	140,415	185	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 18
			32	118,118	154	
07	1	32		1,366,978	2,011	
07	1	37		27,450	45	
			1	26,488	43	
			3	72,964	116	
			7	79,788	122	
			12	122,286	178	
			17	245,820	340	
			22	189,750	250	
			27	62,127	81	
07	1	37		826,673	1,175	
07	1	42		15,384	24	
			1	14,904	23	
			3	41,643	63	
			7	40,533	59	
			12	67,962	94	
			17	129,789	171	
			22	125,021	163	
07	1	42		435,236	597	
07	1	47		8,088	12	
			1	8,172	12	
			3	21,514	31	
			7	21,690	30	
			12	30,360	40	
			17	60,593	79	
07	1	47		150,417	204	
07	1	52		4,248	6	
			1	4,290	6	
			3	10,950	15	
			7	9,867	13	
			12	11,505	15	
07	1	52		40,860	55	
07	1	57		2,232	3	
			1	2,256	3	
			3	5,369	7	
			7	5,369	7	
07	1	57		15,226	20	
07	2	18		4,040	8	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 19
			1	3,570	7	
			3	9,880	19	
			7	5,410	10	
			12	2,845	5	
			17	1,794	3	
			22	1,887	3	
			27			
			32			
			37	4,380	6	
			42	1,534	2	
07	2	18		35,340	63	
07	2	22		19,988	38	
			1	19,116	36	
			3	53,018	98	
			7	22,520	40	
			12	11,248	19	
			17	13,062	21	
			22	13,734	21	
			27	4,122	6	
			32	8,676	12	
			37	6,831	9	
			42	1,534	2	
07	2	22		173,849	302	
07	2	27		8,832	16	
			1	8,370	15	
			3	23,329	41	
			7	15,392	26	
			12	18,038	29	
			17	22,890	35	
			22	15,801	23	
			27	8,676	12	
			32	6,831	9	
			37	3,835	5	
07	2	27		131,994	211	
07	2	32		6,960	12	
			1	6,446	11	
			3	17,940	30	
			7	14,928	24	
			12	22,236	34	
			17	23,358	34	
			22	20,244	28	
			27	4,554	6	
			32	3,068	4	

GROUP	SEX	AGE AT HIRE	YEARS SERVICE	MONTHLY PAY	NUMBER MEMBERS	PAGE 20
07	2	32		119,734	183	
07	2	37		4,880	8	
			1	4,928	8	
			3	13,838	22	
			7	18,966	29	
			12	19,236	28	
			17	19,521	27	
			22	9,867	13	
			27	3,068	4	
07	2	37		94,304	139	
07	2	42		5,769	9	
			1	5,832	9	
			3	15,864	24	
			7	14,427	21	
			12	10,122	14	
			17	13,662	18	
			22	4,602	6	
07	2	42		70,278	101	
07	2	47		3,370	5	
			1	3,405	5	
			3	9,716	14	
			7	7,230	10	
			12	5,313	7	
			17	3,835	5	
07	2	47		32,869	46	
07	2	52		2,124	3	
			1	1,430	2	
			3	5,110	7	
			7	2,277	3	
			12	767	1	
07	2	52		11,708	16	
07	2	57		744	1	
			1	752	1	
			3	2,301	3	
			7	767	1	
07	2	57		4,564	6	
07			TOTAL	6,695,160	10,000	

SUMMARY OF REPORT

1. Basis for Study

The Senate Subcommittee on Labor was authorized by Senate Resolution 235, 92nd Congress, 2nd Session, to continue its study of private pension plans, with particular attention to the various cost factors which affect employers and plans. As part of this study, the Subcommittee contracted to obtain certain pension plan cost estimates from the actuarial firm of Grubbs and Company, Baltimore, Maryland. The study was made to determine the range of estimated costs to private pension plans resulting from compliance with minimum vesting requirements under several proposed minimum vesting standards.

2. Summary of Methods and Assumptions

Data was collected from actual pension plans and used to construct seven model plans distributions of employees. The distribution of employees by sex, age, years of service and rates of compensation were based directly on those for seven actual pension plans. The actual rates of termination of employment for each plan were used in the study. Assumptions were made about the plan provisions, rates of disablement, mortality, retirement age, investment return and increases in compensation. The various assumptions used are described in detail in the report and were carefully selected to be representative of actual experience under pension plans in the United States.

For each model distribution costs were calculated under four different benefit formulas. For each model and benefit formula costs were determined for plans which currently have (a) no vesting provisions, (b) a liberal vesting provision and (c) a moderate vesting provision. For each combination costs were calculated for (a) present employees under fully funded plans, (b) present employees under unfunded plans, and (c) new employees. And for each of these various combinations the increase in pension plan costs was determined under four alternative minimum vesting standards.

3. Summary of Findings

Private pension plans contain endless variety. They contain variety in their plan provisions, including existing vesting provisions, in the extent of their funding, in the distributions of employees they cover by age, sex, and years of service, in their rates of termination of employment of plan participants, in rates of investment return on their funds, and in many other factors. Each of these variations results in differences of costs. Thus the cost of private pension plans covers a wide range. And the increase in cost to comply with the vesting provisions of the proposed legislation also covers a wide range. The report

endeavors to determine the range of those costs for the large majority of plans. There will still exist a small percentage of plans with characteristics such that they do not fall within the range of costs presented in this study.

Costs were determined under four different schedules of vesting requirements. Under the first schedule an employee would be 30% vested in his accrued pension after 8 years of service, and the vesting would increase 10% per year until 100% vesting was reached after 15 years of service. Service prior to the effective date would be counted in determining eligibility for vesting, but benefits accrued based on such past service would not be required to be vested. If such past service were not counted for eligibility, the increase in pension plan costs would initially be slightly less than those shown in the report.

The second vesting schedule is like the first, except that all past service benefits would also be subject to the vesting requirements.

The third vesting schedule is like the first, except that, for employees age 45 or over on the effective date, all past service benefits would also be subject to the vesting requirements.

The fourth vesting schedule is the "Rule of 50" under which an employee's accrued benefit is 50% vested when his age plus service equals 50 years, but not prior to 3 years of service, and the vesting percentage increases 10% for each of the following 5 years. The Rule of 50 does not apply to past service benefits based on service prior to the effective date.

The range of increase in pension plan costs under each of the four vesting schedules is summarized in the table on page 6. The table shows costs separately for plans with no present vesting provisions, plans with moderate present vesting provisions, and plans with liberal present vesting provisions, as well as all plans combined.

23% of pension plan members are now covered under plans with no vesting prior to eligibility for early or normal retirement. The annual long term cost for most of these plans, before being amended to conform with the proposed legislation, ranges from 1.8% to 10.4% of pay. The increase in long term cost to amend these plans to conform with each of the proposed vesting schedules is shown in the top portion of the table as a percentage of payroll, and is shown in the bottom portion of the table as a percentage of the pension plan cost before amendment.

21% of pension plan members are now covered under pension plans with full vesting after 10 years service or less, with no age requirement. The annual long term cost for most of these more liberal plans, before being amended to conform with the proposed legislation, ranges from 2.2% to 11.9% of pay.

The remaining 56% of pension plan members are covered under plans with some moderate vesting provision, but less liberal than full vesting after 10 years service. The annual long term cost for most of these plans, before being amended to conform with the proposed legislation, ranges from 2.2% to 11.8% of pay.

Plans with liberal vesting at present have the highest present costs, but would have only a negligible increase. Plans with no vesting at present have the lowest present costs and would have the highest increase, bringing their costs up toward comparable plans with liberal vesting provisions at present.

Of those plans which do have an increase in cost, those with low turnover presently have the highest cost and would have the smallest increase. Those with high turnover have the lowest present cost and would have the largest increase, bringing them up toward the cost of comparable plans with low turnover.

Termination rates used in this study reflect a wide range of experience, but do not reflect the results of layoffs of large numbers of employees. While such layoffs increase the cost of vested pensions, the total cost of the pension plan as a percentage of pay is usually reduced by such an event.

This report presents pension plan costs as a percentage of total compensation for all plan members, and this is common practice. But it would be a mistake to think that a pension plan actually has costs for all members. Ultimately a pension plan only has costs for members who receive benefits. If a particular pension plan has indicated costs of 4.0% of total payroll, it may really have a cost averaging 6% of pay for those members who ultimately receive a benefit and 0% of pay for employees who terminate their employment with no vested benefit. If addition of a vesting provision increases the cost of that plan from 4.0% to 4.4% of total payroll, it has done so by increasing the number of members for whom there is a cost averaging 6% (perhaps more or less for these additional members), and decreasing the number of members for whom there is a 0% cost. Thus the addition of vesting does not increase the cost for plan members for whom there is already a cost, but rather it adds a cost for members who had no cost previously.

The full findings of the study and the basis on which it was conducted are described in the report.

RANGE OF INCREASE IN PENSION PLAN COSTS

FOR MANDATORY VESTING PROVISIONS

	PRESENT VESTING: NONE	PRESENT VESTING: MODERATE	PRESENT VESTING: LIBERAL	ALL PLANS
Percentage of Pension Plan Members Covered Under Such Plans	23%	56%	21%	100%
Range of Present Plan Cost as a Percent of Payroll	1.8%-10.4%	2.2%-11.8%	2.2%-11.9%	1.8%-11.9%
Range of Increase in Cost as a Percent of Payroll				
1. 30% at 8 years, graded, no past service vested	0.2%-0.6%	0.0%-0.2%	0.0%-0.0%	0.0%-0.6%
2. 30% at 8 years, graded, all past service vested	0.2%-1.4%	0.1%-0.3%	0.0%-0.0%	0.0%-1.4%
3. 30% at 8 years graded, past service vested for members age 45 and over	0.2%-1.2%	0.1%-0.2%	0.0%-0.0%	0.0%-1.2%
4. Rule of 50, no past service vested	0.2%-0.7%	0.0%-0.3%	0.0%-0.2%	0.0%-0.7%
Range of Increase in Cost as a Percent of Present Plan Cost				
1. 30% at 8 years, graded, no past service vested	3%-25%	0%-6%	0%-1%	0%-25%
2. 30% at 8 years, graded, all past service vested	5%-53%	1%-8%	0%-1%	0%-53%
3. 30% at 8 years, graded, past service vested for members age 45 and over	5%-44%	1%-6%	0%-1%	0%-44%
4. Rule of 50, no past service vested	3%-28%	0%-12%	0%-5%	0%-28%

The CHAIRMAN. Mr. Sheehan, United Steelworkers of America, is our next witness. President Abel is necessarily occupied elsewhere, so he is represented by Jack Sheehan. We welcome you back again, Mr. Sheehan.

STATEMENT OF JACK SHEEHAN, UNITED STEELWORKERS OF AMERICA, ACCOMPANIED BY BERNARD GREENBERG, PITTSBURGH, DEPARTMENT OF PENSIONS AND INSURANCE, AND MURRAY LATIMER, CONSULTANT

Mr. SHEEHAN. Thank you, Mr. Chairman. I regret to inform the committee that Mr. Abel, president of the United Steelworkers of America, has found it impossible to be here today. I know that you will understand the reason for his absence when I mention it to you. That is the fact that we have just undergone an election in our union. It is a referendum vote of all of our membership throughout the United States, both for its officers and executive board members.

I might say that although the count is still going on, he had hoped several times to be here this morning. Therefore, we had requested this late position on your schedule, but in the final analysis he just could not be here.

I myself would like to express that regret, because the support for this legislation goes very deeply in our union. I must say that among our membership it elicits a spontaneous, universal, and very strong reaction from our people.

So, Mr. Chairman, with your permission I would like to read the statement that President Abel had prepared for you today.

The CHAIRMAN. Fine.

Mr. SHEEHAN. Before I do that, I should indicate that I am accompanied by Bernard Greenberg from our department of pensions and insurance in Pittsburgh, on my right; and Murray Latimer, whom I am sure all of you know and are well aware of, and who is a consultant to our union on pensions and insurance.

Mr. Abel says: When I last appeared before you on June 29, 1972, I congratulated those members of the subcommittee—both Republican and Democratic—who had joined in bipartisan support of the Senate bill we were supporting at that time.

I said this was in the tradition of earlier legislative statesmen who sponsored and enacted legislation to protect American workers from exploitation, unsafe working conditions and economic insecurity.

Subsequently the full Committee on Labor and Public Welfare unanimously reported the legislation. But what we had hoped would follow that action was not to be. However, the present session of the Congress was barely underway when—on January 4—Senators Williams and Javits—with the bipartisan support of 52 cosponsors—introduced the Retirement Income Security for Employees Act of 1973—S. 4.

Before proceeding with my remarks, therefore, I do want to say that we have noted what the committee has done and the speed with which various Senators and the members of the Committee on Labor and Public Welfare have acted. We also are aware of, and sincerely appreciate, the position of the leadership of the Senate and the priority you attach to this legislation.

I might indicate here that we are aware that Senator Mansfield has indicated that this is a priority issue in this Congress, and this is what we make reference to here.

For the record, our union wholeheartedly supports S. 4, the Retirement Income Security for Employees Act of 1973, and just as strongly urges its enactment as soon as possible.

I say "as soon as possible" because I believe the case for this legislation was made long ago. The record for its need is eloquently clear. It has been documented by the countless stories of heartbreak and despair involving workers who have lost their pensions. You have heard those stories yourselves, from workers who have longed for the day of total release from the routine of work, and looked forward to retirement years of security and dignity, only to be rewarded instead with an old age filled with the nightmare of insecurity.

There is no use belaboring the record that demonstrates the need for the remedy provided in S. 4. By your previous action on this legislation, you have shown that you know well its passage is essential. The news media have publicized and dramatized the need for protecting workers against the loss of their pensions. You have seen the excellent documentary by NBC, "Pensions: The Broken Promise." We have seen it. Millions of Americans have seen it. By this time we all know the dimensions of the problem and we all know the urgency of its solution.

The case for the Senate bill has been made studiously, thoroughly, and objectively. Senator Williams, as Chairman of the Senate Subcommittee on Labor, directed a detailed 3-year study of private pension plans in the United States.

That study, as Senator Williams told the Senate last month on January 4, has dramatically documented the widespread weaknesses which often deny American workers the retirement security they look forward to after investing a lifetime of work.

The Senator noted that the study also showed that private pension plans repeatedly fail to fulfill their promises of retirement security. He also pointed out that at public hearings in Washington and five other cities, workers eloquently expressed the shock and despair they felt when they learned that their dreams of retirement years with economic security were never going to come true.

Senator Schweiker of my home State of Pennsylvania, for example, presided over a field hearing in Philadelphia last July. During that hearing he heard heartbreaking stories of workers in their 60's and 70's who had worked an average of 40 or more years for a company but who lost their pensions when the firm filed bankruptcy.

In past appearances before this subcommittee I cited many specific cases of pension heartbreaks involving our members. And I assure you again, it is impossible to describe one's own helplessness, one's anger, one's frustration, over the injustice of it all. Believe me, gentlemen, when a pension plan terminates without having reached full funding, there is little the union can do in the courts to compensate for the deficit between the assets of the pension fund and the benefits due the workers.

The work of this committee has been such that a well-balanced bill has evolved which would come to grips with the complex problems of private pension insurance. The bill has not been hastily drafted. On the contrary, it is the product of much study and many sessions of con-

sultation with professionals. We feel that the provisions on multiemployer plans, partial plan terminations and the liability of a company after plan termination, are key sections designed to handle the questions of equity raised by earier versions of the bill.

I do not feel that I have to repeat those cases at this hearing today or list the many others which I could detail at this hearing. But I do want to tell you about just one case—one individual and his wife—that occurred since I was last here and which again underscores the need to pass this legislation in the name of simple justice.

The case involves a William E. Martin, who retired at age 72 on February 19, 1971, after 26 years of service with the Angell Manufacturing Co. in Indianapolis, Ind. He started to receive a pension of $50 a month. Shortly after he and his wife sold their home and purchased a mobile home in Norman, Ind., he had to have an operation that cost him $1,400. With the increase in social security effective last September, and his $50-a-month pension, he had planned to pay off—in monthly installments of $20—the $455 of the hospital bill that he owed.

Now I will continue his story by quoting from a letter this former steelworker wrote to our union several months ago: "But no [pension] check came for September. I wrote to Cleveland City Bank that I had not received my check. They told me to send them my social security number and account number in 5 days and they would check on it. Two weeks later—he wrote—"I received the enclosed letter from Angell Co., stating that the Indianapolis plant had closed, and the funds allocated to my account were used to purchase an annuity for me with Bankers Life Co. of Des Moines, Iowa, and I would be receiving a monthly check in the amount of $7.73 for the rest of my life."

Here is a man, now 72 years of age, who worked 26 years for a company; worked in good faith, performing his job day after day, year after year. The end result: $7.73 a month. The Martins had hoped, by cutting their standard of living about in half, to have some $15 to $20 a month for emergencies. Now, that hope has been stolen. But we all know that this is not an isolated case. It is an all too common case. Yet each time it happens, one cannot help but be appalled by the cold, inhumane manner in which it is done and at what a terrible cost in human terms.

The members of this subcommittee should know that our union filed suit in Federal District Court on October 11 of last year against the Angell Co., seeking $440,000 in lost pension funds plus an additional $440,000 in punitive damages. It is our contention that the company violated collective bargaining agreements by failing to contribute to the pension fund even those amounts estimated by the company's actuary to be sufficient to provide the benefits under the plan. We also noted that although the company's pension program called for increases in the basic monthly benefit on January 1, 1971, and January 1. 1972, no funding at all occurred for periods subsequent to January 1, 1971.

No one can forecast the result of our suit; nor how long it will take to get an answer. But what happens to Mr. Martin and millions like him in the meantime? What happens to those who have no union to fight their cases in the courts? Also, it is physically and financially impossible to pursue legal action on a case-by-case basis. The answer is obvious. The solution is before the Congress in the form of the Retire-

ment Income Security for Employees Act of 1973, which in this case would have required a mandatory funding by the company of its stated obligation and a reinsurance of the company's unfunded liability at the time of the shutdown. The company would have been paying a premium on that unfunded obligation and part of its assets at the time of the shutdown would have been subject to recovery by the Federal trust fund.

Incidentally, Mr. Martin is still determined to meet his obligation of paying off the remainer of that hospital bill. He did not tell us how but he said he would do it somehow. And he also told us that he keeps going along, month by month, hoping that something good will happen even though it never does; but that he still will continue to hope.

The William Martins of our country should not have to pay the price they are being forced to pay. They should not be treated like old merchandise, no longer useful, and therefore to be discarded or marked down. They deserve better for what they have given.

If the American public is to emulate the work ethic and if the so-called frustration of the American worker is to be moderated, then at least these pension commitments to him should not be treated as promises—"broken promises" at that—but rather be recognized as liabilities which can be met by mandatory company funding and national insurance.

I would like to recall part of the comments by Edwin R. Newman during the NBC documentary on "Pensions: The Broken Promise":

> The crux of the pension matter now is that increasing numbers of Americans are reaching retirement age. They should not be expected to live in poverty or near poverty or a cut or two higher, lead a drab, penny-pinching sort of existence . . . The refrain that runs though what we've been hearing is a kind of incomprehension. What emerges over and over again is that these people played the game. They did what Americans are expected to do; they worked and met their obligations. But at the end of their working lives, they found that they were in trouble . . . The pension plans that they thought were going to take care of them didn't . . . In any case, at the end of their working lives, they feel cheated and cast aside.

It is our opinion, and I know it is shared by many Members of the Congress, that meaningful pension plan security—guaranteeing and protecting pensions—is one of the greatest unmet social needs of the people. When this legislation does become the law of the land, it will rank as one of the landmark pieces of social legislation in our Nation's history—along with the Wagner Act, minimum wage legislation, social security, medicare, and the Occupational Safety and Health Act.

I said at the outset of these remarks that they would be brief because the case for passage of the Retirement Income Security for Employees Act of 1973 is clear and unassailable. I agree with what Senator Javits told the Senate last month when he said, "* * * if all the volumes of words on the need for pension reform legislation, if all the testimony of witnesses before congressional committees, if all the studies and reports and reams of statistical surveys were laid back to back, they would fill this entire Chamber." Yet, the Senator added, there still is no adequate pension reform law on the U.S. statute books.

However, it is my fervent hope and expectation, as it is of the more than 30 million workers covered by private pension and welfare plans, that finally—in this session of the Congress—we realize our objective; that we see the Retirement Income Security for Employees Act of 1973 become law; that workers receive the guarantee that their twilight years will be years of dignity and contentment.

Let this be the last year of the broken promise. Let this mark the year that pension promises will begin to be kept. I would respectfully urge the subcommittee and the full committee, and the Senate itself, to act promptly on the Williams-Javits bill.

If the Retirement Income for Employees Act of 1973 is enacted—and it can be—the 93d Congress can be remembered by the workers of America as the Congress that remembered them.

Mr. Chairman, President Abel closes by thanking you for the opportunity to be here before you this morning and to assure you that we will be here even after the committee closes its sessions and begins the legislative process.

Thank you.

The Chairman. Thank you, Mr. Sheehan. Will you express our thanks to President Abel, and we certainly understand the need for him to be elsewhere. He and this union of course have been significantly helpful over the years of our study in getting ready for this day when we feel that we are close to final action in the Senate.

The testimony over these 2 days has been—I was going to say uniformly in support of this legislation, but there was one witness who had reservations about the legislation. He did not believe that the bill would solve all the problems for all the people in retirement. I will be quite frank in saying that I do not think we feel competent to solve all the pension problems here with one piece of foundation legislation.

We are trying to fulfill the need that we see in the best and most realistic way we can, and I gather that we are doing that. The response to this bill has been positive across the whole economic board: lawyers and actuaries on these pension funds do represent the workers, and the workers themselves support our legislation, so I think these 2 days, which followed the 3 years of study, the hearings of last year, and the executive action of last year, we should be close to favorable action on this bill.

Your help has been most significant. Senator Schweiker.

Senator Schweiker. Thank you, Mr. Chairman. I too want to say along with the chairman that we really appreciate the help and the leadership that the Steelworkers have given. I know in Pennsylvania they have, as nationally, made it a top priority issue. They have really gotten the grassroots, the rank and file, participating in this effort, which I think has been most helpful to our committee in sponsoring it. Mr. I. W. Abel, the president of the Steelworkers Union, himself has made it the No. 1 priority.

So I think the leadership here provided by Mr. Abel and the union really is commendable. I am delighted to have the chairman, Senator Williams, put at the top of our agenda for this year because I think that is going to be the key to our success.

I want to say we certainly do understand why Mr. Abel is not here. We are probably more sensitive when somebody is not here for an election than any other group. We really understand that.

Third, I do want to say something about the case that you pointed out, William E. Martin. What we are really saying here, the heartbreaking story that you are telling us about Martin really can happen to far too many other workers that are covered by pension plans in this country. I think that is pretty alarming.

So I think you are bringing the story home of Willy Martin and putting it into statistics by a succeeding witness shows the urgency, as you say, the clear-cut logic that cries out for some action. We appreciate your support and help.

That is all I have, Mr. Chairman.

Mr. SHEEHAN. I would like to make just one quick response here in reference to the case we mentioned. We highlighted this case to indicate that we feel it is not so much fiduciary irresponsibility that causes the loss of pensions. We also wanted to highlight the fact that many companies may be acting in good faith in their funding of their obligation, but when the plan terminates, the gap between that funding and the actual obligation results in the kind of problem illustrated in our example. Perhaps Mr. Greenberg would want to say a word or two more on the idea that what is at stake here is the reinsurance of an obligation, which even under good faith may end up being unfunded and the pension lost.

I think that is the significance of reinsurance provision that this legislation, we hope, will produce.

Mr. GREENBERG. If I may, I would just comment very briefly on what Mr. Leo of Towers and Crosby had to say a moment ago. He is among the people who have recently been converted to the notion that we ought to have legislative standards for funding and that we ought to have pension insurance legislation. But he was careful to say, as others attempt to say, that what we ought to do is protect exclusively service which is earned after the effective date of the act.

However, the problem is not one which we will only be facing 30 or 40 years from now, but rather it is a problem that we face every day. As Mr. Sheehan has pointed out, there are companies which are funding on the basis of the recommendations of an actuary but, because of circumstances beyond the company's control, they are compelled to terminate the plan. I would like to cite a case with which I was involved yesterday, and which, by the way, happens to be a case with Towers and Crosby. Not far from Reading, Pa., there is a major steel foundry, which as I say happens to be a client of Towers and Crosby. The company is funding, and is required by contract to fund, in accordance with the recommendation of the actuary. But yesterday the company went to great pains to tell us that they would make no guarantee—since all of us sitting in the room knew about the terrible state of the steel foundry industry—that the pension obligations would be met in the event that, sometime which I hope is in the far future, the operations of that particular company should cease.

It seems to me that what we are trying to do is to meet a problem which exists right now for those who have had service earned, promises

made, and who have depended upon their pensions, as Mr. Sheehan has said, to take care of them for the last 15 or possibly 20 years of their lives.

The CHAIRMAN. Anything further?

Mr. SHEEHAN. Thank you, Mr. Chairman. I appreciate your remarks made earlier when you said that perhaps now there is a great deal of support for this legislation. I guess it is always a happy situation to enact bills where there is consensus, rather than where there is controversy, and maybe the work of this committee has brought about that consensus. It means a lot to us now that we can do something about it.

Thank you.

The CHAIRMAN. Thank you.

(The prepared statement of Mr. Abel follows:)

TESTIMONY

of

I. W. Abel, President

UNITED STEELWORKERS OF AMERICA

before the

UNITED STATES SENATE

Committee on Labor and Public Welfare

Subcommittee on Labor

February 16, 1973

My name is I.W. Abel, and I am appearing here today as President of the United Steelworkers of America. I have already appeared before the Congress a number of times on this vitally important subject. But, we do appreciate this opportunity to appear before you again on legislation that is a priority objective of the United Steelworkers of America.

When I last appeared before you on June 29, 1972, I congratulated those members of the subcommittee -- both Republican and Democratic -- who had joined in bi-partisan support of the Senate bill we were supporting at that time.

I said this was in the tradition of earlier legislative statesmen who sponsored and enacted legislation to protect American workers from exploitation, unsafe working conditions and economic insecurity.

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Before proceeding with my remarks, therefore, I do want to say that we have noted what the committee has done and the speed with which various Senators and the members of the Committee on Labor and Public Welfare have acted. We also are aware of and sincerely appreciate the position of the leadership of the Senate and the priority you attach to this legislation.

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to purchase an annuity for me with Bankers Life Company of Des Moines, Iowa, and I would be receiving a monthly check in the amount of $7.73 for the rest of my life." (unquote)

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No one can forecast the result of our suit; nor how long it will take to get an answer. But what happens to Mr. Martin and millions like him in the meantime? What happens to those who have no union to fight their cases in the courts? Also, it is physically

and financially impossible to pursue legal action on a case-by-case basis. The answer is obvious. The solution is before the Congress in the form of the Retirement Income Security for Employees Act of 1973, which in this case would have required a mandatory funding by the company of its stated obligation and a reinsurance of the company's unfunded liability at the time of the shutdown. The company would have been paying a premium on that unfunded obligation and part of its assets at the time of the shutdown would have been subject to recovery by the Federal trust fund.

Incidentally, Mr. Martin is still determined to meet his obligation of paying off the remainder of that hospital bill. He didn't tell us how but he said he would do it somehow. And he also told us that he keeps going along, month by month, hoping that something good will happen even though it never does; but that he still will continue to hope.

But the William Martins of our country should not have to pay the price they are being forced to pay. They should not be treated like old merchandise, no longer useful; therefore to be discarded or marked down. They deserve better for what they have given.

If the American public is to emulate the work ethic and if the so-called frustration of the American worker is to be moderated, then at least these pension commitments to him should not be treated as promises -- "broken promises" at that -- but rather be recognized as liabilities which can be met by mandatory company funding and national insurance.

I would like to recall part of the comments by Edwin R. Newman during that NBC documentary on "Pensions: The Broken Promise" --

"The crux of the pension matter now" -- he said -- "is that increasing numbers of Americans are reaching retirement age. They should not be expected to live in poverty or near poverty or a cut or two higher, lead a drab, penny-pinching sort of existence ... The refrain that runs through what we've been hearing is a kind of incomprehension. What emerges over and over again is that these people played the game. They did what Americans are expected to do; they worked and met their obligations. But at the end of their working lives, they found that they were in trouble ... The pension plans that they thought were going to take care of them didn't ... In any case, at the end of their working lives, they feel cheated and cast aside." (unquote)

It is our opinion, and I know it is shared by many members of the Congress, that meaningful pension plan security -- guaranteeing and protecting pensions -- is one of the greatest unmet social needs of the people. When this legislation does become the law of the land, it will rank as one of the landmark pieces of social legislation in our Nation's history -- along with the Wagner Act, minimum wage legislation, social security, Medicare and the Occupational Safety and Health Act.

I said at the outset of these remarks that they would be brief because the case for passage of the Retirement Income Security for Employees Act of 1973 is clear and unassailable. I agree with what Senator Javits told the Senate last month when he said, "... if all the volumes of words on the need for pension reform legislation, if all the testimony of witnesses before Congressional committees, if all the studies and reports and reams of statistical surveys were

laid back to back, they would fill this entire Chamber ..." Yet, the Senator added, there still is no adequate pension reform law on the U.S. statute books.

However, it is my fervent hope and expectation, as it is of the more than 30 million workers covered by private pension and welfare plans, that finally -- in this session of the Congress -- we realize our objective; that we see the Retirement Income Security for Employees Act of 1973 become law; that workers receive the guarantee that their twilight years will be years of dignity and contentment.

Let this be the last year of the "Broken Promise." Let this mark the year that pension promises will begin to be kept. I would respectfully urge the Subcommittee and the full Committee, and the Senate itself, to act promptly on the Williams-Javits bill.

If the Retirement Income for Employees Act of 1973 is enacted -- and it can be -- the 93rd Congress can be remembered by the workers of America and the Congress that remembered them.

I want to thank you again for this opportunity to appear before you and to express the appreciation of the United Steelworkers of America for your interest, concern and action in answering the hopes of more than 30 million workers. Thank you.

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The CHAIRMAN. This concludes our hearings on S. 4. The record of these hearings will be held open for 1 week to allow the inclusion of additional statements.

The testimony which has been presented these 2 days, we are gratified to note, has been overwhelmingly in favor of legislation to correct the proven deficiencies in the private pension system as it exists today. To those witnesses—and they are in the majority—who believe that S. 4 is the best way to accomplish this reform, we express our deep appreciation, and we assure you that the many constructive comments and suggestions you have made will be given careful attention during the upcoming executive session of the Subcommittee on Labor as it meets to vote on this bill. To those witnesses who agree that pension reform is urgently needed, but that there are other ways of accomplishing it than the Retirement Income Security for Employees Act of 1973, we also express our appreciation. We are grateful for your deep interest in and commitment to the goals of S. 4, and shall pay no less careful attention to your opinions and suggestions.

What is important to the people most intimately affected by pension legislation—American working people—is that we are apparently reaching a consensus on the need for Congress to act on this legislation. Working men and women can look to these 2 days of hearings with deep satisfaction that their heartrending pleas for dignity and financial security in their twilight years have finally been heard. I believe that they can look for a bill to emerge from this session of the 93d Congress that will contain the necessary remedies for the problems of inadequate vesting, poor funding, and all the other inequities which this subcommittee has proven are denying pension benefits to huge numbers of people.

Since S. 3598 was reported to the Senate last September, the impulse for action on pensions has steadily gained momentum. We on the Labor Committee will not allow this momentum to decline until S. 4 is signed into law as the pensioner's bill of rights.

At this point I order printed for the record any additional statements submitted by persons unable to attend this hearing, and all other pertinent material submitted by same.

(The information referred to follows:)

WRITTEN TESTIMONY OF MEYER BERNSTEIN, PUBLIC AFFAIRS DIRECTOR,
UNITED MINE WORKERS OF AMERICA
AND
HARRY HUGE, ESQ., ARNOLD AND PORTER, WASHINGTON, D.C.,
SPECIAL COUNSEL TO UMWA PRESIDENT ARNOLD MILLER
ON WELFARE FUND MATTERS

In early 1969, the wife of a disabled coal miner in Quinwood, West Virginia, wrote to Harry Huge complaining about the fact that her husband, and hundreds like him, did not receive pension or medical benefits from the United Mine Workers of America Welfare and Retirement Fund of 1950 (the "UMW Welfare Fund"). The letter recited bitterly the many long years that her husband had spent in the mines, and how he and other miners had been destroyed physically, and sometimes emotionally, by this most brutal of all industries. These men, all members of the UMWA, felt a sense of betrayal toward the Union and Fund which they had helped create.

These miners knew only that they had worked long and hard in the coal industry and now, when they most needed it, the "welfare and retirement benefits" that the Fund had promised weren't there. All of these pensioners, who had been rejected, had received denial letter after denial letter from what seemed like a Kafkaesque bureaucracy in far-off Washington, D.C. And these miners asked a very simple question -- How can we have

worked so long only to be faced with regulations which deny so many of us our retirement income?

From those beginnings developed the case of Willie Ray Blankenship v. W. A. (Tony) Boyle. It has been called in the words of one commentator "one of the most massive cases in American legal history" and a "classic in the law of trusts". When Mr. Huge first started to work on this case, he did not know any of the things that he later found out, and then only after months of very intensive investigation. Mr. Huge had to sort through Welfare Fund reports at the Labor Department in Silver Spring; banking records of the Comptroller of the Currency; Union reports, also at the Department of Labor in Silver Spring; and the files at the Security and Exchange Commission. Those reports revealed some very dry facts, like the fact that the Union owned 740,000 shares of a bank; that the Welfare Fund at the end of its fiscal year in 1968 had on deposit $67,000,000 in accounts drawing no interest, and some $50,000,000 in time deposits; and there was a bank which had on its Board of Directors the Comptroller and General Counsel of that same Welfare Fund. Nowhere did it state in any of the records at the Department of Labor or the public reports issued by this Welfare Fund that that money was kept in the Union-owned bank as part of an overall scheme to benefit the bank and the Union to the detriment of these

beneficiaries. But, as Mr. Huge was soon to learn, that was only the top of the iceberg.

Blankenship v. Boyle is now over. It finished just three weeks ago, when Judge Gerhard A. Gesell signed an Order which will permit up to 20,000 old and retired coal miners who had been denied to now receive their welfare and retirement benefits. Before that most important Order of this case was signed, there were two separate trials, each lasting approximately a month, spread over a 3-year period; countless depositions; and more than 15,000 hours of legal time spent by counsel over nearly a 4-year period. Trustees were removed and held personally liable for damages; broad equitable decrees were enforced; and $11,500,000 was won for the Welfare Fund. And most importantly, some 20,000 beneficiaries who had been wrongfully denied their benefits will now receive them. The first checks to coal miners are supposed to go into the mail sometime this week.

We recite these facts only to give some perspective to the enormous effort and cost -- and the human suffering behind the need for such effort -- to reform just one of this country's private pension plans. But it is ours -- and the coal miners reformed it -- or are reforming it. The Blankenship case is merely the most public example of the need for a pension reform bill like you are considering. It should not be up to -- in the words of Judge Gesell -- ". . . Willie Ray Blankenship and a small band of miners . . ." to have to come forward once every 20 years in every

industry and location in order to reform a pension fund. What is needed, and what the UMWA, President Miller, Vice President Trbovich, Secretary-Treasurer Patrick, and the other leaders of the United Mine Workers of America urge upon you is that you write and pass the strongest possible pension bill in terms of disclosure, vesting, funding, fiduciary responsibilities and enforcement. We are concerned that the bills in both the United States Senate (S.4) and in the House of Representatives (H.R.2 and H.R.462) do not go far enough, and must be strengthened.

Some of our areas of concern follow:

1) FIDUCIARY RESPONSIBILITIES -- The word "trustee" has, in the law and tradition of the English-speaking peoples, a very special meaning. It means a person of extraordinary sensitivities, managing, caring for, and preserving the assets, and, in many instances, the lives of other human beings for the benefit of those others. The standard to which a trustee is held is the highest. The most fundamental duty of a trustee is of undivided loyalty to the beneficiaries, and, as it was put in the Blankenship case:

> ". . . You can't be just a little bit loyal. Once you are a trustee, you are a trustee, and you cannot consider what is good for the Union, what is good for the operators, what is good for the Bank, anybody but the trust."

And, as Judge Gesell found:

> ". . . The congressional scheme (of §302(c) of the Labor-Management Relations Act) was thus designed not to alter, but to reinforce 'the most fundamental duty owed by the trustee': the duty of undivided loyalty to the beneficiaries. 2 Scott on Trusts § 170 (3d ed. 1967). This is the duty to which . . . trustees . . . must be held."

The duties of a trustee are many and varied. But in exercising those duties and those responsibilities, they are held to long-standing legal principles establishing what a trustee should do. The legal standard is not as Sec. 111(b)1(B) of H.R.2 or Sec. 510 of S.4 state -- ". . . a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; . . ." Thus, we are very concerned about that standard. There should not be the slightest hint that H.R.2 or S.4 in any way is attempting to write new fiduciary standards for trustees. Those standards are clear and precise and already demand the highest performance. These bills and the committee reports and the legislative history, should make clear that, as Judge Gesell said about the Labor-Management Relations Act, that the pension reform bills are "designed not to alter but to reinforce those duties of trustees."

2) VESTING -- Regulations of pension funds do not have to be complicated. And they should never be permitted to take away the years of toil of men and women. Pension fund regulations do

not have to be designed as if their sole purpose was to set up a series of hurdles to jump over, a series of loops to crawl through, and a series of rigid requirements that are hypothetical and idealized, but have no practical application to living, breathing men and women who work, sometimes get sick: have to move: have family problems: or otherwise get affected by the events of everyday life.

But regulations of this type are typical of most pension plans. We are familiar with other major pension plans whose requirements make the more outrageous requirements of the UMWA Welfare Fund appear liberal. For example, there is one pension plan which, because a man was sick and could not work for the three years before he retired, took away all of his retirement credits from February 4, 1921 through March 17, 1969. The letter from this fund stated:

> "We regret to inform you that all of the 3,208 days of employment credit you accumulated from February 4, 1921 through March 17, 1969, has been forfeited (sic)."

Other funds' requirements are equally appalling. And since most of the people who have been denied do not have access to adequate legal representation, they silently burden in their working years, then are denied the fruits of their labor, and have their retirement years stripped of their dignity. They are victims of a theft of their life expectancy and of their hard-earned dollars as much as any victim of armed robbery in a street crime. And theft in this manner is more invidious because it is

more impersonal, widespread, institutionalized, and takes place behind a veneer of respectability. But it is criminal none the less.

For these reasons, vesting should begin as soon as possible. If a man works two years in an industry, contributes two years' earnings to a welfare fund, he should expect to get, when he reaches retirement age, something back for the amount of money that he put in. If a pension fund wants to require a man to work twenty years before he gets a <u>full</u> pension, that's fine. It is not written anywhere that everybody's pension benefits should be the same. But a worker who works five years in an industry or ten years in an industry should know that come retirement age, his work and contributions will not have been in vain. In this regard we endorse and support the positions on funding and vesting of Professor Merton I. Bernstein, Professor of Law at Ohio State University, as set forth in his testimony before the United States Senate on Friday, February 16, 1973.

We realize this is difficult in some industry-wide settings such as coal mining, steel, construction work, carpentry, and the like. The answer is the portability of pension credits. And managing the problems of portability is minor when compared with managing the problems of complete loss of pension benefits.

We therefore endorse the mandatory portability program for vested pensions set forth in H.R.462, and urge that the discretionary provisions of Title III of S.4 also be made mandatory. However, we do want to point out that in Sec. 103(b)3 of H.R.462 and Sec. 303(a)(3) of S.4, the Secretary is limited to investing surplus amounts only in interest-bearing accounts in banks or savings and loan associations. First, such accounts are only insured up to $20,000 each. But more importantly, there are many other investment opportunities that are just as safe, and return more to the fund than savings accounts in banks or savings and loan associations. It would seem that the Secretary should not be forced to put all of these funds into banks or savings and loan associations. For example, Sec. 206(d) of H.R.462 permits monies of the Pension Benefit Insurance Fund to be invested in obligations of the United States, which frequently pay more than savings accounts and banks. But Sec. 206(d) is also too narrow in limiting investment decisions.

3) FUNDING -- Funding should begin immediately on an expedited funding schedule of the shortest possible time, with a maximum of thirty years. There is no need to wait three, or five, or eight years to have every pension fund in this country begin funding. Funding should begin in the immediate next fiscal year. Actuarial firms may have to work a bit overtime. But any welfare fund that does not have an actuarial computation of what it costs

to fully fund is probably violating its fiduciary responsibilities now anyway.

We also would like to make these additional points regarding funding. First, there should be a limit on the number of variances from the funding schedule which the Secretary may grant. Indeed, the Secretary should be given discretion to terminate a plan at any time that he decides that employee interests will be imperiled.

There is also a built-in conflict of interest regarding the Secretary when he acts both as the manager of the Pension Benefit Insurance Fund and has the right to give variances. Since, by terminating the plan, the assets of the Pension Benefit Insurance Fund will be used, the Secretary would always be inclined to give funds too much time and perhaps imperil beyond repair the rights of beneficiaries. We would therefore urge that the Pension Benefit Insurance Fund should have an independent administrator whose sole loyalty is to the beneficiaries and to the establishment and operation of sound plans.

4) DISCLOSURE -- The present disclosure requirements relating to welfare and retirement funds are a farce. The Securities and Exchange Commission has been in existence for some 40 years. If any corporation, or any individual, would have dared to file as its annual report the disclosure forms required by the Welfare

and Pension Plans Disclosure Act of 1959, that corporation, its Board of Directors, its officers and anybody even remotely connected with that report would probably have been indicted instantly. Very simply put, the report that funds have to file presently is worthless, meaningless, inadequate, and almost not worth the paper that it is written on. The SEC during the last 40 years, through a body of regulations relating to disclosure, has developed reporting requirements for major and minor corporations giving the investing public some idea of what's going on, both from an individual point of view, as well as from a corporate point of view. Unless and until the disclosure provisions of these bills, which are a vast improvement over the 1959 provisions, begin to resemble the disclosure provisions of the Security and Exchange Commission, we will continue to have some of the same insider trading, conflict of interests, mismanagement, and all the other horrors that the Blankenship case conjures up.

There can be no question but that welfare and retirement funds should report as extensively as any corporation or mutual fund. After all this is really wage earners' money we are dealing with. And as such it should be safeguarded. We as union representatives are glad to enlist the government's support toward this end.

If a corporation fails to file a proper report, the officers of that corporation can be not only subject to civil responsibility, but criminal responsibility as well. Some of this country's major corporate officials have gone to jail for failure to file a report. That same threat should hang over every welfare fund trustee and manager who is dealing with the hard-earned dollars of America's working men and women.

5) ENFORCEMENT -- John Dewey once wrote:

> "No matter how ignorant any person is, there is one thing he knows better than anybody else, and that is where the shoes pinch his own feet, and that is because it is the individual that knows his own troubles, even if he is not literate or sophisticated in other respects. The idea of democracy as opposed to any conception of aristocracy is that every individual must be consulted in such a way, actively not passively, that he himself becomes a part of the process of authority, of the process of social control; that his needs and wants have a chance to be registered where they count in determining social policy."

That is the policy that we advocate in enforcement.

We believe that it is vitally important that there be a government to enforce the provisions of the law, be it a part of the Department of Labor, Department of Justice, or a separate pension fund agency, but we believe it of even more importance that

the man whose shoe is being pinched -- whose pension has been denied -- have the right to go into Court. Thus, it must be clear from this bill that the next time a Willie Ray Blankenship stands up, it will be easy for him to get into Federal or State Court. That is why we believe H.R.2 Sec. 106(e)3 and S.4 Sec. 602 should be changed to permit not only the Secretary but a participant or beneficiary to enjoin any act or practice which appears to violate any provision of this title, or to ask for the removal of a trustee. We also do not understand why there is any need for Sec. 106(f)(2) of H.R.2. There is no reason why a trustee should not know that if he plays fast and loose with working men's money he can be personally liable for losses that occur. Indeed, that is the law in any event, and, again, these bills should not raise any questions that the standards for liability of a trustee are in any way being diminished.

6) WIDOWS AND WOMEN BENEFICIARIES -- As noted, it was the wife of a retired coal miner whose letter triggered the Blankenship case. If she is still alive when her husband dies, our UMW Welfare Fund now does not contain adequate provisions to care for her or her dependents. President Miller has pledged that one of his top priorities is to make adequate provisions for widows. However, the UMW Welfare Fund is not unique, and, providing for lump-sum widows benefits, it is indeed more generous than most.

In addition, if the rules and regulations of welfare funds make it almost impossible for most working men to qualify for pensions, it is many times more difficult for a woman. Her pattern of employment just does not fit the typical requirements of a welfare fund. Thus, there should be special attention given to working women, and the widows of working men.

We thank you for the opportunity to present these views.

STATEMENT OF THE AMERICAN LIFE INSURANCE ASSOCIATION TO THE SUBCOMMITTEE ON LABOR OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE ON S. 4

February 15, 1973

The American Life Insurance Association has an aggregate membershi 355 life insurance companies which hold 99 percent of the reserves of insured pension plans in the United States. We appreciate this opportunity to express our views on S. 4--the Retirement Income Security for Employees Act.

General Statement of Position

Our Association supports reasonable measures which will (1) encourage the growth and expansion of the private retirement system and (2) increase the effectiveness of this system in fulfilling the needs and expectations of covered participants. While we are opposed to some of the specific provisions contained in S. 4 and have serious reservations as to the necessity or timeliness of enacting certain of the others, we believe that, on balance, this bill represents a significant step towards achieving the second of these two objectives.

In addition, we believe that there is need for legislation--either as part of this bill or independently--which is directed at achieving the first objective, that is, the growth and expansion of the private retirement system. Possible specific approaches to meet this goal are discussed later in the statement.

Before discussing the specific provisions of the bill, we would like to emphasize--as a general principle applicable not only to the provisions of this bill but also to any other proposals presented to the Subcommittee--the importance of maintaining a vital and dynamic system of private retirement plans. These plans, together with individual savings, insurance, and Social Security, serve the purpose of providing for the retirement needs of our aged population. In this respect, private retirement plans offer unique advantages. Building on top of the floor of protection offered by Social Security, they provide the flexibility by which private enterprise, working through a voluntary system, can make desirable adjustments to suit the individual retirement needs of particular groups of employees in different firms, industries, labor unions, and geographical locations. The important--and growing--role played by the private retirement system is evident from the fact that, as of 1971, the system covered 31.5 million active workers and 5.5 million retired individuals. During 1971 about $7.5 billion were paid by these plans in retirement benefits.

Private retirement plans also have the advantage of supplying substantial amounts of the capital required for a growing dynamic economy. As of the end of 1971 approximately $145 billion of savings had been accumulated under these plans and invested through private financial institutions.

We firmly believe that no legislation should be enacted which will impede the ability of private retirement plans to perform these vital functions. This is not to say that faults should not be corrected and improvements

should not be made. However, each legislative proposal should be scrutinized in the context of the desirability of its objective as weighed against the effect it will have on the growth of employee retirement plans.

We would now like to discuss those provisions of the bill with respect to which we have specific comments and suggestions. In this regard, we are pleased to note that certain of the suggestions which were made in our statement*/ during the Subcommittee's hearings last year on S. 3598 have been reflected in S. 4.

Discussion of Specific Provisions in S. 4

I. Minimum Standards Relating to Eligibility and Vesting (Title II - Part A of the Bill)

(A) Eligibility Requirements. We do not oppose Federal legislation prescribing reasonable maximum age and service requirements which may be imposed as a condition for eligibility under private retirement plans. The specific limitations that are to be prescribed should, however, be carefully designed so as to minimize the administrative complexity and cost that will, in many types of plans, be involved in covering employees earlier in their employment than is presently required. In this regard, we believe that there are advantages to lengthening the waiting period included in the bill (i.e., one year and age 25) to three years and age 25. There are many employees who remain with a company for only a few years and it is highly

*/ This statement, which was presented by Douglas B. Hunter, was made on behalf of the American Life Convention and the Life Insurance Association of America. These two associations have now been merged into a new organization--the American Life Insurance Association.

unlikely that they will have acquired vested rights in this short period of time. Nevertheless, under a one-year eligibility period, many of these employees would technically have to be enrolled as participants in the company's retirement plan, with attendant unnecessary administrative costs. These problems would be accentuated if the plan is contributory. The employees would have to make the required contributions which may not only be an inconvenience for them but would also involve considerable administrative costs for the plan. When such employees terminate employment, their contributions would have to be refunded.

We believe that much of this unnecessary cost--which, in the end, will not in fact produce a pension but rather will absorb funds otherwise available for retirement benefits--can be eliminated by lengthening the permissible waiting period without appreciably affecting the pension benefits of those employees who remain with the employer for a significant period of time. To this end, the effect on employees of a lengthened eligibility period could be minimized by providing that the mandatory period of service required for vesting shall begin to run as of the date an individual is first employed, rather than as of the time he is eligible to participate in the plan.

(B) Vesting Standard. We believe that a well-designed mandatory minimum vesting requirement for retirement plans would make a valuable contribution towards reducing instances in which the pension expectations of employees are not met. Very significant improvements in vesting provisions have been, and are continually being, made on a voluntary basis.

However, the adoption of a reasonable mandatory vesting requirement would accelerate this trend. The approach in the bill represents, in our opinion, a reasonable formula for this purpose. We would note, however, that there are other reasonable formulas that could be adopted. In this regard, we believe that the so-called "rule of 50" proposed by the Administration last year also represents a reasonable mandatory vesting formula.

While we believe that, in general, the vesting provisions in the bill are acceptable, we suggest the following revisions and clarifications in the detailed provisions of the bill:

(1) Effect of a break in service. The bill provides, generally, that only three of the required years of service prerequisite to vesting need be continuous. An exception is made in the case of an employee who terminates service with fully vested rights. In this situation, if he is re-employed, he may be treated as a new employee for purposes of applying the vesting provisions to benefits he earns as to his subsequent employment. We suggest that the Subcommittee give consideration to further expanding this exception by allowing a plan to ignore prior employment in all situations where there has been a long break in service. Such a rule would obviate the necessity for employers and plan administrators having to retain employment records with respect to short-term employees for many years because of the slight chance that they may some day be re-employed.

(2) Definition of "normal retirement age". Under the definition of "normal retirement age" contained in the bill, it is provided that

notwithstanding the plan provisions, such age cannot be later than age 65. There are pension plans which, for valid reasons, provide for normal retirement ages later than age 65, particularly in the case of employees who are over age 55 when they are employed. Thus, we urge that the definition of "normal retirement age" be revised either to delete the age 65 limitation or to provide appropriate exceptions. We have been conferring with the Subcommittee staff as to possible amendments to achieve this objective.

II. Funding
(Part B of Subtitle II of the Bill)

As a general principle, we believe that a minimum mandatory funding standard, which will assure that funding of pension promises is being carried out on a sound and adequate basis, will significantly strengthen the private retirement system. However, we strongly believe that the actual assumptions and funding methods to be utilized in a particular plan should be left to the discretion of the employer, subject to certification by a qualified actuary, and not prescribed by a Government agency. Each plan presents funding considerations peculiar to the particular provisions of the plan, the make-up of the covered participants, and the financial considerations applicable to the employer or employees involved. There is no single set or range of funding methods and assumptions that are suitable for all situations. Instead, it is necessary that the funding assumptions and methods be designed to fit the particular facts at hand. This is a task properly left to a qualified actuary working within the context of the plan involved. The role of the Government

should be limited to prescribing a minimum schedule for funding normal service costs and past service liabilities.

Within the context of these general principles, we have the following specific comments with respect to the funding provisions in the bill.

(A) Authority to Establish Limitations on Actuarial Assumptions. For the reasons stated above, we oppose the provision in section 101(b)(3) authorizing the Secretary of Labor to prescribe rules establishing limitations on actuarial assumptions. In lieu thereof, consideration might be given to requiring certification by a qualified actuary that, in his opinion, the funding assumptions and methods utilized by a plan are in accordance with generally accepted actuarial principles.

(B) Minimum Funding Schedule. The bill provides the general rule that the contributions to a plan must be sufficient to fund all normal service costs and to liquidate initial unfunded liabilities, in equal installments, over a period not to exceed 30 years. In our opinion, this is a reasonable approach to a minimum funding schedule. In this respect, we believe that a shorter period for funding past service liabilities--for instance, 25 years--is essential if a program of plan termination insurance is to be adopted.

The funding schedule embodied in the bill is properly directed only towards establishing a minimum funding level as a matter of Federal mandate. However, we think it is extremely important that Federal policy encourage voluntary funding over this minimum level. A significant step in this direction would be the removal of the existing tax restraints on funding.

We recognize that this is a matter within the jurisdiction of another Committee, but we urge that this Subcommittee take whatever steps it can to encourage such legislation.

In addition to the matters discussed above, we have the following more technical comments on the funding provisions in the bill:

(1) Experience deficiencies. Under section 210(b)(3) of the bill, an employer would be required to fund any experience deficiency (that is, any deficit in funding arising because actual plan experience differed from the actuarial assumptions utilized in determining the contributions) over a period not to exceed five years. An exception is provided where funding at this rate is inconsistent with the Internal Revenue Code deduction limitation. While this is one possible approach, there are other accepted actuarial approaches to making up experience deficiencies and we do not believe that the law should preclude their use. Thus, we urge that the bill be amended to allow the use of alternative methods for funding experience deficiencies, and we have submitted specific statutory language to the Subcommittee staff to accomplish this objective.

(2) Merger or consolidation of plans. Under the bill, one option open to the Secretary of Labor if a plan's funding deficiency is not made up is to order the plan to be merged or consolidated with another plan or plans of the employer. We do not believe this to be an equitable enforcement tool and urge that the provision be deleted from the bill. More specifically, it is not fair, in our opinion, to dilute the funding for one set of employees by requiring that their plan be merged or consolidated with another, more

poorly funded plan. Beyond the matter of equity, such a merger or consolidation could present substantial technical problems.

III. Plan Termination Insurance
(Title IV of the Bill)

Title IV of the bill would establish a pension plan termination insurance program the objective of which is to protect participants against the loss of vested pension rights if their plan is terminated before adequate monies have been accumulated under the plan to fund these liabilities. This protection would be provided under a two-step program: First, the employer or other sponsor of the plan would be responsible for completing part or all of the necessary funding, depending on its financial ability to fulfill this commitment. Second, any remaining deficiency would be made up out of a pool of funds consisting of premiums paid by private pension plans as a group and administered by the Department of Labor.

Putting aside the details of the proposed program for the moment, we believe that the overall question of whether such a program should be adopted presents serious--and competing--considerations which must be carefully balanced by the Subcommittee.

On the one hand, while we believe that adequate funding is an essential aspect of sound pension plan operation, it is nevertheless universally accepted that employers must be allowed to fund past service liabilities over a period of years in order to avoid imposing an unreasonable financial burden on them at the time they establish or liberalize a plan. Thus, it is inevitable that there have been, and will continue to be, situations--

even under what would be considered adequate funding arrangements--when pension plans terminate without enough funds to meet all the vested pension rights then existing. Complete protection of these rights--which we concede is an admirable objective--can probably be obtained only through some sort of plan termination protection program.

On the other hand, we believe that the Subcommittee must carefully weigh the desirability of providing such complete protection against the inevitable consequences of establishing a program of the type envisioned by the bill. First, it is reasonable to expect that the institution of such a program will lead at least some employers to adopt a weaker funding program than they otherwise would, knowing that there is a fund available to underpin their plans. Such a trend would weaken the ability of these plans to meet their ongoing pension commitments and, thus, might force plan terminations that otherwise would not occur. The result would be to deprive employees of pensions for their service thereafter, as well as to provide a certain degree of adverse selection against the plan termination protection program.

Second, the adoption of such a program, with its requirements for more rapid funding and the responsibility on the employer to complete his funding even though his plan terminates, will necessarily deter to some degree the establishment and liberalization of pension plans.

A third important consideration involves the issue of whether the problem is of enough magnitude to justify the administrative complexities and burdens associated with the establishment and operation of the proposed

program. The data that has been available indicate that the number of employees who suffer pension losses--and the magnitude of their losses--is quite small. The data that are being developed by the Administration will hopefully provide a more rational basis for evaluating the scope of the problem and the need for a plan termination insurance program.

If, on balancing these conflicting considerations, your Subcommittee concludes that it should include such a program in the bill, we would strongly urge that the following two important changes be made in the basic structure of the program:

(A) For reasons just outlined, it is extremely important that the termination protection program not become a substitute for funding. In fact, we strongly believe that the program must be underpinned by a stronger minimum mandatory funding standard than is currently included in the bill in order to avoid serious adverse selection against the program. More specifically, we believe that it is essential that the 30-year period allowed for funding past service liabilities which is now included in the bill be reduced to 25 years if a plan termination protection program is to be adopted.

(B) Contrary to the provisions now in the bill, we urge that the administration of any termination protection program (including the handling and investment of the program's funds) be placed in the hands of a Federally chartered non-profit corporation under the direction of persons knowledgable in the investment and administration of private pension funds. We firmly believe that the operation of the private pension system should--to the

maximum degree possible--be left to the private sector of the economy. The private sector has proved that it can operate this system in an efficient manner, while at the same time providing flexibility to accommodate the various segments of the economy. We see no reason, therefore, for designating the Government to administer the termination protection program. Moreover, we believe that a private corporation would have more flexibility in designing the investment policy for the monies in the fund than would a Government agency.

A precedent for the use of a private corporation may be found in the Securities Investors Protection Corporation which was established by Congress to administer the program and fund for protecting customers of stockbrokers in the case of financial difficulty.

In addition to these two major areas, we have also been studying the more detailed problems involved in establishing a termination protection program and have been discussing these matters with the Subcommittee staff.

IV. Voluntary Portability Program for Vested Persons
(Title III of the Bill)

The bill would establish a voluntary program under which terminating employees covered under participating plans could elect to have funds representing their vested pension interests transferred to a Government-operated fund or to the plan of their new employer. We believe that the other provisions in the bill--including particularly the minimum mandatory funding requirement--will adequately protect the vested interests of terminating employees and will make unnecessary the establishment of a complex

portability structure of the type included in the bill. Thus, we are opposed to the adoption of the portability program as an unnecessary Federal involvement in the private retirement system.

V. Disclosure and Fiduciary Standards
(Title V of the Bill)

Title V of the bill would substantially revise the Welfare and Pension Plans Disclosure Act in order to further protect the interests of employees and their beneficiaries in employee benefit plans. This would be accomplished through increased disclosure, broader Government enforcement powers, and the establishment of a fiduciary responsibility standard accompanied by specific prohibitions as to certain acts on the part of fiduciaries. In general, we support the provisions in Title V, subject to the suggestions for changes and revisions discussed below.

(A) Disclosure Provisions

(1) Relevance and Detail of Reporting. As a general matter, we support provisions designed to assure that employee benefit plans will disclose useful information regarding their operations, including eligibility requirements and vesting and funding provisions. However, if the reporting and disclosure requirements are to achieve their objective, it is important that they be confined to data that are meaningful to plan participants. Requirements to report irrelevant material complicate the disclosure procedure and detract from its usefulness by obscuring the really pertinent information.

Such requirements also add unnecessarily to the costly and burdensome task of collecting and filing annual reports. Accordingly, we recommend that--

(a) The existing reporting requirements that would be continued under the bill be carefully reexamined to eliminate all items that are not clearly helpful in terms of the objectives of the disclosure provisions. In this regard, it is important to consider that the proposed independent audit and the suggested new fiduciary standards and enforcement machinery will, in themselves, serve to greatly increase the protection of plan participants, thus making it both feasible and desirable to eliminate the reporting of information currently required which is either unnecessary or of marginal use.

An example of data which must presently be reported although of no practical value to pension participants concerns the detailed calculations required of insurers (by regulation) in reporting "the remainder of such premiums". This item, which has been in the law since its inception (section 7(d)(2) of existing law) and which would be continued under the bill, must be reported to administrators of welfare and pension plans. The law also requires that reports include claims, dividends, commissions, and amounts held to provide benefits after retirement. The "remainder of such premiums" originally required to be reported was the excess of premiums over these other items. We do not question reporting this figure annually. A few years ago, however, the Labor Department revised its annual Report Form (D-2) to require an extensive list of additional items which were characterized as

being components of the "remainder of such premiums". This requirement seems based on the erroneous concept that the policyholder is depositing his money in a fund administered by a fiduciary from which benefits and expenses and other charges are payable if money is available and for which an accounting should be made. In fact, requiring insurance companies to report items which are components of their costs produces figures that are of no more significance to policyholders than details concerning costs of labor and the various other cost components would be for the purchasers of, say, automobiles. The consumer is concerned with the net cost of the product--in this case, the premium paid to the insurer, reduced by any dividend or rate credit, rather than the details of how the cost was arrived at. Accordingly, we recommend that it be made clear that annual reports for insured plans should not be required to include cost details labeled as a breakdown of the "remainder of such premiums".

(b) Furthermore, we believe the law should be specific with respect to the information to be reported and not delegate broad authority to the Labor Department in this regard. Thus, we recommend that S. 4 be expanded so as to delete the provision in section 5(a) of existing law allowing the Secretary to specify the "detail" with which the specified information must be reported.

(2) Overlapping Reporting Systems. Section 506(d) of the bill would require the filing of annual reports with respect to a separate account maintained by an insurance company if such account includes funds under an

employee benefit plan subject to the bill. Life insurance companies already prepare information with respect to their separate accounts for an annual statement which is filed with the states. We urge that the bill indicate that information on separate account business may be reported under the Federal Disclosure Act in the form used for the state annual statements prescribed by the National Association of Insurance Commissioners. The information would be reported for each separate account, and not simply by filing a copy of the NAIC annual statement which shows figures on a combined basis for all separate accounts of a company. This procedure will obviate the necessity for insurance companies having to establish whole new systems for producing the information.

(3) Time Allowed for Submitting Plan Descriptions. Section 505 of the bill would require plan administrators to prepare a more comprehensive and, in certain respects, more understandable plan description than is presently required. In this regard, the Department of Labor has also recently taken action in this area through the issuance of proposed regulations requiring expanded--and more clearly written--plan descriptions. We agree with the objective of fully informing participants of the provisions of their plans. However, because of these expanded requirements, more time than is presently allowed would be necessary for the preparation and filing of such plan descriptions. Thus, we urge that section 6 of the Welfare and Pension Plans Disclosure Act be amended to extend the period for filing the plan description for a new plan from the existing 90 days to 150 days after

the plan becomes subject to the WPPDA. For similar reasons, we urge that a 150-day period also be allowed for filing the description of a plan amendment as required by section 6 of the Act.

(4) Information to be Furnished by Insurance Carrier. Section 506(c) of the bill carries over the provisions of existing law requiring an insurance carrier, in the case of an insured plan, to report certain information to the plan administrator so that he may fulfill his obligations under the disclosure law. The nature of the information to be so reported is to be prescribed by the Secretary of Labor. The provision in S. 4 does not include the "reasonableness" standard that is imposed on the Secretary in this regard under existing law and we urge that this standard be specifically incorporated under the bill.

(5) Information Concerning Plan Participants, Funding, Benefits, and Reserves. Section 506(f) of the bill specifies new information as to plan participants, funding, benefits, and reserves which must be included in annual reports filed with respect to employee pension plans. Under this provision, the amount of accrued liabilities and the amount of reserves would be required to be reported even in cases where the benefits are completely guaranteed by an insurance company. This information appears directed at testing the funding adequacy of the plan. Where the insurance company guarantees the benefits, it is committed to use its surplus, if necessary, to meet its promise so that a comparison of liabilities to reserves seems

irrelevant. We urge, therefore, that this information not be required in the case of insured benefits.

(6) Terminal Reports. Section 504(a) of the bill authorizes the Secretary of Labor to require the filing of special terminal reports in the case of an employee benefit plan which is winding up its affairs, so long as monies or other assets remain in the plan. It is not clear just what additional function such terminal reports would serve that is not already performed by the annual reports. We believe that such a provision should either be excluded from the bill or should be clarified so as to specifically set forth the nature of the new information which is to be included.

(B) Effective Date

Title VII provides that the new disclosure and fiduciary provisions shall take effect upon enactment of the bill.

We think it is important that some lead time be provided for implementing the new reporting requirements in order to allow the Department of Labor to promulgate the necessary regulations and forms, and the employee benefit plans to gear up for the new rules. Thus, we urge that the new reporting requirements become effective no earlier than with respect to plan years beginning two years after the bill is enacted.

VI. Provisions to Encourage the Growth and Expansion of the Private Retirement System

As indicated at the outset of this statement, we believe that Congress should adopt a dual approach towards strengthening the private retirement

system. The provisions in S. 4 are directed at increasing the effectiveness of the system in fulfilling the needs and expectations of covered participants. We strongly recommend that legislative action also be taken to encourage the growth and expansion of the private retirement system. Such a two-pronged approach would result in a stronger private system covering a wider spectrum of the American working population.

To be more specific, we fully support the concept, contained in the Administration's pension proposals, of allowing tax deductions for employee contributions to employer-sponsored retirement plans and for contributions to individual retirement accounts. We believe that such tax incentives will contribute significantly to the expansion of private retirement savings in two important respects: First, a deduction for employee contributions to employer sponsored plans will make it feasible for many employers to establish or liberalize retirement plans through a joint financing program with their employees in situations where the employer could not undertake such a program solely out of his own financial resources. Second, in those cases where an employer does not, for whatever reason, establish a plan, the program for individual retirement accounts will encourage his employees to provide for their retirement through individual savings.

While we support the general approach taken by the Administration as regards tax deductions for retirement savings, we believe that certain changes in the details of the Administration's proposal would increase its effectiveness. These are outlined in the statement we filed with the House

Ways and Means Committee in connection with its hearings last year on the Administration's pension proposals.

While recognizing that there are jurisdictional questions involved, we would urge that this Subcommittee do everything it can to encourage the adoption of tax incentive provisions of the nature proposed by the Administration.

Conclusion

As indicated at the outset of our statement, we believe that S. 4 presents a framework for legislation which will result in a significant improvement in the effectiveness of the private retirement system. We would urge, however, that the bill be revised in the manner indicated and, further, that legislation be enacted to encourage the expansion of the private retirement system.

We realize that you are dealing with a very complicated area and that technical problems may arise as the Subcommittee proceeds in developing legislation. We hope that we may have the opportunity to discuss any such matters with the Subcommittee staff at the appropriate time.

Statement of
The American Bankers Association
on S. 4 Submitted to the
Subcommittee on Labor of the Senate Committee
on Labor and Public Welfare

February 15, 1973

The American Bankers Association appeared before the Subcommittee on June 21, 1972, to testify on S. 3598. In addition to our oral testimony, the Association submitted for the record a prepared statement plus a supplemental statement which commented in detail on the provisions of Title V - Disclosure and Fiduciary Standards. The Association commends the Subcommittee and its staff for the careful consideration given to S. 3598 and the comments and suggestions made with respect to it during the 92nd Congress.

The Association notes that S. 4 is identical to S. 3598, as reported by the Committee on Labor and Public Welfare. While the bill reflects a number of our suggestions, there are still several areas in which we believe change is necessary if the measure is to be effective and not impose undue burdens on the private pension system.

The purpose of this statement is to discuss the changes which the Association believes are needed, to state a new position on funding, and to urge the enactment of legislation which contains fiduciary standards, greater disclosure, minimum vesting standards, and minimum funding standards.

The American Bankers Association has a membership of 13,000 banks and trust companies which constitutes about 96 per cent of the commercial banks in the country. Approximately 3,500 of these banks exercise trust powers and are members of the Trust Division. Banks hold as trustee about $100 billion of pension assets in more than 120,000 accounts. Banks also maintain employee benefit plans for their employees who number approximately one million. Consequently, the Association is vitally concerned that any legislation enacted in this area be the best possible.

Title V - Disclosure and Fiduciary Standards

Because Title V on disclosure and fiduciary standards is of primary interest to the Association, we comment on it first.

Section 502(a) 1. The ABA supports the establishment of fiduciary standards which apply not only to all trustees of employee benefit funds but also to anyone who handles or controls such funds. We believe the definition of fiduciary on page 58 is too narrow to achieve this goal and suggest that it be amended to read:

> "(25) The term 'fiduciary' means any person who exercises any power of control, management, or disposition or renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of any employee benefit fund, or has authority or responsibility to do so."

2. The definition of "market value" and "value" on page 58 should be amended by striking the words "pursuant to rule or regulation under this Act" and substituting "by a fiduciary of the fund." The Secretary would have great difficulty in issuing rules and regulations specifying the procedures to be followed in valuing the many various types of investments held, including such things as mortgages, leasebacks, real estate, and oil payments. In view of the duty owed by fiduciaries under the Act, it would seem quite appropriate to place the responsibility of determining fair value on a fiduciary.

Section 506(d) The Association supports the provisions of S. 4 which provide for greater disclosure of information to participants and

beneficiaries, and which require administrators to have their accounts audited. We have a few suggestions which we believe will improve the disclosure provisions by eliminating duplication and immaterial information. Also, the Association assumes that in cases where the disclosure requirements impose an undue burden and do not serve to further the purposes of the Act, the Secretary will exercise his authority under Section 504(b) to exempt such plans.

1. The new language proposed for Section 7(b)(5) of the Welfare and Pension Plans Disclosure Act on page 67 calls for a separate schedule for loans made to parties in interest. We suggest this provision be amended to exclude loans which are made under Section 15(c)(5) of the Act; that is, loans to participants or beneficiaries of a plan where such loans are available to all participants or beneficiaries on a nondiscriminatory basis and are made in accordance with the plan. We suggest a similar amendment to the new language proposed for Section 7(b)(7) on page 69. This section calls for a detailed list of all party in interest transactions, and we recommend the exclusion of loans authorized by Section 15(c)(5).

2. Paragraphs (7)(b)(4), (5), and (6) call for specific information on purchases, sales, exchanges, loans, and leases involving a party in interest. Paragraph (7) calls for similar information on all transactions involving a party in interest. We suggest that information reported under paragraphs (4), (5), and (6) be exempted from (7) as well as loans made under Section 15(c)(5).

3. Some banks maintain several common or collective trust funds, and many pension and profit-sharing retirement funds hold participations in each fund. Little or no purpose would be served by duplicate filings of reports on these funds by every participant plan. Therefore

we suggest that banks be permitted to file directly with the Secretary a copy of the annual report on their common or collective trust funds for each fiscal year of the funds and that the administrator of each pension or profit-sharing retirement plan having an interest in the common or collective trust funds refer in his annual report filed with the Secretary to the latest reports filed by the bank. The bill authorizes the Secretary to prescribe rules to preclude the filing of duplicate or unnecessary statements, but the Association believes the Congress should make this decision and avoid such duplication by statute.

4. Also, we suggest that the new Section 7(b)(8) be amended to eliminate the Secretary's authority to require across-the-board identification of party in interest transactions in common or collective funds. Because of the large number of participating pension and profit-sharing retirement funds in any one common or collective fund, it would be practically impossible to identify such transactions and, in any event, any one participating fund would have such a small interest in any such transaction of the common or collective fund that it would be immaterial. The Secretary, however, should be given authority to ask for such information in specific cases when he determines he needs it.

Section 506(f) In line 1 on page 72 the word "then" we believe should be "than."

Section 509 1. With the expansion of the Advisory Council to 21 members, the limitation on members from the same political party should be raised to 11.

2. In line 20, page 76, we believe the word "their" should be "his."

Section 510 1. While the prohibitions of Section 15(b)(2) relate to specific transactions and thus are prospective, it is possible that they might be construed to be retroactive. Thus we suggest on line 3, page 79, that the words "subsequent to the date of enactment of this subsection" be inserted between the word "hereunder" and the word "a."

2. With regard to the word "rent" in line 7, page 79, we believe it should be made clear in the report that this term is not to be construed as referring to a continuing transaction but, rather, that it refers to a specific act.

3. We suggest a restatement of subparagraph (E) on page 79 to clarify the activity which is prohibited. We recommend the following language:

> "(E) accept for his own account or for the account of a party in interest of the fund from any source any bonus, commission, or compensation for any act done by him in connection with the administration of the fund."

4. We believe Section 15(c)(4)(A) as proposed on page 81 needs additional change. Paragraph (4) relates to "transactions" not prohibited by Section 15. Yet subparagraph (A) includes "holding." The concept of holding as a transaction is not only confusing in itself, thus making subparagraph (A) unclear, but it tends to undo efforts made to clarify all of the prohibited activities under 15(b)(2) by eliminating any precision

from the transactional terms that are used. Furthermore we question the advisability of requiring divestiture of an investment which was appropriate under the prudent man rule when made and continued to be appropriate until the enactment of this legislation.

5. As to profit-sharing and other plans where the 10 per cent limitation may not be applicable, it should be made clear whether the trust agreement as well as the plan must explicitly provide that some or all of the plan funds may be invested in employer securities.

6. Where a profit-sharing or similar plan requires investment in employer securities, the requirements of Section 15(b)(1)(A) should not be applicable. These profit-sharing and similar plans are incentive-type plans as contrasted to pension plans, and investment in employers' securities should be permitted without statutory limit if the plan explicitly requires that some or all of the plan funds be so invested.

7. At the bottom of page 83, add a new subparagraph 15(c)(4)(C) as follows:

> "(C) entering into or withdrawing from, on behalf of the fund, any common or collective fund of which it is trustee and which is qualified under Section 401(a) and exempt from income tax under Section 501(a) of the Internal Revenue Code of 1954."

This provision would eliminate the possibility that Section 15(b)(2)(D) may be construed to prohibit participation in common or collective trust funds.

8. A new subparagraph (9) should be inserted on page 84 between lines 18 and 19 to make it clear that, so long as it meets the

prudent man test, a fiduciary, notwithstanding Section 15(b)(2), may continue to hold property subject to a lease to a party in interest provided such lease was in existence on the effective date of the Act. Also, the subparagraph should permit a fiduciary in appropriate circumstances with the approval of the Secretary (1) to carry out existing provisions of such a lease, such as an option or an extension; (2) to modify existing leases; and (3) to make additional investments in the property and in such instances to extend the lease provisions on appropriate terms.

The following language is suggested:

> "(9) Complying with the terms of any lease of property of the fund to a party in interest, if such lease was in effect on the effective date of this subsection, or, with the approval of the Secretary, exercising any right, remedy, or option under such a lease, or modifying the terms thereof in any respect including, but not limited to, providing for the financing of the erection of additional improvements on the leased premises, provided that any such action by the fiduciary otherwise meets the requirements of subsection 15(b)."

9. The proposed Section 15(f) should be amended to delete the language which relieves a fiduciary from liability for acts or omissions of a co-fiduciary if he objects in writing and files a copy with the Secretary. The filing of an objection with the Secretary does not adequately protect the beneficiaries of the trust. If the trust agreement requires all the trustees to agree in administering the trust and there is disagreement, the trustees should seek instructions from a court of competent jurisdiction.

10. The proposed Section 15(g) should be amended to specifically provide that where there is an allocation of duties or responsibilities among fiduciaries, no fiduciary will be liable except for the proper performance of such duties as are specifically assigned to him under the plan or trust agreement and that no fiduciary shall be liable for any action taken or omitted to be taken in good faith pursuant to the direction, instruction, or approval of others if he is required to so act by the terms of the plan or trust agreement.

Proposed Section 15(k) should be eliminated. If Section 15(c)(4)(A) is amended to make it prospective only and if it is made clear that the transactions covered by Section 15(b)(2) are instantaneous in nature and not continuing, then there is no need for this provision since the prudent man rule of Section 15(b)(1)(A) will require the trustee to dispose within a reasonable time of investments that do not meet its standard. Three years, as allowed under proposed Section 15(k), may be far too long a time for a trustee to hold an imprudent investment; and, likewise in some circimstances, it may be in the best interest of the fund for the trustee to hold such an investment more than three years before he disposes of it.

Title VI - Enforcement

Section 605 While participants and beneficiaries should have free access to the courts to protect their rights and the fund, they should not be encouraged to bring frivolous suits. Past experience with "strike suits" makes it clear that there is a basis for concern. Such suits can be costly to pension plans not only because of direct costs (legal fees, court costs, etc.) but indirect costs could also be significant. The constant threat of suit may tend to hold down innovations in the management, investment, and

operation of plans. This would be detrimental to all plans over the long run.

We suggest Section 605(a)(1) be amended to limit the court's authority to allow a reasonable attorney's fee and costs of the action only to any successful party. Paragraph (1) should be further amended to allow the court to determine whether the attorney's fee and costs are to be paid from the fund or some other source. Also we suggest a new subsection be added after 605(a) as follows:

> "(b) No action shall be brought under Section 603 or 604 except upon leave of the court obtained on verified application (which application may be made ex parte or on notice as the court shall determine) and for good cause shown, and in determining good cause, the court shall consider the probability of success of the action, the burden on the parties, the difficulties likely to be encountered in the management of the action, and such other factors as the court shall deem appropriate."

Section 608 Unless the word "concealment" in line 11, page 94, is modified by the word "intentional," this section might be construed to make civil liabilities open-ended for fiduciaries who must furnish information. This would impose an unwarranted burden on these fiduciaries. In accounting for the many thousands of transactions, it is possible that some vital information may not be disclosed by a fiduciary through inadvertence. It should be made clear that only fraud or intentional concealment suspends the running of the statute. Otherwise a fiduciary would have no meaningful statute of limitations protection.

Title I - Organization

The ABA still opposes the granting of regulatory powers to the Secretary of Labor and urges the Subcommittee to give further consideration to placing the administration of the Act under the Secretary of the Treasury. He already has under his jurisdiction two offices which are involved in the supervision of employee benefit plans and funds. The Internal Revenue Service administers the provisions of the Internal Revenue Code which impose certain requirements on such plans. The Comptroller of the Currency, as part of his supervision of national banks, examines the activities of trust departments and gives special attention to the manner in which they handle employee benefit funds. Should the bill be passed as is, it would in no way reduce the present regulatory responsibilities of the IRS and the Comptroller. Consequently there would be another layer of supervision, and the Secretary of Labor would have to remain on guard to prevent his actions from disqualifying some plans under the revenue code.

Should the Subcommittee not change its mind on this question, we suggest that the Secretary of Labor be required to use the facilities of the federal banking agencies in administering the provisions of the Act where bank trustees are involved rather than leaving it to his discretion.

Banks are supervised by the Comptroller of the Currency (national banks), Board of Governors of the Federal Reserve System (state member banks), and the Federal Deposit Insurance Corporation (state nonmember banks). All these agencies periodically make unannounced comprehensive examinations of banks, including the activities of their trust departments. Thus, reason dictates that the facilities of these agencies be used in the administration of this Act.

With regard to coverage, there seems to be no reason to exempt from the Act private plans that have fewer than 25 participants.

Title II - Vesting and Funding Requirements

Part A - Vesting

The Association supports a requirement that normal retirement benefits be vested after completion of a reasonable combination of age and service. We regard the rule of 50 which is contained in S. 374 as a reasonable approach. It recognizes the immediate needs of the older employee for early vesting and provides reasonable vesting for the younger employee.

The provisions of Title II do not specify whether employees covered by contributory plans may withdraw their contributions when they terminate employment and, if so, whether the benefits attributable to the employer's contributions must still be vested. This should be clarified.

Many plans already have vesting provisions which differ from the one in the bill. In some cases vesting would be more liberal at certain ages and less liberal at other ages than the bill requires. The authority given the Secretary to determine if other vesting provisions are as liberal as the schedule in the bill may not be adequate since the determination must be based on the majority of the participants in the plan. If the Secretary determines that a plan is less liberal for the majority, there may be a legal question whether existing rights can be taken away from some employees by requiring the employer to mend the plan. The Association suggests that consideration be given to stating in the bill alternative formulae which would be acceptable.

Part B - Funding

Since testifying last June, the Association has given further consideration to the funding issue. As we said then, the ABA agrees that plans should be funded on a reasonable basis to assure the adequacy of funds to pay pension benefits as they become due. Our further study has led us to the decision that a reasonable minimum funding level should be established by law. Thus we support the purpose of Part B, Title II.

The Association reached this decision with some reservations because flexibility is important to proper funding, and it will be difficult to establish a minimum without reducing flexibility. Employers should be encouraged to fund at a greater rate than any minimum schedule during good years, but they cannot be expected to do so unless they can cut back during lean years. The bill should allow an employer to make a smaller payment than his minimum schedule calls for in one year provided he has made sufficient excess payments in past years to cover the smaller payment. The important question is whether in the aggregate the employer is current on funding.

The bill's provision for payments of no less than equal amounts to amortize unfunded liabilities and experience deficiencies would not provide this flexibility because the employer could never take advantage of prior overpayments. Similarly it would discourage plan provisions for funding at a greater rate than the minimum required by the bill because the employer would be committing himself to pay a certain amount each year even if it were a bad business year and regardless of any prior overpayments.

The Association again recommends to the Subcommittee Opinion No. 8 of the Accounting Principles Board of the American Institute of Certified Public Accountants.

Also in the funding area we continue to support legislation to amend the Internal Revenue Code to allow employers to make additional deductible contributions on account of past service in excess of 10 per cent of the original unfunded cost to the extent that such contributions in previous years were less than 10 per cent.

Part C - Variances

The variance authority granted the Secretary in Part C strengthens the reasons for placing administration of the bill in the hands of the Secretary of the Treasury. The whole question of vesting and funding of employee benefit plans is closely related to the requirements of the Internal Revenue Code because of the need for them to qualify for tax exemption.

Title III - Voluntary Portability Program for Vested Pensions

The establishment of a portability program even on a voluntary basis would create a number of complex problems as to which answers have not been found.

There are many differences in the types of plans and benefits maintained by different employers. The actuarial assumptions used vary considerably. The reserves accumulated under an employer's plan are based on all the benefits provided for in the plan, but when an employee terminates employment with a vested right, he will be entitled at normal retirement age only to a normal retirement benefit. This means that only a portion of the reserves which might be considered to have been set aside to provide the employee's benefits will be transferred when he terminates employment. As a result, there will be numerous questions and disagreements concerning the amount of reserves to be transferred and their status with the transferee. Among other difficulties that have to be considered is the impact on the status

of remaining participants when a vested benefit is transferred out of a fund that is not fully funded.

Further, trustees of every participating plan would find it necessary to keep a larger portion of the fund invested in liquid securities in order to meet the requirements for the transfer of lump-sum amounts when employees terminate service. This requirement would reduce the investment return on the funds which, in turn, would affect the extent to which liabilities of the plan are funded.

If this bill is passed and plans are required to have reasonable vesting provisions and adequate funding provisions, there is no pressing need for portability.

For these and many other reasons we feel strongly that further intensive study must be made of the need and of the legal and technical difficulties that must be overcome before such a program is established.

Title IV - Plan Termination Insurance

Turning now to plan termination insurance, all such proposals put forth to date including the one in this bill have failed to recognize or meet many of the problems inherent in operating such a program.

The problems include the probability of encouraging the adoption of plans providing overly large benefits without regard to whether the employer is financially able to make the necessary contributions over a period of time; the discouraging of faster funding of plans because of the availability of the insurance; the absence of any meaningful cost data that would provide a long-range projection of probable premiums; and the absence of a relationship between the insured risk and the premium.

It appears to us to be highly questionable whether the proposed scheme is a workable one. It has been suggested that this type of insurance is similar to the insurance provided for bank accounts by the Federal Deposit Insurance Corporation. However, there is a big difference between the two situations. The Federal Deposit Insurance covers existing dollar deposits and provides assurance for the protection of those deposits through the establishment of administrative requirements and periodic examinations to determine that banks are following safe procedures. In the case of pension plan termination insurance, there is no provision for establishing underwriting rules. Employers are permitted to determine the amount of benefits to be provided and the actuarial assumptions to be used (possibly within limitations fixed by the Secretary). They may determine the rate of funding the initial unfunded liability within a 30-year period. Without underwriting rules the insurance program might well impose an unreasonable burden on employers following more conservative practices.

Even if an insurance scheme could be designed which would take care of these problems, we believe the administrative burden would be great, and the additional cost to employers would be substantially higher, not only because of the insurance cost but also because of the restrictions on actuarial assumptions which would entail larger contributions.

There is no assurance that the cost of the insurance even on the basis set forth in the bill would not be considerably larger than the rate fixed for the first three years. Again, the mere fact that the rate is lower than the funding requirement may encourage employers to fund more slowly.

It should be noted that the amount of the insurance payable is fixed at the difference between the realized value of the plan's assets and the amount

of vested liabilities under the plan. This means that the insurance would guarantee investment results - a liability which could be considerable if a plan is terminated during a period of depressed investment markets.

The Secretary is given very broad authority to set up and administer the plan termination insurance program. The bill establishes benefits criteria, premiums for the first three years, and legal investments for the insurance fund, but leaves most of the rest up to the Secretary.

The ABA believes it would be dangerous for the Subcommittee to proceed with the establishment of the insurance program until it has answers to the above problems and can set out in the statute how the program is to work.

General Comments

The Association recognizes that there have been additional studies conducted during the past year, but we have not seen the results nor does S. 4 reflect the results of the studies since it is identical to S. 3598, as reported.

Consequently, we continue to urge the Congress to move slowly with regard to portability and plan termination insurance. A bill containing fiduciary standards, greater disclosure, vesting, and funding would strengthen substantially the private pension system, and we again urge the enactment of such a measure. It could be counter-productive to add portability and termination insurance which are so complex and subject to so many unanswered questions.

S. 4 contains no provisions which would encourage expansion of the private pension system to the 50 per cent of the American labor force which is not now covered. Instead, its provisions tend to deter expansion because of the costs they would impose on an employer who wishes to provide his employees a pension program. Therefore, something should be added to any pension legislation which is enacted to offset this deterrence.

The ABA suggests that the Individual Retirement Plan recommended by the President and contained in S. 374 be included as well as S. 374's provisions to improve the H.R. 10 self-employed retirement program.

Most uncovered employees work for small firms or are farm or other seasonal workers. Thus the incentives of current law are not apt to have much effect in further expanding the private pension system to these employees. It is universally recognized that, despite continuous increases in social security benefits, they are barely adequate for subsistence. Supplemental income is a necessity for most retired Americans. Therefore, something new is needed.

The Individual Retirement Plan would shift the tax incentive to the persons who would benefit from the retirement plans. Admittedly the program would not be met with open arms by millions of workers. However, the double incentive of tax deferral and retirement savings may help many uncovered workers save for their retirement years. The Individual Retirement Plan would also help workers who are already covered by a retirement plan. It would encourage them by a limited tax deferral to supplement their retirement income. Finally, it would place the employee in a contributory plan on a par with his employer by giving them both a tax deduction for funds set aside for pension benefits.

The limitations of the bill would, for practical purposes, restrict the benefits of the program to the lower- and middle-income worker who needs

their help. The program would provide more equity among American workers in their efforts to achieve adequate retirement income.

The H.R. 10 self-employed program enacted by Congress a decade ago has met with uneven success. One of the reasons for this is the limitation on the amount which can be deducted for retirement purposes. If the program is expanded as suggested by S. 374, it may add sufficient incentive to accelerate the growth of self-employed plans. Support for this can be found in the number of partnerships that have converted to corporations partly to take advantage of the tax laws relating to corporate retirement plans.

The impact of these two programs on the growth of the private pension system may not be sensational, but we must begin to take steps to expand the system as we strengthen it because the increased costs are going to have their effect.

The Association would be happy to meet with the Subcommittee and its staff to discuss any questions which may be raised by these comments or to help in any respect on this legislation because we are strongly committed to supporting a sound, growing, private pension system.

Statement For The Record Of The
Committee on Labor and Public Welfare
Public Hearings Held February 15-16, 1973
S.4 Retirement Income Security for Employees

This statement is made on behalf of Seattle First National Bank, Seattle, Washington. The Bank ranks 24th in the nation in terms of deposits and has substantial interests in the pending legislation due to its trust activities and as an employer of 4,900 employees, three quarters of whom participate in one or more qualified benefit plans. The plans affecting bank employees have assets exceeding $35 million.

Our particular concern is with the fiduciary standards set forth in bill section 501 et. seq. and with the portion prescribing the scope of transactions permitted between a qualified benefit plan trust and parties in interest. The language of S.4 substantially precludes any transaction between the employer or other parties in interest and the trust. In our opinion, this proscription goes far beyond the limits needed to protect benefit funds and participants. In addition, the strict standards drafted would not appear to assure that transactions with other than parties in interest are made for adequate consideration.

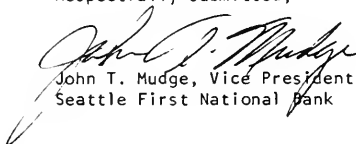
We believe that the stated objectives of the bill to achieve full funding should be aided and not hindered in the ability of the trustee to engage in any prudent arms length transaction that does not create an undue concentration of assets. We would suggest that all the transactions of a trustee should be subject to the criteria of prudence, arms length and diversity regardless of whether the transaction is between the trust and a party in interest or between an unrelated party. Under the S.4 proposals the trust may not even purchase U. S. Government bonds, insured mortgages, etc. from the employer. We believe broader standards should be applied as described that will do a better job of assuring the "exclusive benefit" requirements are met in fact but that worthwhile, beneficial transactions for the trust will not be precluded solely because a party in interest is involved.

The complications of absolute prohibition are serious. Existing transactions could be rendered illegal and could only be liquidated with difficulty or at an unnecessary hardhsip to either the trust or a party in interest. It is also apparent that multiemployer and union plans could find compliance with S.4 difficult or impossible due to the all-inclusive nature of the definition of "party in interest".

We have detailed technical analysis available for your use and can provide suggested modifications to S.4 that would achieve the objectives described above while preserving the beneficial transactions.

Thank you for your consideration.

Respectfully submitted,



John T. Mudge, Vice President
Seattle First National Bank

STATEMENT OF DAVID RAFF,

DIRECTOR OF THE CLINICAL PROGRAM IN EMPLOYEE RIGHTS AT

NEW YORK UNIVERSITY SCHOOL OF LAW

SUBMITTED FOR THE RECORD

OF THE

SUBCOMMITTEE ON LABOR

OF THE

SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

FEBRUARY 16, 1973

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INTRODUCTION

Mr. Chairman and members of the Subcommittee, I am David Raff, Director of Clinical Programs for the New York University Institute of Labor Relations, and a member of the faculty at New York University School of Law. I had the privilege of testifying before this Subcommittee in June of last year, in behalf of the R.I.S.E. Act, S. 3598. I thank you Mr. Chairman and members of the Subcommittee for the opportunity to submit my statement for the record in favor of S.4.

My interest in pension plan reform legislation arose through my experience with the Institute of Labor Relations, and as a teacher of a Clinical Program in Employee Rights. My office handles the job problems of the working poor of New York City in all their various aspects and complexities. As I testified last year, no area is more frustrating for me or my students than the area of pension benefits. This area continues to frustrate those of us attempting to aid the employee, because we still do not have the tools with which to remedy most pension problems.

Since I last testified before this subcommittee, in those months during which Congress has continued to debate, ponder and revise the R.I.S.E. Act, my office has continued to receive a flow of problems dealing with pensions. These problems, and my inability to adequately deal with them under current law, reinforces my desire to see major pension

reform become a reality.

As an attorney and as an advocate for individuals seeking pension benefits, my perspective in approaching pension legislation focuses on whether the mechanisms have, in fact, been established in this proposed legislation to enable the individual pension participant to avail himself of the increased pension protection hopefully created by this legislation. It is because of this special concern with the needs of pension plan participants -- many of whom are old and without financial resources -- and in the spirit of S.4 whose "policy . . . [is] to protect the equitable interests of participants in private pension plans and their beneficiaries" that I urge you to consider adding the following items to the scheme established in S.4.

I will only briefly discuss these proposals in this statement and refer you for a full discussion of the proposals to the testimony I presented to this committee during the hearings on S.3598 (R.I.S.E. Hearings, Vol. 2, pp. 879 *et. seq.*).

First, the requirement that every participant in a pension plan be provided with an Annual Statement which would notify the individual of his status under the plan; second, the creation of a Pension Benefits Review Board (an alternative means by which a participant can raise his claim for pension plan benefits), which would be, in view of the age and infirmity of many claimants, quicker, less expensive and simpler than the means now provided by S.3598, which is by action in a federal district court; and finally, a concept

which I believe must necessarily flow from the portability and Special Fund provisions of S.4 as now constructed namely the creation of a National Pension Fund which would make possible the initiation of new pension plan coverage for employees who are employed by businesses which cannot afford the operating expenses involved in the maintenance of a pension plan. Each of the three concepts is directed toward fulfilling the policy of protecting the equitable interests of the participant, which must be the true nature of legislation in this field; and each concept will not create an undue hardship on employers or pension plan administrators, a factor which we realize must be carefully examined.

ANNUAL STATEMENT OF STATUS

The need for the annual statement of status is reflected in Section 2(a) of S.4 which reads: "Congress finds . . . that employee participants have not had sufficient information concerning their rights and responsibilities under the plans, resulting in loss of benefits without knowledge of same." The Act, in Section 2(b), reads: "It is the declared policy of this Act to protect . . . the equitable interests of participants . . . by . . . (requiring) more adequate disclosure and reports to participants and beneficiaries of plan administration and operations, including financial information by the plan to the participant, as may be necessary for the

employees to have a comprehensive and better understanding of their rights and obligations to receive benefits from the plans in which they are participants." As I have stated previously, such knowledge of what a participant must do and when he must do it to protect his interests goes to the very source of many of the problems which arise under pension plans.

In no place does S.4 provide that the participant will be given the information referred to in Section 2(b) of the Act. I therefore urge that a provision be added to S.4 which will require the plan to provide an annual statement of the participant's rights and obligations, beginning with a notice of when the employee achieves participant status under Section 201 of the Act and annually thereafter to coincide with other annual reports prepared by the employer until the Certificate of Rights is furnished under Section 108 or until the participant terminates employment service with an employer covered by that pension plan prior to achieving vested rights.

This annual statement, which would be subject to the Secretary's powers under Section 101(b)(5) to prescribe rules and regulations concerning the form and detail therof, should contain as a minimum information clarifying: 1) the number of days, weeks, or months which constitute a working year of covered service under Section 202(c) of the Act; 2) the participant's standing vis-a-vis the requirement under Section 202(b)(1) that three of the eight years required to

qualify for the 30 per centum vested rights be continuous; 3) the percentage of vested rights which the participant has achieved under Section 202(a); and 4) retirement qualifications, in terms of age and/or years of service, and when the individual can begin collecting benefits under the plan.

The Report of the full committee accompanying S.3598 indicated, regarding the satisfying of the eight year period, that "it is contemplated that the Secretary will prescribe appropriate notification procedures which avoid impractical burdens on plan administrators." (at p. 31). The need for continuous notification reflected in this statement would be well served by the type of annual statement I am suggesting. I recognize that requiring such an annual statement will result in additional costs in the administration of pension plans. However, in view of the widespread use of computers in this day and age, in view of the tremendous amounts of money involved and in view of the policy of the Act, I believe that this additional cost in minimal.

At this point, I bring to your attention that Section 604 authorizes a participant or beneficiary who is or may become entitled to pension benefits to bring an action in state or federal court to "clarify his rights to future benefits under the terms of the plan." If an individual is provided annually with the information I have set out, the goal of providing clarification of rights will be met and the need to institute court action to reach this goal

should be mitigated. As I will describe, merely providing increased access to courts often proves a hollow remedy for individuals faced with pension problems.

PENSION BENEFITS REVIEW BOARD

The second concept which I would like to discuss involves the creation of a means for the redress of grievances which arise out of pension plan administration. S.4 at this time provides in Title VI that the participant can bring an action under Section 604 in state or federal court <u>to recover benefits to which the participant is entitled</u>. It is my experience that many participants who will have such claims will be older people, perhaps illiterate or suffering from some infirmity which will make the delay which is so common in our court systems an undue burden upon the claimant. In addition, the financial burden of such an action and the obvious need for legal counsel will also serve as an unfair hurdle which the beneficiary might not be able to clear. The wording of the Act in Section 2(b) indicates that it will "provide for more appropriate and adequate remedies, sanctions, <u>and</u> ready access to the courts." Realistically, the remedy provided by Section 604 is not entirely faithful to that purpose with regard to ready access to the courts because of those problems I have just referred to. Furthermore, although an additional remedy is provided in Section 602 which authorizes the Secretary of Labor

to move against a pension plan to require payment of benefits denied in violation of the Act, plan participants are frequently faced with denial of benefits as a result of conflicting contractual interpretation of the pension plan -- a matter which may not rise to a violation of the Act -- and so must, under S.4, be thrashed out in the courts. I therefore urge the adoption of an alternative method of enforcement, that is, a Pension Benefits Review Board (which I will refer to hereafter as the PBRB). The PBRB structure would be such that participants could have their claims heard quickly in an informal, inexpensive and final procedure. I refer the committee to pages 882-883, 946-950 of the R.I.S.E. Hearing, Vol. 2 for detailed description of the PBRB.

The need for such an independent reviewing entity when full and fair review is mandated for each plan in Section 501(1)(2) of the legislation arises in the following manner. If current experience is any guide, pension plans are likely to provide for a hearing before the board of trustees of the plan or some entity responsible to them. These individuals have a fiduciary obligation to the fund and when faced with a claim for benefits which involves an ambiguous contractual provision, the fiduciaries may well be obligated to find out a way which does not deplete the assets of the fund. The case law would mandate such a result in most instances.

Thus in the absence of a reviewing entity which is truly independent of the plan, it appears that the provision for full and fair review, while an improvement, does

not really create a "more appropriate and adequate remedy." The courts of course provide an independent reviewing entity, but I have discussed earlier the limitations on the effectiveness of the increased access to the courts. Provision for the PBRB would create the necessary independence to truly provide a full and fair hearing.

The relationship of this review board to other remedies provided by individual plans, or the Act should not create problems. The PBRB would not handle disputes which involve alleged violations of S.4 and it could postpone involvement in alleged contract violations until the plan's internal review procedures have been exhausted. I recommend, however, that a limit of no more than four (4) months be placed on internal review procedures so that delays are precluded at this initial step.

An obvious objection to the creation of an administrative agency is that it might, in fact, foster additional delay in reaching a final determination on a claim. As a general proposition I agree with that objection. However, in my four years of dealing with the problems of the working poor, I have found it extremely difficult to find attorneys who are willing to take pension cases. Their reluctance is not merely the result of weak laws, but is also the result of financial considerations. While it is true that Section 605 of the act will permit the court to award a reasonable attorney's fee and costs of the action, it should be noted that Title VII of the Civil Rights Act has a somewhat

similar provision, yet it takes months before the court can locate an attorney to take the case in New York, and it is virtually impossible for the individual to find an attorney to take a Civil Rights case -- unless the discriminee can foot the bill.

NATIONAL PENSION FUND

The third concept which I propose for inclusion in S.4 is the establishment of a National Pension Fund in which any employer who meets the specific criteria as established by the Secretary of Labor may participate. The purpose of this fund would be to provide pension coverage for employees who are working for firms which cannot otherwise afford to establish a pension fund. A National Fund could provide for a common pool to which an employer can send his contribution.

The mere size of such a fund obviates the obstacles which prevent the individual employer from establishing his fund; in that a national pool permits the economy of scale capable of insuring meaningful investments with the funds on hand, and lowers the administrative costs of maintaining a pension plan by providing for centralized record and bookkeeping chores. Such a National Fund is essential if the promise of financial security at retirement is to have any meaning at all for millions of Americans. The lower echelons of the labor force -- the high turn-over, low salaried employees, comprised principally of minority groups --

are excluded today from any pension benefits other than, perhaps, Social Security.

The entire concept of S.4 is predicated upon the validity of a combined public and private scheme for the provision of the needs of the retired worker. The viability of this premise cannot obscure the necessity of providing a sufficient standard of living for those not fortunate enough to be covered by their employers private pension fund.

I therefore urge that the National Pension Fund be incorporated as an integral part of the reform legislation.

PROBLEM AREAS

I would like to point out some specific provisions that do appear in S.4, but are a bit troublesome to me in their present form.

Disclosure

Both Sec. 108, Certificate of Rights, and Sec. 507 (b)-(3), Summary of Plan, provide that with regard to these documents the administrator may "furnish or make available, whichever is more practicable. . ."

The Senate Report on S.3598 at p. 29-30 indicates that under certain circumstances the employee may have to request these documents. This language would appear to excuse the administrator from furnishing the material to the partici-

pant since it is probably always more practicable for the administrator merely to wait for a request from the participant. The preference for the adminstrator being required to furnish these documents (which preference is stated in the Senate Report at page 30) should be reflected in the language of Section 108 and 507. The balance between administator and participant on the crucial information function of this bill should be struck more clearly on the latter's behalf.

Vesting

I turn next to some concerns about the vesting provisions of the bill. Professor Merton Bernstein in a letter to the N.Y. *Times* dated 2/2/73, appearing 2/7/73, characterized the pension reforms in S.4 as "sham". He focuses among other things on the fact that sections 701 and 216 together may postpone the initiation of the vesting provisions of the Act for up to eight years after enactment of the Act. While I agree completely with Professor Bernstein that any delay is very unfortunate, I recognize that economic and political considerations mandate some flexibility in instituting pension reform. I cannot characterize this legislation as "sham" when I compare its tenets with the current status of participants' relationship to their pension plans. However, I would urge that consideration be given to shortening the period of possible postponement, and in any event, I must caution this committee that the publicity given this reform

legislation has raised the hopes (however unrealistically or inaccurately) of many participants that the passage of this or similar legislation will be more beneficial to them than in fact it will be. Inasmuch as the expectation of a pension currently ends up as a "broken promise" for many, we would hope that the proponents of this legislation will be sensitive to the fact that the promises offered by this legislation in the short run are more elusive than real.

The vesting provisions in Title II raise some other questions:

Employees less than 45 years of age upon enactment of the Act receive no credit for past years of covered service, while employees 45 years and older receive full credit three years after enactment. While I realize that to give full past credit to all employees would be a burden in many plans, I would urge that the committee consider the possibility of providing a sliding scale which would give employees some credit for past service, with those employees closer to age 45 receiving credit for a higher proportion of past service than would younger employees.

Section 202(b)(1) discusses the three years out of eight which may be required to be continuous service. This subsection raises two main questions and clarification of the language on these points might avoid much litigation.

While the language of the section seems to indicate that the three year continuous service provision is allowable and optional, the Senate report in both the Analysis

section (p. 18) and the Committee Views section (p. 31) suggest that the three years of continuous service are required.

In any event, it is not at all clear from the language whether three years of continuous service at any point durint the eight will be sufficient or whether years of service before the three continuous ones are ignored in adding up the eight.

Discontinuance of Plans

I am delighted to see that provision is made for benefits for participants whose plan has not compeltely terminated but rather has "substantially terminated (Section 211)." I am concerned, however, that there is so little guidance to the Secretary as to what will constitute "substantial termination". If court decisions are to serve as any guide, a plan that continues to operate for only 7% of its original participants may be considered to not be substantially terminated.

Further, if I read the language of Section 211 literally, it appears that when a plan substantially terminates all assets are to be distributed according to the priorities set out in the legislation. The consequence of a finding of "substantial termination" are thus so great that the meaning of the phrase ought to be clearer to those affected -- both plan administrators and participants.

Investment

The provisions of Title III on the Voluntary Portability

Program Fund allow in Section 303(b)(3) that surplus funds may be deposited in interest bearing accounts of banks or savings and loan associations thus, according to the committee's views on S.3598, providing that the "funds may be channeled into socially desirable investments" (at p. 34). The main problem I see with this provision is that since I can find no incentive for plans to join the Voluntary Portability Program Fund, I doubt that significant funds will be available for any kind of investment. This problem would be alleviated, I might add, if the portability provisions were mandatory as is true in H.R. 462 currently being debated in the House.

In the meantime, the interest in encouraging socially beneficial investments can be furthered by insuring that investments by individual pension funds in such projects as housing for the plan's participants are acceptable investments under the Act's prudent man standards. This could be accomplished by insertion in Section 510(c) of a provision that investment in socially beneficial purposes under guidelines established by the Secretary of Labor are among the types of allowable transaction.

Reporting and Disclosure

My concern with insuring that participants and beneficiaries are adequately informed about the nature of their plan and their status in the plan prompts me to inquire whether there are any circumstances in which exemption provided in Section 504(b) "from all or part of the reporting and dis-

closure requirements . . . of any class or type of employee benefit plans if the Secretary finds that the application of such requirements . . . is not required to such plans is not required in order to implement the purposes of this Act, can be anticipated to apply to the plan summaries, descriptions and/or annual reports which are at least to be made available to plan participants and beneficiaries. If not, and I can conceive of no circumstance in which the availability of such information should be dispensed with, then I recommend that a proviso clause be added to this exemption section to insure that these requirements are not deleted.

In order to facilitate communication by the participant or beneficiary with such administrators, the plan summary described in Section 507(b) should include the name and address of the plan administrator.

CONCLUSION

Finally, I would like to offer these thoughts.

First. I consider the act before this subcommittee to be a reasonable and responsible piece of legislation. It is a piece of legislation that is desperately needed now. Further delay can only cause further hardship.

Second. If there is a criticism to be made of the RISE Act, it is that the bill is too institutionally oriented. By this, I mean that the Act tends to deal with the broad scope of pension reform and with broad groups of people affected by pensions. While this breadth of concern is of course needed, in such a structure the individual employee tends to get lost. The single employee must be protected; he needs to be able to know his standing in the pension fund before he retires; he needs to know that benefit disputes can be inexpensively and expediously resolved and that such resolutions will be through a full and fair review; he needs to know that his pension credits are portable; and to this end, I would like to see incorporated into the RISE Act a provision for mandatory portability as is found in H.R. 462.

Third. Regardless of any criticism that I might have of the RISE Act as it now stands, I feel that it is crucial to the economic well being of this country that we have a strong pension reform law. The RISE Act is such a law. I, therefore, urge speedy passage of this bill.

STATEMENT OF THE COMMUNICATIONS WORKERS OF AMERICA
SUBMITTED TO THE SENATE SUBCOMMITTEE ON
LABOR ON PENSION REFORM
FEBRUARY, 1973

The Communications Workers of America, which represents 550,000 people in collective bargaining, supports the enactment of meaningful pension reform legislation that will provide security for America's workers when they retire.

The comprehensive study conducted by the Subcommittee on Labor over the past three years has eloquently documented the widespread weaknesses of private pension plans in the United States and has dramatized the need for federal legislation to protect the millions of American workers who will retire from the labor force.

Too often we forget that a pension is usually the single largest asset other than social security that a worker has after a lifetime of labor. The loss of a pension can cause financial disaster for a working person and his family, dashing the dreams that he had quietly nourished of enjoying his golden years free from the pangs of financial worry. Yet the plain fact is that many workers will never cash in on their company's pension plan.

The study conducted by this Subcommittee revealed the startling fact that under 36 pension plans covering 2,900,000 workers, only 8 percent of those workers have received pension benefits since 1950. Under most of these plans, about 70 percent of the workers forfeit their pension rights because they change jobs. Others lose out on their pension because the companies that they work for are shut down or sold, or go bankrupt through mismanagement or misfortune.

But while hundreds of thousands of workers are being deprived of their pensions, pension plans and their assets continue to grow at a rapid rate. There are now about 34,000 pension plans

in the United States, covering nearly 30 million workers, almost half the labor force.

The assets of these pension plans have experienced an astonishing growth over the last decade and now comprise the largest body of virtually unregulated assets in the United States. These assets have increased from $12 billion in 1950 to $135 billion today, a leap of more than 1100 percent in 22 years. This vast treasury is now growing at a rate of $10 billion annually and should be in excess of $200 billion by 1980. Thus, the money in pension plans is there, but the worker who made the accumulation possible and for whom it is intended is not receiving it.

Concerning our own union, almost all of the 550,000 people that the Communications Workers of America represents in collective bargaining work for the Bell System. The pension plan of the Bell System, which covers about one million employees, has been in effect for 60 years, since 1913. It was, however, only five years ago, in 1968--55 years after the inception of the plan--that CWA was able to persuade the Bell System to include in the plan any vesting rights to pension equity for terminating employees.

A terminating Bell employee now has a right to his accumulated pension equity if he has achieved 15 years of service and is at least 40 years old at the time of termination. The Bell System pension plan offers no partial vesting schedule such as the provisions in S. 4 which allow a worker 30 percent vesting after eight years, with 10 percent each year thereafter until he is fully vested after 15 years. Rather the Bell System takes an "all or nothing" approach, anachronistic in concept and inequitable in

effect, especially when we reflect on the increasing employee turnover in much of the American economy.

Indeed, 50 percent of Bell employees have five years of service or less, and turnover is so great that only a small percentage of present employees will ever qualify for vesting rights. Thus, numerous employees who leave the Bell System before completing 15 years of service reap no protection at all even if they have worked for the System for 14 years. The present level of benefits paid to retirees under the Bell System pension plan is over $400 million a year, but the total balance in the pension fund is almost $10 billion and still growing because of the high employment turnover.

As to the provisions of S. 4, we support the thrust of the Williams-Javits legislation and are pleased that the legislation was introduced with the bipartisan support of 52 co-sponsors. We have, however, several suggestions for modifications in the legislation that we believe would strengthen it substantially.

To begin with, we advocate coverage beginning immediately from the time of employment. This is a useful feature of the Bell System pension program which we believe should be adopted as universally as possible. Such a feature would bestow on a worker potential pension benefits from the start of his employment and would end the practice of cancelling the pension equity of those who terminate their employment with a firm after a few years of service.

We also believe that the vesting formula of the legislation needs to be liberalized. Under S. 4, an employee's pension would

be fully vested after 15 years, but a worker who changes jobs more often than every eight years would not receive even partial vesting of his pension equity.

In this increasingly transient society that we live in in America in the 1970's, people are moving and changing jobs more and more often. Therefore, immediate partial vesting should be required by law under which vesting credits would accrue to participants in pension plans, commencing with their first year of service after enactment, at a rate of 10 percent a year, so that after 10 years an employee would be 100 percent vested. This proposal is similar to the suggestion made by one of the co-sponsors of S. 4, Senator Abraham Ribicoff (D-Conn.), who advocates full vesting after 10 years, with 50 percent vesting after five years of service.

Another aspect of the vesting schedule of S. 4 that needs modification is that Section 701 calls for the vesting provisions to take effect three years after enactment. In addition, the vesting requirements can be made deferrable for five more years in the case of any employer if he can show that the vesting would require curtailing benefit levels.

This adds up to a possible eight-year postponement after enactment, before the vesting schedule of S. 4 could begin to take effect. Thus, an employee would really have to work for 16 years, the eight-year postponement plus the eight years until he would achieve 30 percent vesting under the Williams-Javits formula. Hence, a worker beginning a new job in the year of enactment might have to wait a total of 23 years, the eight years until the

legislation takes effect, eight years until he is 30 percent vested and seven more years as he accumulates 70 percent more credits, to achieve complete vesting. Once again we stress the need for a 10-year vesting schedule rather than a total of 15 years, given the possible time gap from enactment to implementation.

The lack of protection, in the legislation, for pension credits earned before enactment also needs to be reviewed. Employees who are at least 45 years of age are entitled to receive vesting credit for their service with their present employer prior to enactment of the law. Without such retroactivity, only younger workers entering the labor force after the legislation is enacted would have the assurance of receiving their full pension rights, while many older workers would have no protection of their benefit rights accumulated prior to enactment of the bill.

Under our current pension system, a worker often loses his entire pension when he transfers to a new employer. Employees should be able to carry their vested pension rights from one company to another when changing jobs. S. 4 has taken a significant step forward by establishing a voluntary portability fund which would be administered under the authority of the Secretary of Labor.

The only questionable feature of the Williams-Javits legislation is in leaving it up to the company to decide whether to participate in the portability fund. This decision should be up to the worker to decide whether he would prefer to pay into the national portability fund instead of being dependent on the company for this favor.

To make pension program more secure, S. 4 authorizes a Private

Pension Plan Termination Insurance Program similar in concept to the way in which the government protects the public's bank savings through the Federal Deposit Insurance Corporation. The insurance program contemplated by S. 4 would protect participants against loss of vested benefits arising from plan termination if the pension plan in which a worker participates falls short of money.

The Labor Department has estimated that some 25,000 American workers are affected by the termination of about 500 pension plans a year. Many of these terminations result from violations of fiduciary responsibility by those who are supposed to be safeguarding the fund. We applaud the effort of S. 4 to cope with this problem through an insurance system.

S. 4 recognized the need to make sure that employers are responsible in funding their portion of workers' pensions. The legislation recognizes that the money in a pension fund is not "company" money; it is money set aside for the future benefit of the employees for whom the fund was established. The provisions of S. 4 that would eliminate "self-dealing" in pension funds are worthy of enactment, but caution must be taken to clarify "self-dealing" within a corporate "conglomerate" so that the pension fund of one portion is not heavily invested in assets of another branch of the same conglomerate.

Finally, we believe that a public body should be established which would be entrusted with administering Bell System pension plans. The Bell System, as a nationally regulated utility, is subject to government scrutiny in many other areas, and it is

therefore proper to provide for public administration of the Bell System pension plans, whose assets now approach $10 billion.

S. 4 properly recognizes that pensions are not gifts to workers but rather are compensation largely deducted from paychecks, which would have gone into the employees' wallets through the years if they had not belonged to a pension plan. The legislation also recognizes that workers with years of service are entitled to expect more than just social security benefits in their later years, considering the valuable contribution to society represented by their years of hard toil.

Passage of the Retirement Income Security for Employees Act would provide new hope for the American worker. It would afford him the assurance of receiving the decent pension he so richly deserves and enjoying his retirement period free from financial insecurity.

WRITTEN STATEMENT WITH RESPECT TO S.4

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT OF 1973

Prepared By

Employee Trusts Committee

Corporate Fiduciaries Association of Illinois

February 16, 1973

WRITTEN STATEMENT OF THE CORPORATE FIDUCIARIES ASSOCIATION OF ILLINOIS WITH RESPECT TO S.4 RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT OF 1973

INTRODUCTION

The Corporate Fiduciaries Association of Illinois (formerly Corporate Fiduciaries Association of Chicago) has been in existence for 50 years and currently has a membership of 65 banks and trust companies throughout the state.

Through meetings and correspondence the Association affords its members the opportunity for discussion and consideration of questions and problems affecting such companies in their fiduciary capacities.

One of the standing committees of this Association is the Employee Trusts Committee. At the present time there are ten members on this Committee and they represent the largest trust departments in Illinois. This Committee meets on a regular basis to discuss the various problems that arise in this field.

Naturally current and pending legislation, both state and federal, concerning employee benefit trusts is of prime importance to this Committee since its members in their fiduciary capacities represent such a large segmen of the private pension system.

The following data illustrates the size and scope of the plans administered by the banks and trust companies represented on the Committee:

They act as trustee or agent for approximately 4,000 employee benefit plans having assets in excess of $15 billion. These banks and trust companies directly disburse approximately $270 million to 150,000 pensioners annually and pay approximately $160 million to 60,000 profit sharing participants each year from accounts managed by our institutions, acting either as trustee or as agent. As many of the larger corporations act as paying agent for their own plans, we estimate that as much as $500 million is disbursed annually from these employee benefit plans. The institutions represented by this Committee have administered employee benefit plans for themselves and their customers for 75 years. The oldest pension plan managed by our institutions dates back to 1899 and the oldest profit sharing plan to 1916.

The private retirement system has shown fantastic growth in the last twenty years. Assets are currently estimated at over $175 billion held in several hundred thousand separate accounts. It is not unusual that with such rapid growth the private retirement system is not perfect. Abuses have come to light which all responsible fiduciaries abhor. However, we do wish to point out that employee benefit funds managed by independent banks

and trust companies have been relatively untouched by scandals and "horror stories."

Professional corporate trustees are well aware of the fiduciary nature of employee benefit funds, and of their responsibility to employee beneficiaries. While employee benefit trusts may be considered a relatively recent innovation, the trust business, per se, has a long history of development. Banks and trust companies have managed trusts for over a century, and have developed a broad background and great expertise in this area. Undoubtedly many of the current pension plan problems could have been avoided if an experienced corporate trustee had been acting.

This Committee made a rather comprehensive study of the private retirement system and how it works and published a paper in January, 1972 (see report "Selected Material on the Private Pension System"). The purpose of this study was to outline the duties and responsibilities of the various individuals and institutions involved in the private retirement system and to explain how they all function together to make the system work. Meetings were held in Washington with many of those legislators and staff people concerned with federal pension legislation. We are encouraged to feel that our material and conferences proved helpful in generating a better understanding of the private retirement system. Our study pointed out that the Congress stipulated that the trustee of a self-employed invididual's employee benefit trust (HR-10) must be a bank. Perhaps corporate employees should be entitled to the same protection.

The current members of the Employee Trusts Committee are primarily administrators of plans of our customers. As such, we have been exposed to the broadest possible range of employee benefit plans and the problems encountered over the years in the operation of these plans. Two members of the Committee are attorneys specializing in the legal aspects of these plans.

The Committee has reviewed S.4 and feels that it is superior in many ways to the original version of S.3598 submitted in the last session of Congress. We prepared a statement on S.3598 last year and were privileged to be invited to discuss our views with the Subcommittee staff. Generally, we favor federal fiduciary standards and meaningful disclosure and reporting requirements. We are not opposed to reasonable vesting and funding standards. We are concerned that the portability and reinsurance Titles are based on inadequate information and should be studied further before enacting legislation in these areas. The Staff is to be commended for the careful consideration given to those who testified or submitted statements on proposed pension legislation.

While S.4 includes many of the recommendations this group made with regard to S.3598, we sincerely feel additional changes are needed to permit this legislation to best serve the interests of the American worker as they relate to his retirement security.

Our comments and recommendations on S.4 are hereby submitted for your further consideration.

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S.4

Comments and Recommendations on Title I

Organization

In his statement introducing S.3598 in the last session of Congress, Senator Williams stated that at least eight executive agencies have some authority over the operations of private pension plans. S.4 now gives additional authority to the Department of Labor and the Bill itself requires further reporting and does not require the Secretary of Labor to utilize the facilities or services of other agencies or to provide for the filing of a single report under this Act and the Welfare and Pension Plans Disclosure Act. Senator Williams stated: "The great goals of reform legislation must be to guarantee retirement security to the worker, and to assure the continued growth and expansion of private pensions." Disregarding the fact that employers will be discouraged from increasing benefits or establishing new plans because of added costs arising from vesting and reinsurance, employers, even if they could afford the added costs imposed upon them by this Bill, will be reluctant to set up new plans because of further governmental reporting requirements. Substantial costs are incurred by employers in the filing for Forms D-1, D2, 4848, 4849, etc., forms with the S.E.C. and the rendering of tax advice to participants in order to comply with proposed Income Tax Regulations. If Congress is truly interested in pension reform and the continued growth of the private retirement system, we strongly urge that the Federal administrative authority, as reflected through the various executive agencies, be reformed to exercise better control. One definition of "reform" is "to make better by putting a stop to abuses or malpractices, or by introducing better procedures, etc." So, let's introduce better procedures by eliminating duplication of reports, controls, etc. and not confuse the picture even further as this Bill does in some cases. For example, this Bill sets forth transactions which fiduciaries are prohibited from making, but so does Section 503(b) of the Internal Revenue Code. In one case, the Secretary of Labor will issue rules and regulations relating to prohibited transactions and so will the Secretary of Treasury. Is this reform?

We concur with the policy adopted by the American Bankers Association which provides, among other things, that the ABA continues to suggest that if Congress decides that a government agency or agencies must be given investigatory and enforcement powers with respect to employee benefit plan provisions or the handling of employee benefit funds, such regulatory powers should be granted to a specialized agency within the Treasury Department subject to the general supervision and direction of the Secretary of Treasury or to a newly established independent agency, in which event all powers and duties now held by various government agencies should be transferred to that agency.

Section 101(a)(4)(B) deals with the Secretary's power to make an investigation when he has reasonable cause to believe there may exist a

violation of the Act. In the case of banks and trust companies, the duty of assuring compliance with the new law should be left with the banking agency.

Pursuant to Section 101(b)(2) of the Bill a fee will be charged to the employer to register his plan. With the increased costs of funding, vesting, insurance, how will another fee encourage the growth of the private retirement system?

We recommend that the authority of the Secretary of Labor to prescribe rules and regulations should not apply to general or specific interpretations of the prudent man rule set forth in Section 510 of this Bill. We are concerned that non-professional trustees will be seeking rulings before taking any action and a new body of trust law could evolve. Professional corporate trustees will judge for themselves what is prudent and what is not. The final decision as to whether an act is prudent or not should be subject to judicial review and decision and not to the decisions of the Secretary of Labor.

In order to avoid duplication of functions among Government agencies, the first "may" in Section 101(e) should be changed to "shall" to make it a requirement upon the Secretary to cooperate with other agencies. Also, the word "may" in Section 106 should be changed to "shall" to require the Secretary to provide for a single report under this bill and the Welfare and Pension Plans Disclosure Act.

The summary of the Bill states that plans covering self-employed are exempt but Section 104(b)(3) seems to exempt such self-employed plans if no common-law employees are covered. If such a plan covers five common-law employees, is it covered under the Bill or would it be exempt under 104(b)(4)? This needs to be clarified.

Why are plans covering less than 26 participants exempt from vesting, funding and termination insurance? Isn't a long term employee of a smaller employer entitled to the same protection as are employees of a larger employer? An employee's needs will be the same whether he works for a small or large employer. A small employer could be exempt from certain reporting requirements to avoid the expense in connection therewith, but the employees should still be entitled to the other protections afforded employees of large companies. How can it be explained to an employee that he need not be vested just because his employer employs less than 26 people? Surely the "horror stories" about lost pension rights will not disappear unless employees of <u>all</u> employers with pension plans are covered by the basic vesting provisions.

Also, why are plans administered by religious organizations exempt from vesting standards? The needs of the employees of such organizations are the same as any other employees.

The federal and state retirement systems are exempt from Title II, III and IV of this Bill. Obviously, it is felt that government taxing powers obviate the need for funding government pension plans although private plans will be forced to fund. We wish to point out that the private

pension system is far better funded than public systems in general. Future generations will be forced to pay (through increased current taxes) for the pensions of government employees who, in many cases, enjoy pension benefits far in excess of most private plans.

The six month period for registering a plan in Section 105(b) is unrealistic. Rules and regulations will not be issued for some time after the enactment of the Bill and it would be impossible for employers to comply.

S.4

Comments and Recommendations on Title II

Eligibility, Vesting and Funding

Eligibility requirements call for service no longer than one year or age greater than 25, whichever occurs later. Most companies experience the greatest degree of employee turnover within the first three years. Requiring the enrollment of all employees after one year of service will create much additional paper work, particularly in profit sharing plans, which will be entirely unproductive for those employees who leave within three years. Such a short period of employment will not provide the base for a meaningful retirement benefit. Accordingly, we recommend that the service requirement for eligibility be restated as no more than three years at a maximum.

Mandatory funding and vesting may tend to discourage employers from establishing new pension plans. Legislative mandatory rules and requirements in these areas will tend to interfere with collective bargaining and the freedom to individualize plans. If funding is such a concern, perhaps the Internal Revenue rule should be changed to allow funding of past service liability at more than the present limit of 10% per year.

It is obvious that for employers whose pension plans do not have short vesting periods and are not fully funded, the vesting and funding, as required by the Act, will entail additional costs. The amount of the additional costs will vary from plan to plan, depending upon the extent of the required change from their present position of vesting and funding. In some cases the additional cost can be substantial, while in other cases it may be minimal.

S.4

Comments and Recommendations on Title III

Voluntary Portability Program for Vested Pensions

We don't believe a need has been shown for such a program and are of the opinion that the establishment of such a program would give rise to unnecessary expense to taxpayers.

Section 303(b)(3) provides for depositing funds of the Voluntary Portability Program in savings accounts. Section 406(d) provides moneys of the insurance fund may (not shall) be invested in U. S. obligations. Why the difference?

While we don't necessarily recommend this, another approach to a partability program could be the use of U. S. Retirement bonds. Upon termination of employment with vested rights, an employee could elect to have the value of those rights used to purchase a special Treasury bond which either could be redeemed in full at age 59 1/2 as in the case of HR-10 plans or paid over a period of years by submitting payment coupons to the Treasury. The bonds would have to be fully redeemed at a certain age to eliminate the possibility of escaping estate taxes. The administration (and related costs) of such a program would be practically nonexistent. There would be no central fund, no depositing or transfer of funds and no bookkeeping records by the employer. The employee would have possession of the bonds and the employer need not notify him of his benefits sometime in the future or keep track of him. Such a program would also assist the Treasury in the sale of bonds. This program would seem to be a better approach than that set forth in Title III - and should be explored. Of course, provision would have to be made that the employee would not be taxed at the time the bonds are purchased.

The bookkeeping records required by Section 305(1) would be monumental and horrendous. If a member plan agreed to accept amounts from employees covered under 100 other member pension plans, individual records would have to be maintained for those 100 employees showing the value of their vested benefits plus new benefits. Records under profit sharing could also be difficult. If the transfer is from a contributory plan to a non-contributory plan, or if the employee made a pre-termination withdrawal from the plan, will the new employer have to reconstruct or obtain records from the transferring plan so as to comply with the income tax regulations computing and taxing a future distribution as capital gains or ordinary income? In view of the present and most complex problems raised by the proposed income tax regulations, we can't conceive of a plan being willing to accept funds from another plan.

What is the gist of Section 305(1) and who determines whether credits purchased in a member plan have at least an equivalent actuarial value as the amounts transferred? If two profit sharing plans are involved, no

actuarial values are involved. If a transfer is made between a pension and a profit sharing plan, the problems are increased.

Section 305(2) provides for the purchase of an insurance contract at age 65. What if the former plan allowed alternate methods of distribution such as a lump sum or installments or the commencement of payments at an earlier age? Will an employee under such a plan agree to participate in the portability program?

Further, we can foresee problems if a participant in a large corporation's well-funded plan changes employment to a much smaller corporation with a less well managed plan. If his new employer has less than nine employees, the transferring participant will not even have the protection of this proposed legislation.

It should be noted that many employee benefit plans provide for payment of a vested benefit to terminated participants upon attainment of retirement age. Mandatory vesting will obviously increase the number of participants who will be entitled to benefits when they reach retirement age. If a member of the work force has been employed by several different employers during his career, he will receive benefit checks from each employer's pension plan. Therefore, why the need for portability? Why reduce the present flexibility of payments inherent in each private plan and cause the creation of another government bureaucracy for no basically sound reason?

S.4

Comments and Recommendations on Title IV

Plan Termination Insurance

At this time we cannot endorse the concept of plan termination insurance. A compelling reason for reinsurance of pension benefits has not been established. As trustee of thousands of employee benefit trusts since 1899 with assets in the billions of dollars, we have encountered very few situations where the proposed insurance would have been needed.

Also, we understand that a Labor Department survey found that one-tenth of one percent of workers are affected by pension plan terminations. We don't believe that the survey stated that those workers lost all benefits. We question an increase in costs or need of another agency with its attendent increase in costs where so few workers actually stand to lose all pension benefits. Also, if Titles I, II and V of the Bill are enacted that one-tenth of one percent should shrink. The cure should not be worse than the desease. Why enact insurance legislation which will discourage both the adoption of plans by employers who do not now have them or an increase in benefits to those employees presently covered? The reinsurance program would probably have an adverse effect on a substantially greater number of employees than those affected by plan terminations.

Of all the proposed pension legislation, reinsurance without the facts and figures to back it up looms as one of the most objectionable features of the proposed laws. This feature has to discourage the establishment of new plans. New plans will obviously have the greater unfunded liabilities and therefore the greater amount of premiums to pay. Considering the entire pension universe, would it not make more sense to have premium dollars applied instead against unfunded, vested liabilities or for an increase in benefits?

Further, the details and structure of the reinsurance proposal are left almost entirely to the discretion of the Secretary. There are too many unanswered questions and loose ends surrounding reinsurance, as proposed in Title IV, that need resolution before a meaningful evaluation can be made.

It seems much more reasonable to get the facts before barging ahead in the difficult area of reinsurance. If the need can be established without an adverse effect on the continued growth of plans and increases in benefits, the facts produced would give some meaningful direction to legislation.

S.4

Comments and Recommendations on Title V

Disclosure and Fiduciary Standards

With respect to Section 510 of the Bill dealing with fiduciary responsibility we agree with the concept that all persons handling employee benefit funds have a fiduciary responsibility to the covered employee and that remedies should be available for breaches of such fiduciary responsibility. However, the definition of "fiduciary" set forth in Section 502(a) should be broadened to include investment counsellors who give advice. Many individuals acting as trustees of employee benefit funds rely upon the advice of investment counsellors employed by them believing that such counsellors recognize the terms of the trust agreement and the responsibilities of a trustee. We do not believe that the definition of "fiduciary" includes an investment counsellor who does not direct the trustee to make investments or does not execute the orders but renders advice to the company or company-appointed committee which in turn, acting upon such advice, directs the trustee to make investments. The investment counsellor, in such cases, is not technically exercising any "power of control, management or disposition" with respect to the fund. While it is true that in such situations the company or committee is a fiduciary, it should be made clear that the investment counsellor is also a fiduciary. With the current emphasis on investment performance, companies are employing investment counsellors as investment experts, hopefully expecting a high return on invested funds. The company officers will, as a practical matter, rely either exclusively or almost exclusively on the advice of the investment counsellors. The company will not pay a fee for advice and then ignore it. Therefore, the definition of "fiduciary" set forth in Section 509 should be enlarged by adding the following words after the word "disposition":

> "or renders investment advice for a fee or other compensation, direct or indirect."

Section 15(b)(2) prohibits some investments which could be beneficial to the fund. Also, that section is inconsistent to some degree with Section 503(b) of the Internal Revenue Code which sets forth prohibited transactions. Prohibited transactions must be reported on Form 990-P and therefore it appears 503(b) is sufficiently broad enough and clear enough to be substituted for 15(b)(2) in most respects and it is recommended that 15(b)(2) be rewritten as follows:

"(2) Except as permitted hereunder, a fiduciary shall not -

(A) enter into any prohibited transaction as set forth in Section 503(b) of the Internal Revenue Code and in Income Tax Regulations issued thereunder by the

Secretary of the Treasury or his delegate;

(B) lease or sell property of the fund to a fiduciary individually or lease or purchase on behalf of the fund any property known to be property of the fiduciary;

(C) in his individual or any other capacity act in any transaction involving the fund on behalf of a party adverse to the fund or to the interests of its participants or beneficiaries;

(D) furnish goods, service or facilities of the fund to any person known to be a party in interest."

While it appears the above suggested change together with other sections of the Bill would more than adequately cover the interests of the employees, if 15(b)(2) is not changed as we suggest, then other changes are recommended.

Many trusts have, in the past, leased property to the employer and the rate of return to the trust has been good, all to the advantage of the employees. Such advantageous investments should not be prohibited. It must be kept in mind that a prohibited transaction under 503(b) of the Internal Revenue Code leads, among other things, to the disqualification of the tax-exempt status of the trust and loss of deduction of employer contributions. Therefore, the lease of property to the employer in an arms-length transaction cannot result in a diversion of income or principal to the employer which would be a prohibited transaction. Also, a fiduciary must act prudently and if such investments are imprudent, the fiduciary should dispose of them. If Sections 15(b)(2)(A) and (B) are retained, at least the investments already in existence on the date the Bill is enacted should not have to be disposed of. Such a forced disposition at more or less a distress sale could cause irreparable damage to the very employees the Bill is intended to protect. Also, the Bill should permit compliance with terms of leases entered into before enactment of the Bill.

The first portion of Section 15(c)(4)(A) clearly imposes no limitation on the percentage of company securities which can be purchased in profit sharing, stock bonus, thrift or similar plans. The two sentences preceding the last sentence of that subparagraph appear to be inconsistent with the first portion, since they impose a limitation on certain profit sharing, stock bonus, thrift and similar plans. Also, those two sentences confuse us further unless a distinction be made between a plan which requires that all or a portion of the fund be invested in company securities and a plan which does not require such investment but the plan or trust agreement explicitly permits investment in company securities. Where the plan requires such investment, the last sentence of 15(c)(4)(A) places the trustee in an impossible situation. If the trustee does not purchase the securities he must under the terms of the trust agreement,

it could be said that he would be breaching his trust and would be liable for any losses sustained by reason of not following the terms of the trust agreement. If, on the other hand, he does purchase the securities as directed and the investment does not meet the prudent man rule, he is in violation of the Act. He is damned if he does and damned if he does not.

While Section 15(b)(1)(C) may be said to relieve the trustee from liability for purchasing stock when the trust agreement so requires, the last sentence of 15(c)(4)(A) and Section 15(c)(8) provide the trustee must act prudently. Having in mind the objectives of these profit sharing and stock bonus plans, there would seem to be no compelling reason for requiring the securities in such plans to meet the test of the prudent man rule, particularly since the employees would be on notice that the fund is to be invested largely or entirely in the company's securities.

This point, as well as the apparent inconsistency between the first portion of this subparagraph and the two sentences preceding the last sentence of this subparagraph, should be clarified.

Section 15(g) permits allocation of specific duties and responsibilities among fiduciaries and also agreement of indemnification, but we wonder why it would be necessary to have an agreement of indemnification outside of the trust agreement itself. It appears to us that if certain duties are allocated to one fiduciary, the other fiduciaries should be relieved of liability for those duties by the Bill itself. The agreement of indemnification may not necessarily protect the fiduciary if the other party to such agreement cannot meet its obligations under the agreement. It is one thing to say you have no liability and another to say you may be indemnified. Therefore, we would recommend that 15(g) be rewritten as follows:

> "(g) No fiduciary may be relieved from any responsibility, obligation or duty under this Act by agreement or otherwise; provided, however, nothing herein shall preclude the trust instrument from allocating specific responsibilities, obligations or duties among fiduciaries in which event such a fiduciary to whom certain responsibilities, obligations or duties have not been allocated shall not be liable either individually or as a fiduciary for any loss resulting to the fund arising from the acts or omissions to act on the part of another fiduciary to whom such responsibilities, obligations or duties have been allocated."

We agree that participants should receive worthwhile information to enable them to clearly understand their rights to benefits and in order to determine whether they have to take any steps to protect their interests. However, too much detailed reporting and information would tend to confuse most people and in addition, would be costly and burdensome to compile. For example, Section 506 on page 67 requires reports of all loans. The information required could involve an enormous amount of work resulting in great cost with little or no value to the participants. We suggest that no

listing of Section 15(c)(5) loans (participants' loans) be required. This suggested change in reporting was received favorably by the Internal Revenue Service and its revised Form 990-P, effective December 31, 1971, eliminates the need to report in detail all participants' loans.

The disclosure provisions require too much detailed reporting. Based upon the experience of the Labor Department under the Welfare and Pension Plans Disclosure Act, tons of paper are filed which are not reviewed. This Bill requires even further reporting and it would appear that the Labor Department will be literally swamped with reports which could not possibly be reviewed and if reviewed would have to be reviewed by experts. This would be quite expensive and in most instances, wasteful. It appears that all that should be required would be a summary statement of receipts and disbursements, a list of assets and a statement of transactions involving parties-in-interest. Since the fund has to be audited by qualified public accountants and an actuarial report will also be required, any further reporting would seem to serve no worthwhile purpose. Can you imagine someone in Labor reviewing each and every transaction in a billion dollar account managed by multiple trustees? How long would it take and what would he be looking for?

Section 506(d) requires a detailed statement of commissions. We see no worthwhile purpose served by including brokerage commissions paid for the purchase or sale of marketable securities through registered dealers and would like to see that as an exception to reporting commissions.

Section 506(d) on page 69 which sets forth subsection 8 of Section 7 of the Disclosure Act dealing with collective trust funds should be rewritten to permit banks to comply by filing with the Secretary of Labor a copy of the annual report of the collective trust fund. In our opinion, no real worthwhile purpose is served by having literally hundred of accounts reporting the same receipts and disbursements and assets and liabilities to the Secretary. The annual report of the collective trust fund is audited by outside public accountants and should suffice for the purposes of the Act.

Since this Bill amends the Welfare and Pension Plans Disclosure Act, and inasmuch as banks or trust companies are exempted by Regulations of the Secretary of Labor from the bonding provisions of that Act set forth in Section 13 thereof, we recommend that S.4 itself exempt banks from the bonding requirements and we suggest that the following be added to Section 13(a) of the Disclosure Act:

"The following institutions and persons need not be bonded for handling funds other than their own:

(1) Banks or trust companies subject to Federal or State supervision and examination.

(2) Insurance carriers or service or other organizations operating in accordance with State law.

(3) Armored motor vehicle companies or other independent contractors performing functions not

normally carried out by plan administrators, officers, or employees.

Banks and trust companies subject to Federal regulation and examination need not be bonded for handling funds of plans which they administer for the benefit of their own employees."

S.4

Comments and Recommendations on Title VI

Enforcement

Sections 603 and 604 provide that civil actions may be brought in any court of competent jurisdiction in the district where the plan is administered, where the breach took place or where the defendant resides or may be found. This gives rise to the possibility of a fiduciary having to defend actions in a court far removed from his principal place of business. It would be unduly burdensome and costly for a fiduciary to be sued in any jurisdiction where the plan is administered, which possibly could mean any location where the employer had employees covered under the plan. Therefore, we recommend that the words "... the plan is administered, where the breach took place or where ..." be deleted from Sections 603 and 604 since, if not deleted, the possiblity would exist that banks or even individual fiduciaries would have to defend actions in courts far removed from their home base. This could be costly. Also, if the defendant was successful in its defense, all court costs, attorney fees, etc. would be borne by the fund to the detriment of the participants. Also, how do you determine where the breach took place? In the case of a disputed distribution, is it where the payee resides at the time he receives a check, where the check is issued or where each member of the committee which gave the direction resides?

Also, we strongly believe that 605(a) of the Bill should provide for attorneys' fees and costs only to a successful party and to require the posting of a bond to cover costs. Again, it should be kept in mind that the trustee could be faced with many frivolous and nuisance law suits and the costs of defending, which could be substantial, would be charged against the fund thereby diluting the interests of the remaining participants. We suggest that 605(a) be rewritten as follows:

"(i)(1) In any action by a participant or beneficiary, the court

(A) in its discretion may allow a reasonable attorney's fee and costs of the action to the successful party; and

(B) shall require the plaintiff to post security for payment of costs of the action and reasonable attorney's fees."

S T A T E M E N T

of

James F. Bailey
Legislative Advocate

United Brotherhood of Carpenters and Joiners of America

before

Subcommittee on Labor
United States Senate

on:

S.4, Retirement Income Security for Employees Act

February 16, 1973

Mr. Chairman, I am James F. Bailey, Legislative Advocate for the United Brotherhood of Carpenters and Joiners of America, 101 Constitution Avenue, N.W., Washington, D.C., 20001.

We would like to take this opportunity to comment on a few of the provisions of S.4.

<u>Vesting</u>

We agree that reasonable vesting requirements for private pension plans would promote greater equity in the distribution of pension benefits. We have two comments in regard to the vesting provisions of S.4.

First, we think the vesting schedule set forth in Title II is unnecessarily complicated. A simple requirement of full vesting after ten years service would be just as equitable and much easier for the plan to administer and for the participant to understand. We note that Sec. 202(e) authorizes the Secretary of Labor to waive the vesting requirements of S.4 if a pension plan has vesting provisions which are determined to be "as liberal" as those requirements. The administrative time and money needed to make these individual determinations could be eliminated by writing the option of full funding at so many years into the law itself.

Second, we are concerned about the inequities that would arise under Sec. 202(a)(2). Under this provision, a 45 year old employee with 15 years service at enactment of the law would be fully vested. if he were only 44 years old, however, he might be required to work

another 15 years before being fully vested. We hope the Committee will consider some sort of phasing-in of vesting requirements that would accelerate the vesting of older workers without the inherent inequity of a drastic cut-off point at age 45.

Funding

We believe the funding requirements in S.4 are sound and reasonable. We are pleased to see that S.4 recognizes the unique situation of multiemployer plans by requiring the Secretary of Labor to prescribe alternative funding requirements for these plans. Multiemployer plans, which are not dependent on the financial fortunes of a single company, have a proven track record of long-term security of pension benefits. The funding requirements contemplated by S.4 would give reasonable assurances that all the commitments of the plan would be met without requiring the plan to meet an unnecessarily rigid schedule.

Portability

The issue of portability is a difficult one. We believe that S.4 has taken the proper approach by instituting a voluntary portability program while authorizing the Secretary of Labor to give technical assistance to pension plans to help them develop portability and reciprocity programs. We believe that the voluntary approach is the only realistic way for the federal government to become involved in a portability program at this time.

This Brotherhood is now engaged in a major effort to achieve a system of full reciprocity among all the local pension plans in which our members participate. Under the Reciprocal Agreement announced

in April 1971, a member can move from one participating pension plan to another without jeopardizing his pension credits. He is vested when his total service meets the requirements of each plan in which he has participated. When he retires, each plan pays him a partial pension according to his service under that plan.

A voluntary reciprocity or portability program such the one we have described obviously does not solve all the problems of lost pension credits. But we believe that a good deal can be accomplished through the voluntary approach.

Plan Termination Insurance

The termination of a private pension plan can lead to hardship and disappointment for the participants in that plan. The plan termination insurance program proposed in S.4 is one possible solution to this problem. However, we must again call the Committee's attention to the special circumstances of multiemployer plans.

Multiemployer plans are the least likely of any plans to terminate. We doubt that plan termination insurance is necessary for multiemployer plans. But if these plans are to be covered, we urge the Committee to impose as small a burden as possible on them.

The premiums proposed in S.4 recognize the special character of multiemployer plans by exempting them from the higher premium to be paid by most plans on unfunded vested liabilities incurred before enactment. We hope the Committee will consider writing into the law a provision directing the Secretary of Labor to prescribe premiums for multiemployer plans based on their experience with terminations. We do not believe it would be fair to force multiemployer plans to pay unnecessarily high premiums based on the experience of plans with

much greater chance of plan termination.

Bonding

We note that S.4 does not contain any provisions concerning bonding in Title V, which deals with fiduciary standards. We hope the Committee will consider taking legislative action to remedy a serious inequity in the current bonding system under the Welfare and Pension Plans Disclosure Act of 1958. That inequity is exorbitant premiums.

The attached letter from Robert Paul, president of the distinguished firm of Martin E. Segal Company, to then Secretary of Labor James Hodgson, states the situation clearly. The Department of Labor's figures show that the net losses incurred by the bonding companies amounted to only one-tenth of the premiums they earned.

The enormous profits earned by the bonding companies are unjustifiable. The millions of dollars of excess profits come ultimately from the pension checks of retired employees. We see no justice in compelling present and future pensioners to subsidize the bonding companies through inequitable premiums.

We urge this Committee to devise some means to correct this injustice. We see at least three possible legislative remedies:

1. The federal government could assume the bonding function itself, by setting up an independent bonding corporation, analogous to the Federal Deposit Insurance Corporation. Premiums would be set to cover actual costs. In this way, the burden of premiums on private pension plans could be significantly reduced without jeopardizing the security of pension assets.

2. If a plan termination insurance program is established as

in S.4, bonding could be handled through that mechanism. For a small additional premium a plan would be bonded as well insured against termination. The additional administrative burden on government would be minimal.

3. The Secretary of Labor could be required by law to establish premium rates for bonding.

Any of these suggested remedies should substantially reduce the burden of premiums, with little if any cost to the government. Whatever solution is thought best, we believe that the government has an obligation, since it requires bonding, to insure that the bonding system does not impose unfair burdens on private pension plans.

In conclusion, we urge the Committee to keep in mind one central fact - that all financial and administrative burdens that are placed on private pension plans must ultimately be paid for out of the pension checks of retired employees. We hope this Committee and the entire Congress will work to strike the right balance between the need for reform and the need to keep the cost to the pensioner to a minimum.

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C O P Y

September 26, 1972

Hon. James D. Hodgson
Secretary of Labor
14th and Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Secretary:

As consultants and actuaries to over 1,500 client pension, welfare and other employee benefit plans we have a deep interest in the statutes affecting these plans - and so keep a continuing watch on the direct and indirect effects of such legislation. In so doing, we have studied your 1971 Report to Congress on the activities under the Welfare and Pension Plans Disclosure Act. Figures in that report appear to confirm what we have long been led to believe from our own experience: That the bonding provisions of the 1962 amendments to the Act, while necessary in purpose, have resulted in windfall profits to the bonding companies.

The Act requires bonds to protect employee benefit plans from loss resulting from acts of fraud and dishonesty by officers and employees of the plans. In the five year period 1966 through 1970, reported premiums paid by plans for such bonds totalled $7,413,063. Direct losses paid by the bonding companies were somewhat less than 9 percent of total premium; expenses of adjusting these losses were a bit more than 2 percent. In all, the net incurred losses were less than 11 percent of total premium.

Bonding companies also claimed expenditures of over $3,000,000 for "expenses other than loss adjustment" - about 41 percent of total premium.

There was a balance, however labeled, of about $3,600,000 - over 48 percent of total premium - accruing to the bonding companies. (See statement attached.)

It is the public policy of the United States, expressed in the Internal Revenue Code, in the Welfare and Pension Plans Disclosure Act and in other legislation, to support the growth of employee benefit plans and to protect the interests of participants in these plans. We believe that that policy is furthered by the legislative mandate that officers and employees of the plans be bonded. However, we also believe that it is contrary to that public policy to require the unnecessary expenditure of money contributed for the welfare and retirement benefits of employees. In our view, net incurred losses of 11 percent of total premium over a five year period indicate higher-than-justified premium charges, and therefore excessive expenditure of funds held in trust for the benefit of employees. Some claims applicable to the reported years may have been delayed. But any allowance for delayed claims would be a percentage of paid claims, and certainly not large enough to change in any important sense the relationship between the figures.

The law does not explicitly give to the Secretary of Labor power to regulate premiums charged for bonds required by the Welfare and Pension Plans Disclosure Act. However, since the law does require bonds, and gives to the Secretary of Labor power to issue regulations necessary to carry out the provisions of this section of the law, responsibility for the equitable operation of the bonding section is, we believe, implicitly placed upon the Secretary.

As we view this problem, four courses of action suggest themselves, and we very respectfully offer them to you for your consideration:

1. That the Secretary order the appropriate division or office of the Department to undertake discussions with the bonding companies in an effort to reduce what appear to be unnecessarily large premiums.

2. That the Secretary recommend to the Advisory Council on Employee Welfare and Pension Benefit Plans a study of the cost of bonds required by the Act.

3. That the Secretary explore the possibility of setting up some "other bonding arrangement [that] would provide adequate protection of the beneficiaries and participants." (Sec. 13(e)). Among possible alternatives might be escrow arrangements in which title to - and interest earnings on - escrow funds remain with the plan.

4. That the Secretary request the Congress to amend the Act to give him power to regulate the amount of premium charged for bonds required by the Act.

In the five year period for which figures are available, 55 losses due to fraud or dishonesty were reported for over 150,000 pension and welfare plans. Certainly, the employees covered by these plans should be protected against such losses, but the money contributed for employee benefits should not be used to produce windfall profits for the bonding companies. It is in this spirit that we address this letter to you.

Sincerely,

/s/ Robert D. Paul
President

RDP/b

Premiums and Claims

Report of 1,120 surety companies, 1966-1970, under the Bonding Requirement, Welfare and Pension Plans Disclosure Act

	Amount	Percent
Direct Premiums Earned	$7,413,063	100%
Losses		
Direct losses incurred	651,408	8.8
Loss adjustment	164,547	2.2
Recoveries	-24,688	0.3
Net incurred losses	791,267	10.7
Expenses other than losses	3,044,047	41.0
Balance	3,577,749	48.3

* * *

Number reported losses

1966	2
1967	6
1968	16
1969	14
1970	17
Total	55

AMERICAN SOCIETY OF PENSION ACTUARIES

POSITION REPORT ON

S.4 "RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT"

SUBMITTED TO

SENATE SUB-COMMITTEE ON LABOR

February 20, 1973

By: William W. Hand, President
555 Cullen Center Bank Bldg.
Houston, Texas 77002

INTRODUCTION AND BACKGROUND

This report is submitted on behalf of the American Society of Pension Actuaries, hereinafter referred to as ASPA. ASPA is a non-profit organization with over 850 members who are engaged primarily, if not exclusively, in design, installation and administration of pension and profit sharing plans for small and medium size companies.

There are four categories of membership in ASPA designating the degree of skill and proficiency in all phases of pension planning which has been evidenced by the individual by his ability or inability to pass one or more of five examinations covering such diverse areas as law, IRS regulations, taxes, accounting, funding methods, actuarial cost methods, actuarial assumptions and techniques as related to retirement plans and investments. These examinations and related study material are prepared under the direction and supervision of Professor Lloyd A. Knowler of the University of Iowa, one of America's foremost authorities in the field of actuarial education. The preliminary results of a survey currently being conducted among our members indicates that members of ASPA administer in excess of 10,000 retirement plans covering more than 3 million employees which have assets in excess of 8 billion dollars. This same survey shows that members of ASPA have an average of over ten years of experience in the pension field and almost without exception have engaged in some type of specialized training in this field in addition to their basic academic training.

This report includes statements and opinions which are intended to be constructive and helpful in passing meaningful legislation to strengthen the private pension system as a whole.

NEED FOR PENSION REFORM

The Private Pension System has undergone intense investigation for more than ten years by various government and private agencies and committees. The undisputed facts revealed by these studies and investigations indicate there have been certain abuses and there are still certain weaknesses in the Private Pension System which must be corrected to protect the interest of the individual participants in these plans and to restore the confidence of the American people in the Private Pension System as a whole. ASPA applauds the thoroughness of the investigations and supports all efforts to enact meaningful legislation which will curb abuses in the pension field without destroying initiative to continue providing meaningful retirement benefits to employees within the framework of the free enterprise system.

However, when the results and findings of all studies in the private pension plans are carefully analyzed, it will be found that practically all, if not all, abuses in private pension plans are a direct result of:

(1) Inadequate vesting provisions.

(2) Plan terminations where assets were insufficient to fund vested benefits.

(3) Promises (written and verbal) made to employees by employers without any type of "qualified" plan to back up the promises made.

As far as we have been able to determine from the testimony presented to the various congressional committees and the multitude of newspaper articles, magazine articles, radio and television stories which have been presented on the subject there has not been a single abuse in private pension plans which can be attributed to lack of competence to perform the necessary actuarial calculations incident to the plan on the part of the plan administrator or the actuary or consultant employed by the plan administrator.

SUMMARY OF ASPA's POSITION

We support:

(1) Mandatory minimum vesting requirements.

(2) Minimum funding requirements.

(3) Adequate disclosure and fiduciary standards.

(4) Plan termination insurance.

We oppose:

(1) The Department of Labor or any other governmental agency:

(a) Recognizing membership in a private organization such as the American Academy of Actuaries as automatically qualifying an individual to be

a qualified actuary for the purpose of certifying to required pension calculations. We will, however, support efforts on behalf of the Labor Department or other governmental agency <u>to establish examinations covering all aspects of pension plan design, installation and administration</u> (including proper use and application of actuarial tables) which eventually will be required of everyone representing a client in front of the Treasury Department or the Department of Labor on pension matters. As more fully explained later in this report the standards presently set forth in S.4 and HR-2 would essentially give a monopoly to a relatively small group of people (many of whom are not experienced in pension planning) and <u>will unjustly put ASPA members and hundreds of other qualified pension consultants and actuaries out of business (or at best relegate them to second class citizens in their chosen profession</u>.)

(b) Setting standards for pension actuaries which emphasize the need for competence only in the field of actuarial science (which is in reality only a small part of proper pension plan administration) without requiring competence in other aspects of pension plan administration, such

as investments, IRS rules and regulations, legal requirements, etc.

(2) The provisions of S.4, Title III, which is entitled "Voluntary Portability Program For Vested Pensions," on the ground that such provisions do nothing more than put the United States Government in direct competition with private life insurance companies in the sale of single premium deferred annuity contracts and may have other detrimental effects on the security of private pension plans, as more fully explained later in this report.

(3) Certain other technical aspects of S.4.

Each of these positions is supported in more detail in the remaining sections of this report.

VESTING REQUIREMENTS

The greatest single fault in private pension plans, brought to light by the intensive investigations and hearings of the last ten years, is the lack of vesting in a large number of plans. While most employers (particularly the small employers who comprise the majority of clients of our members) have been rapidly moving toward the voluntary adoption of more liberal vesting requirements, it has become obvious that some minimum standard is required to provide uniform protection for all employees covered under private pension plans. In general ASPA applauds and supports the fundamental provisions of S.4, Title II, Part A which

generally require plan participants to have a vested interest in the accrued portion of their normal retirement benefit equal to 30% after eight years of plan participation with such vested interest to increase at the rate of 10% per year for each year of plan participation in excess of eight years. While basically we support this provision as being a step in the right direction, we believe Members of Congress should be made fully aware of the fact that this type of mandatory vesting provision primarily benefits the younger employees and its beneficial effect on private pension plans may not be realized for many years after enactment.

The so-called "Rule of 50" vesting requirements are also a step in the right direction and should be given careful consideration. The "Rule of 50" vesting requirements benefit the older employees considerably more than the vesting requirements of S.4 and therefore will have a more immediate effect in eliminating current plan abuses. A comparison of vesting under the "Rule of 50" and S.4 is illustrated in the chart below.

Comparison of Vesting Requirements
(As Percentage of Accrued Benefits)

Age When Hired	Plan Entry Age	Attained Age							
		25	30	35	40	45	50	55	60
20	30/25	0/0	0/0	0/50	50/100	100/100	100/100	100/100	100/100
25	30/26	...	0/0	0/40	50/90	100/100	100/100	100/100	100/100
30	33/31	...	...	0/0	0/40	80/90	100/100	100/100	100/100
35	38/36	...	...	...	0/0	60/40	100/90	100/100	100/100
40	43/41	...	...	...	...	0/0	80/40	100/90	100/100
45	48/46	...	...	...	...	...	60/0	100/40	100/90
50	53/51	...	...	...	...	...	...	60/0	100/40

Note: Figures shown above are percentages with those on left of slash applicable to the "Rule of 50" and those on the right applicable to the provisions of S.4.

As a compromise between these two Bills ASPA would suggest the adoption of the basic provisions of S.4 with the further stipulation that such vested percentage would not be less than that which would be calculated under the "Rule of 50." In other words, the vesting applicable to each participant would be calculated under the method most favorable to the participant.

FUNDING REQUIREMENTS

Minimum vesting requirements without adequate funding and plan termination insurance could prove to be an empty gesture in attempting to cure abuses in the private pension system. Therefore, ASPA strongly supports the basic provisions of S.4, Section 210(b) paragraphs (1) and (2) which generally require payments into the plan each year which are sufficient to pay all normal costs plus an amount sufficient to amortize unfunded past service liabilities over a period of thirty years. It is important, however, for every Member of Congress to understand that these provisions alone will not insure adequate funding of pension plans. Actuarial assumptions used to determine the funding requirements will have a much greater effect on the soundness of the plan than will the requirement to amortize the "calculated" unfunded past service liability over a thirty year period. While Section 101(b)(3) of S.4 authorizes the Secretary to establish reasonable limitations on actuarial assumptions we strongly recommend that the Act require that minimum actuarial standards and procedures be established and published to insure uniform protection of all employees under private pension plans. Publication of such actuarial

standards and procedures will also dramatically reduce the cost of administration both for the government and employers sponsoring private pension plans. Variance from the published actuarial standards should be permitted only when it can be conclusively demonstrated that such standards impose unreasonably high funding requirements for a particular plan as compared to funding requirements based on actual experience of the plan or employer over the previous five year period. In addition, the Act should require the Secretary to publish acceptable computation methods and procedures without which all other funding requirements are meaningless. For example, there is nothing in the Act which would prevent an employer from adopting a plan using a "terminal funding" approach which offers no security at all for employees.

Section 210(b)(3), with certain exceptions, requires the repayment of an "experience deficiency" in equal annual installments over a period not to exceed five years. Since small and medium size plans are subject to wide fluctuations from any published norm in mortality and turnover, such provision could impose undue hardships on such plans. ASPA recommends that the period of funding such "experience deficiencies" be extended to at least ten years.

Section 210(e) exempts "fully insured" plans from the requirements imposed by Sub-sections (b)(2) and (3), (c), and (d) of Section 210 of the Act. Many small and medium size employers utilize a "Combination Method of Funding" to build up the required assets under their pension plan. Under the combination method of funding, death benefits and the cost of providing retirement benefits are guaranteed by the life insurance company. Plans using the combination method of funding should also be exempt from requirements of the same Sub-sections as "fully insured" plans

where the additional assets are accumulated under the level annual actuarial cost method utilizing standard actuarial assumptions and procedures published by the Secretary of Labor, as recommended above.

FIDUCIARY STANDARDS

ASPA believes in strong enforceable fiduciary standards and supports the provisions of Title V, Section 510 of S.4.

PLAN TERMINATION INSURANCE

Adequate minimum vesting requirementsand plan termination insurance cannot be separated if all employees under private pension plans are to be guaranteed uniform protection against loss of their expected pension benefits in the future. Although we fully realize that the provisions of this part of the Act will be most difficult to administer and will undoubtedly present many problems relating to adverse selection, ASPA fully supports the concept contained in Title IV of the Act. Specifically in connection with Plan Termination Insurance, we again respectfully call your attention to the absolute necessity for the Secretary to publish tables based on standard actuarial assumptions and to set forth standard actuarial cost methods to be used in determining liabilities under this Section of the Act. While there may be very logical justifications for using varying actuarial assumptions (based on actual turnover experience, actual investment yields, actual death and disability experience and actual salary increases) to determine funding requirements of a plan that is to be continued, it must be realized that plan termination insurance must be

based on the situation that would exist at that time assuming the plan was terminated on that day. Under such circumstances, the government will not be able to look to actuarial gains based on future terminations, other than mortality, nor will it be concerned with projected future salaries, nor with the history of past investment earnings under the plan. It will be faced with a very real and factual situation; i.e., that of paying all vested accrued benefits under the plan at such time as they become due. When a pension plan terminates, the governmental agency can look only to actual assets under the plan, possible recovery from the employer, any possible mortality gains which could result if vested benefits are not paid to the participant's beneficiary, and investment gains that it (the governmental agency) can expect in the future. It must also be remembered that each plan registered under the Act will be required to pay a "premium" or insurance "tax" on the difference between the present value of the vested liabilities under the plan and the market value of the plan assets. The Act goes into great detail in stipulating how market value of plan assets is to be determined but it is virtually silent on how the present value of the vested liabilities is to be determined. Failure to publish standard tables based on acceptable actuarial assumptions, as well as the procedures to be used in determining this liability, will result in gross inequities and ultimately the downfall of the entire pension insurance system. While certain exceptions to the use of standard actuarial assumptions could be granted by the Secretary for a plan which will be continued in effect there can be no logical reason for allowing the administrator of any plan to use other

than the standard published tables and procedures in computing the present value of vested liabilities for plan termination insurance.

ACTUARIAL CERTIFICATION

The stated purpose of S.4 is to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare plans. Provisions of both S.4 and HR-2 require reports to be certified by a "qualified actuary." While Section 101(b) of S.4 provides that the Secretary is authorized to determine who is and who is not a "qualified actuary" the Senate Sub-Committee report recommends that members of the "American Academy of Actuaries" be deemed automatically to have met any required standards of a "qualified actuary." HR-2 is even more emphatic on this point. It stipulates "all statements required pursuant to this Sub-section (104(e)) shall be certified as being in conformity with accepted principles of actuarial practice by an actuary who is a member of the American Academy of Actuaries or who meets qualifications as the Secretary may establish by regulation." Considering the stated purpose of the Act and the proposed provisions, the average person would naturally assume that:

(1) The investigations and hearings have revealed that widespread abuses have been caused in private pension plans by incompetent actuaries performing the required computations.

(2) Certification to actuarial computations by members of the American Academy of Actuaries have eliminated or reduced plan abuses, thus insuring greater protection for employees covered under these plans.

These assumptions are simply not correct.

The facts are:

(1) There has not been a single bit of evidence presented to indicate that any plan abuse or the loss by an employee of any promised benefit was the result of incompetency on the part of the person performing the actuarial calculations.

(2) During the hearings and investigations which have been conducted over the past ten years, the names of dozens of plans have been published where abuses were found and where participants lost benefits. A careful search of the D-2 reports on file with the Department of Labor revealed that in every incident (where a D-2 report could be located for these companies) the actuary was a member of the American Academy of Actuaries.

While we do not intend in any way to imply that the abuses and loss of benefits which occurred in these plans were the fault of the actuary involved, we do submit that the facts conclusively prove that certification of pension reports by a member of the American Academy of Actuaries has not in any way prevented plan abuses and loss of benefits by covered employees.

In spite of these facts the two major Bills now pending before Congress would give this private organization of the American Academy of Actuaries a virtual monopoly in pension plan administration to the exclusion of the members of ASPA and hundreds of other qualified individuals who have helped build the private pension system into the strong viable force it is today.

To completely comprehend the absurdity of these proposed provisions dealing with actuarial certification, it is necessary for every member of Congress who will ultimately cast his vote for or against pension reform legislation to fully understand:

(1) The role of the pension actuary in pension plan design, installation and administration both in large and small plans.

(2) The background and composition of the American Academy of Actuaries.

(3) The present system of selecting pension consultants and pension actuaries.

Each of these subjects is more fully covered below in the order listed.

(1) Pension plan design, installation and administration require a diversity of talents including, but not limited to knowledge of the laws and regulations governing pension plan qualification, knowledge of the various tax laws and IRS regulations dealing with both contributions and benefits, knowledge of the various funding media, computation methods and actuarial techniques involved, ability to structure a plan to meet the objectives of the sponsor within budget limitations, knowledge of the various reports required by the Treasury Department and the Department of Labor, ability to establish and maintain records which will reveal any required information at a later date and knowledge and skill in employee communications. Larger plans often utilize the services of many individuals

skilled in a particular phase of this work. For example, most large law firms now have one or more specialists in the legal aspects of pension plans, most large CPA firms have specialists in trust accounting and audit work and many large actuarial firms have specialists in the field of pension actuarial work. These specialists each perform a valuable service in the overall operation of large pension plans. One of the earliest criticisms of the private pension system was the fact that small employers could not afford the services of so many high paid specialists and, therefore, had not adopted plans for the benefit of their employees. This resulted in the development of (a) standardized and prototype plans, (b) common trust funds, and (c) a new profession of pension plan consultants and actuaries who are capable of handling all aspects of pension plans for their clients. ASPA members are a part of this new profession which has brought competent economical service in the pension plan field to small and medium size employers enabling them to adopt plans for the benefit of their employees. The proposed Act permits the American Academy of Actuaries to place this entire professional group of several thousand people in a sub-servient position in pension plan administration. First of all it should be realized that the field of actuarial science relates to many areas completely unrelated to the pension field just as the field of law covers

vast areas which are completely unrelated to the pension field. Second, it is important to realize that most pension plan computations do not require a knowledge of actuarial science at all but simply a knowledge of how to apply published tables to specific problems. In a survey conducted by the American Academy of Actuaries (the results of which were submitted to their Board of Directors in a report dated October 21, 1972) it was revealed that practically all small pension plans use either the 1958 CSO Table or the 1951 GA Table (sometimes with projections) as the basis of mortality. Interest rates and other actuarial assumptions used in these plans also fall into a narrow range. From a practical standpoint, it is not feasible to base actuarial assumptions in pension plans on actual experience except in the very largest plans. This reaffirms our recommendation that the Secretary be required to publish minimum actuarial standards, tables and procedures applicable to plan funding. Once actuarial assumptions have been determined or specified, it is a pure _mathematical_ problem to correctly apply the tables to pension computations. The requirement that all pension calculations be certified by a "qualified actuary" _will greatly increase the cost of plan administration for the small and medium size employer for no logical reason except to enrich a small group of members of the American Academy of Actuaries_.

(2) At the present time there are approximately 2,800 active members of the "American Academy of Actuaries" (hereinafter referred to as "Academy"). An additional 320 of the total membership are either retired or do not indicate any business connection. The Academy is made up of members of (1) The Society of Actuaries, (2) Fraternal Actuarial Association, (3) Conference of Actuaries in Public Practice, (4) Casualty Actuarial Society and (5) Canadian Institute of Actuaries. It should be clearly understood by every member of Congress that <u>many of the current members of the Academy did not have to take a single actuarial examination to obtain their membership status</u>. It is equally important to realize that a large percentage of the <u>members of the Academy work in fields completely unrelated to the pension field and have never performed an actuarial evaluation for a pension plan</u>. We <u>do not</u> intend to imply in any way that the Academy does not have among its members many who are extremely well qualified in the pension field. However, more than 60% of the active members of the Academy are employed by insurance companies. Only approximately 30% are classified as consulting actuaries and insurance brokers. When speciality lines are counted precisely, it is probable that not more than 500 of this entire group actually devote a reasonable portion of their time to pensions. We respectfully submit that there is absolutely no logical reason to give this diverse group special sanctity in the field of pensions. If for any

reason Congress feels that it is necessary to establish qualification requirements for individuals working in the pension field <u>we recommend and will support standard examinations on all aspects of pension plan design, installation and administration which would be required to be taken by everyone who wishes to practice in this field</u>.

(3) Under the present system which does not require actuarial calculations to be certified by a "qualified actuary," each plan administrator is at liberty to pick the pension consultant or pension actuary who he feels can render a competent service at a reasonable cost. In order to sell his services, any pension consultant or pension actuary must be able to convince the prospective plan administrator that he is competent to render a valuable service. This free and open selection of pension plan consultants and pension actuaries has developed healthy competition among practioners in keeping with the highest standards of the free enterprise system. Recent statistics show that the average pension plan approved by Internal Revenue Service during 1972 involved only slightly more than twelve plan participants. This simply reaffirms the fact that the great bulk of employees not presently covered by private pension plans work for small and medium size employers. This is the pension market that has been developed by members of ASPA and hundreds of others like us who have made a profession of servicing the

small employer. It is unthinkable that we would now be deprived of providing services for the plans we have helped establish without the necessity of having our computations certified to by a small group attempting to realize personal gain from restricted competition. The ultimate loser of such unwise and unfair legislation would be the small and medium size employer who provides the only hope for continued development of the private pension system.

VOLUNTARY PORTABILITY PROGRAM FOR VESTED PENSIONS

Provisions of Title III of S.4 provide in effect that a plan sponsor may transfer assets to a government agency on a voluntary basis in consideration of that agency agreeing to assume the obligation of paying a severed participant his vested pension when he reaches his retirement age. This same employer (without benefit of additional legislation) now has the right to transfer this liability to any one of hundreds of life insurance companies that actively solicit this type of business. In simple language, the proposed provisions of Title III of S.4 would put the government in the business of selling single premium deferred annuity contracts in direct competition with life insurance companies who market such contracts on a highly competitive basis. In addition to the obvious encroachment on the free enterprise system, the very presence of the proposed legislation raises the following fundamental questions:

(1) Would the government propose to make their rates lower than those presently available on the open market?

(2) Major life insurance companies now base the rates charged for single premium annuities on interest assumptions of 7-1/2% or more. Can the government earn this rate of interest on the restricted investments permitted under the Act?

(3) If the government rates are lower than provided by competitive life insurance companies, would they be sound?

(4) If the rates charged by the government proved to be unsound, who (other than the taxpayer) would make up the loss?

(5) Is this proposal really the beginning of government subsidy to pension Plans? If so, why?

(6) If the vested benefits of a pension plan are not fully funded is it wise to encourage the transfer of assets representing the full vested liability of a given participant out of the Plan?

These and similar unanswered questions relating to the proposed provisions of Title III indicate that this subject needs more research before being enacted into law. Therefore, ASPA opposes the provisions of Title III of S.4.

TECHNICAL PROVISIONS

A. Title II, Part A,Section 201 provides that any plan registered under the Act which does not provide for full immediate vesting shall not require a period of service by an employer of more than one year

for plan participation. From a practical standpoint most plans provide that employees will become eligible to participate in the plan on the anniversary date of the plan. The provisions of this section, as currently worded, could require that an employee be covered under the plan after only being employed one day. We recommend that the language be changed to require one year of service after the plan anniversary date which coincides with or which next follows the date of employment. A better alternative would be to allow up to two years of service before an employee would participate in the plan.

B. The language contained in Title II seems to prevent the vested equity of any participant from being expressed in terms of cash. While under most circumstances it may be desirable to defer the payment of vested equities until an employee has reached his retirement age, provision should be made for cash settlements on amounts not sufficiently large to justify the bookkeeping over a long period of years.

C. Sub-section (29) of Section 3 defines "normal retirement age" as the normal retirement date, specified under the plan, but not later than age 65 or, in the absence of plan provisions specifying the normal retirement age, age 65. This definition is unnecessarily restrictive. It does not permit the flexibility of plan design that is normally required in many small firms where several employees are in their late 50's, or early 60's. We

recommend that this definition be modified to permit retirement at the end of ten years or at age 70, whichever first occurs, for participants who enter the plan at ages 55 and above.

February 27, 1973

STATEMENT FOR THE RECORD

BY

EDWARD J. CARLOUGH, GENERAL PRESIDENT

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION

FOR

THE SUBCOMMITTEE ON LABOR

OF THE SENATE COMMITTEE ON LABOR
AND PUBLIC WELFARE

ON S.4

(THE RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT)

My name is Edward J. Carlough and I am the president of the Sheet Metal Workers International Association, AFL-CIO. The members of our union have a very strong--and very immediate stake--in the outcome of the deliberations of this committee. It is our pension funds, our retirement security, you are talkin about. Our local unions are party to well over 200 pension fund And we have several thousand retired members receiving retiremen benefits from these pension funds. None of these funds have terminated; no retired member of our union has had his pension closed or reduced because an employer went out of business. We are vigilant in safeguarding both the quality and quantity of ou

retirement benefits and the mechanism which produce them.

I open with these remarks because in close watch of the news coming out of a great many hearings on bills to regulate private pension funds, I have seen very little that was positive. From the testimony given at these and similar hearings, at least that part of the testimony given wide publicity, and from reports of congressional committees, it would appear that there is little good and much that is wrong with the private pension system in the United States. I make no claim that there is nothing wrong with private pensions. Of course, there is. There are some that obviously failed to live up to their responsibilities--to fulfill their promise. There is much that can be improved--as there is with all institutions, including, I might add, Congress. But I refuse to accept the conclusions that too many people have drawn from what has come out of these hearings--that most private pension plans are a fraud; that most covered employees will be cheated of benefits; that most of the parties involved in the governance of private pension funds are less than true to their responsibilities.

My experience, and the very extensive experience of the union I have the honor to head, indicates that for the most part private pension plans are fulfilling their purpose and their promise. This is demonstrated by the steadily increasing assets of private pension plans which back up these promises--assets now well over

$160 billion. It is demonstrated by the steadily rising number of retirees receiving pension benefits--over 5.5 million beneficiaries of a pension system that covers about 30 million workers. It is demonstrated by the steady increase in total and average benefits--well over $8 billion in 1971. And it is demonstrated by a figure that I have not seen mentioned in these hearings heretofore--yet the figures are from a highly respected, completely unbiased government agency: the Office of Research and Statistics of the Social Security Administration. According to their study, published March 1971, entitled "Survey of New Beneficiaries," of 164,000 men who retired in the six-month period January to June, 1969, 38 percent received private pensions in addition to Social Security benefits. These men, who were awarded Social Security benefits in the first six months of 1969, had to have earned their private pensions, for the most part, during the period 1949-1969. This was a period when less than 50 percent of all private employees were covered by private pension plans.

This Social Security study shows that, in general, the percentage of people covered by private pensions and the percentage receiving benefits at retirement age are about the same.

I make these statements, not to support any claim that the private pension system is free of all errors or lacks--it certainly is not--but to counter the many claims that it is riddled with

inequities and falsities and broken promises.

Now the purpose of the proposed legislation now under consideration by this committee, and the subject of these hearings, is--I hope--the correction of structural deficiencies in some private pension plans, and the strengthening of their ability to provide secure retirement benefits. With that purpose I ally myself unreservedly. A situation such as occurred at Studebaker, and similar situations where workers lose their promised pensions because of the financial insolvency of their employers, is a tragedy Congress should have corrected long ago. But the present bill, unless amended, would throw out the baby with the bathwater.

In a democratic society, laws should apply equally to all those touched by the law. They don't always, but they should. However, the best laws, the most just laws, are those that are framed to adjust most equitably to the differences among the people and institutions they govern. Perhaps this is the time to remind you of Anatole France's cynical remark that "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg on the streets, and to steal bread."

[illegible] treat all private pension funds with "majestic equality." Yet all pension funds are not alike. The pension funds to which [illegible] local unions of our International Association are party are multi-

[illegible] employer funds. And multi-employer funds are quite unlike the pension plans which cover the employees of single corporations. Multi-employer pension funds, which cover about 30 percent of all employees covered by private pension plans, have built into their structure much of the safeguards which this bill would mandate upon all pension plans. The bill as written would cause multi-employer plans to spend money to provide features which are already implicit in the nature of these plans. And this money would have to come out of the funds available for current benefits.

Multi-employer pension funds pool the contributions of a great many employers. They pool the pension credits earned by employees whether they work for a single employer or a hundred different employers. Some of these employers may be quite stable, some may be marginal, some may go broke after only a brief existence. But the money contributed by these employers, and the pension credits earned by their employees, are secure and continuing in the multi-employer fund. In fact, it is no exaggeration to say that in many places, the most stable element in the industry is the multi-employer pension fund. They continue to receive contributions, to accumulate assets, to pay pensions regardless [illegible] individual employer. This is a far cry [illegible] situation [illegible] in single-employer pension plans which are tied inextricably to the fortunes of the individual corporation.

Yet the bill would, for the most part, apply the same restrictions, mandates and formulas to both types of pension plans.

More specifically: The bill now before us would require vesting according to a fixed schedule. There is no argument but that vesting is a sound and desirable method of protecting earned pension rights. Obviously there is no question about this since, according to the Bankers Trust survey of pension plans, 96 percent of unilaterally-established pension plans, and 98 percent of negotiated pension plans have some vesting provisions. The vote for vesting is practically unanimous--when vesting is added according to the priorities dictated by the needs and conditions of the specific fund.

But vesting merely means that an employee is guaranteed his pension credits even if he leaves the employer's employ. And vesting is earned only after the employee has worked for a substantial number of years for the employer. Now consider the worker covered by a multi-employer pension fund. He carries his pension credits with him from employer to employer; the credits keep right on accumulating. Moreover, the worker covered by the multi-employer fund doesn't have to wait five, ten, fifteen years to begin this form of vesting. He starts accumulating his pension rights from day one of coverage. He can add three days of earned credit with Employer A, three months of credit earned with Employer B and three years earned with Employer C. No years of

prior service, no minimum age needed here. .

The argument is made that the vesting implicit in the multi-employer form is limited to a particular industry and the particular area covered by a fund. It is true that the continuing coverage is limited to the particular industry or trade. But a man who has worked in construction as a sheet metal worker for five years and becomes a skilled craftsman is unlikely to leave the industry. Much the same holds for ironworkers and electricians and engineers and, for that matter, garment workers. Our people are very mobile in jobs; they are not mobile--nor do they want to be--in craft.

The other limitation often cited is that of geography. Well, portability of pension credits is not limited geographically in our trade, and increasingly in most other trades covered by multi-employer pension funds. Our union is party to a national pension fund which covers members of 184 local unions from one end of the country to the other. A sheet metal worker covered by our national pension fund continues to accumulate pension credits whether he works in New England or California or in between; whether he works for one employer or any of the thousand or so who contribute to the national pension fund. That kind of vesting is much better than any contemplated by this or any other pension legislation. Yet the law does not consider it vesting.

But not all union members are covered by a national pension

fund. Many are covered by local pension funds. Yet even these members are not limited in continuing accumulation of pension credits to narrow geographical areas. Many such funds are bound by reciprocal agreements to recognize each others' pension credits. No longer does a man have to lose his pension because he happens to work for 10 years under Pension Fund A and 10 years under Pension Fund B. By reciprocal agreement, the funds can recognize each others' credits and, in this case, each would pay the member one-half of a full pension.

Let me say very candidly that I could never be a party to defending a situation where a man could work for 25 years as a union sheet metal worker in different parts of the country and still wind up without a pension because he had not earned sufficient credit to be vested in any one area.

Such a situation is indefensible. It was precisely to avoid the tragedy of such possibilities that our union established its national pension fund back in 1967. Not all of our local unions are presently covered, but we are constantly working at it.

Yet the proposed legislation does not recognize the National Fund and reciprocating funds as the equivalent of vesting--though [illegible] by the bill.

The purpose of vesting is to safeguard the earned pension credits of workers who move from employer to employer. In effect,

to make pension credits somewhat portable. In my view, a true national pension fund serves that purpose quite effectively. Therefore, I would argue, the bill should not require that true national pension funds add another layer of vesting. In effect, to set aside money now available for current pensions to protect against a hazard that is practically non-existent.

That, I think, is the minimum change dictated by equity. But I would also argue that local multi-employer pension funds which enter into reciprocal agreements with a national fund within the same industry, or achieve a wide area reciprocity through some other method, also be exempt from the vesting provisions which would govern single employer plans. They, too, provide a degree of protection of earned pension credits that is, at least, as good as that proposed in the bill before us.

The differences between single employer and multi-employer pension plans evident in the discussion of vesting are paralleled when funding is under examination. As we know, the rules of the Internal Revenue Service require that all future service be completely funded. What the funding section of the proposed bill deals with is past service liability--the cost of giving employees pension credit for employment prior to the establishment of the pension plan.

Some of the sheet metal multi-employer pension funds do fund this past service liability according to a fixed schedule. But

others pay only interest on the unfunded liability--as is permitted by law. Is funding of past service liability necessary in an ongoing pension plan? Not at all. A pension plan can be healthy and secure and sound without a penny ever being paid to reduce the amount of the past service liability. The only time funding becomes an issue is when the plan terminates--if it terminates. This is a fact of pension plan life that is little understood--particularly by the general public. Funding is relevant only when a pension plan goes out of business. Funding is irrelevant if a plan continues.

As I pointed out before, multi-employer pension funds are not dependent for continuation on the economics of a particular employer. Employers can come and go, can prosper and go bankrupt, but the multi-employer plan goes on. As a general rule, individual companies are transitory, industries are permanent. And multi-employer plans depend on industries not individual employers.

Despite this situation, some of our pension funds do amortize the past service liability according to a fixed schedule. And even those funds which pay interest-only, actually amortize some of this liability by gains in actuarial experience. Most of our pension funds have an actuarial assumption of investment gains of 4½ or 5 percent per year. Experience is generally appreciably better. A portion of these gains over assumption are, in effect,

used to fund the past service liability.

Because of these differences, multi-employer pension plans should not be required to fund past service liability according to a mandated schedule. They will all come to funding in time --the history of pension plans shows that plans add funding as they mature and can afford it. But let them choose the time. In that way, benefits for today's 65-year olds won't be reduced to take care of some future contingency for some future generation.

However, if these arguments do not convince you, please consider an alternative: funding only the vested portion of past service liability. That's the part that's guaranteed, that's the only part that should be funded--if funding is mandated.

We have often been warned that law is not necessarily justice. Yet each time we see an example of law that does not deal justice, we're affronted. And there is a peculiar injustice built into pension legislation. The proposed law says, in effect, if you have been liberal with your employees, you will be socked; and if you have been stingy, you will get off lightly.

Consider two groups of employers: one group has been stiff and ungiving. It has kept its pension contributions down so low that benefits are limited to $100 a month. Another group of employers--same trade, neighboring cities--has understood the union's demands and has been openhanded. They contribute enough

[illegible] pay $250 a month pension. Now let's assume this law is passed [illegible] it is. The stingy employers will have to come up with an additional 2 to 4 cents an hour to pay for the vesting and funding requirements. The fair employers will have to vest and fund far more liberal benefits--so their contributions will have to go up 6 to 10 cents an hour.

And [illegible] remember [illegible], in the construction industry, our members make the decisions concerning the allocation of their negotiated wage packages to fringe benefit funds. If this bill is passed as presently written, the guys who will eventually pick up the tab will be our members and their fellow union construction workers. And the more liberal the present pension plan, the higher will be the eventual tab. Union construction workers have had their fill of bureaucratic controls and regulations during the past few years. We don't need still another monkey placed on our back.

Of course, there is another class of employers who do not [illegible] to pay an extra penny regardless of this law or any similar legislation. That's the employer who just doesn't have a pension plan. Because his employees are completely uncovered, have no private retirement benefits, he is rewarded; his savings are increased.

This is perhaps the greatest paradox in pensions. Months of [illegible] and committee consideration and study, weeks of public [illegible], millions of words published pro and con--all concerned

with those who have pensions. Large or small, safe or unsafe, vested or unvested--half the private wage and salary employees are covered by pensions. They have something. The other 30 million or so workers have nothing. They also get no Congressional notice, no hearings, and no big stories in the press. Shouldn't they be the first consideration of this committee? Before giving undue consideration to those who have, shouldn't you give some small consideration to those who have not?

In fact, you might solve both problems, at least in part, by passage of some law such as that proposed to this committee by Mr. Robert D. Paul, president of the consultant and actuarial firm of Martin E. Segal. Mr. Paul proposed that all employers be required to provide a minimum pension or pay a minimum pension contribution--say 1 or 2 percent of earnings. And that this minimum benefit be fully vested and fully portable. This would take care of those now without pensions, and also give full vesting of the basic portion of the benefit to those now covered by pension plans. It would also leave to collective bargaining, to the free play of the market place, that portion, if any, of pensions above the basic minimum.

I subscribe fully to this approach and I commend it to the committee.

We are proud of what we in our union have accomplished through [illegible] interplay of forces in free collective bargaining. [illegible]

pool pension funds and we pay what we promise. No one gets cheated and no one gets conned. We set our own priorities and we liberalize benefits whenever we feel the money is available. Frankly, I doubt that you know our business better than we do--and so I would caution you on how far you might wish to go in making our decisions for us.

I would add only this, the position our union has taken here today concerning the vesting and funding provisions of this bill as applied to multi-employer pension funds is and has been the official position of the AFL-CIO on this matter since the Federation's 1967 Convention. We ally ourselves with our brothers and sisters in the American labor movement on this issue, most of whom are presently covered by pensions that would be affected by this bill.

STATEMEMT OF EDWIN M. JONES, ESQ. OF THE NEW YORK LAW FIRM OF SHEA GOULD CLIMENKO & KRAMER COUNSEL FOR ELGIN NATIONAL INDUSTRIES PENSION PLAN AND TRUST DISCUSSING PERTINENT MATTERS FOR CONSIDERATION BY THE SENATE LABOR AND PUBLIC WELFARE COMMITTEE IN CONNECTION WITH POSSIBLE AMENDMENTS TO S.4 DEALING WITH TERMINATION OF PENSION PLANS,PORTIONS OF WHICH WERE DELIVERED ORALLY IN A FACT-FINDING INQUIRY CONDUCTED BY THE HONORABLE ADLAI E. STEVENSON III, UNITED STATES SENATOR FROM ILLINOIS, IN ELGIN, ILLINOIS, ON FEBRUARY 9, 1973

I am a practicing lawyer and a member of the New York law firm of Shea Gould Climenko & Kramer which represents the Elgin National Industries Pension Plan and Trust. You have stated that the purpose of your fact-finding inquiry today is to consider legislation regarding termination of overfunded pension plans, and that you will be making a report on this matter to the Honorable Harrison A. Williams, U.S. Senator and Chairman of the Senate Labor and Public Welfare Committee.

It is commendable to consider legislation in this area, and our firm is happy to give to you, Senator Williams, and all the members of the Senate Labor and Public Welfare Committee whateven assistance we can in considering whether a legislative recommendation should be made for future application to pension plans in a constitutional non-retroactive way, and what it might cover.

In this connection we have previously advised you that the particular facts of the Elgin National Pension Plan and Trust and the rights of beneficiaries under that plan are now before the Courts of your sister state of New York and will be considered by that Court. As a lawyer representing our clients, it would be improper for me to indulge in a detailed public discussion of the facts and issues of the particular case at this time, as we have advised you. I'm sure that you as a lawyer, and as a U.S. Senator, will understand that fact.

THE BASIC QUESTION

However, subject to limitations imposed on us because of the imminence of Court hearings, we will try to treat with the basic question at issue here, which is whether Congress should pass a law which would require all pension plans established after the effective date of the new law to pay out to employees and pensioners the amount of any overfunding, which you refer to as "surplus monies", remaining in a pension fund after all pension benefits to employees called for by the terms of a pension plan are fully paid and satisfied, and after there remains no chance whatsoever of an employee's losing a penny of the benefits provided by the basic terms of the plan. The issue can also be stated as being whether Congress should enact a law requiring all pension plans to contain provisions prohibiting the payment of such surplus monies to employers under those circumstances.

Your press release states that your legislative recommendations would be proposed as an amendment to the existing Senate bill S.4 entitled the Retirement Income Security Act for Employees. If enacted this act will be the first Federal law dealing with the required substance and content of pension plans, as is made clear

in Senate Committee Report 92-1150. In order to be of maximum assistance to you and the Senate Labor and Public Welfare Committee my suggestions will be cast around the framework of S.4. The views expressed are mine as a lawyer, and as a person with some experience in these matters gained in twenty years of active work in the pension plan area.

COMPARISON OF PENSION PLAN BENEFITS TO MINIMUM STANDARDS OF S.4 AND OTHER PLANS

The Elgin National Pension Plan and Trust is one that already meets or exceeds the minimum standards for pension benefits that are now set forth in S.4. Thus, the Elgin Plan is already ahead of S.4 in its benefits for employees. Measured by such objective standards,the Elgin Plan is to be commended rather than criticized.

For example, the provisions of S.4, called the vesting provisions, would protect an employee for up to 50% of his benefits after an employee has given 10 years of service to an employer. The Elgin National Pension Plan provides 100% vesting after 10 years of service. We think S.4 is a great step forward, but point out that the existing Elgin Plan is twice as good as S.4 in this respect.

Under S.4 an employer can make an employee wait until the employee has completed one year of service, or reached age 25, before he need begin to accrue benefits under the plan. By contrast, under the Elgin Plan, employees are entitled to receive protection from the very first day of employment no matter how young he or she may be.

Under S.4, retirement benefits would not have to be paid until an employee reached age 65. Under the Elgin Plan, retirement benefits are payable at age 55, which is a liberal provision.

S.4 does not require the inclusion of any disability benefits in a pension plan. The Elgin National Plan provides full disability benefits to employees.

S.4 does not contain any limits on employee contributions under a contributory plan. Under the Elgin Plan, the rate of employee contributions is set in such a way that they amount to about one year's salary over the entire normal 30-40 year working span of an employee's lifetime. This rate is only about one half of the maximum contribution rate that is allowed to be imposed on employees if a pension plan is to be tax qualified.

Furthermore, S.4 does not require that there be any preretirement death benefit whereas the Elgin Plan has provided employees with a death benefit equal to one times annual salary, in addition to a return of the amount of an employee's contributions with guaranteed interest.

Moreover, contrary to the situation in a very large percentage of pension plans throughout the country, there is no reduction in pension benefits payable under the Elgin Plan by reason of the amount of Social Security benefits payable to employees. This is also a liberal provision.

In short, the Elgin Plan benefits, being substantially better than those required by S.4, would seem to be providing now for the legitimate interests of employees, and doing so more liberally than would be required under S.4 in its present form. The Elgin Plan benefits also compare favorably with other pension plans throughout the country.

The irresponsible and inaccurate comments made by individuals who have had no responsibilities or interest in the Elgin Trust other than to draw benefits, should not be allowed to obscure the fact that Elgin National and the Trustees of the Plan have done an outstanding job of providing benefits measured by S.4 standards, and of managing Pension Fund assets. The probabilities are that if only a mediocre managing job had been done by the Trustees there would be very little for the pensioners and others to talk about. It seems questionable whether Congress should adopt legislation that would tend to espouse mediocrity.

We suggest that facts such as these in relation to pension plans generally must be fully considered and evaluated by the Senate Labor and Public Welfare Committee, if Congress is to reach a sound decision on whether employees on termination should receive surplus monies remaining after the payment of 100% of their benefits has been absolutely guaranteed and assured.

CONGRESSIONAL TAX POLICY HAS LONG SANCTIONED PAYMENT OF ANY SURPLUS MONIES TO EMPLOYERS

The intent of Congress to date, as set forth in established tax law, has clearly been to permit payment of surplus monies to employers. Such intent is set forth in Section 401(a)(2) of the Internal Revenue Code. That Section provides, among other things, that a trust forming part of a pension plan shall constitute a qualified trust under this section -

> "(2) If under the trust instrument it is impossible at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year of thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries;"

This clause only determines tax benefits and not substantive rights, but it is cited to point out that S.4, if it were to contain a provision regarding payment of surplus monies to employees, would represent a major shift in the underlying thinking of Congress to date.

PROTECTING EMPLOYEES WHO HAVE LEFT EMPLOYMENT

A significant matter that must be fully appreciated in considering whether and how to treat with surplus monies is that such a surplus, if any, would arise only after every benefit that an employee has earned is fully satisfied and paid.

Such earned employee benefits include those that are accrued to date of termination, even though the benefit is not vested at time of termination. Thus, in the Elgin case, an employee of Elgin with only a year, or two or three, of service, up to nine (which would be short of the required ten years of service under its Plan before vesting takes place) will be absolutely assured, because of the termination, of receiving his full benefits based on the years of service that he has actually put in, even though he would have lost such benefits if he had left the Company before termination of the pension plan.

It is questionable in my opinion whether Congress should treat with the basic question in a way that would sanction payment, to however many employees happen to remain in employment at the time of the termination of the plan, of money that might otherwise have been payable to employees had they not left before termination of the plan. This smacks of a "tontine" type result, which has long been condemned in state law relative to insurance and annuities which, after all, are the type of benefits with which we are here dealing.

Any such payment to employees would ordinarily be referred to as a payment resulting from "forfeitures". In this connection it is noted that Section 401(a)(8) of the Internal Revenue Code, relating to tax qualified plans, provides as follows:

> "(8) a trust forming part of a pension plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan."

It would appear that this tax law provision would have to be changed drastically if the amount of any surplus monies arising from forfeitures is to be applied to increase benefits to employees and pensioners.

I suggest that if Congress is to consider amending S.4 in relation to surplus monies, that it may be equitably necessary to provide that an employee's rights must vest year by year, so that he loses nothing by moving from employer to employer. Obviously, this goes to the heart of existing portability and other provisions of S.4, already considered in depth by the Senate Labor and Public Welfare Committee. Yet, it seems clear to me that Congress cannot deal properly with surplus monies arising on termination, without considering the rights of employees who have left before the termination.

POSSIBLE FAR-REACHING ADVERSE EFFECTS OF REQUIRING SURPLUS MONIES TO BE PAID TO EMPLOYEES ON THE NUMBER AND SOUNDNESS OF PENSION PLANS

Another factor to consider is the possible effect of any legislation regarding surplus monies upon an employer's willingness to establish a pension plan in the first instance. Since the beginning of "tax qualified" plans in this country, employers have been able to approach the question of whether to establish a pension plan in the firm knowledge that if the pension fund becomes larger than expected the employer's normal annual costs would be reduced, and the employer would in any event have the right to receive any surplus monies on termination of the plan, after satisfying liabilities to employees 100%, and be required to include such amounts in taxable income of the employer in the appropriate year.

To change this law in such a way as to take this right away from employers as a matter of substantive Federal law (as distinct from tax law) may have far-reaching adverse effects on employers and the nation, and affect related industries.

It could operate to cut down the number of pension plans established by employers.

It would lead to establishment of plans providing minimum benefits for employees. It would almost certainly result in employers' paying minimum amounts required by any law, such as S.4, into the pension trust. This would probably lead to financial weakness of many pension plans. It could result in actual loss of benefits to employees in many cases that would not otherwise have occurred but for enactment of a law requiring surplus money to go over to employees on termination of a pension plan. It is clear that the thrust of any new law which would require distribution of surplus monies to employees and pensioners is exactly the opposite of the intent of Congress thus far set forth in S.4 to assure adequate funding and sounly financed pension plans for the protection of employees and pensioners.

It is also possible that enactment of such a law would result in a substantial shift of pension trust monies away from banks and individual trusteed plans. Conceivably, pension fund monies would be more apt to flow to insurance companies.

In any event, there could develop a tendency for pension fund managers to make the most conservative type investment that would have an adverse impact on the growth of the country.

These are matters that the Congress should weigh carefully.

RATE OF INTEREST TO BE PAID TO EMPLOYEES ON THEIR CONTRIBUTIONS TO PENSION FUNDS

Another matter to consider, particularly in contributory plans, is the existence of a commitment by the employer to pay to employees a certain interest percentage on amounts contributed by employees and held in the pension trust, for whatever period of time such contributions remain in the trust.

It is significant that over the previous lifetime of the Elgin Pension Fund, $8,000,000 of employee contributions have been paid back to them by the Trustees, plus compound interest on such amounts for the time that they remained in the pension trust.

The Elgin Pension Fund has been well managed and there is no question about the solvency of this Fund. It is a record that all who have been involved in the Elgin Pension Fund can be proud of.

I believe, where the employer has guaranteed to employees a return of the capital amount of their contributions and the payment of a reasonable interest rate on their contributions, and the risk of meeting these guarantees is thus squarely placed on the employer (and the employer must thus contribute additional amounts if the trustees fail to earn the amount of interest guaranteed or the pension fund suffers capital losses), that it would be clearly unfair for legislation to require that such an employee is also entitled to receive earnings of the fund in excess of the guaranteed rate. Such an employee bears no share of the risk of the pension fund's earning less that the guaranteed rate of interest, nor any share of the risk of capital losses, except in the case of insolvency of the employer, and he should not expect to share in the surplus.

Accordingly, any amendment to S.4, requiring surplus monies to be paid to employees should certainly exempt from its scope pension plans like Elgin's under which a fixed guarantee of returning the full amount of the employee's contributions and a reasonable rate of interest thereon is given by the employer.

On the other hand, if the interest guarantee under a pension plan is obviously low, such as 1%, then it would seem to me that new legislation, if any is deemed desirable by Congress, might require a payment to employees out of any surplus monies, on termination of a pension plan, to the extent required to pay to the employee a reasonable rate of return on amounts contributed to a pension fund for the period of time that they remain in the fund, and to return to the employee the capital amount of his contributions. Thus, any amendment would in effect be adding another minimum standard to be observed by employers in creating a congtiruboty pension. In fact, whether or not an amendment is added to S.4 regarding surplus monies, the Senate Labor and Public Health Committee might want to consider setting a minimum standard interest rate that must be paid to employees on the amount of their contributions, and require a full return of the amount they contributed.

Elgin National has been paying a reasonable rate of return for over half a century. Not a single employee has lost a penny of interest on capital. Obviously hundreds of employees have benefited. There is no reason why other employees should not be required to do what Elgin National has been doing for years.

OTHER IMPORTANT MATTERS TO BE CONSIDERED

This suggests other pertinent points. No thoughtful treatment of this problem can be conducted without considering the implications of the reasons for there being surplus monies in any

pension fund, whether contributory or non-contributory, after satisfying 100% of the obligations to employees. These reasons will differ with each case and will differ from year to year on any given plan.

One reason for surplus monies is related to the actual income earned on a fund in comparison with estimates. If the earnings turn out to be greater than anticipated by the actuaries in determining required contributions by employers, a pension fund builds up to a larger sum from this source than if the earnings turned out to be exactly as expected. Contrarywise, if the earnings turn out to be less than expected, the pension fund would fall below expected levels, could result in underfunding and the Company would be obligated to make up the deficiency. Would it be wise policy for Congress to pay the excess to employees when they have borne no share of the risk of making up any deficiency that may develop?

Second, estimates of the expected number of deaths and the time when they are expected to occur invariably turn out to be different from actual facts as they develop. People may live longer than expected with the result that more monies are required than were expected, or they may live less longer than expected which would give rise to some surplus. Should untimely and unexpected deaths of large numbers of employees or pensioners be allowed to benefit the remaining participants in the plan?

A third aspect of surplus monies relates to expected rates of employee turnover and terminations. If they turn out to be greater over the years than anticipated, and the people who leave employment do not have vested rights at the time of termination, there would tend to be some additions to surplus. Should Congress now change its policy and mandate payment to employees of surplus monies arising out of forfeiture? This would also change the long established Congressional policy of requiring a pension plan to provide for determinable or defined benefits, before it can qualify for specified tax advantages.

There are other factors involved, such as estimates of future salaries under a "final average" salary defined benefit pension plan. In general, the actuarial aspects are so interwoven that good results in some years as to income earned may offset bad mortality experience or vice versa. The end result is that until a defined benefit pension plan is terminated, and liabilities are fixed as of a given date, it is not possible to establish any meaningful figure as to overfunding or surplus monies. Is Congress instead to require an annual accounting of surplus monies to provide for a "dividend" each year to employees, or employers, or both?

The broad question is raised as to whether Congress wishes now to change or eliminate the whole concept of defined benefit plans and permit only "money purchase" plans or other types of profit sharing arrangements with consequent risks to all interested parties.

OVERALL BENEFITS OF EMPLOYEES

Another major factor to be considered by Congress in deciding whether to adopt legislation regarding the disposition of surplus monies on termination of pension plans is the overall result of the management of the pension plan in terms of benefits provided to employees during its previous life and to be provided to them on termination. To put this point in focus in light of the Elgin National Pension Plan and Trust, the facts are that the employer has contributed about $12,000,000 to the pension fund and the employees have contributed and left with the pension fund about $7,000,000, over the life of the Fund. (The $7,000,000 figure represents net employee contributions, after deducting $8,000,000 of their contributions which were repaid to them after being in the Trust for relatively short periods of time.) These are actual amounts not increased by interest. Pensioners have already received direct benefit payments of about $20,000,000. In addition, under the guaranteed group annuity contract, which is being purchased from a large life insurance company with pension fund assets, pensioners and presently active employees, for all of whom guaranteed lifetime group annuity benefits will be purchased, will receive payment over the next thirty or forty years which are actuarially calculated to approximate $30,000,000. Thus, about $50,000,000 of benefits have been and will be paid out to employees and pensioners. This sum is seven times the total amount of the employees' net contribution to the fund by employees and pensioners. The amount that may be paid to the Company is in the neighborhood of $10-$12,000,000.

If Congress is to consider enacting legislation directly related to surplus monies, it might want to obtain from Government actuaries an expression of their views, or conduct a study regarding the experience of other contributory funds, insofar as the ratio of employee benefits to employee contributions is concerned. The ratio is obviously a reflection of many factors, which will vary from plan to plan.

The basic point I am making is that some consideration should be given by Congress to the overall job done by management and pension fund trustees in assessing whether employees and pensioners would be given any part of surplus monies under a contractually defined pension benefit plan, after 100% of the plan's liabilities to employees and pensioners have been fully met and satisfied. Certainly, Congress should be giving full weight to the long established legitimate interests of the employer in any overfunding, after 100% of plan liabilities to employees have been fully met and satisfied.

LEEWAY FOR AMERICAN INGENUITY AND RESPECT FOR RIGHTS OF SHAREHOLDERS

To move to another point, there is inherent in any dealings between employees and employers an element of bargaining. This is particularly true in cases where unions represent some or all of the employees. In the Elgin case, there has been sub-

stantial bargaining with the unions. Our suggestion is that Congress should not act too hastily in enacting a law that would mandate the payment of surplus monies, if any exist on termination of a plan, to employees and pensioners, and thus unduly restrict the rights of the parties to exercise their own ingenuity and negotiate their own pension contracts, suitable to the particular facts of each case, including provisions regarding the disposition of surplus monies, if any, remaining on termination of the fund.

To illustrate, the Elgin National Plan and Trust has long contained a provision which flatly provides for return of all surplus monies to Elgin National on termination of the Elgin Pension Plan. This is a standard provision contained in many tax qualified pension plans. (The return of surplus monies to employers has been occurring for years in pension plans throughout the United States, without any questions having been raised about such return.) In the Elgin case, before the Company exercised its contractual rights to terminate the pension plan, the Company entered into collective bargaining sessions with duly authorized representatives of the Precision Electronics Industrial Workers Union. That Union has been the long standing certified bargaining unit for Elgin Union employees. After detailed discussions, the Union and the Company entered into a collectively bargained agreement, which was approved by the full membership of the Union. The agreement called for:

1. a significant increase in pension benefits payable upon retirement to the present members of the Union,

2. the purchase of a group annuity contract from a large legal reserve life insurance company which would guarantee payment of such increased pension benefits,

3. termination and liquidation of the Fund, and

4. payment of any remaining surplus monies to the Company.

Thereafter, the Company representatives met with a Committee of pensioners which requested benefit increases in excess of those bargained for and agreed to with the Union. The Company considered the request of the pensioners and granted increases in their pension benefits to be determined in a manner that is comparable to the method of increasing pension benefits to Union employees. The only pensioners who would not receive increases on liquidation of the pension trust are those who received a 20% increase two years ago and a $300 lump sum payment and at that time signed a receipt stating that they acknowledged that the 20% increase and the $300 cash payment was in full satisfaction and discharge of all claims or demands they were making or could make in connection with the pension fund. In addition, the Company and the Trustees are making provision for restoration of certain benefits to many former employees who elected to withdraw their contributions on termination of employment and thus would not ordinarily be entitled to receive pension benefits under the pension plan.

All of these negotiations have been taking place for the last six months. In addition, the Trustees are asking the Supreme Court of New York to approve of their proposed handling of the trust monies. Accordingly, every individual having an interest in the Trust has been given notice of their right to present any claims they may have to the Court for judicial settlement.

Thus, it is patently clear that the Elgin National management and the Trustees of its Pension Trust have operated in a completely lawful and orderly way in which the rights of all parties will be fully protected by the Courts of our land. It is equally clear that it is completely misleading and wrong for anyone to cast doubt on the lawful purposes, objectives and intent of Elgin National's management and of the Trustees of the Elgin National Pension Plan. As a lawyer representing the Trustees, I believe that many statements attributed to a number of individuals who are opposing the Trustees' actions are so wide of the mark, based on the facts, as to be completely misleading and worthy of no serious consideration by legislators.

In any event, where a contractually defined pension benefit plan is established, Congress should not act to abrogate the rights and obligations of the interested parties established by contracts executed before any new law is enacted.

Overall, it would seem appropriate for Congress to weigh the legitimate interests of shareholders and creditors, before any law in this area is passed. Obviously, they have a direct interest in this matter since they too make contributions to the business of the company, as well as employees, and they should continue to have a right to their fair share of the results of good management which includes investment management. Shareholders certainly bear the risk of loss resulting from poor management.

SUMMARY

Thus, in summary, we suggest that a number of elements are pertinent to the making of a sound decision on whether legislation should be enacted dealing specifically with possible future rights of employees to surplus monies in a pension fund upon termination of a pension plan in the future. These elements include:

1. the benefits payable in relation to minimum standards already set forth in S.4 and any other referred to in this statement which may be added to S.4 before it is enacted,

2. the level of all benefits payable under the particular plan and related guarantees in relation to average benefit levels and guarantees under other plans,

3. the protection of employees who have left employment prior to termination of the plan,

4. possible far-reaching adverse effects upon the number and soundness of pension plans that will be established, if surplus monies must be paid to employees and pensioners irrespective of benefit levels and all guarantees under the particular plan, in relation to S.4 minimum standards and to other plans,

5. the payment of guaranteed and reasonable interest rates to employees and pensioners on their contributions without any risk to them, including guarantees against any loss of the capital amount of their contributions,

6. the various reasons for the existence of overfunding or surplus monies, and the serious related policy questions involved in dealing with them, including the undermining of the basic concept of defined benefit pension plans and the possibility of adversely affecting bank trusteed plans,

7. the need for continuing the availability of reasonable latitude to management, unions and employees in establishing contractual benefit provisions befitting the particular circumstances of each case, and giving due recognition to the legitimate interests of shareholders as well as employees and employers.

A reading of the legislative history on S.4 indicates that the Senate Labor and Public Welfare Committee is well aware of the importance of many of these points and has already given thoughtful treatment to them in drafting S.4.

The wisdom of now adding an overfunding or surplus monies definition to S.4, to come into play on termination of an overfunded plan, is certainly debateable. If added it might well provide a basis for litigation for years to come.

A number of complicated related provisions might also have to be included in S.4, which would be of uncertain value to the nation.

An overall aspect of this matter deserving of much thought is that the number of situations in which any overfunding or surplus monies legislation would apply are apt to be relatively limited in number, and would of course be situations in which no employee has suffered, or will suffer, any loss of rights or be deprived of any benefits to which he is contractually entitled under a pension plan. They would be situations in which employees will assuredly receive 100% or more of their contractual pension benefits.

Thus, it does not seem accurate to characterize overfunding situations as problem or deficiency situations which demand Congressional treatment.*

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* It seems significant that S.4, if enacted substantially in its present form without including any definition of "surplus monies", is designed to eliminate or largely reduce past deficiencies in pension plans generally, and strengthen and improve the protection of interests of pension plan participants and their beneficiaries by:

1. requiring vesting after specified period of service,
2. requiring specified minimum standards for funding,
3. providing for portability of pension credits through a central fund,
4. establishing a plan termination insurance program against loss of vested benefits because of plan termination,
5. requiring disclosure of vital data and reports to be filed with the Government, and understandable explanation to workers of their rights and obligations under their pension plans,
6. requiring minimum standards of fiduciary conduct,
7. establishing federal jurisdiction over the substance of pension plans for the first time, and providing for certain methods of judicial and administrative enforcement of the provisions

Rather, it would seem proper to consider the underlying issue to be whether Congress should require that employees and pensioners must receive additional benefits of a "windfall" character, if the pension plan under which they are covered terminates for sound business reasons at a time when the pension plan is overfunded.

Broadly speaking, it would appear that if the Senate Labor and Public Welfare Committee reaches the conclusion that the matter of overfunding or surplus monies should now be dealt with, the Committee would have to consider all the elements above noted and also retrace many of its steps and reconsider the wisdom and desirability of:

1. establishing minimum pension levels, in relation to salary levels, years of service and other pertinent factors to be provided under pension plans,

2. establishing minimum death benefit levels,

3. establishing minimum guaranteed rates of interest to be paid to employee contributions and requiring guarantees with respect to return of the capital amount of employee contributions,

4. establishing maximum contributory rates by employees,

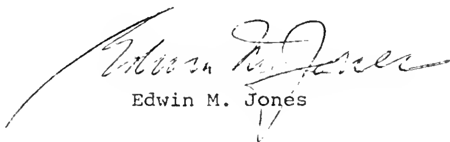
5. treating with a variety of other factors that would be pertinent to fair and equitable treatment of the matter by Congress.

If Congress were to enact legislation requiring surplus monies to be paid to employees, it would amount to a significant change in long established Congressional policy under which pension plans have become an important part of the nation's economic framework.

When it is fully appreciated that overfunding, and any related surplus monies may exist for a variety or reasons, normally attributable to sound management and sound investment practices, or to other conservative actuarial recommendations followed by management to best protect the employees' interest and to assure that the employer will be able to fully discharge defined pension and death benefit commitments made by him to his employees, it would be understandable if Congress were to conclude that no special legislation dealing with surplus monies is now needed to protect the legitimate interests of employees in cases of overfunding.

The Senate Labor and Public Welfare Committee has apparently concluded to date, after long debate hearings and deliberation, that S.4 should not treat directly and in detail with points 1, 2 or 5 above. This is certainly understandable. It would also be understandable if the Committee were to give further consideration to the desirability of covering points 3 and 4 above in S.4.

We thank the Senator for listening to our views. We hope that our comments will help the Senator and the Senate Labor and Public Welfare Committee in relation to legislative aspects of this matter and we offer our help in the future with respect to any legislative aspect on which it is thought that we might be of assistance.



Edwin M. Jones

POSSIBILITIES FOR LITIGATION AS A TOOL FOR PRIVATE PENSION REFORM

By: Paul S. Nathanson
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MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE

My name is Paul Nathanson. I am the Executive Director of the National Senior Citizens Law Center, a program dedicated to redressing the special legal problems of the elderly poor. Prior to my present employment, I was associated with the Los Angeles law firm of O'Melveny and Myers where I was primarily involved in drafting private pension, profit sharing and stock ownership plans to be qualified with the Internal Revenue Service.

One of the high priorities of the National Senior Citizens Law Center, as enunciated by its Executive Committee and Governing Committee (which Governing Committee is composed of representatives of the Administration on Aging, the American Association of Retired Persons, the American Bar Association, the Association of American Law Schools, the California Rural Legal Assistance, the Gerontological Society, the Farmers Union Senior Citizens Program, La Raza National Lawyers Association, the National Association of Retired Federal Employees, the National Bar Association, the National Caucus on the Black Aged, the National Clients Council, the National Council of Senior Citizens, the National Council on the Aging, the National Legal Aid and Defender Association and the Western Center on Law and Poverty), is legal redress of the problems of the present private pension system as they have come

to the attention of the public through the hearings of this Subcommittee.

Since the National Senior Citizens Law Center has come into existence, those of us dealing as attorneys with the private pension area have been struck by the fact that a great deal of reform would be forthcoming if existing statutory and legal principles were fully and effectively enforced. Substantive legislation, whether on a federal or state level, which cannot be effectively policed on behalf of the ultimate beneficiaries of such legislation, may very well be an exercise in futility. We are becoming increasingly aware that, for example, even a pension plan participant with a claim justified within the four corners of a particular private pension plan will find it extremely difficult to find knowledgeable legal representation in pursuing his claim. The reasons for this are obvious. Most attorneys who are at all knowledgeable in this very complex field are already receiving their bread and butter from either management or official union circles, and would be faced with a conflict of interest if they were to represent an individual claimant against these interests. I do not have to tell you how complex are the issues involved in understanding and interpreting the legal remedies available under a private pension plan and under existing law touching on private pension plans. The time needed by a private attorney to appropriately and adequately represent a pension claimant is very often (absent an unusual class action situation) so far out of line with the possible recovery that the average private practitioner cannot be bothered

with pursuing fully a pension claim. Thus, the average plan participant is left with no true advocate of his interests. This is so with respect to individual claims, and of course is even more so with respect to complicated law reform and broad-reaching class action litigation.

We would respectfully submit that the passage of worthwhile legislation in the private pension area, while essential, would only go part of the way to truly reforming the private pension system. It is our view that, in order to make existing and future legislation effective, the legislative and legal framework must be opened up to continuing review and challenge on behalf of plan participants by individuals knowledgeable in the field and independent of the powers that be. This would be a means by which progressive and equitable legislation might be made truly responsive to the individual clients.

We would hope that the article attached as Appendix "A" hereto will underscore our view that existing legal principles and legislation, when used and expanded by knowledgeable representatives of individual claimants, can have an impact on the private pension industry.

Thank you very much for your time.

I. THE PROBLEM

A. Introduction

Private pension funds, containing some 135-odd billion invested dollars, amount to the largest aggregation of substantially unregulated assets in the United States.[1] According to the Securities and Exchange Commission, pension funds purchased $4.6 billion of common stock during 1970, more than the amounts purchased by property and liability insurance companies, life insurance companies and "open-end" investment companies combined.[2] This kind of concentration of economic power should be sufficient reason for close public scrutiny of the structure and operation of pension funds. When this power is coupled with the important public purpose pension funds are expected to serve, a purpose recognized by an annual tax subsidy estimated to be from three to eight billion dollars annually,[3] such scrutiny becomes imperative.

Yet, to date, the organization and activities of private pension funds have been permitted to remain substantially immune from public regulation and, to a significant extent, public knowledge. The results have been disastrous for the funds' supposed beneficiaries, the working people whose labor has generated their vast resources. The scope of the disaster is reflected in the findings of a study by the Senate Subcommittee on Labor released on March 31, 1971.[4] Of 9.8 million persons participating in 87 selected pension plans, some 92% of those enrolled in plans requiring 11 or more years of service

for vesting of entitlement to benefits, and 73% of those enrolled in plans requiring 10 years or less for vesting, did not qualify for any benefits upon leaving their employment.[5] Moreover, those few employees who have qualified for benefits have tended, by and large, to be relatively well paid executives whose need for a stable retirement income is, perhaps, the least of any class of workers.[6]

Pension reform should clearly be a subject for the attention of Legal Services attorneys for two very important reasons. First, and most significantly, if some of the dollars held in such funds can be made to flow through to poor elderly individuals, such individuals might well be spared from the humiliation (as viewed by such elderly persons who have worked all their lives) of joining the welfare roles and from becoming clients of Legal Services offices. Secondly, as we hope will become clear from this article, the private pension area (because of its immense significance on the American economic scene combined with the one-sidedness of the law to date) offers one of the most exciting possibilities for law reform litigation in the 1970's.

The private pension system is an outgrowth of the practice of many employers, early in this century, to pay small, often irregular, benefits to those of their employees who had grown too old to work. Such benefits were terminable at the will of the employer, were not funded in advance and were regarded as gratuities, a reward for the lifelong service of a loyal worker.[7] The burgeoning of this haphazard non-system

into today's economic colossus is the result of both collective bargaining and unilateral company action, the later spurred by the tax benefits afforded pension funds and by the exemption of pension benefits from the wage freeze imposed during the labor-short years of World War II.[8] Further growth was assured by the decision in Inland Steel Co. v. NLRB,[9] that pension benefits were a mandatory subject of collective bargaining under Section 8(d) of the Taft-Hartley Act.[10]

Most pension plans are funded entirely by employer contributions; a small percentage, however, either permit or require covered employees to supplement these contributions. A plan may employ, as a funding medium, a trust established and funded by an employer or group of employers; alternatively, the plan may be funded pursuant to a contract. Under the contract an employer or group of employers make contributions in the form of premiums paid to an insurance company. The insurance company in turn pays an annuity to each covered employee who becomes entitled to benefits under the terms of the contract and/or plan.[11] Still other plans are operated jointly by a union and an employer or group of employers, pursuant to the authority of Section 302 of the Taft-Hartley Act and are funded by a trust or annuity contract.[12] This section, designed to prevent bribery of union officers, prohibits the transfer of funds from employers to employee representatives; but excepts from this ban contributions to jointly administered pension funds held for the exclusive benefit of covered employees and their dependents.

Tax exempt status is conferred on all pension funds which "qualify" under Section 401 of the Internal Revenue Code.[13] Because of the great economic incentive to do so, the vast majority of plans have so qualified.

Such status amounts to a substantial public subsidy of qualified funds since it includes (1) deductibility of employer contributions into a fund as they are made,[14] (2) exemption from taxation of profits made by fund investments,[15] and (3) deferral of employee tax liability on pension benefits until such time as they are distributed.[16] In order to qualify, a plan must be written, permanent and in existence during the year for which exemption is claimed.[17] In addition, the plan must be "for the exclusive benefit of covered employees"[18] and their beneficiaries and must provide benefits in a way which does not discriminate in favor of stockholders, officers, supervisors or highly paid employees.[19]

B. Conditions for Receipt of Benefits

There are many reasons for the shameful record of the private pension system in failing to provide benefits to the working people who have relied on it for their retirement security. Most of these reasons can, however, be traced to a common source - the notion that a pension is a gratuity to be bestowed on loyal employees, rather than an integral part of the compensation of every worker. This notion has found its clearest formulation in provisions of pension plans which condition eligibility for benefits on the attainment of retirement age while working at employment covered by the plan and/or on the completion of a lengthy term of service with the same employer or in employment covered by a union's jurisdiction, or occasionally, by a period of membership in a union.[20] Such provisions have effectively denied pension benefits to all but the most sedentary of workers.

The requirement that these sorts of age and term of service conditions be met before rights in a pension plan "vest" is defended on the ground that it encourages employee loyalty, reduces turnover and its attendant training costs and fosters a benevolent feeling in a worker toward his employer, akin to that which he might feel toward an extended family.[21] An additional rationale offered in joint union-management plans is the inducement to union members to work only in covered employment. Paternalism aside, there is no doubt some merit to this view, but it accords little with either the realities or the social values of American life in the last third of the twentieth century. Our heritage is one of rootlessness, fed by an ideal of socio-economic mobility. Few American workers have continued in the same employment throughout their working lives.[22] Their willingness to change jobs, to seek new opportunities and greater responsibilities has had a dynamic impact on our economic and social history.[23] The right to travel has been found by the Supreme Court to be sufficiently important to our scheme of values to warrant constitutional protection.[24] Yet a pension plan can undermine these values by requiring a worker to remain in the same job throughout his life or, if the worker is more fortunate, for 15 or 20 years, before that worker is entitled to any of the money deposited into a pension fund during the period of his service for the contributing employer.

A second feature of the private pension system which works in combination with age and, particularly, term of service vesting conditions to prevent many employees from receiving pensions

is the pension system's wholesale failure to provide for the transfer of credits of service toward vesting from one pension plan to another.[25] Thus, a worker employed in a subsidiary of a large corporation who is transferred after eight years of service to a second subsidiary of the same corporation, may find that his eight years of service count for nothing toward obtaining vested rights to a pension because the second subsidiary does not participate in or accept service credits from the pension plan of the first subsidiary.

An analogous situation can occur when, after a period of employment under the auspices of a particular union local, a worker goes to work for an employer who does not contribute to the pension fund co-administered by that worker's former local but, instead, contributes either to a fund established by a different local of which his employees are members or to his own plan. Even if the two locals are constituents of the same national or international union, there is often no provision for transfer of service credits between the two plans.[26] Even more egregiously, transfer of credits may be denied between two local unions participating in the same plan. As a result, a worker in a trade such as carpentry, which demands great mobility of its practitioners, may find that after a lifetime of work he has not earned sufficient credit with any one particular local to qualify for a pension.

Effective practice of union democracy can have a similar effect on whole groups of workers. Thus, if workers in a particular bargaining unit vote no longer to be represented by a particular union, they will very likely forfeit all credits earned toward vested rights in that union's jointly operated pension plan.[27]

Successful completion of a required term of service is also frequently prevented by economic forces totally beyond a worker's control. The sale of an employer's business to or merger with a new company, for example, can result in the employees being required, in order to keep their old jobs with the new company, to drop out of a joint union-employer pension plan into which the old employer had made contributions, thus forfeiting any unvested credits earned. Even if these employees are covered by another plan at the new company, it is likely that they will have no credits in it.[28] A consolidation of two employer facilities, each covered by a different employer's plan, can provide a similar result.[29] An employer's decision to cease doing business may also destroy the pension rights of employees. If such an employer has administered a plan for his employees which qualified for tax exempt status, each employee is required to be totally vested in his rights in the plan upon termination of his employment.[30] However, if the plan had not been adequately funded, which is more than likely, his vested rights may amount to little or nothing.[31]

Perhaps the most frustrating feature of the private pension system is its widespread provision for forfeiture of credits earned toward vested rights in a plan. A worker who temporarily leaves employment covered by a particular plan before earning vested rights may find that his break in service, however brief, has stripped him of all credits earned toward vesting. Upon his return to covered employment, he must begin reaccumulating such credits from ground zero. In some plans, such break-in-service provisions are applied in tandem with a requirement that a minimum number of days or hours be worked at covered employment in a given year in order to credit that year toward vesting and, often, avoid attribution of a break. The combination almost seems designed to produce forfeiture of benefits.

Completion of the term of service or union membership and attainment of the required age do not always assure that a worker will enjoy the pension which such vesting promises him. Many plans provide for the divestment of vested rights on the occurrence of certain specified conditions, such as death before retirement, acceptance by the participant of employment with a competitor of his company, or even violation of vague proscriptions against conduct inimical to the interests of his employer or union or society at large.[32]

C. Funding

Wholly apart from the question of whether an employee is entitled to a pension under the terms of a plan is the question of whether there will be sufficient funds available to pay the vested benefit to which the employee is entitled.[33] The funds necessary to fulfill the obligations of a pension plan may not be present for two separate reasons. They may either never have been paid into the trust or other funding medium or they may have been depleted due to improper investments or other transactions by the administrators[34] of the fund. The former problem is related to the "funding level" of the plan, and the latter is related to fiduciary activities of the administrators.

In 1964, the Studebaker plant in South Bend, Indiana terminated its pension plan after an existence of 14 years during which the plan had been regularly funded as required by law.[35] Four thousand vested employees between 40 and 60 years old received 15% of their anticipated benefits and 2,900 workers under 40 (whether vested or not) got no benefits at all.[36] In another plan failure, employees of Horn and Hardart Baking Co. had been informed through their pension plan booklet that, "[A]s a Horn and Hardart employee you can look forward to retirement with peace of mind, knowing that under the plan there will be a pension check in the mail to you from the Company every month for life. Your financial future is secure."[37] In September, 1970, these employees received the following news:

September 18, 1970

"DEAR PENSIONER: Since the adoption of the Horn & Hardart Pension Plan in 1964, the Horn & Hardart Baking Company has been experiencing very heavy losses in its operations. It has now reached the point that it must conserve its assets and curtail its expenditures if it is to continue operations.

"Accordingly, the Board of Directors has directed that no further payments be made into the First Pennsylvania Banking and Trust Company, which is the Trustee under the Company's Pension Plan. The funds remaining in the fund of the First Pennsylvania Banking and Trust Company for the payment of pensions are only sufficient to continue making payments to you for a period of approximately nine months.

....
....

"We are most regretful of the situation but there is no other alternative.

"Very truly yours,

"Horn & Hardart Baking Co."[38]

The unbelievably disappointing situation in which these employees found themselves is, unfortunately, not unusual.

Under present law a pension plan must be funded so as to cover current service liabilities[39] and the interest on unfunded accrued liabilities.[40] The employer is not required to make payments toward the principal of the unfunded accrued liabilities. In short, no specific program of contributions to fully fund the benefits promised under a plan is required, and there is, therefore, no guarantee at all that the pension fund

will be adequate to provide the promised benefits which covered employees justifiably expect. In addition, Internal Revenue Code provisions which are intended to prevent over-funding and excess deductions by employers, limit the amount an employer can deduct in a given year as a contribution to the plan thereby providing further disincentive to full funding.[41]

As many recent news stories indicate,[42] the investment practices of many funds have been inadequate to secure deposited monies in them. Although the majority of plans are free of such obvious mismanagement, the question remains whether the absence of gross misfeasance by fund administrators is sufficient to assure policies designed to preserve existing assets for the benefit of covered employees. As discussed below,[43] certain regulation does exist of the investment policies of plan administrators.

One area in which regulation appears to be deficient, however, is the investment by a pension fund in securities of the contributing employer.[44] Here a possibility arises for the investments to be made in pursuance of the employer's or union's business interests or for purposes of effecting or maintaining corporate control of the employer. In joint union-management plans, investment in securities of employers might be made for purposes of securing stronger bargaining positions. Such investment policies clearly are motivated by considerations other than the interests of participating employees.

Generally, however, problems involving the investment practices of pension funds arise not so much from the need for extra standards of fiduciary responsibility and prudent investment, as from the failure of the Internal Revenue Service (IRS) and the courts to enforce existing standards.[45]

II. POSSIBLE REMEDIES

A. Disclosure

The first step toward a solution to any of the structural flaws in the private pension system discussed above is to open the system to scrutiny and evaluation by the workers for whom pension plans are supposedly designed and by the general public as well. Present federal law makes token provision for such scrutiny through the publication and disclosure requirements of the Welfare and Pension Plans Disclosure Act.[46] Under the terms of this statute, administrators[47] of private pension plans connected with interstate commerce and covering more than 25 employees, are required to file a description of the plan with the Department of Labor, and "publish" this description to participants and beneficiaries.[48] Publication entails maintaining

a copy of the plan description at the "principal office of the plan" for examination by participants and beneficiaries and delivering a copy of the description to any participant or beneficiary on his written request.[49] The publication requirement does not, however, include provision for notice to participants or beneficiaries of their right to examine the plan description.

Administrators of plans covering 100 or more participants must publish and file, in addition to the plan description, an annual report of the plan's operations.[50] Again, however, participants need not be told of the report's existence or their right to see it.

Willful violation of any provision of the disclosure act is punishable by a fine of $1,000 or a prison term of six months, or both.[51] In addition, a plan administrator who fails or refuses within 30 days to comply with a participant or beneficiary's written request for a copy of a plan description, or whole plan, or annual report, may become liable to pay such participant or beneficiary $50 per day from the date of such failure or refusal plus costs and attorney's fees.[52] The Labor Secretary may also enforce the Act by seeking injunctions against its violation.[53]

The material required to be disclosed in plan descriptions and annual reports is quite extensive but, nevertheless, is not often helpful to those participants in a plan who happen to learn that it has been compiled and then request and receive it. The reasons for this inutility are two-fold: first, the information itself includes almost none of the features of a

pension plan which are truly important to a worker expecting to draw benefits under it. The most important of the provisions which may be omitted are those dealing with vesting requirements, the possibilities of divestiture of vested benefits and the methods by which periods of work are credited toward completion of a vesting requirement - in short, all the provisions which tell a worker what he must do in order to receive a pension and all the contingencies which might prevent such receipt. The second, and perhaps more serious difficulty, is that the information which must be published need not be presented in a way calculated to be understandable to the average participant. Without such provision, the most thorough-going, substantive disclosure will be of little use except to the rare participant who can decode the legal and actuarial jargon which is the *lingua franca* of pension plans.

Despite these serious defects, the federal disclosure law does provide access to data which may be useful in vindicating a participant's right to a pension. A plan description must spell out the procedures a participant must follow to present a claim or seek review of a denial of a claim under the plan.[54] In addition, it must be accompanied by a copy of the plan or of the instrument by which the plan was created and is funded.[55] With respect to nearly all plans, each annual report must show the actuarial assumptions on which employer contributions to the plan are based.[56] Disclosure of these assumptions may be particularly embarrassing to a contributing employer as they may reveal that the amount of his periodic deposits into a pension fund derive from an expectation that only a small percentage of covered employees, probably higher paid

executives, will qualify for benefits. Evidence of this sort of expectation may in turn serve as a basis for a claim that the plan discriminates against lower paid employees and is, therefore, not entitled to tax exempt status under Section 401 of the IRC.[57]

The information required to be filed and published by the disclosure act is to be supplied by plan administrators "in such form and detail as the Secretary (of Labor) shall by regulation prescribe."[58] To date, the "form and detail" prescribed by the Secretary has amounted only to a restatement of the requirements of the Act.[59] Last February, however, the Labor Department published as proposed rules a set of amendments to the present regulations.[60] These amendments would substantially expand the information to be disclosed to plan participants and would, in addition, prescribe that this information be presented in a manner calculated to be understandable to them. Above all, the proposed rules would require notification to participants of the availability of the published material for their examination. Hearings were held on these proposed changes in June.[61] At this writing, neither they nor any other amendments have been adopted by the Labor Department. Because substantive disclosure regulations have not been issued, a mandamus action to force the Labor Secretary to prescribe "form and detail" may be appropriate.

State disclosure statutes are another potential source of leverage on the practices of pension funds. California, for example, enacted a scheme in 1970 based largely on the federal law.[62] Though weak in its substantive requirements, the

California statute does contain a requirement of notice to employees of their rights and may, for this reason, provide participants a bit more than purely paper rights.[63]

B. Judicial Remedies - Common Law

If pension plans seem designed to assure that almost no one gets a pension and if disclosure laws seem designed to shield the structure and administration of pension plans from their beneficiaries, a survey of judicial forays into disputes arising under pension plans does little to soften the bleak predicament in which a pension claimant is likely to find himself. Common law principles and remedies have by and large been inadequate to the task of assuring that America's working people receive the pensions they have counted on and which they have earned.

Courts have tended to a literal construction of the terms and conditions of pension plans. A worker unable, whatever the reason, to meet a vesting requirement of 25 years continuous service is not likely to be awarded a pension by a court which has just read the plan provision setting out just such a prerequisite to receipt of benefits.[64] There are, however, exceptions. And within these exceptions, there are, we believe, coherent strands of judicial thought that are susceptible to

elaboration into a new common law of pension rights. The core of such a new common law, if it develops, will be reconstruction of such venerable concepts as unjust enrichment, promissory estoppel, and, particularly, the obligations of trustees and other pension plan administrators to act as fiduciaries in their relations with plan participants.

1. Fiduciary Duties

Various fiduciary relationships upon which a legal attack may be mounted may exist within the setting of a pension plan. The trustee, administrator, or insurance company which actually holds the trust monies or directs their investment, may have certain fiduciary responsibilities to plan participants or their beneficiaries with respect to fund investment and protection. A union may owe its members a fiduciary duty when it negotiates or draws up the terms of a pension plan; and the individuals or committee which actually administers the plan may owe a fiduciary duty to plan participants or their beneficiaries to use fair procedures in administering the plan and perhaps to disclose to participants salient provisions and information relating to funding and eligibility under the plan. It is likely that, with respect to responsibilities of the sort first mentioned, fund trustees and/or administrators may be held to general common law principles regarding the prudent investment and holding of trust funds.[65] The extent to which pension plan administrators, or union officials, are otherwise subject to common law fiduciary obligations is, nonetheless, suprisingly uncertain. Nevertheless, some courts, led by federal courts in the District of Columbia, have relied on the existence of such

fiduciary obligations in actually evaluating the equity and reasonableness of eligibility clauses in pension plans and in guaranteeing the rudiments of procedural due process to employees asserting the right to receive benefits.

In companion cases challenging the terms and methods of administration of the United Mine Workers Welfare and Retirement Fund, the District of Columbia Circuit Court of Appeals has held that the relationship in which the fund's administrators stand to the union members covered by the fund forbids the imposition of arbitrary and capricious conditions on eligibility for receipt of benefits provided under the fund. In Roark v. Boyle[66] and Collins v. United Mine Workers Welfare and Retirement Fund,[67] the court applied this standard to invalidate a provision of the trust which was interpreted by the trustees to require a participant to work for an employer making contributions into the fund during his last year of employment prior to retirement in order to receive retirement benefits. This condition was not only a prerequisite to receipt of benefits, but was also sufficient to trigger payment of benefits to any participant meeting it, without regard to whether he had ever previously worked for a covered employer. The court found that this signatory last employment rule bore no reasonable relationship to the purposes of the fund, paramount among which was the payment of benefits to the employees of contributing employers. Accordingly, it was struck down as "being arbitrary in the sense of being legally objectionable, without a rational basis.[68]

What is important about this holding is that the administrators of the plan were found to have a duty to

the employees covered by the fund to act in such a way as to further the goal of payment of benefits to them. Moreover, the practices of the administrators and, significantly, the terms of the trust, even those relating to eligibility, were held subject to judicial scrutiny. Such scrutiny could, in future litigation, lead to the invalidation of lengthy term of service vesting requirements and break-in-service conditions, for example, should they be found to be arbitrary or unreasonable when measured in light of the purposes of pension trusts.

There are, to be sure, important caveats which must be recognized in assessing the holding in Roark and Collins. The pension fund involved was established pursuant to the authority provided by Section 302(c)(5) of the Taft-Hartley Act.[69] Thus, it was administered jointly by the United Mine Workers Union and the employers with whom the union had contracts. Because of this substantial involvement in the administration of the fund by the union, administrators of the plan owed special duties to the miners enrolled in the plan over and above those which would have been due them under a plan established and administered solely by the employers. These duties are partially reflected in the requirement of Section 301 of the National Labor Management Relations Act that a union provide "fair representation" of the interests of all employees within its jurisdiction.[70] This duty of "fair representation," though not alluded to in the decision, may be an implicit reason for the court's willingness to examine conditions for eligibility for benefits under the mine workers pension trust. The special fiduciary obligation of

"fair representation" of unions to their members may well provide some sort of a lever to force union officials to actively bargain for pension plan provisions which will benefit all, even the lowliest and least influential union members.[71] The breach of this obligation may well form the basis for a lawsuit challenging provisions clearly not for the benefit of rank and file union members.

Section 302(c)(5) of the National Labor Management Relations Act requires, in addition, that a pension trust established under its authority, be "for the sole and exclusive benefit of employees."[72] Another recent circuit court decision found this provision to be at the bottom of the Roark decision. In Lee v. Nesbitt,[73] a Ninth Circuit panel applied the standard enunciated in Roark to a Maritime Union pension plan provision which cancelled previously earned credits toward vesting in the event of a break in service. Though the Lee court ultimately denied a motion for summary judgment by the pension claimant, it did void the provision, relying on Section 302(c)(5), as applied in Roark and Collins.[74]

With respect to the methods of administration of pension plans, as opposed to the drafting or negotiating of plan provisions themselves, the duty of administrators to accord fair treatment to covered employees may be part of the fiduciary obligation of administrators of employer-administered and jointly-administered plans alike. In another case involving the United Mineworkers Welfare and Retirement Fund, Kosty v. Lewis,[75] the District of Columbia Circuit struck down a change in eligibility requirements instituted without notice to the affected employees. The court held that the administrators of the plan, like all fiduciaries, are subject to judicial correction on showing that they have acted arbitrarily or capriciously toward one of the persons toward whom their trust obligation runs. Though this holding, like those in Roark and Lee, supra, draws on Section 302(c)(5) of the Taft-Hartley Act, its chief reliance is unmistakably on the general obligations of fiduciaries. The elementary procedural due process for which it stands should accordingly be applicable to jointly administered and employer-administered funds alike. Certainly, once the basic terms of a pension plan have been determined, the administrators charged with executing them stand as fiduciaries to employee-participants in the sense described by Kosty whether the terms themselves were drawn up by a union or by an employer.

2. *Unjust Enrichment*

A common law source of recovery for an employee denied a pension under the terms of his pension plan lies in the quasi-contract theory of unjust enrichment. The leading case relying on this theory is *Lucas v. Seagrave Corporation*.[76] In *Lucas*, defendant corporation, shortly after purchasing the plant at which plaintiffs were employed and after assuming the previous employer's obligations to contribute to a retirement annuity plan in which plaintiffs were enrolled, discharged plaintiffs, who together made up almost half the plant's work force. At the time of discharge, plaintiffs did not have vested rights in the plan and accordingly forfeited any possibility of qualifying for benefits under its terms. Plaintiffs' complaint alleged a right to recover the value of that part of their services for which the employer's contributions to the plan were compensation. Should such contributions be held to have been forfeited by the discharged employees, plaintiffs claimed, defendant corporation would be unjustly enriched in that it would be able to apply the forfeited amounts in satisfaction of its obligation to contribute to the plan on behalf of the remaining employees.

In dismissing defendant's motion for summary judgment, the court essentially accepted plaintiffs' arguments. Relying heavily on *Inland Steel Co. v. NLRB*,[77] which had held pension benefits to be part of the wage/fringe benefit package and, therefore, a mandatory subject of collective bargaining, the court found that employer contributions to a pension plan "are essentially a form of compensation,"[78] whether or not collectively bargained, by

virtue of their benefit to employees and their use by employers to attract workers. Further, to deny the possibility of recovery to plaintiffs would be to deny a portion of their compensation which they had already earned for failure to meet a condition over which they had no control. The employer could not argue that he was harmed by non-performance of a condition when he, in fact, caused the non-performance. In fact, he was enriched by terminating the plaintiffs, since he could use the value of their forfeited rights in lieu of a portion of his future contributions to the pension plan on behalf of the remaining covered employees. Finally, the court rejected defendant's claim that the actuarial integrity of the plan would be threatened by plaintiff's recovery. Whatever the actuarial assumptions underlying the plan, they could not be grounded in an expectation of a mass termination of almost half of the covered employees.

Again, there are important limits to the Lucas holding. The court was no doubt influenced by the fact that the plan provided no vesting of benefits after a term of service, however long, but required instead that a participant work without a break at covered employment up to the age of 65 in order to receive benefits. Even more important was the fact that the defendant employer rather crassly ceased contributing to the plan immediately upon his termination of the affected employees, rendering all too obvious the "enrichment" to him and "injustice" to the employees brought about by the discharges. The strongest factor in the court's holding was perhaps the massive sweep of

the terminations. Had a smaller percentage of the plant's work force been affected, and almost certainly if only one terminated employee had sought restitution of contributions made on his behalf, the court would probably have found, as most other courts have found,[79] that the employees assume the risk of termination for whatever reason prior to the vesting of benefits.

Still, these qualifications do not diminish the hopeful signs in the Lucas holding. The court's conclusion that pension benefits are not only compensation but that the employer contributions toward such benefits are compensation earned by an employee as they are made would mean, if it is followed elsewhere, that any forfeiture of pension rights, whether vested or not, amounts to a confiscation of earnings. Such a confiscation might be justifiable in some circumstances, but to frame the problem in this manner effectively shifts the burden of such justification to the employer.

The court's recognition of the inability of the plaintiff-employees to control their economic destinies may be another benchmark of a changing judicial attitude. Admittedly, in Lucas this lack of control was obvious enough. The employees were fired, possibly in order to keep them from claiming pension rights. But there are other economic forces unrelated to employer ill will which can and do prevent workers from meeting the age and term of service conditions for vesting of pension rights. To what extent, for example, can the Lucas reasoning be used to secure relief for workers whose rights don't vest because: (1) their employer moves his plant to another state 2,500 miles away and they can't follow; (2) they are temporarily

laid off because of economic recession thereby sustaining a break-in-service which in turn prompts forfeiture of previously earned credits; or (3) they are required, in order to keep a job, to move from one corporate subsidiary to another or one local union to another between which credits toward vesting under the same pension plan are not transferred?

3. Promissory Estoppel

A second, though to date less promising source of quasi-contractual recovery is the doctrine of promissory estoppel. Section 90 of the RESTATEMENT (SECOND) OF CONTRACTS defines the theory of promissory estoppel as follows: "A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee ... and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."[80] The promise involved in a pension plan is, most often, the employer's (or union's) promise to pay a pension to a covered employee upon his satisfaction of certain conditions, e.g., age and term of service requirements or membership requirements. In this situation the employee's capacity to assert detrimental reliance is limited by the conditional nature of the promise. The doctrine will accordingly not be helpful to an employee seeking a pension who has failed to meet the prerequisites set out in the plan, unless he has been induced to rely on a promise external to the terms of the plan which alters those prerequisites. Promises external to the provisions of a plan are by no means rare, however. Most commonly they take the form of brochures, pamphlets, letters, or even oral information purporting to describe the

plan, which are given to an employee when he starts work or, less often, when he is considering leaving employment covered by the plan to take another job. Representations made to employees in these contexts have been held to supercede the terms of the plan itself, on the theory that they are advanced expressly to induce the employee to take a particular job, to forbear from taking a new job, or to retire at a particular time. When an employee, in fact, does perform the action sought by the representations, courts have often, though far from invariably, found him to be entitled to a pension without regard to his compliance with, for example, a term of service prerequisite to the vesting of rights under the plan.[81] Promissory estoppel can be a particularly effective remedy against an employer whose pension plan is insolvent, since the relying employee may look to the general assets of the promising employer, rather than just the pension trust fund, to satisfy his claim.

4. Other Common Law Doctrines

There are at least two other common law doctrines that would seem adaptable to the plight of a worker unable to qualify for a pension under the terms of the plan covering him, though we know of no cases relying on either. If the plan is viewed as an offer of a unilateral contract which can be accepted by an employee's completion of the age and term of service conditions for vesting, the offeror, i.e., the employer or union, is under a duty not to prevent the employee's performance.[82] Under this view, an employer would not be able to keep a worker from qualifying for a pension by laying him off, transferring him to a unit not covered by the pension plan

or arguably, by shutting down his plant or moving to another city. Similarly, a union would breach its duty to a member under a jointly administered plan if it assigned him to work for a non-contributory employer in order to prevent his meeting a continuous service obligation.

The doctrine of unconscionability has recently been revived chiefly as a defense to a sales contract.[83] The policies which underlie the protection of a consumer from unconscionable sales contracts often apply to an employee who has "bought" a pension plan containing unconscionably strict eligibility conditions. Rarely does an individual employee have any role in the drafting of a plan's terms. He must either accept or reject enrollment in a plan as it stands and frequently, as we have seen, the provisions of the plan are highly unfavorable to his chances of ever receiving a pension. This unfavorability is exacerbated when an employer can require the employee to work until he is 60 years old, under a plan's terms, in order to receive a pension, but can still prevent him from working until he is 60 by firing him. The chief obstacle to effective appeal to the doctrine of unconscionability in pension cases is that it is traditionally limited to use as a defense to an affirmative duty to perform.[84] The remedy afforded a victim of an unconscionable contract is normally rescission, not an award of his expectation.[85] It remains to be tested whether an equity court can be convinced to require payment to an employee of the pension denied him under the color of an unconscionable eligibility condition.

In sum, the inequities in the private pension structure derive in the main from the terms of the legal instruments governing the operation of pension trust funds and contracts. Since courts are reluctant to look beyond these terms in adjudicating the rights of the parties to such instruments, the common law of pensions is at present not a significant source of leverage for change. Nevertheless, cases such as Roark v. Boyle and Lucas v. Seagrave may portend a judicial awakening to at least the grossest kinds of injustice offered up by the system. This awakening, if supplemented by an expansion of the remedies available under existing legislation dealing with private pension plans, may yet result in a more equitable division of the vast resources deposited in pension funds.

C. Remedies Under Existing Legislation

1. Internal Revenue Code

a. Substantive Questions

The major source of legislative control over the activities of pension funds is the tax exempt status such funds are afforded by Section 401 of the Internal Revenue Code(IRC).[86] The public subsidy provided by this exemption is justified by a presumption that all pension funds on which it is bestowed are operated "for the exclusive benefit of the employees" covered and do not "discriminate" in contributions or benefits in favor of stockholders, officers, supervisors or highly paid employees.[87] In light of the small percentage of covered employees who ever receive a pension and the fact that pension benefits are a good deal more likely to

reach the hands of high paid individuals or supervisors than low paid rank and file workers,[88] there is substantial doubt whether this presumption is an accurate reflection of reality. To the extent it is not, it is appropriate to ask whether legal remedies are available to force the IRS to make the private pension system live up to the mandate of Section 401(a)(4).

The IRS initially "qualifies" all private pension plans which seek special tax status. Thus, all plans are reviewed at their inception (all amendments which must also be submitted to the IRS, trigger a review of the affected plan) for compliance with the requirements of Section 401. Obviously, only the clearest cases of future discrimination in contributions or benefits (as proscribed by Section 401(a)(4)) can be caught at this stage and only by an agent with an extremely sharp eye. While spot reviews of plans after they have been in existence for several years have begun in recent years to be conducted, post-qualification review on a systematic basis would most likely exceed the IRS's manpower capabilities.[89] As a result of the difficulties of a post-qualification factual review with an eye toward spotting actual discrimination in benefits under pension plans, the IRS appears to have focused its attention at the qualification stage on only eligibility for <u>participation</u> in the plan, i.e., <u>coverage</u>, and on the clearest cases of discrimination in benefits.[90]

The legislative history of Section 401[91] seems clearly to indicate that it was the intent of the Congress and the

President only to provide the governmental largesse of tax exemption to private pension plans which actually benefited all employees rather than a select few.[92] The IRS agrees that the proscription of Section 401(a)(4) requires it to focus on discrimination in benefits and not just on discrimination in eligibility to participate in the plan. Thus in Revenue Ruling 71-263, a plan was disqualified which had a 15 year vesting provision and a requirement that participants remain on the job until retirement age of 65. The majority of employees were migratory workers who stayed on the job for only a short time and, therefore, could not vest in a pension, and only a few executive employees could benefit from the plan. The ruling states in part:

> A classification may appear to be satisfactory on paper but if in the actual operation of the plan it discriminates in favor of employees who are highly compensated, etc., the plan will fail to qualify. Both paragraphs (3)(B) and (4) of section 401(a) of the Code (dealing with whether a classification, and contributions or benefits discriminate in favor of employees who are officers, shareholders, supervisors, or highly compensated) are considered together in determining whether the qualification requirements are met. Although the coverage provisions in this case meet the statutory requirements, in actual operation only the executive employees will benefit.
>
> Accordingly, it is held that this plan does not qualify under section 401(a) of the Code. The plan might be made to qualify if satisfactory provisions for vesting are incorporated therein. The plan might also be made to qualify by excluding employees who do not have a minimum period of service, as permitted under section 401(a)(3)(A) of the Code.[93]

Although vesting provisions are the most likely to result in the prohibited discrimination in contributions or benefits, there may well be other provisions in a plan which work, either alone or in combination, to cause the plan to provide the bulk of its benefits to the prohibited group. Thus, there may be initial eligibility requirements or break-in-service or forfeiture provisions which have the prohibited effect. It must also be remembered that there may be both provisions which, when enforced fairly as to all types of employees, discriminate in result and there may be occasions where provisions, seemingly innocuous on their face, are enforced discriminatorily. Both types of discrimination should be subject to attack under Section 401(a)(4).

Litigation in this area might, therefore, be aimed in several directions. Appropriate might be mandamus actions against the IRS to force it to: periodically review all pension plans for the prohibited discrimination in contributions and benefits in actual practice;[94] disqualify plans which are shown to discriminate in contributions or benefits in favor of the prohibited group;/promulgate regulations which/are more clearly aimed at the prohibited discrimination in ultimate benefits as distinguished from initial eligibility to participate (i.e., "coverage").

The IRC may also provide a check on investment practices of trustees and/or administrators of pension funds. Section 401 of the IRC requires that funds held in a qualified plan be held "for the exclusive benefit of employees and their

beneficiaries."[95] In addition, the IRC in Section 503 lists certain prohibited transactions which will result in loss of tax exempt status by the trust.[96] Investment in securities of a contributing or sponsoring employer has not been generally challenged under any provisions of the code as not being "for the exclusive benefit of employees and their beneficiaries."[97]

Another area where the IRC may provide relief from inequitable situations arising under private pension plans is centered around the termination of such plans, or the discontinuance of contributions to such plans. IRC Section 401 requires that if a pension plan is terminated or contributions to it are discontinued, all plan participants must be 100% vested in their pensions.[98] The situation is quite straightforward where under a pension plan provided only by one company, rather than a multi-employer or jointly administered plan, the one company has only one plant or business operation and the company closes its single operation or discontinues contributions to its plan. In such a case, the requirement of 100% vesting in Section 401 is clearly applicable since there has been a complete termination of the plan.

However, quite often, an entire plant of a multi-plant company is shut down, or one company or union with a pension plan is merged into or replaced by another company or union with its own plan, and covered employees are forced out of the pension plan under which they were previously covered.[99] The result of such activities often is that plan participants lose all accrued rights under their pension plan since they have been either terminated from their employment or from membership in their union.[100]

It is in these cases that the IRS regulation which provides for 100% vesting of the rights of workers affected by "partial" terminations may be helpful.[101] Although the general case law has been quite restrictive in the area of plan terminations,[102] two recent IRS rulings may open the way to a more liberal assessment of the rights of groups of employees affected by a massive ouster from plan coverage.[103] In Rev. Rul. 72-510, the IRS declared a "partial termination" to exist when an employer, in connection with the closing of one division of his business, discharged 95 of the 165 participants in his plan. In Rev. Rul. 72-439, a "partial termination" was declared where 120 of 170 participants in an employer plan became members of a union and were, as a result, required to drop out of the plan. In each of these cases, the affected employees were vested 100% in their benefits in the plans from which they had been severed.

b. Procedural Questions

While it is unlikely that the IRC creates a private cause of action by a pension plan participant against the sponsors of his plan, IRS construction of the Code may, nevertheless, be helpful in litigation brought against the sponsors under the terms of the pension plan itself. Thus, for example, if a plan provides (as is required by Section

401(a)(7)) that all participants must be 100% vested if the plan is terminated or contributions are discontinued, the views of the IRS on plan terminations, no doubt, would have a significant effect on judicial application of this provision of the plan.

It must be noted that since the IRS deals only with plan qualification for tax exemption, the relief provided by any litigation against the IRS is limited to court ordered plan disqualification and loss of tax benefits or in the alternative to changes in the qualification requirements of the IRS. Such litigation would not directly result in a recovery of benefits to an aggrieved employee. However, it is likely that a credible threat of disqualification by the IRS, whether due to more effective enforcement of existing law or changes in qualification regulations, would spur an employer or union to make revisions in its plan which would inure to the benefit of plan participants and perhaps even directly to an aggrieved plaintiff

If the IRS is to be induced to act more effectively to hold the threat of denial of exempt status over pension funds which violate the proscription against discrimination contained in the Code or which do not adequately protect their participants against "partial terminations" or which make prohibited investments, participants must be able to secure judicial review of IRS determinations of plan qualification. Availability of such review in turn depends upon whether a plan participant can effectively assert standing to challenge IRS procedures and decisions.

The weight of authority seems clearly to favor a pension plan participant's claim of standing to challenge an IRS

determination that his plan has qualified. The standards employed by the U.S. Supreme Court are set out in the companion cases, Association of Data Processing Service Organizations v. Camp,[104] and Barlow v. Collins.[105] In these cases the court held that a litigant had standing if he could show: (1) that he had been "aggrieved"[106] by a determination of an administrative agency; and (2) that the interest he sought to protect was "arguably within the zone of interests to be protected ... by the statute in question."[107]

The first of these prerequisites would certainly be satisfied by a litigant denied a pension under the terms of a "discriminatory" plan which had, nevertheless, been qualified by the IRS. The second would be met by a showing that his interest in securing a pension was arguably within the zone of interests protected by the statutory scheme granting tax exemption to qualified pension funds. Since Section 401(c) affords exempt status only to those funds which are for the "exclusive benefit of covered employees," it seems likely that a plan participant could satisfy this test as well.

These intuitions seem confirmed by a D.C. Circuit holding handed down a year after Data Processing and Barlow, N.W.R.O. v. Finch.[108] In a situation in many respects analogous to that of a pension plan participant seeking to challenge an IRS grant of exemption to his fund, the court found that welfare recipients not only were entitled to judicial review of a Department of Health, Education and Welfare determination that a state welfare program was in compliance with federal law and,

therefore, entitled to federal matching funds but, also, could participate as parties in the HEW decision-making process itself. N.W.R.O. v. Finch is particularly significant because the welfare recipients involved, like pension plan participants, sought to overturn a grant to another party of federal largesse which that party was obligated to use for their benefit, in order to vindicate enforcement of statutory standards protective of their interests under which such largesse was required to be disseminated.

The Supreme Court has spoken once more on the question of standing since Data Processing and Barlow and N.W.R.O. In Sierra Club v. Morton,[109] the court affirmed denial of standing to the Sierra Club in its challenge to the Interior Department's approval of the Disney Mineral King Development. The holding, however, turned on the Sierra Club's failure to assert that an "injury in fact"[110] was threatened by the development. Had the club claimed that "it or its members would be affected in any of their activities or pastimes by the development"[111] the result might have been different. An employee enrolled in an exempt pension plan who has been denied a pension by virtue of its discriminatory features, would not seem to be affected by the Sierra Club decision.

2. Age Discrimination in Employment Act

Though not specifically addressed to the problems of employees enrolled in pension plans, the Age Discrimination in Employment Act[112] may afford a remedy to a worker who, on account of his age, is fired, laid off, or otherwise prevented from achieving vested pension rights. This Act makes it unlawful for

an employer "to ... discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's age."[113] Similarly, a union may not "exclude or expel from its membership, or otherwise ... discriminate against any individual because of his age."[114], or, "... limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age"[115] or "cause or attempt to cause an employer to discriminate against an individual in violation of this section."[116]

Excepted from these proscriptions are actions taken where age is a bona fide occupational qualification, actions taken in conformance with a seniority system or an employee benefit plan (including a pension plan) and discharges of employees "for good cause."[117] In addition, the Act's coverage is limited to individuals who are at least 40 years of age but less than 65 years of age.[118]

The primary responsibility for enforcing the act rests with the Secretary of Labor, who is empowered to seek injunctive relief and damages on behalf of aggrieved employees in accordance with the procedures set out by the Fair Labor Standards Act.[119] Aggrieved employees may also sue to enforce

their rights under the Act, provided 60 days' notice of the suit is given the Labor Secretary.[120] This private right of action terminates, however, in the event the Secretary commences an action on behalf of the aggrieved employee.[121]

The particular value of this scheme to a participant in a pension plan is its provision for the payment of damages. Thus, a worker discharged by his employer or denied work by his union on account of his age, may be awarded such damages as proximately result from the wrongful discharge or denial. If the discharge or denial prevents the worker from earning sufficient service credits to vest his rights in a pension plan, the damage award may include the pension to which he would have been entitled, save for the violation of the Act. The Labor Department recently achieved just such a result in settling an action for damages under the Age Discrimination in Employment Act brought on behalf of a group of employees discharged by Pan American Airways. The settlement provided for the payment of $250,000 in pension benefits to the 29 aggrieved Pan Am employees.[122]

3. National Labor Relations Act

Section 8(b)(1)(A) of the National Labor Relations Act, although also not specifically addressed to pension problems, may nevertheless be used to protect the pension rights of union members enrolled in joint union-management administered plans.[123] This section makes it an unfair labor practice for a union to "restrain or coerce" employees in the exercise of rights protected by Section 7 of the Act.[124] Among these rights is the freedom to

enjoy all benefits of employment irrespective of membership in a union or compliance with any duties or obligations of union membership.[125] The Seventh Circuit Court of Appeals has determined that eligibility to participate in a joint union-management pension plan is such a benefit of employment. In Local 167, PMW v. NLRB,[126] a Seventh Circuit Panel affirmed a NLRB order that two former members of plaintiff-union be reinstated as participants in the welfare and retirement pension plan established by contract between the union and the Coal Producers' Association of Illinois, an employer group. After working at employment covered by the plan for 27 and 10 years respectively, the two employees left their jobs to work for a mining company whose employees were represented by another union, the United Mine Workers of America. At the time they changed jobs, their pension rights in the Progressive Mine Workers of America (PMW) Plan had not vested, as vesting depended upon continuous membership in the union until retirement from work in the mining industry. After moving to the new jobs, the employees were expelled from their PMW Local and were deemed by the Local to have forfeited all rights in the PMW-Coal Producers' Pension Plan. The expulsion and forfeiture were ordered notwithstanding the willingness of the two employees to continue paying Progressive Union dues. The court, in affirming the NLRB order, found that while the PMW might be justified in expelling from membership those workers who accepted employment with mining companies not parties to contracts with it, employees thus expelled could not for that reason be denied pension eligibility. A "procedure of denying welfare and pension benefits to employees who change mines and

consequently change unions," the court held, "coerces employees in the exercise of their Section 7 rights to join or not to join a labor union and is violative of Section 8(b)(1)(A)."[127]

To the extent it wins acceptance from other courts, this decision has tremendous significance for all workers enrolled in joint union-employer administered pension plans. Its reasoning would apply to virtually any situation in which a worker loses credits earned under such a plan by accepting a job with a non-contributing employer or by being a member of a bargaining unit which votes no longer to be represented by the union which has established the plan.

4. Other Statutory Remedies

The other federal statutes which touch in an important way on the pension system are the Welfare and Pension Plans Disclosure Act and Sections 301 and 302(c)(5) of the Taft-Hartley Act.[128] Their possibilities and limitations have already been discussed. Other peripheral authority is provided by the registration requirements of the Securities Act of 1933,[129] the allowable cost standards covering housing construction assisted by the Department of Housing and Urban Development,[130] and the procurement regulations of the Department of Defense.[131] None of these latter authorities, however, shows much promise of adaptation to the cause of law reform litigation.

D. Constitutional Remedies

The ultimate, and to date wholly untested, resort of the worker seeking a pension (and fair procedures in the administration of his pension plan) is the Constitution. Private pension

funds would, no doubt, assert total exemption from the due process and equal protection strictures of the Fifth Amendment[132] and the Fourteenth Amendment.[133] But, given their acknowledged public purpose[134] and the substantial public involvement in their activities through the Internal Revenue Code, their continuing ability to elude constitutional accountability is at least open to question. This past November, a three-judge federal court in Oregon found that the state could not grant an exemption from taxation to Elks Club Lodges which restrict membership to whites.[135] Tax exempt status was, in short, found to be sufficient public involvement to bring the activities of an otherwise private organization under the scrutiny of the equal protection clause of the Fourteenth Amendment. Should the reasoning of this panel on the question of state action find approval from the Supreme Court, tax exempt private pension funds would seem, _a fortiori_, to be within its sweep. The terms and conditions and administrative practices governing tax exempt pension funds would, as a result, be required to conform to the due process clause of the Fifth Amendment.[136] The administrators of such funds could be compelled to accord basic procedural rights to enrollees in determining their entitlement to benefits. Perhaps more tenuously, a pension plan found to "discriminate" in the award of benefits against low paid workers might be held to have failed to guarantee such workers equal protection of the law. And finally, though most speculatively, the tendency of the pension system as a whole to penalize workers who change jobs by preventing them from transferring service credits toward vesting

from one job to another, might be found to abridge the freedom of movement held basic to our scheme of values in _Shapiro v. Thompson_.[137]

An additional constitutional remedy available to public employees covered by a pension plan is the provision forbidding a state from "impairing the obligation of contracts."[138] This provision has been read by some state courts, most notably in California, to prevent any change in a pension plan to the detriment of a covered employee unless a benefit of substantially equivalent value is provided.[139]

III. PROPOSED LEGISLATION

The problems arising under the private pension system as it now exists have not gone unnoticed by legislators. Thus, there has been pending in Congress, for several years, legislation known as the Javits-Williams Pension Bill.[140] This legislation has a vesting requirement of 30% of the benefit after eight years and 10% each year thereafter, so that after 15 years of service the employee is 100% vested. It also sets minimum funding standards, requires broadened disclosure of pension fund investments and plan provisions, provides for federal standards of investment of pension funds, and has a provision for reinsurance in case there is a plan termination or bankruptcy.[141] This legislation also has an optional portability provision for the transfer of credits from one plan to another.

The Nixon administration has proposed a bill[142] which quite clearly is less progressive than the Javits-Williams legislation. The bill requires as a condition of tax exemption that a pension plan must have "rule of 50" vesting. This means that when age of the employee plus years of service equal 50, the individual will be 50% vested in his benefit and the other 50% of his benefit will be vested over the next five years. There are no specific provisions for funding requirements of plans, or reinsurance of plans if they are prematurely terminated or go bankrupt. In addition, the rule of 50 obviously discriminates against older individuals seeking employment. An individual 49 years of age (and therefore one year away from vesting) might well have a difficult time obtaining employment with a company which had a pension plan. A plethora of other bills has been introduced.[143]

It is likely that some sort of pension legislation will result from Congressional action in the near future. However, given the uncertainty of the final passage of such legislation and of the substantive provisions which such legislation will contain, an attack on the private pension system through law reform litigation seems appropriate. In addition, it seems quite likely that activity in the sphere of litigation may well be the prod which is needed for the passage of major legislation.

To put in practical context this survey of rights and remedies of employees enrolled in private pension plans, there follows a questionnaire or checklist designed to be used by a

lawyer investigating a pension case. It is hoped that this checklist, when applied to the facts of most pension problems, will provide a rudimentary framework for analysis of a participant's rights under a pension plan and the legal arguments which might be made in service of his right to benefits.

FOOTNOTES

1. SUBCOMM. ON LABOR, SENATE COMM. ON LABOR AND PUBLIC WELFARE, INTERIM REPORT OF ACTIVITIES OF THE PRIVATE WELFARE AND PENSION PLAN STUDY, 1971, S. Rep. No. 92-634, 92d Cong., 2d Sess. 111, 112 (1972). [hereinafter cited as INTERIM REPORT]

2. Id. at 12,13.

3. PRESIDENT's COMM. ON CORPORATE PENSION FUNDS, PUBLIC POLICY AND PRIVATE PENSION PROGRAMS - A REPORT TO THE PRESIDENT ON PRIVATE EMPLOYER RETIREMENT PLANS 17 (1965). [hereinafter cited as PUBLIC POLICY AND PRIVATE PENSION PROGRAMS]
Nader, Nader Cries Fraud on Private Pension System, PENSION AND WELFARE NEWS 31 (July 1972).

4. INTERIM REPORT at 15.

5. Id.

6. TASK FORCE OF SENATE SPECIAL COMM. ON AGING, 91ST CONG., 1ST SESS., A WORKING PAPER ON ECONOMICS OF AGING: TOWARD A FULL SHARE IN ABUNDANCE 38-39 (Comm. Print 1969).

7. Bernstein, Employee Benefit Rights When Plants Shut Down, 76 HARV. L. REV. 952,959 (1963).

8. Levin, Proposals to Eliminate Inequitable Loss of Pension Benefits, 15 VILL. L. REV. 527,528 (1970).

9. 170 F.2d 247 (7th Cir. 1948), cert. denied, 336 U.S. 960 (1949).
The recognition accorded pension benefits by the Inland Steel decision sounded the death knell of official acceptance of the employer advanced notion that pensions are gratuities bestowed on deserving workers rather than a form of earned compensation (See text at pp. 4,5). This change was an important theoretical advance for pension plan participants. For while gratuities may be taken away as casually as they are granted, a worker's compensation is not, at least in theory, so easily trifled with. It is unfortunate that the judiciary, while offering lip service to the pensions-as-compensation argument has paid it little heed in practice (See text at p.16).

10. 29 U.S.C. §158(d).

11. See generally PUBLIC POLICY AND PRIVATE PENSION PROGRAMS at 5-8.

12. 29 U.S.C. §186(c)(5). Plans established under the authority of this section are hereinafter referred to as "jointly administered" or "joint-union-management" plans.

13. 26 U.S.C. §401. Earnings of pension funds which meet the requirements of this section are exempt from taxation under Sec. 501 of The Internal Revenue Code. 26 U.S.C. §501

14. 26 U.S.C. §404.

15. 26 U.S.C. §501(a).

16. 26 U.S.C. §402,403.

17. 26 U.S.C. §401(a) (2), 401(a)(b); See also INTERIM REPORT at 23-24.

18. 26 U.S.C. §401(a).

19. 26 U.S.C. §401(a)(4).

20. A good introductory discussion of the development and effect of these eligibility conditions, known as "vesting" conditions, can be found in PUBLIC POLICY AND PRIVATE PENSION PROGRAMS at 33-47. A more technical treatment of vesting is provided by Norman, Private Pensions: A Study of Vesting, Funding and Integration, 21 U. OF FLA. L. REV. 141, 151-168 (1968). Each of these sources sees vesting provisions as beneficial to the interests of pension plan participants. A worker whose right to a pension becomes assured upon his reaching the age of 50, while working for an employer with whom he has more than 15 years service, is unquestionably better off than is his counterpart who, because his rights never "vest," must continue working for his employer until he reaches retirement age in order to receive any benefits. From the perspective of the many workers who never work for the same employer for more than five years, however, the kinds of vesting provisions found in most pension plans are of little use.

21. See, e.g., INTERIM REPORT at 79.

22. SCHULZ, PENSION ASPECTS OF THE ECONOMICS OF AGING: PRESENT AND FUTURE ROLES OF PRIVATE PENSIONS, A WORKING PAPER PREPARED FOR THE SPECIAL COMM. ON AGING, 91st Cong., 2d Sess. 19, 35-39 (Comm. Print 1972).

Labor Turnover Rates in Manufacturing, 1959 to Date, MONTHLY LAB. REV. 97 (June 1969) (table).

23. See generally PUBLIC POLICY AND PRIVATE PENSION PROGRAMS at 27-29, 40-42.

24. Shapiro v. Thompson, 394 U.S. 618 (1969); See also Aptheker v. Secretary of State, 378 U.S. 500 (1964); U.S. v. Guest, 383 U.S. 745 (1966).

25. INTERIM REPORT at 112; PUBLIC POLICY AND PRIVATE PENSION PROGRAMS at 55-57.

26. Levin, _supra_ note 8, at 533-534.

27. _Id_. at 536-538.

28. _Id_. at 540-543.

29. _Id_. at 543-545.

30. 26 U.S.C. §401(a)(7).

31. _See_ Norman, _supra_ note 20, at 176-179.

32. _See, e.g._, _Taylor v. General Tel. Co. of Cal._, 20 C.A.3d 70, 73 (1971).

33. In order to be qualified with the Internal Revenue Service, a pension plan must be "funded," that is, contributions into the fund governed by the plan must be made in advance of the time when benefits are due particular employees. A plan whose benefits are paid directly by an employer as they arise on a pay-as-you-go basis, cannot qualify for tax benefits. _See_ Rev. Rul. 65-178, 1965-2 CUM. BULL. 94.

34. The use of the term "administrators" here refers to those persons responsible for the management of the investments of a pension fund. Such persons are often rather loosely called "trustees." But many funds have both "trustees," often the bank or insurance company where the corpus of a fund is deposited, which has no responsibility for investment decisions but which holds legal title to the fund, and other administrators, often a committee of the employer or union, charged with directing all transactions made with the fund's resources. Hence, our use of the broader term. In another context, see text at p.18 "Administrators" is used to denote those persons responsible for the day to day execution of the terms of a pension plan. These "administrators" may be or may not be the same persons as the administrators of the fund. This latter function is almost never assumed by the trustees. The term "trustees" is used throughout this discussion only to refer to those individuals or corporate entities who hold legal title to the funds and have no other administrative duties.

35. STAFF OF SUBCOMM. ON LABOR, SENATE COMM. ON LABOR AND PUBLIC WELFARE, 92D CONG., 2D SESS., PRIVATE WELFARE AND PENSION PLAN STUDY, 1972 - REPORT OF HEARINGS ON PENSION PLAN TERMINATIONS 1-2 (Comm. Print 1972).

36. _Id_.

37. _Id._ at 12.

38. _Id._

39. With respect to the funding requirements of the Internal Revenue Code, see note 35 _supra_, at 4. "Current service liabilities" is defined in PUBLIC POLICY AND PRIVATE PENSION PROGRAMS at 48 as "the present value of future benefits based on employee services performed during a particular period, generally the current year."

40. "Accrued liabilities" is defined in PUBLIC POLICY AND PRIVATE PENSION PROGRAMS at 48 as "the present value of future benefits that arise from employee services performed prior to a specific point in time, generally the valuation date of a plan."

"Unfunded accrued liabilities" is said in PUBLIC POLICY AND PRIVATE PENSION FUNDS at 48 to arise as "the result of so-called past service credits, which arise with respect to services performed before the plan was established."

41. 26 U.S.C. §404(a)(1); Treas. Reg. §1-404.

42. _See, e.g._, Hillock, _Your Pension: Does it Provide Real Protection_, Lorain (Ohio) Journal, reprinted in CONG. REC., Senate, November 17, 1970; _Private Pensions: Real or a Cruel Mirage_, Kansas City Star, May 7, 1972; Drapkin, _False Security: Union Men, Workers Worry About Safety of Their Pension Funds_, Wall Street Journal, March 7, 1972; Leinenweber, _The Great American Pension Machine_, RAMPARTS 29 (June 1972).

43. See discussion in text at pp. 17, 31-32.

44. Disclosure to the Internal Revenue Service of investment in employer securities is required. _See_ Treas. Reg. §1.401-1(b)(5)(ii).

45. PUBLIC POLICY AND PRIVATE PENSION PROGRAMS at 73-74.

46. 29 U.S.C. §§301, et seq.

47. 29 U.S.C. §304(b).

48. 29 U.S.C. §§304(a), 307.

49. 29 U.S.C. §307(a).

50. 29 U.S.C. §§304, 306.

51. 29 U.S.C. §308(a).

52. 29 U.S.C. §308(b)(c).

53. 29 U.S.C. §308(f).

54. 29 U.S.C. §305(b)

55. Id.

56. 29 U.S.C. §306(f)(1)(A), (2)(A)

57. Note 19 supra.

58. 29 U.S.C.§304(a).

59. See 29 C.F.R. 460, et seq.

60. 37 Fed. Reg. 2443 (February 1, 1972).

61. 37 Fed. Reg. 10385 (May 20, 1972).

62. CAL. CORP. CODE §§28000, et seq. (West 1955).

63. CAL. CORP. CODE §28106 (West 1955).

64. For some typical examples of strict judicial adherence to eligibility conditions set out in pension plans, see Burgess v. First Nat'l Bank, 219 App. Div. 361, 220 N.Y.S. 134 (1927); George v. Haber, 343 Mich. 218, 72 N.W.2d 121 (1955); Gaydosh v. Lewis 410 F.2d 202 (D.C. Cir. 1969); McCostis v. Nashua Pressmen Union, 248 A.2d 85 (1968); Gorr v. Consolidated Foods Corp., 91 N.W.2d 772 (1958); Hablas v. Armour and Co., 270 F.2d 71 (8th Cir. 1959); Bos v. U.S. Rubber, 224 P.2d 386 (1950).

65. See generally PUBLIC POLICY AND PRIVATE PENSION PROGRAMS at 73-76; Norman, supra note 20, at 182-184.

66. 439 F.2d 497 (D.C. Cir. 1970).

67. 298 F.Supp. 964 (D.D.C. 1969), affirmed, 439 F.2d 494 (D.C. Cir. 1970).

68. 439 F.2d 504.

69. 29 U.S.C. §186(c)(5).

70. 29 U.S.C. §185.

71. It is logical, yet often proves unfortunate to rank and file union members, that the officials who articulate a union's position in negotiation with employers over pension plan terms and conditions may have many years of service in employment covered by the plan and/or membership in the union. For this

reason, they may not object to a lengthy term of service vesting requirement. In fact, they may even actively seek such a provision since it will force many forfeitures of benefits and thereby secure the availability of the plan's funds to pay their own pensions.

72. Note 69 supra.

73. 453 F.2d 1309 (9th Cir. 1972).

74. 453 F.2d 1312.

75. 319 F.2d 744 (D.C. Cir. 1963), cert. denied, 375 U.S. 964 (1964); See also Sturgill v. Lewis, 372 F.2d 400 (D.C. Cir. (1966)).

76. 277 F. Supp. 338 (D. Minn. 1967).

77. Note 9 supra.

78. 277 F. Supp. 343.

79. See, e.g., Sprogna v. Worcester Metal Co., 234 N.E.2d 749 (1968); Knoll v. Phoenix Steel Corp., 325 F. Supp. 666 (E.D. Pa. 1971).

80. RESTATEMENT (SECOND) OF CONTRACTS §90 (Tent. Draft No. 2, 1965).

81. See, e.g., Miller v. Dictaphone Corp., 334 F. Supp. (D. Ore. 1971); Dictaphone Corp. v. Clemons, 488 P.2d 226 (1971); Feinberg v. Pfeiffer Co., 322 S.W.2d 163 (1959); Bredemann v. Vaugham Manufacturing Co., 188 N.E.2d 746 (1903); Sessions v. Southern California Edison Co., 118 P.2d 935 (1941); But see also Gallo v. Howard Stores Corp., 145 F. Supp. 909 (E.D. Pa. 1956); Voight v. South Side Laundry and Dry Cleaning, Inc., 128 N.W.2d 411 (1964).

82. WILLISTON, CONTRACTS, §129 3A.

83. See UNIFORM COMMERCIAL CODE §2-302.

84. See generally Bargaining Power and Unconscionability. A Suggested Approach to UCC Section 2-302, 114 U. PA. L. REV. 998 (1966).

85. Id., See also Williams v. Walker-Thomas Furniture Company, 350 F.2d 445, 447 (D.C. Cir. 1965); Unico v. Owen, 232 A.2d 405 (1967); Ellsworth Dobbs, Inc. v. Johnson, 236A.2d 843 (1907).

86. Notes 13-19 supra.

87. Notes 18-19 supra. These classes of beneficiaries are known as the prohibited group. See also note 134 infra.

88. Notes 5-6 supra.

89. The IRS has certainly examined discrimination in operation of plans after the initial qualification stage. See, e.g., Rev. Rul. 72-303, 1972 INT. REV. BULL. No. 25, at 6; Rev. Rul. 70-659, 1970-2 CUM. BULL. 90; Rev. Rul 62-206, 1962-2 CUM. BULL. 129; Rev. Rul. 70-75, 1970-1 CUM. BULL. 94; Rev. Rul. 71-151, 1971 INT. REV. BULL. No. 12, at 12; Rev. Rul. 71-263, 1971 INT. REV. BULL. No. 25, at 8. But see Sherwood Swan and Company, Ltd., et al v. Commissioner, 352 F.2d 306 (9th Cir. 1965) (affirming 42 T.C. 299) where it was held that once a plan initially qualifies it continues to be tax exempt even if, because of employee dropouts, the prohibited group is likely to receive most of the benefits upon the termination of the trust. The IRS, as announced in Rev. Rul. 66-251, 1966-2 CUM. BULL. 121, will not follow the Sherwood Swan case and "will continue to re-examine any plan which, though adequate in form, fails for any reason to comply in its operation with the provisions of Section 401 of the Code."

Adoption of new regulations concerning information required to be supplied to the IRS with respect to on-going operations of a plan may also indicate a renewed interest in review of plans in operation and not just at the qualification stage. See Treas. Reg. §1.404(a)-2A.

90. See generally, Goodman, Legislative Development of the Federal Tax Treatment of Pension and Profit Sharing Plans, TAXES - THE TAX MAGAZINE, (April 1971) 226, 231-232; in this discussion, Mr. Goodman, Chief of the Pension Trust Branch of the Internal Revenue Service, notes the distinction between coverage and benefits under a plan, but his summary of the kinds of plan provisions which trigger disqualification betrays an almost exclusive concentration on questions of coverage or participation.

The IRS, if pressed, might seek to justify this approach by citing Section 401(a)(3)(A)(B) which provides for exemption of a pension trust:

> (3) if the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under this subsection which benefits either--
>
> (A) 70 percent or more of all the employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees

are eligible to benefit under the plan, excluding in each case employees who have been employed not more than a minimum period prescribed by the plan, not exceeding 5 years, employees whose customary employment is for not more than 20 hours in any one week, and employees whose customary employment is for not more than 5 months in any calendar year, or

(b) such employees as qualify under a classification set up by the employer and found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees;

The Service might be informally taking the position that this section which speaks to benefits is satisfied when the requisite percentage of employees is covered by a pension plan, (See Treas. Reg. 1.4103A.) and that satisfaction of Section 401(a)(3) in this manner will prevent the discrimination in contributions and benefits barred by Section 401(a)(4). But it is clear that a plan whose coverage meets the requirements of Section 401(a)(3) is by no means certain to comply with the separate prohibition against discrimination in contributions and benefits set out in Section 401(a)(4) and implemented by regulation 1.401-4.

91. 26 U.S.C. §401.

92. See Message of President Franklin Roosevelt to Congress, 81 CONG. REC. 5124, 5125 (1937); 88 CONG. REC. 6378 (1942) (debates).

93. Rev. Rul. 71-263, 1971 INT. REV. BULL. No. 25, at 8.

This view was earlier enunciated in Rev. Rul. 69-421, Parts 4(i), 5(c)(1), 1969-2 CUM. BULL. 59, 72, 76 (declared obsolete for other general reasons in Rev. Rul. 72-488, 1972 INT. REV. BULL. No. 41, at 43) where the IRS recognized generally that, for example, excessively long vesting provisions in plans covering employees in high turnover industries might result in prohibited discrimination in benefits. See also Treas. Reg. §1.401-4 which requires that a plan must avoid discrimination in benefits as well as coverage in order to qualify for tax benefits and discussion in note 90 supra.

94. This would probably prove so onerous to the Internal Revenue Service, that its requirement would probably speed the creation of a federal agency to deal exclusively with pension plans; see, e.g., S. 2485, note 143 infra.

95. Note 18 *supra*.

96. §503(b) of the Internal Revenue Code provides (subject to exceptions set out in sub sections 503(e) and (f)) as follows:

> (b) PROHIBITED TRANSACTIONS. For purposes of this section, the term "prohibited transaction" means any transaction in which an organization subject to the provisions of this section--
>
> (1) lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;
>
> (2) pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;
>
> (3) makes any part of its services available on a preferential basis to;
>
> (4) makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;
>
> (5) sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to; or
>
> (6) engages in any other transaction which results in a substantial diversion of its income or corpus to;
>
> the creator of such organization (if a trust); a person who has made a substantial contribution to such organization; a member of the family (as defined in section 267(c)(4)) of an individual who is the creator of such trust or who has made a substantial contribution to such organization; or a corporation controlled by such creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

97. See PUBLIC POLICY AND PRIVATE PENSION PROGRAMS at 75; and Reg. §1.401-1(b)(5)(ii) where such a review of such investments is *required*. In addition there may be possible arguments under Reg. §1.401-2 which requires that plans must provide that funds may not be diverted or used for purposes other than the exclusive benefit of employees or beneficiaries.

98. This does not guarantee that a pension will be received by anyone, since the plan may not be adequately funded. *See* notes 34-38 *supra*.

99. Levin, *supra* note 8.

100. See discussion in text at 5-7. *See generally* Levin, *supra* note 8, Bernstein, *supra* note 7.

101. Treas. Reg. §1.401-6(b)(1)(2) provide:

> (b) TERMINATION DEFINED. (1) Whether a plan is terminated is generally a question to be determined with regard to all the facts and circumstances in a particular case. For example, a plan is terminated when, in connection with the winding up of the employer's trade or business, the employer begins to discharge his employees. However, a plan is not terminated, for example, merely because an employer consolidates or replaces that plan with a comparable plan. Similarly, a plan is not terminated merely because the employer sells or otherwise disposes of his trade or business if the acquiring employer continues the plan as a separate and distinct plan of its own, or consolidates or replaces that plan with a comparable plan. See paragraph (d)(4) of §1.381(c)(11)-1 for the definition of comparable plan. In addition, the Commissioner may determine that other plans are comparable for purposes of this section.
>
> (2) For purposes of this section, the term "termination" includes both a partial termination and a complete termination of a plan. Whether or not a partial termination of a qualified plan occurs when a group of employees who have been covered by the plan are subsequently excluded from such coverage either by reason of an amendment to the plan, or by reason of being discharged by the employer, will be determined on the basis of all the facts and circumstances. Similarly, whether or not a partial termination occurs when benefits or employer contributions

> are reduced, or the eligibility or vesting requirements under the plan are made less liberal, will be determined on the basis of all the facts and circumstances. However, if a partial termination of a qualified plan occurs, the provisions of section 401(a)(7) and this section apply only to the part of the plan that is terminated.

The language of subsection (b)(1) with respect to replacement with a "comparable plan" is not exactly clear. Would this be satisfied if a new plan with no carry-over of credits from the old plan were substituted?

102. See Gorr v. Consolidated Foods Corp., supra note 64 (no partial termination of acquired company's pension plan where corporate acquisition resulted in lay-off of all but 75 of 580 employees of acquired corporation); Bailey v. Rockwell Spring and Axle Co., 13 Misc. 2d 29, 175 N.Y.S.2d 104 (Sup. Ct. 1958) (Complete closure of 17 plants covered under one company's pension plan did not result in partial termination as to separated employees); Schneider v. McKisson and Robbins, Inc., 254 F.2d 827 (2d Cir. 1958)(closure of division was not a partial termination); George v. Haber, supra note 64 (95% of company's 11,000 employees were laid off and no plan termination was declared); Local Lodge 2040, International Association of Machinists v. Servel, Inc., 268 F.2d 692 (7th Cir.), cert. denied, 361 U.S. 884 (1959) (terminated employees have also unsuccessfully tried to argue that they remained employees for the purposes of qualifying under the terms of the plan). None of these cases purported to apply or interpret IRS termination regulations.

103. Rev. Rul. 72-510, 1972 INT. REV. BULL. No. 43, at 8; Rev. Rul. 72-439, 1972 INT. REV. BULL. No. 38, at 11. As a general matter, courts are not bound by these or any other IRS rulings or interpretations though such rulings and interpretations undoubtedly carry significant weight in judicial review of IRS suspension of tax benefits.

104. 397 U.S. 150 (1970); see also Flast v. Cohen, 392 U.S. 83 (1968).

105. 397 U.S. 159 (1970).

106. 397 U.S. 153.

107. Id.

108. 429 F.2d 725 (1970).

109. 405 U.S. 727, 92 S.Ct. 1361 (1972).

110. 92 S. Ct. 1366.

111. Id.

112. 29 U.S.C.§§621 et seq.

113. 29 U.S.C. §623(a)(1).

114. 29 U.S.C. §623(c)(1).

115. 29 U.S.C. §623(c)(2).

116. 29 U.S.C. §623(c)(3).

117. 29 U.S.C. §623(f); thus a system of mandatory retirement which is part of a pension plan and not a subterfuge to evade the purposes of the act may be permissibly applied to employees coming under its terms, e.g., an employee could be mandatorily retired at age 55 if he was provided a pension under a pre-established plan.

118. 29 U.S.C. §631.

119. 29 U.S.C. §626(b); 29 U.S.C. §§211(b), 216, 217.

120. 29 U.S.C. §626(c)(d).

121. 29 U.S.C. §626(c).

122. News release, Office of Information, U.S. Department of Labor (October 17, 1972).

123. 29 U.S.C. §158(b)(1)(A).

124. 29 U.S.C. §157.

125. Id.

126. 422 F.2d 538 (1970), cert. denied,, 399 U.S. 905 (1970).

127. Note 123 supra.

128. Notes 69-70 supra.

129. 15 U.S.C. 78 O(d).

130. See INTERIM REPORT at 98.

131. Armed Services Procurement Regulations §15-205.6; see also INTERIM REPORT at 99.

132. U. S. CONST. AMEND V.

133. U. S. CONST. AMEND XIV, § 1.

134. PUBLIC POLICY AND PRIVATE PENSION PROGRAMS at 11-19.

135. Falkenstein v. Dept. of Revenue of Oregon, 41 L.W. 2282 (D. Ore. Nov. 22, 1972).

136. Note 132 supra.

137. Note 24 supra.

138. U. S. CONST. art. I, § 10.

139. See Lyon v. Fluornoy, 271 C.A.2d 774 (1969); Babbitt v. Wilson 9 C.A.3d 288 (1970); Kern v. City of Long Beach, 179 P.2d 799 (1947). In Kern the California Supreme Court, awarding a pension to a public employee whose pension plan was repealed before he completed a prescribed period of service, held that, "Pension provisions of the City Charter are an integral portion of the contemplated compensation set forth in the contract of employment ... and are an indispensable part of that contract and that the right to a pension becomes a vested one upon acceptance of employment." (at 801) (italics supplied) This language, while presumably concerned only with public pensions governed by art. I, § 10, has nevertheless been quoted favorably in a recent California Appellate Court decision, Taylor v. General Telephone Co. of California, supra note 32, in the context of a private pension plan. This citation of Kern was, however, mere dictum as plaintiff Taylor was denied a pension on the ground that he had embezzled from his employer.

140. Most recently introduced as S. 3598, 92d Cong., 2d Sess. (1972); see 118 CONG. REC. 7604 (daily ed. May 11, 1972).

141. Reinsurance (in effect federal insurance against losses of vested pension benefits arising from plan termination) is designed to transfer the risk that a pension plan will terminate with assets insufficient to meet its accrued obligations from the employee-participants in the failed plan to the pension system as a whole. The payment/of premiums and administrative costs to cover the program would be mandatory on all plans. As Noel Levin points out, however, "Plan Insolvencies precipitate only a minimal percent of benefit losses and while insurance would solve a small part of the problem it does not even touch the more frequent and serious areas where loss of pension is due not to fund insolvency but to lack of eligibility for the pension benefit." Levin, supra note 8, at 582.

142. S. 3012, 92d Cong., 1st Sess. (1971).

143. See, e.g., H.R. 1269, 92d Cong., 1st Sess (1971); S. 2485, 92d Cong., 1st Sess. (1971); H.R. 6530, 92d Cong., 1st Sess. (1971).

MEETING THE CHALLENGE OF PROVIDING ADEQUATE RETIREMENT INCOME FOR THE AMERICAN PEOPLE

A Presentation by Ernest J. E. Griffes
on behalf of the American Society for Personnel
Administration Members

Presented to:

Senate Labor and Public Welfare Committee
House Education and Labor Committee
House Ways and Means Committee
of the Ninety-third Congress

AMERICAN SOCIETY FOR PERSONNEL ADMINISTRATION
19 Church St., Berea, Ohio 44017

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PREFACE

The purpose of this preface is to provide a concise summary of the content of this paper.

The 10,000 members of the American Society for Personnel Administration believe that the system for providing human dignity in retirement through adequate retirement income must be viewed as a unified whole, with Social Security, public retirement plans, private retirement plans, and the financial resources of individuals each serving an important role in meeting the needs of our retirees.

We believe that it is in the best interest of the people of America to maintain the dual system of providing retirement income through Social Security as a base with private pension plans as an income supplement, and that every encouragement must be offered to individuals to provide a measure of their retirement income security from their own resources.

We believe that personnel administrators are in a crucial and unique position in the private pension debate because they operate in the realm of practicality at the base level, the people level, and in employee benefits the buck stops in the personnel administrator's office. Everything that is good or bad about a private pension plan focuses on the point at which an employee is told about the benefits he will receive.

We do not agree with the contention that it is the intent of most employers to deprive employees of retirement income security or to structure pension plans in such a manner as to benefit only a chosen few.

It appears to us that the logical vehicle for additional regulation is the present process of qualification of a private pension plan with the Internal Revenue Service. Another over-burdened government bureaucracy will only impede the delivery of benefits.

We believe the basic structure of the private pension institution to be sound and capable of delivering the benefits it promises, and that what is needed is significant legislation to encourage faster funding and broader coverage for American workers.

We believe that there must be a minimum level of vesting required and that this negates the need for a portability system that would appear to us to be impractical and even unworkable. But care must be taken to avoid the minimum becoming an accepted standard.

We believe that the answer to benefit security is in faster funding of benefits through encouragement to contribute more resources, and that termination insurance would discourage growth of private pension plans, and possibly operate to the disadvantage of plan participants during periods of economic depression.

We believe that a requirement to communicate plan benefits in simplistic language is unrealistic without extensive guidelines on what simplistic language is and protection for employers from liabilities arising out of the use of such language. But plan participants are entitled to be told the full and complete story about their benefits and the handling of their pension funds.

We believe that the Social Security system and public retirement systems also contain substantial weaknesses and deserve to be subjected to the same intense study and review that is being applied to the private pension system.

Finally, emerging social trends and changing social attitudes should be considered in the development of any new legislation or regulation.

We believe the cooperative spirit of all - legislators, actuaries, consultants and employers, union representatives and fiduciaries, participants and the American public - must be energized to generate the imagination and teamwork necessary to solve this great social challenge of our time.

PERSPECTIVE

The 10,000 members of the American Society for Personnel Administration commit themselves to observe a code of ethical practices, two tenets of which are:

> "I will respect the dignity of the individual as one of the essential elements of success in any enterprise."

> "I will demonstrate and promote a spirit of cooperative effort between owners, managers, employees, and the general public, directly or indirectly connected with the enterprise."

When the human machine wears out, the continuing reward for a lifetime of work takes the form of a retirement income providing dignity and independence in the "Golden Years". That is what the private pension institution is all about - dignity for human beings.

The raging controversy over private pension legislation is characterized by elaborate and detailed technical studies, conducted by brilliant men, but arriving at opposite conclusions. Harsh accusations by intelligent men against other intelligent men have hardened positions and frozen attitudes.

And yet the goal of all parties on all sides is the same - to provide security and dignity in retirement for human beings who have contributed a working lifetime to society.

The time for promoting a spirit of cooperative effort is at hand.

ORIENTATION

Personnel administrators are by nature people orientated.

Our basic approach to any subject is to ask, "What impact will this action have on the people - what is the meaning of this action in terms of human life experience?"

We are not unmindful of economic implications- for we understand that economic factors - especially the profit motive and the free enterprise concept - are a part of the foundations of our society.

It is the economic factors that make possible a standard of living for our people unmatched in the history of mankind. But people make the free enterprise system work - and the rewards of the system should be shared with them to the maximum possible extent.

Personnel officers occupy a unique position in the pension benefit controversy. They are personally involved in the design and administration of pension plans at the base level - the people level. They are most often responsible for communicating the benefits of the plan and for the administration of the plan - including all the face-to-face feedback when problems arise in benefit eligibility. The net total of all the positives and negatives in a private pension plan come to focus at the point of telling an employee he will or will not receive a benefit and what the benefit will be. In employee benefits, the buck stops in the personnel administrators office.

To these purposes - human dignity in retirement and a cooperative spirit in solving the problems of providing the means to achieve that dignity - the members of the American Society for Personnel Administration rededicate themselves in offering the concensus of their opinion with respect to improving the systems for providing retirement income in the United States.

FUNDAMENTAL PRINCIPLES

DUAL PENSION SYSTEM

We believe that it is in the best interest of the people of America to maintain the dual system of providing retirement income - that is social security as a retirement income base, supplemented by the resources of private industry in providing additional benefits to the maximum extent possible through private pension plans.

But the social security system must remain a base benefit and not be permitted to expand without limit to the point where economic resources are less available to provide private pension benefits.

We, therefore, believe that every effort should be made to restrain the spiral of ever increasing social security costs that bear heaviest on the middle income employee under the present system. Continually increasing the wage base is a cruel deception on working men and women - a mirage that appears to offer great future security but in fact is a welfare plan shifting the income of some to support others.

We believe that the financing of the social security system would be more appropriate to the nature of social security benefits if it were spread in some manner across the resources of the nation as a whole rather than falling so heavily on an arbitrarily selected segment of our workers. Furthermore, the payment of benefits should recognize all other sources of retirement income so that those who have the need for income receive adequate income, and those who have adequate retirement income from other sources do not drain social security resources for unneeded income.

The private pension system thus should be offered every encouragement and inducement to fulfill its proper role as a democratic institution established in the tradition of free men negotiating their relationships and the contracts controlling those relationships.

GOVERNMENTAL CONTROLS

It is in the best tradition of Democratic ideals that people be permitted maximum freedom from governmental restraint to work out the relationship between employee and employer. Legislation that has as its ultimate effect restraint of action by either party can only be justified on the basis of protecting the interest of one party as against the other. This justification of necessity assumes it is the intent of one party to deprive the other of some privilege or right to which the injured party is entitled.

We do not agree with the contention that it is the intent of most employers to deprive employees of retirement income security or to structure pension plans in such a manner as to benefit only a chosen few. The vast complexity of regulations now existing under the Treasury Department and the Internal Revenue Service is adequate to prevent this if those regulations and rulings are enforced.

The present process of qualifying a pension plan is the logical vehicle for any additional regulations that are deemed necessary. Another governmental control unit with an equally vast array of regulations, equally understaffed and unable to properly enforce it regulations, is an expensive duplication of effort and only serves again to demonstrate the folly of the premise that all problems can be solved by creating another governmental agency.

THE PRIVATE PENSION INSTITUTION IS MATURING

Although the inception of the private pension concept dates into the 1800's in the United States, the real birth of private pensions occurred in the early 1940's. Thus the private pension institution is relatively young. Considering the long period of time necessary for pension plans to mature, only plans established in the 1940's and early 50's have had an opportunity to approach maturity. Yet the greatest growth ever in private pension plans is just now taking place.

The maturing process of the private pension institution suggests that what is needed now is some guidance and direction to smooth out the problem areas and encouragement to mature toward fulfillment of the useful and important role for which it is designed. We believe the basic structure of the private pension institution to be sound and capable of delivering the benefits it promises. Legislation that cuts deeply into the present system and changes its nature seems unnecessary and would likely have the effect of discouraging the continued growth of private pension plans. This would mean only that fewer people would have the opportunity to participate in this allocation of private resources. We believe that such a result is contrary to the interests of the American society and economy

We do believe, however, that my legislation that is passed must be significant enough to result in real improvement, and must not be a simple whitewash to satisfy the demand of the public for some sort of action. To gloss over the very real problems of benefit security with ineffective legislation will only serve to weaken the private pension institution.

POSITIONS ON SPECIFIC PROPOSED LEGISLATION

VESTING AND PORTABILITY

There must be a minimum level of vesting - for it's wrong in every sence that an employee who has provided his service for many years should be deprived of any benefit upon termination resulting from circumstances beyond his control.

And yet the maximum vesting of 100% immediately is unrealistic because the cost would force benefit levels at actual retirement to a much lower level. We assume that there is a limit to the resources an employer can allocate for pension benefits and, therefore, choices must be made between which benefits are to be provided. Since it is the basic objective of a pension plan to provide an adequate retirement income, the goal must be maximizing the retirement benefits and vesting benefits within a given resource allocation for these benefits.

We believe that as a requirement for qualification of a pension plan, full vesting in the earned benefit should occur not later than age 55, with five years service, with partial vesting occuring prior to that age and commencing not later than age 40.

The specific approach to achieve this minimum need not be legislated, for there are any number of methods that could achieve this goal and there is no need to impose legislation that unnecessarily limits the imagination of the people involved in each case to meet the requirement in the best manner possible under their own circumstances.

Certainly we have learned the lesson that imposing a minimum standard often leads to that standard becoming the accepted level. Many plans now provide more liberal vesting than this minimum - and care should be taken not to allow the standard to restrict the initiative of individual employers to do better than the minimum.

Furthermore, we believe that there should be a guarantee under the social securtiy system that every contributor should always be 100% vested in his own contributions so that under no circumstances could a participant, or his beneficiaries, receive less in benefits than the contributions he had paid in with interest.

We believe that a vesting minimum should be set, but enacted as a Treasury Department or Internal Revenue Service requirement for qualification, and not legislated by an act of Congress. .

There are certain industries with special turnover problems, such as the aerospace and some defense industries, that should have a lower minimum requirement because of those unique industry problems.

We believe that vesting and portability are related. If adequate vesting occurs with benefits being payable at retirement then portability is not necessary. The proposals for portability of benefits contemplate a governmental clearing agency as the mechanism for the holding of funds and payment of benefits.

It is our position that the mechanism of portability, if it could be organized at all, would be an unnecessary and costly process. As personnel officers we would almost surely bear responsibility for the administration of the process and it appears to us to be unworkable. We believe that the maintenance of adequate records to assure payment of deferred vesting benefits can be handled within present established administrative procedures at a reasonable cost.

For these reasons we believe a system of portability of benefits is unworkable and unnecessary, and would be an intrusion into the private pension institution that would impede, rather than improve, the delivery of pension benefits to recipients.

FUNDING AND TERMINATION INSURANCE

The problem of lost benefits when a pension plan terminates has been perhaps the principal source of severe criticism of the private pension institution. The inadequacy of funds to provide benefits in such circumstances is a tragic occurrence and any solution to prevent such situations deserves the full support of every facet of government, industry and society.

The fact that such unfortunate occurrences represent only a very small percentage of the total plans in operation, and affect an even smaller percentage of the total of all participants in private pension plans, does not minimize the tragedy to those affected.

We believe that a requirement for funding of past service over a period of not more than 40 years would contribute to securing benefits without creating a burden on the contributing employers.

We also believe that the maximum restriction on contributions that permits only a 10% of Past Service cost deduction per year should be liberalized. There are employers who would contribute more, and the larger the contribution, the more secure are the benefits of the participants. This action would contribute significantly to a solution of the problem in plan terminations.

Plan termination insurance of unfunded Past Service liabilities or vested benefit liabilities does not appear to us as the answer to securing benefits.

The cost would fall most heavily on young plans with large liabilities for past service. This would act to discourage plan development. Alternatively, the cost would be factored into contributions and benefits would be lower. Or, plans would be in past service liabilities to be insured and also depriving employees of benefits for past service. If the termination insurance is applied to vested benefits only, the effect would still be the same. Lower benefits would result in lower liabilities for vested benefits.

Equally as important is the potential for some employers to use this as an escape from the liability for pension benefits. In difficult times, the easy way out would be to terminate the plan and let the insurance fund pay the benefits. An economic downturn could quickly bankrupt the insurance fund and the participants would again be the losers - perhaps on a much greater scale than has been experienced to date.

In summation, we believe the answer to securing benefits in plan termination is to encourage faster funding so that more funds are available to provide those benefits.

The vehicle for accomplishing this would again logically be the present requirements for qualification of a plan.

We also believe that the present limitations on deductible contributions to HR-10 plans for the self employed should be increased. The entrepreneur is the foundation of our economic system. It is the striving for dignity that drives a man to bear the risk of a business undertaking. He should be encouraged to provide for himself and his employees. There is no rationale for telling him that if he worked for someone else instead of for himself, he could be entitled to the privileges of greater retirement income.

COMMUNICATION AND DISCLOSURE

The very basis of understanding between people is open and complete communication. We become suspect of the source of information when we have reason to believe that communication is designed to be misleading or deceptive.

The charges made against the communication of information about pension benefits stems from two factors of the present system:

1. The complex technical and legal aspects of the pension contract have lead to wariness in communication of plan provisions. It is a difficult task to translate legal jargon into simplistic language and yet retain the legal protections that are a part of the contract. There have been many occurrences in which employers have been required to meet a liability arising from communication material that was not accepted as an obligation under the terms of the plan.

2. The magnitude of the investment employers make in pension benefits for employees, encourages the tendency to present the plan in the most positive terms possible so that a return in positive employee attitudes can be realized on the investment. This leads to over simplification and an advertising sales approach. When, as is so often the case, the communication material is prepared by persons not thoroughly cognizant of the technical and legal nature of plan provisions, the result can easily become a document subject to criticism as incomplete and misleading.

We believe that people prefer to be told the full story and are entitled to be provided full information. This alone would raise the level of performance in securing pension benefits because it would discourage the kinds of actions that result in losing benefits.

Full disclosure of all information regarding the plan and benefit security is a logical and reasonable requirement for deductibility of contributions to a retirement plan. The money belongs to the employees and they are entitled to be advised of what is being done with that money.

The proposed requirement to emphasize negative aspects of the plan and to use simplistic language in communications is, however, totally unrealistic, and could only be suggested by one who has never faced the task of preparing such material or presenting it face to face to employees. It is comparable to legislating a requirement that every legislator report to all his constituents the full and complete explanation of his vote on every issue and the significance of his vote, emphasizing the negative impact it might have on the lives and incomes of his constituents - in terms designed to be understood by an average constituent.

We therefore support requirements for fuller disclosure and more complete information in communication material but oppose requirements to emphasize negative aspects and the generalized requirement to use simple language, which in itself is a completely subjective judgment.

We, in fact, believe that Congress should restrain the Department of Labor from enacting this portion of the proposed regulation as published in the Federal Register on February 1, 1972, (37 F.R. 2443), unless and until the Department can also provide comprehensive guidelines as to what is and is not simple language that an average participant will understand, and further provide a protective mechanism for employers under circumstances in which simple language results in unintended liabilities.

It is not beyond belief to envision an employer, particularly small employers, terminating a pension plan, or being financially destroyed by a liability arising from an attempt to use simple language in explaining a pension plan to employees. Such a result certainly will not secure pension benefits for the employees involved.

DEDUCTIBILITY OF INDIVIDUAL CONTRIBUTIONS

We believe the enactment of legislation permitting tax deductions for voluntary or mandatory contributions to qualified pension plans is long overdue. The logic of encouraging individuals to save for their retirement is so basic that there appears to be every moral and social justification for this approach. Man derives the utmost in human dignity when he can provide for himself and does not have to rely upon others for assistance.

Furthermore, we believe that the required contributions to the social security system should be tax deductible to employees, just as they are deductible to the employers.

GOVERNMENTAL PENSION DEPARTMENT

Private pension plans are now subject to regulations and controls from eleven federal departments and agencies, not to mention state and local regulation where it exists.

Assuming that all of these departments and agencies could transfer their pension plan control functions to one agency, we believe the operation of the private pension institution might be improved. Short of this, and it seems unlikely that this could be accomplished, we see no value in having yet another governmental control unit with more bureaucratic mechanisms to hobble the delivery of retirement benefits to participants.

FIDUCIARY STANDARDS AND INVESTMENT LIMITATIONS

We believe that any step necessary to assure the safety of employee pension funds and the integrity of persons responsible for those funds is deserving of our support.

Requirements to assure that such persons are qualified by training, experience and personal character are logical and valid. They should meet the same criteria as others who are entrusted with public funds, such as officers of financial institutions.

However, assuming that such qualified people are appointed to such positions, we believe they should be permitted to exercise their expertise in the competitive financial marketplace to do the best job they can for the participants of the plan.

We support the principle of the "prudent man" rule in fiduciary situations and believe it works to the benefit of the plan participants. Elaborate restrictions on investments, or a requirement that investments be made to accomplish social objectives, are not in the best interest of all plan participants. We oppose the attempt to place such restrictions or fiduciaries. We believe they alone are responsible for those judgments in their circumstances and should be free to act in their capacity.

Present law provides for the problems of fraud and outright mismanagement of funds. And present qualification requirements prohibit the most common transactions that could endanger the security of the funds. Requirements for disclosure of adequate information to detect violations seem to us to be appropriate and we support such requirements.

ADDITIONAL CONSIDERATIONS

The changing nature of our work force and of the American social structure offer guidance in what the objectives of our retirement income delivery system should be.

A mobile work force suggests that vesting must be an integral part of the retirement system.

A younger and more affluent work force suggests that ways must be found to encourage individuals to participate in providing their own retirement income.

A better educated work force suggests that the level of information provided about their retirement income should be raised and that they will understand and accept this increased information.

A greater percentage of women in the work force suggests that provisions must be made to permit them to participate fully.

The shifting social attitude toward more opportunity for leisure and aesthetic pursuits, suggests that we must prepare for earlier retirement at higher income levels.

The expanding retired population and the new social awareness of the problems of the aging suggests that programs of education and preparation for retirement should be undertaken.

The increasing proportion of our work force engaged in public and governmental employment suggests that public retirement programs deserve the same review now being given to private plans, to assure that public retirement systems also function as they should.

The new awareness in our young people of their individuality and their desire to participate in the events that control their lives, suggest that they will demand a higher level of participation in the decision making process and administration of retirement income systems, both public and private.

These new factors suggest additional concepts and approaches. If social security is permitted to continually increase benefits, then the future role of private pension plans may be the provision of a level of income from age 55 to 65 equal to the social security income commencing at 65. This would encourage earlier retirement at an adequate income so that retired persons could enjoy their retirement years, and the channels of promotion would be opened for our youthful work force.

Such earlier retirement would provide a segment of our population that could be retrained to dedicate some of their time at reasonable additional income, to attacking some of our social problems that need attention. Alternatively, their training and experience, willingness and ability to give of their time, could be turned to advantage in teaching or training activities - or assistance to small faltering businesses.

Programs to prepare people for the emotional and psychological impact of retirement are sadly lacking. Programs designed to ease the transition from a lifetime of work to days of leisure deserve everyone's encouragement. This is a crucial factor in enabling our people to enter retirement and live out their retirement years with dignity.

SUMMATION AND CONCLUSION

As a basic principle, we believe that the entire system of delivering retirement income to our people must be the consideration in this great pension debate. The focus of criticism on private pension plans alone is not justified, for they have performed a great service in their relatively short lifetime, and certainly are maturing into one of the finest of our democratic institutions.

The social security system, which is also an integral part of our retirement income system, should also be subject to this review and debate. The requirements placed upon it to perform in delivering the maximum benefit for dollars contributed, should be no less than those placed upon the private pension system.

Likewise, the public and governmental retirement systems should also share in this debate, for they also are an integral part of the retirement income system, and have weaknesses and strengths that should be scrutinized carefully.

It is our consensus that every effort should be made to encourage the integrated growth and development of all of these retirement income systems, with the basic objectives always being to secure and maximize the benefits that make it possible for our people to live out their retirement years with dignity.

The cooperative spirit of us all - of the legislators, the actuaries and the consultants, the employers and the union representatives, the participants and fiduciaries - must be invigorated and energized to generate the imagination and to achieve the team work necessary for meeting this great social challenge of our time.

...ADERSHIP IN A CHANGING WORLD

Chamber of Commerce of the United States

1615 H STREET, N.W.
WASHINGTON, D.C. 20006

LEGISLATIVE ACTION GENERAL MANAGER
HILTON DAVIS

202·659-6140

February 20, 1973

Honorable Harrison A. Williams, Jr.
Chairman, Subcommittee on Labor
Committee on Labor and Public Welfare
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

The Chamber of Commerce of the United States is deeply concerned about the provisions of S. 4, the "Retirement Income Security for Employees Act."

We support suitable amendments to the Welfare and Pension Plans Disclosure Act, and urge your Committee to give priority to such legislation along the lines indicated in Title V of S. 4.

On the other hand, we believe the tax-related provisions of the bill should be referred to the Senate Finance Committee for its study. These provisions are covered in Titles I through IV and relate to vesting, funding, insurance and portability.

The Chamber does support needed private pension legislation, but we are concerned about the crippling effects unnecessary or unwise legislation would have on private pension growth and future private pension expectations.

To briefly restate the views we presented to your Subcommittee on June 28, 1972:

1. We support the highest standards of honesty in the administration of employee benefit funds. Therefore, we support suitable amendments to the Welfare and Pension Plans Disclosure Act, including some form of federal fiduciary responsibility act for pension and welfare plan administrators and trustees.

2. In general, we support proposals such as are contained in Sections 3 and 4 of S. 374, the "Individual Retirement Benefits Act of 1973," that would provide income tax deferral for employees who defer income for their retirement, and that would increase the present tax deferral available to the self-employed who have or establish pension plans.

3. We support reasonable minimum federal standards or regulation governing the vesting of private pensions. Such legislation should be accomplished through amendment of the Internal Revenue Code, as a condition for qualifying a plan. (Our Nation's basic private pension laws are contained in Section 401 of the Internal Revenue Code of 1954, as amended by Public Laws 91-691, 89-809, 89-97, 88-272, 87-863 and 87-792. A half-century review of Federal tax legislation on employee pension plans shows clearly that jurisdiction has always resided in the Senate Committee on Finance.)

4. We oppose provisions, such as those in S. 4, that would create a new federal agency or office to regulate private pension plans and their assets, and that would impose new federal funding, insurance or portability requirements on private pension plans and their assets. We consider it essential that attempts to determine what federal policy should be on these questions should not be made until we have basic data that are not now available. The President has directed the Treasury and Labor Departments to gather this basic information, employers are now filling out the numerous complicated forms which are being used to amass these data, and the results should be available shortly.

5. We believe any pension legislation, rather than imposing restrictive regulation, should encourage private pension growth so that our citizens will have adequate retirement income.

Since our testimony was given, we have had new Social Security legislation.

The 92nd Congress passed two Social Security measures that have caused major changes in the costs and benefits of that system.

Employers and employees will pay an additional $14 billion in Social Security payroll taxes this year. It is estimated that the total tax this year will be about $65 billion. The maximum tax on each employee has increased from $468 in 1972 to $631.80 in 1973, and will increase to $702 in 1974 -- with matching contributions by employers. This means that each $12,000 a year job in 1974 will impose $1,404 in Social Security taxes on the employee and his employer.

These increased taxes are financing higher benefits. Beginning in 1975, these higher benefits will automatically be adjusted in line with increases in the Cost-of-Living Index. This means significant increases in primary benefits will be made in the future. Furthermore, Congress has reserved the right to raise benefits independently if it so desires.

These changes in Social Security costs and benefits are forcing all employers to reexamine the costs and benefits of their private pension and profit sharing plans, as well as benefits under disability income plans, medical plans, and survivor income and death benefit plans. Some preliminary studies indicate that the new higher Social Security benefits when combined with private pension benefits would give some individuals higher income after retirement than before.

We suggest your Subcommittee may wish to review how private pensions will be affected by the new Social Security tax and benefit increases before it finally proposes further legislation that will increase employee costs for private pensions.

We appreciate your consideration of our views and request that this statement be made a part of the hearings record.

Cordially,

Hilton Davis
General Manager
Legislative Action

cc: Subcommittee Members
Gerald Fader, Counsel
Mario T. Noto, Special Counsel
Michael Gordon, Minority Counsel

American Institute of Certified Public Accountants

February 23, 1973

The Honorable Harrison A. Williams, Jr.
Chairman, Subcommittee on Labor
New Senate Office Building
Washington, D. C. 20510

My dear Senator Williams:

The American Institute of Certified Public Accountants respectfully submits comments concerning audit standards, reporting and disclosure requirements, and qualifications of auditors contained in S.4, Retirement Income Security for Employees Act.

The American Institute is the national professional association of certified public accountants. It is composed of more than 88,000 members, residing in every state and territory of the Union, and the District of Columbia. The American Institute establishes the standards which must be observed by Institute members in their independent examinations of financial statements.

Importance of Independent Examinations

On page 64 of S.4, Section 506 (c) (amending Section 7(a) (3) of the Welfare Pension Plan and Disclosure Act) states that an audit is to be made annually of employee benefit funds and, that "...Such audit shall be conducted in accordance with accepted standards of auditing by an independent certified or licensed public accountant,..."

The use of independent audits is in accordance with good practices and in the public interest and, therefore, we strongly support legislation requiring them. However, we believe that the terminology presently contained in the bill should be modified to require that audits be conducted in accordance with "generally accepted auditing standards."

The objective of an audit made in accordance with generally accepted auditing standards is to enable the CPA to express an opinion, for which he assumes professional responsibility, as to whether the financial statements under examination present fairly the financial position and the results of operations.

The Honorable
Harrison A. Williams, Jr. -2- February 23, 1973

Generally accepted auditing standards are well recognized as the standards which establish the responsibilities assumed by a CPA, and have frequently been cited by the courts, the Securities and Exchange Commission, and other governmental agencies. It is significant to note that CPAs are subject to disciplinary action if it is determined that they have not adhered to such standards.

Audit Guides for CPAs

Recognizing your keen interest in pension reform, we are pleased to report at this time that an Institute draft of a proposed publication Audits of Pension Funds may be circulated to interested persons for comment within the next three months. This audit guide will complement one already published by the Institute regarding Audits of Employee Health and Welfare Benefit Funds.

These audit guides are intended to provide direction to CPAs engaged to examine and report upon financial statements of employee health, welfare and pension benefit funds; they incorporate the principles of accounting to be followed in preparing financial statements for such funds and the auditing procedures to be followed in examining them.

Audit guides, such as the ones mentioned, are authoritative references which contain the thoughts of the accounting profession as to what constitutes the best practices of accounting, auditing and reporting in a specific area. Any member of the AICPA who departs from recommendations set forth in a guide can be called upon to justify his departure.

We respectfully submit for your information and for inclusion in the record of your proceedings on S.4, our publication Audits of Employee Health and Welfare Benefit Funds. Copies of the draft on Audits of Pension Funds will be made available to the Committee when it is released for public comment.

Qualified Auditors

The Comptroller General, in a letter dated September 15, 1970 (B-148114) to the heads of Federal departments and agencies, outlined the qualifications of independent public accountants deemed necessary for financial audits of governmental organizations and programs. For your information, we have enumerated these qualifications in Appendix I of this letter.

Such qualifications would ensure that audits required under the legislation would be conducted by individuals with the highest qualifications and we believe public interest would be enhanced if audits are conducted by those who meet these requirements. Therefore, we endorse the standard audit language advocated by the Comptroller General and recommend that such language be incorporated in S.4.

Annual Report

With regard to Sections 506(c) and 506(d) of S.4, we respectfully submit the following comments. In an attempt to clarify the intent of the legislation as it relates to financial statements and related information specified in the bill, consideration should be given to modifying the present language contained in Section 506.

As previously mentioned, generally accepted auditing standards require that an independent qualified public accountant, as a result of his examination, express an opinion as to whether the financial statements present information fairly in conformity with generally accepted accounting principles or to clearly set forth the reasons why such an opinion cannot be expressed. Accordingly, we respectfully submit the following revision to Section 506(c) (revising Section 7(a) (3) of the Welfare Act) for your consideration. We believe this revision will assure consistency between the proposed legislation and the standards followed by the profession.

> "(3) The administrator of an employee benefit plan shall cause an audit to be made annually of the employee benefit fund established in connection with or pursuant to the provisions of the plan. Such audit shall be conducted by an independent qualified public accountant who shall conduct such an examination of the books and records of the plan and fund as may be necessary to enable him to form an opinion as to whether the financial statements required to be included in the annual report by Section 506 (d) are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the plan and fund as are considered necessary by the independent qualified public accountant.

With respect to supplementary financial data required under Section 506 (d), such as schedules which present the details of individual balances or line items contained in the financial statements, we believe that a requirement that the qualified independent public accountant report on such data would be appropriate. Such a requirement might be worded in Section 506 (c) (following the word accountant above) as follows:

> "The independent qualified public accountant shall also submit a report as to whether the supplementary financial data specified in Section 506 (d) presents fairly in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole. Nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing insurance, investment, or related function for the plan, if such books or records are subject to periodic examination by any agency of the Federal Government or the government of any State. The auditor's opinion and comments with respect to the financial information required to be furnished in the annual report by the plan administrator shall form a part of such report."

In addition to the foregoing recommendation, we believe that consideration should be given to revising Section 506 (d). The purpose of the revision should be to simplify the reporting process and at the same time provide for the filing of financial statements and other information necessary to effectively supervise the financial activities of employee benefit funds. Financial reporting requirements can be developed which would permit adequate financial supervision but which, in comparison with the present requirements of Section 506 (d), would be less costly both to the employee benefit funds and to supervisory agencies.

Certain provisions of Section 506 (d) as drafted would, in effect, require incorporating into the annual report duplicate copies of substantial parts of the books and records maintained by the fund. This would result in extremely cumbersome filings and, in our opinion, would interfere with the accomplishment of the legislative intent of achieving adequate financial supervision. We recognize that there is a need for assurance that adequate books and records will be maintained by such funds. However, we believe that an alternative exists and should be explored.

The Honorable
Harrison A. Williams, Jr. -5- February 23, 1973

Legislation and regulations applicable to commercial companies subject to federal regulation require that certain financial documents be preserved. Examples are:

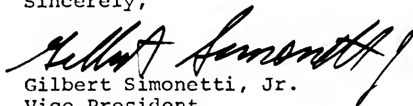
- Section 31(a) of the Investment Companies Act,
- Rules 17a-2 through 4 of the General Rules and Regulations Under the Securities Exchange Act of 1934, and
- The Holding Company Act of 1935 and the related Securities and Exchange Commission's "Accounting Series Release No. 84."

Incorporating in S.4 provisions similar to those adopted by other agencies of the Federal Government, but tailored to employee benefit funds, would, in our opinion, enable the responsible agency to be more efficient in supervising financial operations of funds and at the same time to obtain necessary assurances as to record maintenance and preservation.

To submit to you with this letter, a recommended revision of Section 506 (d) to deal with these matters would be presumptuous. The American Institute would be delighted to volunteer the services of its Committee on Health, Welfare and Pension Funds, as well as those of its staff, to participate in redrafting Section 506 (d) and to submit a revision for your consideration. The preparation of such a revision can be expedited to provide for its submission to coincide with any reasonable timetable which you wish to establish or may already have established.

Again, we want to assure you that the American Institute of Certified Public Accountants stands ready to be of whatever assistance it can in <u>any</u> matters of financial reporting, auditing or accounting principles in the contemplated legislation.

Sincerely,



Gilbert Simonetti, Jr.
Vice President
Government Relations

GJ/mdh

cc: Members of the Subcommittee
on Labor
Messrs. Mario Noto
Michael Gordon
Thomas R. Hanley, AICPA

APPENDIX I

QUALIFICATIONS OF INDEPENDENT AUDITORS

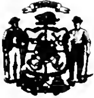
ENGAGED BY GOVERNMENTAL ORGANIZATIONS

When outside auditors are employed for assignments requiring the expression of an opinion on financial reports of governmental organizations, only fully qualified public accountants should be employed. The type of qualifications, as stated by the Comptroller General, deemed necessary for financial audits of governmental organizations and programs is quoted below:

> "Such audits shall be conducted *** by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States: Except that independent public accountants licensed to practice by such regulatory authority after December 31, 1970, and persons who although not so certified or licensed, meet, in the opinion of the Secretary, standards of education and experience representative of the highest prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations may perform such audits until December 31, 1975; provided, that if the Secretary deems it necessary in the public interest, he may prescribe by regulation higher standards than those required for the practice of public accountancy by the regulatory authorities of the States."[1]

[1]Letter (B-148114, Sept. 15, 1970) from the Comptroller General to heads of Federal departments and agencies. The reference to "Secretary" means the head of the department executing the instrument in which the quotation appears.

*U.S. GOVERNMENT PRINTING OFFICE 1972 721-869/3 1-3



State of Wisconsin \ OFFICE OF THE COMMISSIONER OF INSURANCE

S. C. DuRose
Commissioner

201 East Washington Avenue
Madison, Wisconsin 53702

Patrick J. Lucey
Governor

February 23, 1973

Senator Harrison A. Williams, Jr., Chairman
Subcommittee on Labor - Room 4230
New Senate Office Building
Washington, D. C. 20510

Re: Retirement Income Security for Employees Act of 1973 (S.4)

Dear Senator Williams:

As Chairman of the National Association of Insurance Commissioners Subcommittee on Regulation of Employee Pension and Welfare Plans, and as an Insurance Commissioner responsible for administering the Wisconsin Employe Welfare Fund Law enacted in 1957, I would like to submit the following statement to your committee in connection with your deliberations on Senate Bill 4.

It is my considered opinion that the determination of fund requirements for vesting, funding and portability would best be handled through federal legislation and I have no quarrel with the proposals in that area in Senate Bill 4. But I do feel that two important areas have been overlooked in most recent federal legislative considerations -- the need for effective regulation of funds and the need for a governmental agency to resolve consumer complaints and perform consumer protection activities in this area.

The table attached to this statement shows the number of funds registered with my office at December 31, 1972, classified by location, type of benefit and number of covered participants. This table leads me to the following conclusions:

(1) Because of the large number of funds, nationwide, fund regulation is a big task. I believe it is reasonable to assume that the Wisconsin volume of funds is typical of the average state.

(2) Legislative attention has primarily concentrated on pension funds, but regulation is also needed for other types of funds. We have concluded from our regulatory experience in Wisconsin that many profit-sharing retirement funds are being managed in a manner not consistent with the welfare of fund participants.

Senator Harrison A. Williams, Jr.
February 23, 1973
Page 2

(3) A great number of employes are covered by smaller funds. Our experience indicates that the smaller fund, either by neglect, or design, does not receive the internal administrative attention required for proper operation.

I feel that federal pre-emption of fund regulation and the limited consumer protection afforded - the right of engaging an attorney and starting action in a federal court - will not afford an adequate remedy and protection of fund participants.

More consumer protection needs to be provided fund participants and this can best be accomplished by federal enactment of a fiduciary standards law which permits federal assignment for enforcement jurisdiction on defined funds to the state of domicile where such state provides acceptable regulation by federal enacted standards. I am enclosing a suggested provision for federal enactment that would accomplish this purpose.

The National Association of Insurance Commissioners Subcommittee I chair is developing a model bill for state enactment which would provide the governmental regulatory authority required, particularly over the smaller funds. This proposed state act would provide for fund examinations, investigatory powers, annual publication of earned benefit statements, receivership procedures and other regulations somewhat similar to those now applicable to insurance companies.

The regulation of pension and welfare funds is a huge task requiring the cooperative efforts of both federal and state agencies. Instances of fund mismanagement require correction by an active governmental agency and cannot be resolved by expecting an employe to initiate legal action, in many instances, against his employer. Any federal enacted proposal should not close the door to minimum levels of monitoring or scrutiny being provided at the state level.

Very truly yours,

S. C. DuRose
Commissioner of Insurance

SCD:imk
Enc.

STATE OF WISCONSIN

OFFICE OF THE COMMISSIONER OF INSURANCE

CLASSIFICATION OF REGISTERED EMPLOYE PENSION AND WELFARE FUNDS

December 31, 1972

	Total	Wisconsin	Out of Stat
All Funds Registered:			
Pension Funds	3,428	2,880	548
Profit Sharing Funds	3,174	3,023	151
Health and Welfare Funds	309	182	127
Group Life Insurance Funds	61	17	44
Supplemental Unemployment Benefit Funds	43	17	26
Vacation, Savings and Other Funds	189	132	57
Total	7,204	6,251	953
Funds Covering More Than 25 Wisconsin Employes:			
Pension Funds	1,036	730	306
Profit Sharing Funds	714	654	60
Health and Welfare Funds	252	172	80
Group Life Insurance Funds	41	16	25
Supplemental Unemployment Benefit Funds	35	17	18
Vacation, Savings and Other Funds	157	118	39
Total	2,235	1,707	528
Funds Covering Less Than 26 Wisconsin Employes:			
Pension Funds	2,392	2,150	242
Profit Sharing Funds	2,460	2,369	91
Health and Welfare Funds	57	10	47
Group Life Insurance Funds	20	1	19
Supplemental Unemployment Benefit Funds	8	-	8
Vacation, Savings and Other Funds	32	14	18
Total	4,969	4,544	425

*Principal office of fund located outside Wisconsin

2-23-73

SUGGESTED PROVISION FOR FEDERAL ENACTMENT TO PERMIT STATES TO REGULATE EMPLOYE BENEFIT PLANS AND FUNDS

(a) Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any employe benefit plan excluded from federal jurisdiction by definitions in this Act.

(b) Any State which, at any time, by enactment of state statute assumes responsibility for development and enforcement of employe benefit plan disclosure, fiduciary standards, examination or audit programs and other regulations reasonably as effective as those in sections of this Act shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgment--

(1) designates a State agency or agencies as the agency or agencies responsible for administering the disclosure requirements and plan and fund regulations throughout the State,

(2) provides for the development and enforcement of employe benefit plan requirements for disclosure and regulation reasonably as effective as that provided in this Act,

(3) limits state jurisdiction to those plans or funds covering only, or substantially only, employes in that state and such other plans or funds as may be specifically designated by the Secretary,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such regulations,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such regulations, but nothing in this Act shall prevent such state or agency thereof from making such charges as may be necessary for the administration of the program,

(6) provides that the State agency will make such reports to the Secretary in such form and containing such information, as the Secretary shall from time to time require.

(d) If the Secretary rejects a plan submitted under subsection (b), he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

(e) The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having an employe benefit protection plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any litigation commenced before the withdrawal of the plan.

(f) The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition to modify or set aside in whole or in part the action of the Secretary. A copy of such petition shall forthwith be se upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provived in section 2112 of title 28, United States Code. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

WEAL National Office
538 National Press Building
Washington, D.C. 20004

February 26, 1973

Harrison A. Williams, Chairman
Jacob K. Javits, Ranking Minority Member
Senate Committee on Labor and Public Welfare
U.S. Senate

Dear Senators Williams and Javits:

We appreciate the amount of time and effort that both of you have put into the drafting of S. 4, a bill to reform our private pension system. That is why we believe it is so crucial that the effect of this legislation on women, the majority of our population, be carefully considered before reporting any bill.

Women have a great stake in pension reform. For whether they are among the 31 million women who constitute 38% of the nation's labor force or whether they are among the millions more working at home without pay, women have at least one thing in common. Women can now look forward to being a member of our poorest class of citizens -- women over the age of 65. Today these women have a median income of $1,397 per year. Six out of ten live below the poverty level.

Their poverty can be attributed to a number of causes including an inadequate social security system and an even poorer private pension system. Many of the inadequacies of private pension plans are the direct result of years of employment discrimination against women which leaves them in the lowest paying jobs which are the least stable. In addition, women tend to have shorter job tenure and larger gaps in employment due to childbearing. Since pension benefits are most commonly based on salaries and length of uninterrupted service, women get about 30% less in pensions than men. (A 1967 study of pension benefits showed that half the unmarried men receive less than $865 a year and half the women get less than $665 a year.)

The inadequacies of pension plans in providing survivors' benefits has contributed to the poverty among women who have worked at home during their married life. Women tend to outlive their spouses. There are now 139 women to every 100 men in the 65 and above age group. Consequently, survivors benefits that are certain and sufficient are essential to these women.

We realize that neither S. 4 or for that matter any other legislation to reform our private pension system could possibly compensate for years of employment discrimination against women. However, we do believe that we could avoid compounding the mistakes of the past by making the following modifications in S. 4:

Vesting & Defining Continuous Service

We are pleased that Section 202 (b) eliminates requiring continuous service for employees to qualify for vesting. The exception to this section -- that in order to qualify for the 30% vesting at eight years employers' may require three years of continuous service -- troubles us. For in part (c) the Secretary of Labor is given the authority to prescribe standards for determining and computing this continuous service. It is crucial for women that maternity leave as well as lay-offs not be considered a break in service even under the three-year requirement. We recommend that these exemptions be written into the legislation rather than be left to the discretion of the Secretary of Labor.

We also recommend that part-time employment be given proportionate credit for vesting purposes.

Survivors' Benefits

S. 4 fails to include provisions to improve pension plans with regard to survivors' benefits. Private pension plans which now provide some sort of survivors' benefits place the burden on the employee to take affirmative action in order to receive the benefit. (Your study of November 6, 1971 showed that 68% of the plans responding to your questionaire which had some sort of death benefits, had an optional form to be received only upon selection.) We recommend that plans that now provide survivors benefits be automatic unless the employee elects not to participate.

We also recommend that there be some kind of "hold harmless" provision to insure that current survivors' benefits continue. It would be unfortunate if survivors' benefits became the scapegoat for an employer's fear (as unfounded as it might be) of additional costs to comply with this new legislation.

Prohibition Against Sex Discrimination

We recommend adding a provision to S. 4 prohibiting discrimination on the basis of sex in the granting of any benefits or the administration of any part of this act or the programs covered by this act.

We consider these minimal modifications essential to making the bill relevant to the needs of women. However, we are also concerned about the broader questions of vesting generally and portability. First, we think that the vesting schedule should be lower. Second, the voluntary portability system should be strengthened. At minimum every employer that has a pension plan should be required to participate in a portability system along the lines provided in H.R. 462.

Finally, S. 4 does nothing to help two additional groups of women --

those in industries without private pension plans and those employed by state and local governments. (There are nearly five million women who now constitute 47% of state and local employees.) We would support providing additional incentives to industries to establish private pension plans. And we also urge Congress to begin work on legislation to reform pension plans for state and local government employees.

We request that our comments be placed on the record, and urge you to consider our recommendations for inclusion in S. 4. True pension reform must be true reform for the 51% of us who are women.

Sincerely,

/s/ Doris Meissner, Executive Director
National Women's Political Caucus

/s/ Arvonne Fraser, President
Women's Equity Action League (WEAL)

/s/ Carol Burris, President
The Women's Lobby, Inc.

cc: Mario Noto, Special Counsel
Subcommittee on Labor

The CHAIRMAN. This hearing is now adjourned.

(Whereupon at 12:30 p.m. the hearing was adjourned.)

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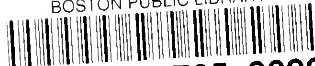
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