Calendar No. 119

93D CONGRESS, *1st Session* } SENATE { REPORT No. 93–127

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT OF 1973

APRIL 18, 1973.—Ordered to be printed

Mr. WILLIAMS, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany S. 4]

The Committee on Labor and Public Welfare, to which was referred the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare. benefit plans, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

I. Synopsis

The provisions of S. 4 are addressed to the issue of whether American working men and women shall receive private pension plan benefits which they have been led to believe would be theirs upon retirement from working lives. It responds by mandating protective measures, and prescribing minimum standards for promised benefits.

The purpose of S. 4 is to prescribe legislative remedies for the various deficiencies existing in the private pension plan systems which have been determined by the Senate Subcommittee's comprehensive study of such plans. This legislation would authorize the establishment within the Department of Labor of an Office of Pension and Welfare Plan Administration which would implement specified and required standards of vesting, funding, reinsurance, disclosure and fiduciary standards, and a voluntary program of portability of vested pension credits. That office would also be charged with enforcement of the provisions of the Act.

The Act imposes minimum vesting requirements in pension plans, whereby employees, after eight years of service, will be entitled to a vested nonforfeitable right to 30% of their accrued pension benefits, and, thereafter, each year will acquire an additional 10% to such right

83–010 O

until, at the end of 15 years' service, they will be entitled to 100% vested benefits. Where plans are determined by the Secretary of Labor to contain vesting formulas which provide a degree of vesting protection as equitable as the vesting schedule in the bill, compliance with the statutory vesting schedule may be waived by the Secretary. Pension plan participants would be vested in the accrued pension benefits attributable to service with their employer performed both before and after the effective date of the Act.

Under specified circumstances, where the vesting requirements would increase costs or contributions to an extent that "substantial economic injury" would result to the employer and to the participants' interests, the Secretary may defer compliance with the vesting provisions for a period not to exceed five years.

The Act establishes minimum funding requirements for pension plans to assure that all unfunded pension liabilities of the plan will be funded over a 30-year period. However, the Secretary of Labor is authorized to permit variances from such funding requirements to plans which qualify under appropriate conditions.

It establishes a voluntary program for portability of pension credits through a central fund, whereby employees of participating employers may transfer vested credits from one employer to another upon change of employment.

A plan termination insurance program is established to guarantee that vested pension credits of employees will be paid upon termination of a pension plan when there are not sufficient assets to pay the workers' vested benefits. It insures benefits already earned and vested under the terms of the pension plan, prior to the date of enactment.

The bill prescribes new and stringent rules of conduct required for trustees and fiduciaries administering employee benefit funds, and prohibits conflicts of interest and various specific parctices to prevent actual or potential misuse of such funds.

It requires additional and comprehensive disclosure of vital data in reports to be filed with the Federal Government, and understandable explanations to workers of their rights and obligations under their pension plans.

The bill makes it unlawful for any person to discharge, suspend, expel, fine, discipline or discriminate against participants in order to interfere with their rights under the plan or the Act or for the purpose of preventing the attainment of their rights under the plan or the Act. It is made a criminal offense to use fraud, force or violence, or threats thereof, in this connection.

Finally, it establishes federal jurisdiction and adequate remedies to both the Government and individual worker for judicial and administrative enforcement of the bill's provisions, including recovery of pension benefits due.

II. Background

History of Pension Plan Regulation

The growth of the private pension industry in the United States, which began before the turn of tle century, had been gradual until the years preceding World War II. By 1925, there were about 400 private

pension plans in operation. However, as time progressed and American attitudes and beliefs regarding retirement security changed, as a result of the Depression, and the subsequent passage in 1935 of the Social Security Act and the Railroad Retirement Act, a steady increase in the growth of the private pension plan system began. The wage freezes, imposed during World War II and the Korean conflict, contributed to the acceleration of this growth. Increases in fringe and retirement benefits during these crucial periods became a means of compensating workers in lieu of increased wages, thus making pension benefits a form of deferred wages.

In 1947, stemming from a suit filed with the National Labor Relations Board, the U.S. District Court decided that pensions were a form of remuneration for labor within the terms of the National Labor Relations Act (1935) and, accordingly, they were recognized as mandatory subjects of the collective bargaining process. This decision was upheld by the Seventh Circuit Court of Appeals in 1948 and paved the way for the rapid growth of collectively-bargained pension plans and the expansion of pension benefits to union members. (*Inland Steel Company v. NLRB, 170 F. 2d 247 (7th Cir. 1948), cert. denied, 336 U.S. 960 (1949)*.)

In 1940, an estimated four million employees were covered by private pensions; in 1950, the figure had more than doubled to 9.8 million; in 1960, over 21 million employees were covered; and in 1973, approximately 30 million workers participated. Currently, about one-half of our industrial work force in the United States are members and participants of private pension plans. It is projected that by 1980, 42.3 million workers will be covered by private pension plans. The growth of the assets owned or controlled by pension funds has closely paralleled this expansive growth. Total estimated assets of pension plans have accelerated from $2.4 billion in 1940 to $150 billion in 1973 and are increasing at a rate projected to exceed $250 billion by 1980.

This rapid growth has constituted the basis for legislative efforts by both the federal and various state governments to gain some regulatory jurisdiction over private pension plans to assure effective and equitable performance. Various aspects of pension plans have been affected to some degree by most of the major labor legislation of the twentieth century, including the National Labor Relations Act (1935), the Labor-Management Relations Act (1947), and the Labor-Management Reporting and Disclosure Act (1959). However, not until 1958, with the enactment of the Welfare and Pension Plans Disclosure Act, was legislation effected which was specifically designed to exercise regulatory controls over pension and welfare funds. Based upon disclosure of malfeasance and improper activities by pension administrators, trustees, or fiduciaries, the Act was amended in 1962 to designate certain acts of conduct as federal crimes when they occurred in connection with welfare and pension plans. The amendments also conferred investigatory and various regulatory powers upon the Secretary over pension and welfare funds. In the decade since the amendments were enacted, experience has shown that, despite intermittent enforcement of the reporting requirements and the criminal provisions, the protection accomplished by statute has not been sufficient to accomplish Congressional intent.

The Existing Law

The growth and development of the private pension system in the past two decades has been substantial. Yet, regulation of the private system's scope and operation has been minimal and its effectiveness a matter of debate. The assets of private plans, estimated to be in excess of $150 billion, constitute the only large private accumulation of funds which have escaped the imprimatur of effective federal regulation.

At the federal level, there are essentially three federal statutes which, although accomplishing different purposes and vested within different federal departments for enforcement, are all compatible in their regulatory responsibilities. These are the Welfare and Pension Plans Disclosure Act (29 U.S.C. Sec. 301 et. seq.), the Labor-Management Relations Act (29 U.S.C. Sec. 141, et. seq.) and the Internal Revenue Code (I.R.C. of 1954, Secs. 401–404, 501–503).

A complete description of the federal regulation affecting the administration of private plans can be found in Interim Report of The Private Welfare and Pension Plan Study, 1971, Senate Report No. 92–634 of the 92d Congress, 2d Session.

After a comprehensive investigation of abuses in the administration and investment of private fund assets, Congress adopted the Welfare and Pension Plan Disclosure Act in 1958. The policy underlying enactment of this Act was purportedly to protect the insterest of welfare and pension plan participants and beneficiaries through disclosure of information with respect to such plans. The essential requirement of the Act was that the plan administrator compile, file with the Secretary of Labor, and send to participants and their beneficiaries upon written request, a description and annual report of the plan. It was expected that the knowledge thus disseminated would enable participants to police their plans. The Act was amended in 1962 to make theft, embezzlement, bribery, and kickbacks federal crimes if they occur in connection with welfare and pension plans. The 1962 amendments also conferred limited investigatory and regulatory powers upon the Secretary of Labor, and required bonding of plan officials.

Experience in the decade since the passage of the above amendments has demonstrated the inadequacy of the Welfare and Pension Plans Disclosure Act in regulating the private pension system for the purpose of protecting rights and benefits due to workers. It is weak in its limited disclosure requirements and wholly lacking in substantive fiduciary standards. Its chief procedural weakness can be found in its reliance upon the initiative of the individual employee to police the management of his plan.

The Labor-Management Relations Act, Sec. 302, provides the fundamental guidelines for the establishment and operation of pension funds administered jointly by an employer and a union. The Act is not intended to establish nor does it provide standards for the preservation of vested benefits, funding adequacy, security of investment, or fiduciary conduct.

Tax deduction benefits accruing to employers are prescribed by the Internal Revenue Code under which the employer is granted a deduction within certain limits for contributions made to a qualified plan, and the investment earnings on such plans are made tax-exempt. To attain "qualified status" under the Code, the plan must be (1) for the

exclusive benefit of the participants; (2) for the purpose of distributing the corpus or income to the participants; (3) established in such a manner to make it impossible for the employer to use or divert funds before satisfying the plan's liabilities; and (4) not discriminate in favor of officers, stockholders, or highly-compensated or supervisory employees.

The Internal Revenue Code provides only limited safeguards for the security of anticipated benefit rights in private plans since its primary functions are designed to produce revenue and to prevent evasion of tax obligations. The essence of enforcement under the Code lies in the power of the Internal Revenue Service to grant or disallow qualified status to a pension plan, thus determining the availability of statutory tax advantages. The Internal Revenue Service jurisdiction and enforcement capabilities are solely to allow various tax advantages to accrue to employers who establish and maintain pension plans which can qualify for such tax benefit privileges.

In the absence of adequate federal regulation, the participant is left to rely on the traditional equitable remedies of the common law of trusts. A few states, including New York, Washington, Wisconsin, Massachusetts, and California have codified existing trust principles and enacted legislation which requires in many instances a greater degree of disclosure than required by federal statute.

The fact that statutory rules exist says little as to their efficacy in adjusting inequities that are visited upon plan participants, as evidenced by the hearings before this Committee. In almost every instance, participants lose their benefits not because of some violation of federal law, but rather because of the manner in which the plan is executed with respect to its contractual requirements of vesting or funding. Courts strictly interpret the plan indenture and are reluctant to apply concepts of equitable relief or to disregard technical document wording. Thus, under present law, accumulated pension credits can be lost even when separated employes are within a few months, or even days, of qualifying for retirement.

The proposed bill would, therefore, establish minimum standards of vesting, funding, and fiduciary conduct and also provide for voluntary portability of earned pension credits and a system of compulsory benefit insurance to protect the security of pension rights.

As suggested by the President's Cabinet Committee Report of 1965: "As a matter of equity and fair treatment an employee covered by a pension plan is entitled, after a reasonable period of service, to protection of his future retirement benefit against any termination of his employment." Concern for loss of benefits by workers after long years of labor through circumstances beyond their control was similarly expressed by President Richard M. Nixon on December 8, 1971, when, in a message to the Congress he said, "When a pension plan is terminated, an employee participating in it can lose all or a part of the benefits which he has long been relying on, even if his plan is fully vested . . . even one worker whose retirement security is destroyed by the termination of a plan is one too many."

Prior Legislative Action

Prior inquiries and studies by the Senate into the administration and operations of the private pension plan system in the United States were made by the Subcommittee on Welfare and Pension Funds, Committee on Labor and Public Welfare under authority of Senate Resolution 225, 83d Congress, and Senate Resolution 30, as extended by Senate Resolutions 200 and 232 of the 84th Congress. That comprehensive investigation, which concluded with a final report to the Senate on April 16, 1956, had been primarily directed to determine whether federal legislation was necessary to protect the financial interests of participants in welfare and pension plans. The study also involved an appraisal of the functions exercised by federal agencies over private pensions, as well as the adequacy of state controls. It concluded with various findings and recommendations to the Senate, and, more specifically, calling for enactment of federal legislation to compel registration, disclosure and periodic reporting of welfare and pension plans in the United States. The Subcommittee intended that Congress provide for greater legislative protection for beneficiaries of pension plans through detailed public disclosure of the administration and operation of private pension plans.

Subsequently, the Subcommittee on Welfare and Pension Plans in the 85th Congress, 1st Session, conducted public hearings on legislative proposals. These measures proposed to establish the federal regulatory controls contemplated by the prior Subcommittee findings and recommendations. The records of these prior hearings and reports made by the Senate have been given meticulous and concerned analysis by this Subcommittee, and have furnished immeasurable and invaluable assistance in the inquiry which led to S. 4.

The prior investigations by the Senate culminated with the enactment of the Welfare and Pension Plans Disclosure Act on August 28, 1958. Its main objective was to require welfare and pension benefit plans covering more than 25 employees to file a description of the plan and pertinent financial reports with the Department of Labor, and to furnish participants and beneficiaries, upon request, with a description of the terms of the pension plan and summary of financial data pertaining to the plan. On June 18, 1962, amendments became effective that furnished the Secretary of Labor with enforcement authority and the power to require bonding of plan personnel who handle plan funds or assets. Various criminal penalties were added to the Act to apply to embezzlement, bribery, and other criminal actions which threaten the security of the funds of private pension plans.

During the 89th Congress, the Senate Special Committee on Investigations, the Senate Finance Committee, and the Joint Economic Committee each held investigatory hearings on the subject of pension and welfare plans. The Senate Special Committee on Aging took up the subject in the 90th Congress, as part of a comprehensive study on Developments in Aging, and the House Subcommittee on Labor of the Education and Labor Committee held extensive hearings in the 91st and 92nd Congresses. During the 90th Congress, 2nd Session, the Senate Labor Subcommittee held further hearings on four bills which proposed additional amendments to the Welfare and Pension Plans Disclosure Act, and various other reforms of the welfare and private pension plan system. None of this legislation was enacted.

During the 92nd Congress the Senate Labor Subcommittee under the mandate of successive Senate resolutions conducted sweeping

inquiries into the private pension system. These inquiries are described more fully in Section IV of this Report *infra.*

In the 93rd Congress the Senate Labor Subcommittee held legislative hearings on S. 4 on February 15 and 16, 1973 and both the House General Labor Subcommittee and the House Ways and Means Committee conducted hearings in February and March of 1973 on this subject. The House General Labor Subcommittee has issued two interim reports covering its activities to date.

Executive Branch Activity

The Executive branch expressed interest in the private pension plans system when, in March,1962, President John F. Kennedy appointed a Cabinet Committee on Corporate Pension Funds to conduct an investigation of and assessment of laws which govern private pension and other employee retirement income programs. Additionally, the Committee was directed to review legislation and administrative procedures applicable to pension plans. It reported its findings on January 15, 1965, to President Lyndon B. Johnson on various aspects and areas of private pensions which it believed required remedial action. The Presidential Committee concluded that:

> there were no effective prescribed government standards governing welfare and pension plans;
>
> vesting provisions were generally severe and restrictive, or nonexistent;
>
> lack of an adequately comprehensive federal funding requirement plans terminated prematurely, with no insurance to provide for payment of accrued benefits to workers; and
>
> employees could be immobilized by lack of portability of earned pension credits.

The President's Committee findings in effect revealed that defective private pension plans were failing to provide the elderly with adequate income to meet economic needs when their productivity had ended.

In a report to delegates attending the 1971 White House Conference on Aging, called by President Richard Nixon, the need for strengthening private pension plans was emphasized. The Employment and Retirement Section of that Conference reported that: "Legislation must be enacted as soon as possible requiring early vesting, adequate funding and portability of pensions and to provide for Federal insurance of pensions." They further state, "A National Pension Commission with a Governing Board of management, labor and public representatives should be established to encourage the expansion and the improvement of pension plans with particular reference to: flexible retirement ages, liberal (early) vesting and portability, adequate funding, more general coverage, and job redesign."

Moreover, in a report of a Special Task Force to the Secretary of Health, Education and Welfare, issued December, 1972 and entitled "Work in America" it was concluded that: "earlier vesting and portability would clearly reduce inequities in the existing private pension plans, and enhance the worker's ability to change occupations—to be freed from the job that keeps him only because it holds out the promise of economic security".

III. Major Issues

Although the need for legislative reform has been and continues to be widely acknowledged among all persons and sectors affected, governmental supervision of mandated and essential improvements has been resisted due to the belief that such legislation might impede plan growth. However, as the Committee has progressed in its inquiries and made public disclosures of its analysis and findings, it has been discerned that some resistance has become dissipated and various opponents have now acknowledged that such reforms will not deter the establishment or the improvement of pension plans.

The principal issues affecting the vital and basic needs for legislative reform involve consideration of the essential elements of pensions:

a. Vesting

One of the major private pension plan considerations centers around the concept of vesting. Vesting refers to the nonforfeitable right or interest which an employee participant acquires in the pension fund. The benefit credits may vest in the employee immediately, although in most cases participants do not become eligible for vesting of benefits until a stipulated age or period of service, or a combination of both, is attained.

Upon compliance with the basic requirements of age or service, many plans will grant their participants vested rights to those benefits earned to that time. However, should employment terminate prior to such time, the employee will recieve no benefits. Some pension plans, however, specify "graded" vesting formulas, whereby only a defined percentage of the accrued benefits earned will vest upon fulfillment of minimum requirements, and such percentage may increase periodically, as the employee continues in his employment and completes additional service.

Despite the recognized and acknowledged need for pension plans to provide for vesting of earned benefits, if pension promises are to be meaningful to workers, there is need for federal statutory requirements which will compel an employer to grant such vesting benefits. The difficulties and hardships resulting from nonexistent or inadequate plan provisions for vesting of benefits have been vividly established by the Subcommittee's studies and hearings.

It is noteworthy that in 1965, the President's Commission on Public Policy and Private Pensions, while acknowledging that there had been some improvement in private plans by increased adoption of vesting provisions, nonetheless found and recommended legislation to make minimum vesting provisions mandatory. That Commission concluded that ". . . the degree of retirement protection in private pension plans varies widely and in many cases remains quite inadequate." (President's Committee on Corporate Pension Funds and Other Private Retirement and Welfare Programs, *Public Policy and Private Pension Programs: A Report to the President on Private Employee Retirement Plans*, January, 1965, p. 39).

The vesting concept recommended by the Cabinet Committee suggested preference for deferred graded vesting. It specifically favored a vesting formula under which 50 percent of an accrued pension would

be vested in a plan participant upon completion of 15 years of service, with rights to full vesting of accrued pension credits to occur after 20 years of service. In general, although there has been some discernible progress to permit early vesting of benefits to employees, some employers incline to defer such vesting until the employee reaches a normal or early retirement eligibility formula. This is essentially based upon the belief that it will discourage and deter such employee from leaving the job before reaching retirement age.

Despite claims by opponents that progress made in pension plan provisions to provide vesting manifest an eventual voluntary vesting system, plans involving substantial numbers of workers which contain no vesting are still not uncommon. The Senate Labor Subcommittee's statistical analysis of data furnished by 1,493 private pension plans has concluded that approximately 13 percent of private pension plans in the United States do not contain provisions which require vesting of benefits to employees prior to retirement. Opponents of mandatory vesting believe that compulsory vesting provisions will discourage development of new plans and impede flexibility and latitude in formulating employee benefits because of excessive costs that are certain to result. However, in face of Subcommittee findings relative to projected costs to plans for imposed vesting, indications are that the resistance of opponents to universal vesting is essentially structured upon extreme reluctance to submit to governmental regulatory measures concerning pension plan administration and operations. In its final analysis, the issue basically resolves itself into whether workers, after many years of labor, whose jobs terminate voluntarily or otherwise, should be denied benefits they have earned as deferred compensation and which have been placed for them in a fund for retirement purposes.

b. Funding

Another major issue in private pension plans relates to the adequacy of plan funding. "Funding" refers to the accumulation of sufficient assets in a pension plan to assure the availability of funds for payment of benefits due to the employees as such obligations arise. Today, funding of pension plans for the limited and specific purpose of qualifying for tax benefits permitted by law for contributions made is governed by statutory and regulatory requirements which are under the jurisdiction of the Internal Revenue Service (I.R.S. Code of 1954, Sections 401–404). The minimum funding rules (Treasury Regulations, Sections 1.401–404(c) (1963)) require an employer to make contributions to a pension fund, qualified by the Internal Revenue Service, of amounts at least equal to the pension liabilities being created currently, and the interest due upon those amounts of monies which reflect unfunded accrued liabilities. The inherent weakness of this required minimum funding is that the employer is not required under law to make payments toward the *principal* of the unfunded accrued liabilities. Without mandatory funding of past service liabilities, a pension plan may never be in financial posture to meet its pension obligations to its employees.

The pension plan which offers full protection to its employees is one which is funded with accumulated assets which at least are equal to the accrued liabilities, and with a contribution rate sufficient to maintain that status at all times. However, since plans are revised and amended to provide new benefits which create new and different liabilities for the plan, opponents of compulsory funding argue that it is unrealisitc to expect that plans maintain a full funding status at all times. The same opposition is voiced for new plans, which invariably assume a large unfunded liability at the outset of the plan, due to the granting of credit for past service by employees to the employer.

The ineffectiveness of funding requirements were acknowledged in the President's Cabinet Committee Report of 1965, when it concluded that ". . . the minimum standards for funding under present tax law do not assure adequate funding. The setting of standards for adequate funding therefore becomes an important public concern." (*Public Policy and Private Pension Programs*, 1965, pp. 50–51). The Promise and commitment of a pension can be fulfilled only when funds are available to pay the employee participant what is owed to him. Without adequate funding, a promise of a pension which may be illusory and empty.

c. Reinsurance

One of the more dramatic evidences of the deficiencies of pension plans, illustrated by the Studebaker case in 1964 and more recently in over 100 cases of pension plan termination uncovered by the Subcommittee during its inquiry into plan termination, is the failure of employees to receive all of the pension benefits to which they are entitled, when a company shuts down, relocates or merges with another corporate entity. Some critics have proposed that corporate assets be committed to guarantee any pension obligations which exist at termination.

Another suggestion is that a federal insurance program should be instituted to guarantee the payment of these obligations. Under this program, specified premiums would be paid by pension plan administrators, and, in the event that a plan is forced to terminate, with insufficient assets to pay vested employee benefits funds from the guaranty fund would become available for this purpose. The adverse impact upon workers of terminated underfunded plans was effectively shown in the Subcommittee report on plan terminations issued September 11, 1972.

In his message to Congress of December 8, 1971 on the subject of pension reform the President directed the Departments of Labor and Treasury to undertake a one-year study of pension plan terminations. To date, an interim report has been published. It reports 683 pension plan terminations during the first seven months of 1972 affecting approximately 20,700 pension participants.

d. Portability

Portability refers to the process by which an employee is permitted to transfer his earned vested pension rights from job to job and at the end of his career be able to convert all such credits into a final benefit amount reflecting all of his prior service. Such a process would require a centralized control or clearinghouse through which the earned credits could be channeled. The interchangeability of earned vested pension credits would require regulatory and administrative machinery in a federal agency to make it function properly. An effective system which permits the transferability of earned vested pension credits is certain to facilitate the mobility of labor.

e. Fiduciary responsibility and disclosure

Another area of concern of the Subcommittee has involved the conduct of administration and operations of pension plans. Of particular interest has been the course of conduct in fund transactions, the degree of responsibility required of the fiduciaries, the types of persons who should be deemed pension "fiduciaries," and the standards of accountability they shall be governed by in the management and disposition of pension funds. The only current federal requirement is that the Secretary of Labor require fiduciaries, trustees, etc., to make disclosure of the provisions and financial operations of the pension plan under the Welfare and Pension Plans Disclosure Act.

An important issue relates to the effectiveness of communication of plan contents to employees. Descriptions of plans furnished to employees should be presented in a manner that an average and reasonable worker participant can understand intelligently. It is grossly unfair to hold an employee accountable for acts which disqualify him from benefits, if he had no knowledge of these acts, or if these conditions were stated in a misleading or incomprehensible manner in plan booklets. Subcommittee findings were abundant in establishing that an average plan participant, even where he has been furnished an explanation of his plan provisions, often cannot comprehend them because of the technicalities and complexities of the language used.

IV. Committee Studies and Activities

The Subcommittee on Labor, pursuant to Senate Resolution 235, 92nd Congress, March 6, 1972, and prior resolutions from the 91st Congress, has conducted a comprehensive and exhaustive study of the private pension plan system in the United States, with particular emphasis upon the impact which such plans have upon the workers covered. The Subcommittee's implementation of the Senate resolutions has been a methodical collection and analysis of vital statistics and pertinent detailed data from individual and group cases reflecting the internal administration and operations of private pension and welfare plans. Invaluable data was furnished by 1,493 selected pension plans in response to a comprehensive questionnaire prepared by the Subcommittee in the spring of 1970. The data was analyzed in the Senate computer to extract information for evaluation by the Subcommittee staff to ascertain the weaknesses and effectiveness of the provisions of such plans. A preliminary staff report was issued on March 31, 1971, which contained findings by the Subcommittee relative to 87 pension plans covering approximately 10 million workers. Staff studies were also conducted of numerous individual pension plans in different industries and geographical locations in the United States. An additional study of 764 pension plans was made by the staff and its findings published on November 7, 1971, which, among other findings, determined that the median monthly income being received by retired pension plan participants in the United States was approximately $99.00.

In September 1972, the final statistical analysis of the 1,493 plans was prepared and a report issued. It focused on the several characteristics of private pension plans, eligibility requirements, retirement provisions, vesting, funding, disclosure and fiduciary standards. In general, it demonstrated that a substantial number of plans do not meet the obligation promised of retirement with dignity after many years of service.

In addition to the staff studies of plans, investigatory hearings were held in Washington, D.C. during July and October 1971, at which time workers, employers and affected sectors testified with respect to various inequities and hardships resulting to the plan participants from the non-existent or defective provisions of such plans with respect to vesting, funding, portability and insurance issues. During these hearings, 14 employer organizations and more than 25 individual plan participants were heard during a total of five days of hearings. Additionally, during 1972, the Subcommittee conducted field hearings on plan terminations in five major cities throughout the United States. These hearings, in St. Louis, Newark, Minneapolis, Cleveland and Philadelphia, publicly disclosed the adverse effects resulting to workers from the inadequate funding of pension plans which covered them. The problems surfaced were representative of those which exist in other cities throughout the country. These selective hearings in the five cities encompassed several different industry pension plans covering over 22,500 employees. Investigation preceding the hearings encompassed more than 115 other companies which had terminated their pension plans with similar disastrous effects upon their employees.

On May 11, 1972, S. 3598, the predecessor bill to S. 4, was introduced in the U.S. Senate. This legislative proposal, as its successor, S. 4, embodies remedies specifically designed to correct the deficiencies uncovered and would provide adequate protection to pension plan participants. In June 1972, the Subcommittee held six days of legislative hearings on S. 3598, at which time the Subcommittee heard testimony of not only experts in the pension field, but representatives and organizations vitally affected by the legislation.

After S. 4 was introduced in the Senate, similar legislative hearings were held on February 15 and 16 in the 93rd Congress, First Session, relative to S. 4 which incorporated all the provisions of its prececessor, S. 3598.

These hearings exemplified the purpose of underlying the Subcommittee's entire study, in that all affected sectors, within the limits of time available, were afforded ample opportunity to present their views with respect to proposed legislation. Additionally, those whose requests to testify could not be honored due to limitations of time, were encouraged to submit statements and views for consideration by the staff. Many of these resulted in subsequent conferences to discuss the merits of objections and suggestions. A number of suggestions were meritorious and constructive and were subsequently incorporated into the bill.

Because of the Subcommittee's concern with the effects which the projected costs of mandatory vesting might impose upon pension plans, the Subcommittee, through the actuarial firm of Grubbs & Company, Baltimore, Maryland, conducted its own actuarial study and evaluation of estimated increases in pension plan costs resulting from vesting provisions. This study, conducted by a recognized and qualified actu-

arial firm, permitted the Subcommittee to assess the range of increased costs to private pension plans which might be anticipated as a result of enactment of S. 3598. A summary of the Subcommittee cost study is attached as Appendix.

The Subcommittee's implementation of its study, as mandated by Senate resolution, was methodical and analytical. It undertook initially, through its inquiries and fact-finding, to define the specific problems of private pension plans in the United States. When the problems were sufficiently identified, a comprehensive analysis of each was made by the Subcommittee staff. The analysis was essential in order to determine the need and extent of reform essential to meet the deficiencies and problems surfaced.

In considering S. 4 and other legislation, the Subcommittee was of the opinion that, based upon its findings, it would be unwise and impractical to propose either revisions or new provisions of law in patchwork fashion. It was convinced that the nature and extent of the problems determined to exist required one omnibus legislative proposal which would embody essential and indispensable reforms.

V. Committee Action and Explanation of Amendments

The Committee enthusiastically endorses the concept of a comprehensive private pension reform program. It believes that expeditious enactment of S. 4 will institute a program which will achieve a stengthening of the role played by private retirement plans within the fabric of our economic and social structures. Its most important purpose will be to assure American workers that they may look forward with anticipation to a retirement with financial security and dignity, and without fear that this period of life will be lacking in the necessities to sustain them as human beings within our society. The enactment of progressive and effective pension legislation is also certain to increase stability within the framework of our nation's economy, since the tremendous resources and assets of the private pension plan system are an integral part of our economy. It will also serve to restore credibility and faith in the private pension plans designed for American working men and women, and this should serve to encourage rather than diminish efforts by management and industry to expand pension plan coverage and to improve benefits for workers.

The Committee believes that the legislative approach of establishing minimum standards and safeguards for private pensions is not only consistent with retention of the freedom of decision-making vital to pension plans, but in furtherance of the growth and development of the private pension system. At the same time, the Committee recognizes the absolute need that safeguards for plan participants be sufficiently adequate and effective to prevent the numerous inequities to workers under plans which have resulted in tragic hardship to so many. The Committee has vividly demonstrated this need in public hearings.

The Bill reported by the Committee represents an effort to strike an appropriate balance between the interests of employers and labor organizations in maintaining flexibility in the design and operation of their pension programs, and the need of the workers for a level of protection which will adequately protect their rights and just expectations. In adopting this approach, the Committee believes it has designed a bill, which, like the National Labor Relations Act, the wage-hour laws and other labor standards laws, brings the workers' interests up to parity with those of employers. This legislation strikes an appropriate and equitable balance between two opposing schools of thought—those who advocate complete and stringent control of private pensions and those who oppose any form of government supervisory or regulatory control.

The Subcommittee on Labor unanimously adopted and reported out S. 4, with several major changes from S. 4 as introduced on January 4, 1973. The Subcommittee Print also contained various changes which were technical or conforming in nature. These changes are explained in more detail in the section-by-section analysis which appears later.

Examples of major changes incorporated in the Subcommittee Print included:

1. Providing plan participants on the effective date of the vesting title with retrospective vesting credit for service performed prior to the effective date of the title regardless of the age of the plan participant. (Sec. 202)
2. Requiring the Secretary of Labor to undertake studies of vesting provisions with respect to high mobility workers and to develop recommendations for revision of government procurement regulations so as to provide more adequate protection against loss of benefits to professional, scientific, and technical personnel working on government contracts. (Secs. 101, 221–223)
3. Permitting the Secretary of Labor, upon appropriate application, to provide insurance to cover unfunded vested liabilities of a plan not otherwise covered by the Act, which conforms with vesting, funding and other standards required by the Act. (Sec. 401)
4. Requiring a plan to serve notice upon the Secretary of Labor of intent to terminate the plan; failure to provide such notice results in personal liability on persons who failed to give such notice of losses incurred by the Pension Benefit Insurance Fund. (Sec. 404)
5. Provision that persons who terminate plans with intent to circumvent the Act or WPPDA shall be personally liable for losses incurred by the Pension Benefit Insurance Fund. (Sec. 404)
6. Providing that upon termination an employer shall be liable for 100% of the plan's unfunded vested liabilities, but not to exceed 50% of such employer's net worth. (Sec. 405)
7. Where upon plan termination the plan has surplus assets attributable to employee contributions, they shall be equitably distributed in relation to employee contributions. (Sec. 510)
8. Fiduciaries cannot receive any consideration from any party dealing with such fund in connection with a transaction involving the fund. (Sec. 510)
9. No person can interfere with or discriminate against a participant with respect to rights and privileges which such person is entitled to under the plan, Act, or the WPPDA. (Sec. 610)
10. It shall be unlawful for any person to use force or threaten or otherwise interfere with a person's exercise of rights under the plan, Act, or WPPDA.
11. When considering the experience of multi-employer plans for insurance premium purposes the Secretary of Labor shall take into account the withdrawal of employers from the plan. (Sec. 217)

In its Executive meeting on March 20, 1973, the Committee adopted unanimously the following three amendments:

(1) An amendment offered by Chairman Williams and Senator Javits to assure participants that optional death benefits can only be waived in writing signed by the participant after the participant receives a written explanation of the terms and conditions of the options and the effect of such waiver. The amendment would prevent a participant from losing by default an optional death benefit. (Sec. 510)

(2) An amendment offered by Senator Javits to authorize the Secretary of Labor to bring civil litigation under the Act and the Welfare and Pension Plans Disclosure Act through attorneys appointed by the Secretary (except in the Supreme Court.) (Sec. 101)

(3) An amendment offered by Senator Javits extending coverage of the fiduciary and disclosure amendments to the WPPDA to all benefit arrangements described in or permitted by Section 302 of the Taft-Hartley Act. These benefit arrangements would include jointly administered vacation funds, apprenticeship training funds, day care centers, scholarship funds, etc. (Sec. 502)

In addition, there were several technical changes adopted by the Committee.

VI. Committee Views

Policy of the "Retirement Income Security for Employers Act"

The policy statement in Section 2 is most significant in that it recognizes that all of the problems in the private pension field surfaced by the Committee are so interrelated that they cannot be resolved without a comprehensive legislative program, dealing not only with malfeasance and maladministration in the plans, or the consequences of lack of adequate vesting, but also with the broad spectrum of questions such as adequacy of funding, plant shut-downs and plan terminations, transferability of vested credits, adequate communication to participants, and, in short, the establishment of certain minimum standards to which all private pension plans must conform if the private pension promise is to become a reality rather than an illusion.

Definitions

The Committee has the following technical notes concerning definitions:

The definition of "employee" is intended to encompass any person who has the status of an "employee" under a collective bargaining agreement.

The exclusion of assets of investment companies regulated under the Investment Company Act of 1940 from the definition of "fund" is not intended to exclude participating shares in an investment company held by the fund.

With respect to the term "profit-sharing retirement plan", it is intended that stock bonus, thrift and savings or similar plans with retirement features be treated as the equivalent of profit-sharing retirement plans for purposes of this Act unless expressly indicated otherwise.

With respect to the definition of "fully funded", it is intended that the assets of the plan be valued at fair market value at the time the funding status determination is made in order to ascertain whether plan assets are sufficient to cover all accrued liabilities. It is to be emphasized that "fully funded" is intended to refer to the sufficiency of assets with respect to all benefits which may be due and not just those benefits which are vested.

With respect to the term "experience deficiency", it is anticipated that the Secretary will devise rules to preclude a plan from suddenly revising actuarial standards in order to avoid or circumvent "experience deficiencies".

With respect to the term "normal service cost", it is intended that this definition be applied consistent with such cost methods recognized by the Internal Revenue Service unless there is an effort to avoid or evade the funding requirements of this Act.

With respect to the term "non-forfeitable right" or "vested right", it is not contemplated that vesting be required in benefits such as death benefits, disability benefits, or other forms of ancillary benefits provided by the plan. The plan may, of course, at its option, provide for vesting in such benefits.

With respect to the terms "normal retirement benefit" and "normal retirement age", it is intended that the participant not be compelled to await the receipt of his retirement or vested benefit beyond age 65. However, since the Act sets minimum standards, plans may provide retirement or vested benefits prior to age 65, or, on the basis of individual agreements made with participants, after age 65 if the participant so desires.

In formulating the definition of "multi-employer plan" the Committee was guided by the concept that such a plan, if sufficiently comprehensive in size or scope, would be unlikely to terminate because its existence did not depend on the economic fortunes of one employer or employer entity. The Committee recognized that certain single employer plans have characteristics similar to those of the multi-employer type described in the definition, but, on balance, it is believed that experience on plan terminations provides a reasonable basis for the distinction.

TITLE I.—ORGANIZATION

The Committee believes it is essential to concentrate in the Secretary of Labor sufficient powers to effectively implement the provisions of this Act with the minimum amount of duplication and overlapping o functions.

The Secretary's investigatory authority permits examination of plan books and records without the Secretary having reason to believe a violation of the Act (or Welfare and Pension Plans Disclosure Act) may exist. However, the Secretary is limited to one such examination annually. He may, of course, conduct an examination at any time when he has reasonable cause to believe a violation may exist. The Committee believes that monies in a pension or welfare fund should be as safe as money in a bank or insurance company. Periodic spot-check audits by governmental examiners is a time-tested method for assuring the security of funds. At the same time, the Committee recognizes a concern over possible "harassment" which may impede the effective implementation of the Act's requirements. Limiting the Secretary to one non-violation audit annually takes account of this concern and it is to be assumed that this authority shall be exercised in good faith and with no intent of capriciousness or harassment. In light of the large number of plans that will become subject to the Act, it is extremely doubtful, as a practical matter, that the Secretary could conduct more than one spot-check annually for any given plan.

The Secretary is also authorized to establish standards and qualifications for actuaries. This is a major innovation and indispensable to effective enforcement of the funding standards and operation of the plan termination insurance program. The Committee is unaware of any significant licensing procedures for actuaries at either the state of federal level and this may, to some extent, explain inadequate funding procedures which have been found to exist. Generally speaking, the American Academy of Actuaries is regarded as the umbrella organization with the most rigorous standards for admission to membership, and the Committee intends that the Secretary should give due weight to membership in this organization or its equivalent as a basis for certifying actuaries under the Act. Additionally, the Secretary may certify actuaries on the basis of objective standards, promulgated without regard to membership in any particular organization.

The Secretary is also required to establish and maintain reasonable limitations on actuarial assumptions. It should be noted that the Secretary is authorized not to prescribe what actuarial assumptions must be used, but rather to assure that those which are used are reasonable and reflect relevant experience.

The Secretary is authorized to undertake studies into the private pension and profit-sharing retirement plans covering a wide variety of subjects. Of particular interest to the Committee are those studies which would encompass methods of encouraging further growth of the private pension system and the advisability of additional coverage under the Act. With respect to the latter, the Committee intends that the Secretary pursue studies of those elements encompassed in this legislation to include but not be limited to vesting, funding, portability, reinsurance, and fiduciary and disclosure requirements. The Secretary is required to conduct appropriate studies of State, City and local government pension plans, exempt from S. 4, to ascertain any need for legislative actions with respect to these plans. He is further required to study the sufficiency of vesting provisions as applicable to workers who are engaged in high mobility services or professions such as scientists, engineers, teachers, architects and similar occupations. The innovative provisions of this bill require close observation to assure fulfillment of the legislative intent and accordingly, appropriate revisions or other necessary changes shall be incumbent upon the Secretary to initiate. The Secretary shall give high priority to recommendations regarding further legislation.

In order to avoid duplications and unnecessary expense, the Secretary is authorized to make arrangements with appropriate federal or state agencies for assistance in the performance of his functions. In addition, the Secretary is authorized to enter into arrangement with appropriate state agencies to assist him in implementing the Act's provisions. The states of Wisconsin and New York, for example, exercise supervision over certain pension and welfare funds in their respective jurisdictions, and the experience and technical know-how of these state agencies would be of valuable assistance to the Secretary. It is not intended, however, that the state agencies utilized would formulate or apply substantive standards to plans subject to this Act which differ from the standards in this Act. The Secretary may also enter into appropriate agreements with such Federal Banking agencies as the Comptroller of the Currency, the Federal Deposit Insurance Corporation, etc. to assist him in administering and enforcing the fiduciary standards in the Welfare and Pension Plans Disclosure Act.

Part B. Coverage and Exemptions

It is intended that coverage under the Act be construed liberally to provide the maximum degree of protection to working men and women covered by private retirement programs. Conversely, exemptions should be confined to their narrow purpose.

In the case of any plan which fluctuates in terms of participant coverage both above and below twenty-six participants, it shall continue to be subject to the Act's coverage once it has become initially subject to the Act's coverage.

Plans of all non-profit institutions, with the exception of religious organizations, shall be subject to the Act in order to provide the employees of these institutions with protection equal to the protection of employees of profitmaking organizations. In the case of plans established or maintained by religious organizations for the benefit of employees engaged in activities not substantially identified with the primary role of the religious organization, such employees should obtain the benefits of coverage under this Act.

The Committee notes that special exemptions have been provided to plans which are financed exclusively through the medium of union membership dues and for plans which, as indicated above, cover less than 26 participants. As to the first, it was the Committee's conclusion, after careful consideration, that it would be unwise to impose federally mandated standards of vesting and funding on plans where the participants themselves have the means through the democratic processes of their union (as protected under the LMRDA) to install these improvements themselves. To insist on the application of the standards in this Act to such plans would, in effect, result in requiring the union members to tax themselves at a higher rate for benefit improvements which they themselves have been unwilling to accomplish for themselves by the means at hand. Such an approach would be inconsistent with the basis of this legislation which is to provide welfare and pension plan improvements where the participants do not have the means to provide these improvements themselves through their collective actions.

The Committee also concluded that an exemption for plans of small size was necessary in order to prevent discouraging small employers from establishing pension plans. The Committee has abundant statistical evidence to demonstrate that the greatest need for extending pension plan programs occurs in connection with employees of small business. While reasonable men may differ in their judgment as to whether a small plan exemption would encourage greater expansion of private pension plans among small businessmen, it is the Committee's judgment that subjecting all plans, regardless

of size, to the standards of this Act could have an inhibiting effect on future private pension expansion. In addition, the Committee recognized that small plans established for the self-employed and their employees meet adequate vesting standards under other laws. Finally, the bill does require the Secretary to study the need for expanding coverage of this Act to those plans which are not made subject to this Act. The Committee believes that this study will provide useful data which can serve as the basis for further policy in connection with expanding the Act's scope of coverage to smaller plans.

SECTION 108. CERTIFICATE OF RIGHTS

The Committee intends that the phrase "furnish or make available, whichever is most practicable" be construed to assure that plan participants obtain a copy of vested right certificates without imposing impractical burdens on plan administrators. In the case of large multi-employer plans, for example, arrangements made to delegate the certificate function to the participating employers or to require the participant to apply for his certificate upon his severance from employment may be necessary. Wherever possible, preference should be given to requiring the administrator to furnish the certificate to the participant.

Copies of vested right certificates are also required to be filed with the Secretary so that in the event a participant loses or misplaces his certificate or the certificate is accidentally destroyed, a record copy is availabe with the Secretary. It is the view of the Committee that the Secretary should explore the feasibility of coordinating his record keeping responsibilities in connection with this provision with the Social Security Administration so that the most efficient mechanism for maintaining records of vested interests can be developed.

TITLE II.—VESTING AND FUNDING REQUIREMENTS

Part A. Vesting

SECTION 201. ELIGIBILITY

Section 201 provides that no pension plan shall require, as a condition for eligibility to participate, a period of service longer than one year or an age greater than 25, whichever occurs later; however, a plan which provides 100% immediate vesting upon entry into plan, may restrict participation to those who are 30 years of age or have three years of service, whichever occurs later.

Earlier eligibility standards were considered and appeared to impose an unwarranted additional cost on plans. Additionally, the Committee believes on the basis of substantial evidence presented that until age 25 a large portion of the work force is still transient and accounting for such employees would impose unduly burdensome and costly record-keeping requirements on plan administrators. The Committee believes that an age 25 entry standard approaches the norm for the majority of plans today.

The exception for plans which provide 100% full vesting upon plan entry is based on the fact that such plans, like the TIAA-CREF plan for college teachers, provide earlier vesting in larger amounts than provided under the bill, and requiring such plans to install earlier membership requirements would impose burdens well beyond the minimum standards approach intended by the Committee, and might compel such plans to sacrifice immediate full vesting on plan entry.

SECTION 202. VESTING SCHEDULE

The Committee has endorsed a major innovation which provides for retrospective credit in accured benefits attributable to service rendered prior to the effective date of the vesting provisions. The prior version of S. 4 limited such retrospective vested benefit credit to workers age 45 or older on the effective date of the vesting provisions.

The prior version of S. 4 was predicated on the theory that older workers were most in need of retrospective vesting credit and that younger workers would have, in most instances, ample opportunity to attain adequate amounts of vested credits under the bill on the basis of their opportunity for service after the effective date of the vesting provisions.

Testimony in the February 15 and 16 hearings of the Labor Subcommittee indicated, however, that restricting retrospective vesting to workers age 45 tended to be arbitrary. In addition, actuarial cost data prepared for the Subcommittee in February, 1973, (See Appendix disclosed that the additional incremental cost associated with eliminating the age 45 cut-off was no more than .2 percent of payroll or an additional 9 percent of present plan cost. This additional increment of cost appears, therefore, to be tolerable by the vast majority of plans that would be subject to the vesting provisions of S. 4 and is greatly outweighed by the much larger number of workers who will be rewarded for their labors by retrospective vesting. Accordingly, in the interests of complete equity, as a means of strengthening worker's incentives based on private retirement arrangements, and to promote simplicity in the understanding and application of the vesting requirements of the bill, total retrospective vesting credit, regardless of age, was adopted.

It is to be understood that in the event the plan is provided a 5-year deferral from compliance with vesting in accordance with section 216, active participants at the time vesting compliance commences are to be provided credit for service performed during the 5-year period of deferral. It should also be made clear, that the vesting benefits provided by this title are applicable only to those active employees who are covered by the plan on the effective date of the title, or, in the event of a 5-year deferral, on the date statutory vesting compliance commences.

Section 202 requires that three of the eight years of service required to qualify for an initial vested right be continuous. In order to assist participants to know whether they have met this requirement, it is contemplated that the Secretary will prescribe appropriate notification procedures which avoid impractical burdens on plan administrators.

In addition, Section 202(b)(3) recognizes that while, in general, aggregate service rather than continuous service requirements will more nearly meet the needs of most employees in a mobile industrial

society, such a standard if applied to an employee permanently separated from employment with 100% vested rights might militate against his subsequent rehire. Accordingly, Section 202(b)(3) permits an employer to ignore such an employee's prior service if he is rehired. This exception is not intended to apply to employees who are separated with less than 100% vested rights.

Under section 202(e), the Secretary is authorized to approve a vesting schedule, in lieu of that mandated by the bill, which provides a degree of vesting protection as equitable as that contained in the bill. For example, for most participants, vesting schedules in the so-called "pattern plans" negotiated in the auto industry, which provide 100 percent full vesting upon completion of 10 years of service, would appear to provide as equitable a degree of vesting protection as that in the bill. In no event, should the Secretary approve an alternate vesting schedule which provides for 100% vesting upon the completion of more than 15 years of service.

The Committee believes further that there is no reasonable justification for depriving employees in multiemployer plans of the vesting protection mandated by the Bill. Section 202 subjects such plans to its requirements.

PART B. FUNDING

SECTION 210.—FUNDING REQUIREMENTS

The Committee believes that actuarially sound funding procedures are indispensable to effective implementation of the purposes of the Act. If employers never went out of business or terminated pension plans before they were completely funded, there would, no doubt, be no persuasive justification for funding standards aside from whatever tax considerations might be applicable. Nevertheless, employers do experience financial or economic difficulties or they undergo varying degrees of corporate reorganization, all of which can lead to premature termination of underfunded plans. A plan termination insurance program provides the essential safeguard to the rights of workers who are trapped by these unforseen economic hazards but such a program cannot be made practical without being coupled to required standards of funding. To create a plan termination insurance program without appropriate funding standards would permit those who present the greatest risk in terms of exposure to benefit at the expense of employers who have developed conscientious funding programs. The funding standards contained in Section 210 are designed to lessen that unnecessary exposure by requiring every plan to be funded in a manner which will fully amortize unfunded liabilities in 30 years. 30 years was selected as representing more closely the funding period norm for most private plans. It is within the contemplation of the Committee that so-called "pay-as-you-go" or "terminal funded" plans are precluded under the requirements of this section.

It should be noted that the unfunded liabilities are to be amortized in no less than equal annual payments over a 30-year period. This will permit the unfunded liabilities to be funded faster in the earlier years of the plan and more slowly in the later years, as long as the cumulative funding status of the plan is always where it would have been if the unfunded liabilities had been amortized by precisely equal annual payments.

SECTION 211.—DISCONTINUANCE OF PLANS

One of the most unregulated features of the private pension plans is their bewildering array of inconsistent provisions governing the priority of distribution of plan assets in the event of plan termination. Section 211 is intended to rectify this matter and should be construed in an integral fashion with the plan termination insurance provisions. The Secretary has been given discretion to determine what constitutes "a substantial termination". In making his determination of a "substantial termination" the Secretary should be guided primarily by the interests of plan participants and beneficiaries and the capability of the insurance program to adequately and equitably underwrite plan termination losses.

PART C. VARIANCES

SECTION 216.—DEFERRED APPLICABILITY OF VESTING STANDARDS

The Committee recognizes that despite a three-year delayed effective date for compliance with vesting standards, there still may be some plans which will experience a cost burden that would result in substantial economic injury to the interests of employers and their employees.

As to these plans, provision is made that if they can demonstrate "substantial economic injury" as defined and intended by the Act, they may be eligible for an additional period not to exceed 5 years within which to commence compliance.

The requirement that in collectively-bargained plans both parties must join in requesting the variance is believed necessary since in such cases both parties involved have a vital and intrinsic interest. Both will serve as a check and balance on the other, and by virtue of this check and balance, a joint application from the parties is to be accorded due weight.

SECTION 217.—VARIANCES FROM FUNDING REQUIREMENTS

Under this section, the Secretary is directed to prescribe a period of time in excess of 30 years for multiemployer plans to fund their unfunded benefit liabilities. In prescribing such additional periods, it is the Committee's intention that the Secretary may proceed by promulgating specific periods for specific multiemployer plans or for specific classes of multiemployer plans where characteristics are substantially identical. In promulgating such additional periods the Secretary need not be bound by actuarial standards more appropriate in application to single employer plans, but should formulate a standard of funding adequacy which reflects the plan's experience and gives reasonable assurance that the plan's benefit commitments will be met. While no specific upper limit on the funding period is expressed in this section, no additional period should be prescribed which would be manifestly inconsistent with the underlying purposes of this Act.

In considering the experience of multi-employer plans for establishment of new premium rates, the Secretary shall take into account for prescribing lower rates, the withdrawal of employers from such plans, although the withdrawal did not result in significant reductions of

contributions to the plan. The purpose of this provision is to direct the Secretary to assure that multi-employer plans are not inequitably treated by prescribing premium rates which do not take into account or are not consonant with the low incidents of termination experience of such plans.

In all proceedings under Part C, the Committee intends that the Secretary afford interested parties, including plan participants and beneficiaries, the opportunity to present their views.

PART D. PROTECTION OF PENSION RIGHTS

Because of rapid and frequent changes in Federal procurement objectives and policies, professional, teaching, scientific and technical personnel suffer a uniquely high rate of forfeiture under private pension plans. Last year, in connection with the National Science Policy and Priorities Act of 1972 (S. 32), the Committee adopted as a Title IV to that bill, requirements that would cause the Director of the National Science Foundation to investigate the matter and attempt to develop new procurement standards which would provide adequate protection of these mobile personnel who because of Federal procurement contract terminations and changes in procurement objectives rarely work long enough for a single employer so that the vesting standards contained in Title II of this bill would provide sufficient protection to them.

Upon review of this matter, the Committee concluded that it would be more appropriate to lodge this authority in the Secretary of Labor, who has overall supervisory authority of private pension plans under this bill, and to expand coverage of his authority to encompass other professional personnel, such as teachers, architects, medical technicians, etc., working on government contracts, in addition to engineers and scientists. This is accomplished in Part D of Title II.

Section 221 states that the Secretary of Labor shall develop his recommendations for changes in federal procurement regulations "in consultation with appropriate professional societies". The Committee considers this phrase to include unions of professional personnel. Section 221 also requires that changes in procurement contracts should be developed "to the extent feasible", and this element compels the Secretary of Labor to take account of the existing provisions of law affecting private pension plans, the circumstances surrounding the establishment and operation of such plans by government contractors, the impact of plan revisions on existing industrial relations in aerospace, defense, and similar industries, as well as the economic consequences of any specific approach or series of approaches to securing greater pension protection through governmentally-imposed standards.

TITLE III.—VOLUNTARY PORTABILITY PROGRAM FOR VESTED PENSIONS

It is the belief of the Committee that the voluntary portability program created by this Title will stimulate and lead to enhanced vested benefits under the Act and will pave the way for providing vested benefits more closely related to all of a worker's productive years. In addition, such a program will simplify and relieve many employers of recordkeeping problems which add administrative expense to their plans. The Committee is aware of the arguments of those who have opposed legislative efforts to initiate portability. However, the Committee is persuaded that such a program is feasible and that the successful implementation of a system of tax-free transfer of vested credits in Canada without the "clearinghouse" format created by this Section is proof of its feasibility. Obviously, if present tax laws could be modified to permit the tax-free transfer of vested credits by employees from job to job, then the "clearinghouse" system established by this Title might not be indispensable. However, in the absence of such far-reaching tax changes, the voluntary program established herein can prove to be of inestimable value to many participants.

There are a number of important elements of this voluntary program:

First, it is purely voluntary on the part of employers to enlist their plans in the portability system.

Second, it is purely voluntary on the part of the employee as to whether he wishes to transfer his vested credits from one member plan to another member plan through the clearinghouse mechanism.

Third, the Secretary is empowered to protect the employee's vested interest from his initial plan by assuring that the credits purchased from the new plan have equivalent actuarial value.

Fourth, amounts deposited in the "clearinghouse" fund may be channeled into socially desirable and productive investments, such as housing, since surplus amounts may be deposited in interest-bearing accounts of banks or savings and loan associations insured by the FDIC or the FSLIC.

Fifth, the Secretary is authorized to provide technical assistance to plans wishing to enter into reciprocal arrangements which will facilitate the free transfer of all pension credits, vested or not. In this connection, it is not intended that the Secretary actually establish such arrangements on behalf of the requesting parties but that he provide appropriate assistance.

The Committee does not believe that the portability program established by this Title is a substitute or replacement for adequate minimum vesting standards. It is, instead, an extension of the vesting concept which permits the employee to capture the value of his vested interest at a particular point in time and exchange that value for credits which will mature into an ultimately greater vested benefit than he might otherwise obtain.

TITLE IV.—PLAN TERMINATION INSURANCE

SECTION 401.—ESTABLISHMENT AND APPLICABILITY OF PROGRAM

The bill reported by the Committee requires plan termination insurance to cover unfunded vested liabilities incurred *prior to* as well as subsequent to enactment of the Act, in order to prevent employees from being deprived from insurance protection for retirement credits earned before enactment.

The Secretary may provide insurance to plans to cover unfunded vested liabilities of a plan not subject to the Act so long as there is compliance with the vesting, funding and other requirements of the

Act and the plan pays the requisite assessments and premiums. This is intended to make insurance coverage under the Act available on a voluntary basis to plans not subject to the Act.

SECTION 403.—ASSESSMENTS AND PREMIUMS

The Committee adopted a provision which requires initial three-year premium to be paid by plan, as follows:

(a) For funded vested liabilities incurred after enactment—0.2 percentum of unfunded vested liabilities;

(b) For unfunded vested liabilities incurred prior to enactment—0.2 percentum of unfunded vested liabilities provided plan was 75 percent funded during five-year period preceding Act, or if plan less than five years old on date of enactment, if it was reducing unfunded vested liabilities at rate of five percent each year;

(c) For unfunded vested liabilities incurred prior to Act, but funding tests above in (b) not met—not more than .4 percentum and not less than 0.2 percentum of such unfunded vested liabilities;

(d) As to multi-employer plans, both as to unfunded vested liabilities incurred before or after Act—not to exceed 0.2 percentum of all such unfunded vested liabilities.

In order to minimize the risk of shifting to the reinsurance program substantially unfunded liabilities created prior to enactment, it was believed essential to create two classes of risks for purposes of setting the premium rate. If the plan was being funded in an adequate fashion, i.e., was 75 percent funded or was amortizing unfunded vested liabilities at the rate of five percent each year, it was believed that such a plan was an acceptable risk and the .2 percentum premium rate was appropriate. In the event the plan did not meet the test of funding adequacy, as indicated, it falls in the category of being a higher risk, and therefore, can be charged up to twice the amount of normal premium, but no more. Since multi-employer plans, as defined in the bill, have a much lower risk of plan termination, it was believed appropriate to continue charging the .2 percent premium regardless of when the unfunded vested liabilities were incurred.

SECTION 404.—PAYMENT OF INSURANCE

There are a variety of circumstances under which pension plans terminate. In some cases, the termination proceeds by stages. In other cases, it may happen fairly rapidly. In order to carry out the purpose of the reinsurance program while at the same time protecting the program from undue exposure owing to delays, manipulation, or unforeseen economic hazards following plan termination, the Secretary is provided with sufficient flexibility to determine the most appropriate procedure for winding up terminated plans and assuring effective implementation of the insurance program.

It is also required that plans furnish to the Secretary adequate prior notice of intent to terminate the plan. Persons responsible for giving such notice who fail to do so, or who terminate plans in order to circumvent or avoid the Act or the WPPDA, are held personally liable for losses sustained by the insurance program. The Committee believes this approach to be more practical and less time-consuming than requiring a plan to obtain the approval of the Secretary before the plan can be terminated, which was the approach employed in the prior version of S. 4.

SECTION 405.—RECOVERY

The Committee recognizes that in order to provide adequate protection to employees against loss of vested benefits owing to premature plan termination, it is necessary for the insurance program to cover all forms of plan termination regardless of the circumstances giving rise to the termination. The Committee also recognzed that some degree of employer liability was essential where the employer was not insolvent at the point of plan termination in order to preclude abuse by shifting the financial burden to the plan termination insurance program despite the fact that the employer had avaiable funds to continue funding the plan.

One approach to this problem would be to require financially responsible employer to, in effect, act as self-insurers for the unfunded vested liabilities and those who are not financially responsible to obtain plan termination insurance. This approach, which is supported by precdent in the field of workmen's compensation, for example, was considered and rejected becuase of the potentially enormous liabilities invoved. To require the Secretary to evaluate the financial capabilities of particular employers to assume such potentially enormous liabilities might have an adverse effect on the employer's competitive position and on his continued healthy growth.

Having determined that participation in the plan termination insurance program was essential for all plans, and that some degree of employer liability was necessary, the question of the degree of such liability becomes important. The Committee had concern that if the degree of liability was absolute to the extent of the employer's assets, it might drive some employers to the brink of bankruptcy, impose substantial economic hardship, or discourage the establishment of plans or the reasonable liberalization of benefits.

Accordingly, the Committee endorsed a formula of employer liability which requires the employer to reimburse the plan termination insurance program for the total amount of insurance paid, but in no event greater than 50% of employer's net worth at time of plan termination.

In addition, as a result of plan termination field hearings held by the Labor Subcommittee, numerous instances were disclosed where acquiring companies that terminated pension plans failed to take over the liability for vested benefits owed to the employees of the predecessor company. Since this circumstance could also arise in connection with the reinsurance provision, it is necessary to strengthen the reinsurance provisions by requiring successors-in-interest to be liable for reimbursements owed by predecessor companies.

In order to make liability of employer for reimbursement of insurance paid meaningful, it was considered essential to provide a mechanism for enforcement of such liability through giving the government a lien on employer property for unpaid amounts due.

With respect to the Secretary's authority to treat portions of multiemployer plans as terminated for purposes of applying the plan termination insurance provisions, it should be noted that the contributing

employers in such arrangements are free to arrange indemnification agreements among themselves in connection with the plan's application for insurance coverage under Title IV, so that employer liability for reimbursement of insurance paid under Title IV can be allocated under terms that the parties themselves have agreed to as equitable.

TITLE V.—DISCLOSURE AND FIDUCIARY STANDARDS

Title V amends the Welfare and Pension Plans Disclosure Act in two significant ways. First, by additions to and changes in the reporting requirements designed to disclose more significant information about plans and the transactions engaged in by those controlling plan operations and to provide specific data to participants and beneficiaries concerning the rights and benefits they are entitled to under the plans and the circumstances which may result in their not being entitled to benefits. Second, by the addition of a new section setting forth responsibilities and proscriptions applicable to persons occupying a fiduciary relationship to employee benefit plans, including a "prudent man" standard for evaluating the conduct of all fiduciaries, and by barring from responsible fiduciary provisions in such plans for a period of five years all persons convicted of certain listed criminal offenses.

REPORTING AND DISCLOSURE

The underlying theory of the Welfare and Pension Plans Disclosure Act to date has been that reporting of generalized information concerning plan operations to plan participants and beneficiaries and to the public in general would, by subjecting the dealings of persons controlling employee benefit plans to the light of public scrutiny, insure that the plan would be operated according to instructions and in the best interests of participants and beneficiaries. The Secretary's role in this scheme was minimal. Disclosure has been seen as a device to impart to employees sufficient information and data to enable them to know whether the plan was financially sound and being administered as intended. It was expected that the information disclosed would enable employees to police their plans. But experience has shown that the limited data available under the present Act is insufficient. Changes are therefore required to increase the information and data required in the reports both in scope and detail. Experience has also demonstrated a need for a more particularized form of reporting so that the individual participant knows exactly where he stands with respect to the plan—what benefits he may be entitled to, what circumstances may preclude him from obtaining benefits, what procedures he must follow to obtain benefits, and who are the persons to whom the management and investment of his plan funds have been entrusted. At the same time, the safeguarding effect of the fiduciary responsibility section will operate efficiently only if fiduciaries are aware that the details of their dealings will be open to inspection, and that individual participants and beneficiaries will be armed with enough information to enforce their own rights as well as the obligations owed by the fiduciary to the plan in general.

The Committee regards the following changes in the reporting and disclosure provisions as most significant.

First, the general exemption in Section 4(b)(3) of the Act for plans of certain non-profit organizations such as hospitals, universities, foundations, etc. has been revised to exempt only plans of religious organizations. There is no substantial reason why employees covered by plans of non-profit organizations should be entitled to less protection or less disclosure than employees covered by plans of profit-making organizations.

Second, the annual report must include the opinion of an independent auditor based upon the results of a required annual audit. Such information will allow better assessment of the plan's financial soundness by administrators and participants alike (the exemption for the books of institutions providing investment, insurance, and related functions and subject to periodic examination by a government agency will prevent duplicative audit examinations of these institutions). In light of this change, the provision requiring the Secretary to obtain certification of the report by an independent accountant prior to making an investigation of plan books and records has been eliminated as superfluous.

Third, funded plans must include in their reports particularized information pertaining to leases, party-in-interest transactions, and investments in assets other than securities, in addition to information about securities, investments, and loans. With respect to transactions other than those involving parties-in-interest, particularized information is to be provided, in general, if the transaction exceeded three percent of fund value. Also, actuarial information is now required so that participants and beneficiaries and the Secretary can evaluate the funding of the plan.

Amendments to provide detailed information to individual participants are found in Section 8 of the Welfare and Pension Plans Disclosure Act. In addition to the current obligation to make available copies of the plan description and latest annnal report, the administrator will be required to furnish or make available, whichever is most practicable, to every participant upon enrollment in the plan a summary of the plan's important provisions, an explanation of the benefits, and the circumstances which may disqualify a participant from securing benefits, as well as the availability of the underlying plan documents, such as bargaining agreements, trust agreements. The participant may obtain from the administrator a copy of any or all underlying documents relating to the plan upon the payment of a reasonable charge (as determined by the Secretary).

Finally, in view of the significantly expanded functions, given to the Secretary under the Retirement Income Security for Employees Act and the Welfare and Pension Plans Disclosure Act, the membership of the Advisory Council to the Secretary found in Section 14 is amended to create new permanent categories of membership, including investment counselors, actuarial consultants, and accountants, and the composition of the Advisory Council is increased to 21 members to take account of these functions.

Fiduciary Responsibility

A fiduciary is one who occupies a position of confidence or trust. As defined by the amendments, a fiduciary is a person who exercises any power of control, management or disposition with respect to

monies or other property of an employee benefit fund, or who has authority or responsibility to do so. It is not the intent of the Committee, however, that where the sole power of control, management or disposition with respect to plan funds rests with the participants themselves, as may be the case with respect to certain plans where the participant has the sole discretion over an individual account established in his name, that such participants shall be regarded as fiduciaries. The fiduciary responsibility section, in essence, codifies and makes applicable to these fiduciaries certain principles developed in the evolution of the law of trusts. The section was deemed necessary for several reasons.

First, a number of plans are structured in such a way that it is unclear whether the traditional law of trusts is applicable. Predominantly, these are plans, such as insured plans, which do not use the trust form as their mode of funding. Administrators and others exercising control functions in such plans under the present Act are subject only to minimal restrictions and the applicability of present State law to employee benefit plans is sometimes unclear. Second, even where the funding mechanism of the plan is in the form of a trust, reliance on conventional trust law often is insufficient to adequately protect the interests of plan participants and beneficiaries. This is because trust law had developed in the context of testamentary and inter vivos trusts (usually designed to pass designated property to an individual or small group of persons) with an attendant emphasis on carrying out the instructions of the settlor. Thus, if the settlor includes in the trust document an exculpatory clause under which the trustee is relieved from liability for certain actions which would otherwise constitute a breach of duty, or if the settlor specifies that the trustee shall be allowed to make investments which might otherwise be considered imprudent, the trust law in many states will be interpreted to allow the deviation. In the absence of a fiduciary responsibility section in the present Act, courts applying trust law to employee benefit plans have allowed the same kinds of deviations, even though the typical employee benefit plan, covering hundreds or even thousands of participants, is quite different from the testamentary trust both in purpose and in nature.

Third, even assuming that the law of trusts is applicable, without provisions (lacking in the present Act) allowing ready access to both detailed information about the plan and to the courts, and without standards by which a participant can measure the fiduciary's conduct (also lacking in the present Act) he is not equipped to safeguard either his own rights or the plan assets. Furthermore, a fiduciary standard embodied in Federal legislation is considered desirable because it will bring a measure of uniformity in an area where decisions under the same set of facts may differ from state to state. It is expected that courts will interpret the prudent man rule and other fiduciary standards bearing in mind the special nature and purposes of employee benefit plans intended to be effectuated by the Act.

Finally, it is evident that the operations of employee benefit plans are increasingly interstate. The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws.

Section 15(a) when read in connection with the definition of the term "employee benefit fund" makes it clear that the fiduciary provisions apply only to those funds which leave assets at risk. While the Retirement Income Security for Employees Act has the effect of requiring all retirement plans subject to that Act to be financed through the medium of a segregated fund, there may be welfare funds subject to the Welfare and Pension Plans Disclosure Act such as those providing sickness or disability benefits, which may not be funded. Thus, an unfunded plan in which the only assets from which benefits are paid are the general assets of the employer is not covered. However, if the plan does have assets at risk, the form in which these assets are held is deemed to be a trust, whether or not a trust agreement exists, except that every employee benefit fund is required to be established or maintained pursuant to a written document indicating the purpose and basis of the fund. In the case of insured plans, this would encompass the insurance contract or similar agreement. Fund assets are therefore deemed a trust and may only be used for the purposes of providing benefits for participants and defraying reasonable expenses.

It is to be noted that the definition of "employee benefit fund" excludes assets of an investment company regulated under the Investment Company Act of 1940 but any participating shares held by the employee benefit fund in an investment company are assets of the fund and subject to coverage under this section.

The Committee also has made provision for contributory plans to equitably distribute any surplus funds remaining on plan termination to the participants in accordance with their rate of contribution. This requirement is applicable only after plan assets have been used to satisfy all liabilities. The Committee believes it is unfair to permit the complete recapture by employers of surplus funds in terminated contributory plans, without regard to the fact that contributions by the workers helped to generate the surplus. The Committee wishes to emphasize that while it is not passing judgment on any particular case now pending, it has concluded that equitable principles require that this particular subject be governed by a specific rule which reflects what the Committee regards as essential protection for the interests of workers in such plans.

Subsection 15 (a) (b) and (c) incorporate the core principles of fiduciary conduct as adopted from existing trust law, but with modifications appropriate for employee benefit plans. These salient principles place a twofold duty on every fiduciary: to act in his relationship to the plan's fund as a prudent man in a similar situation and under like conditions would act, and to act consistently with the principles of administering the trust for the exclusive purposes previously enumerated, and in accordance with the documents and instruments governing the fund unless they are inconsistent with the fiduciary principles of the section.

There follows a list of proscriptions which represent the most serious type of fiduciary misconduct which in one way or another has occurred in connection with some welfare or pension plans. Some of these situations have been found in the administration of the WPPDA. Others have been discovered by congressional investigations, newspaper reporters, audits, and miscellaneous sources. While the magnitude of these improper practices is small in relation to the total number of plans in existence, the seriousness of the improper practices disclosed indicates the need for additional precautions to insure that these specific examples do not become general conditions. The list of proscriptions is intended to provide this essential protection.

With respect to the prohibition against transferring indicia of ownership of plan assets outside the United States, this is intended to preclude frustration of adequate fiduciary supervision and remedies for breach of trust. However, the Committee recognizes that it is not necessarily imprudent for plan funds to invest in securities of foreign companies, and the high cost of transferring securities back and forth overseas might result in impractical burdens to plan administrators. Accordingly, the Secretary is authorized to provide a specific exemption from this requirement where the participants' interests are safeguarded in an adequate fashion.

The exemption provision which follows the listed proscriptions has been included in recognition of established business practices, particularly of certain institutions such as commercial banks, trust companies, insurance companies, and investment counselors, which often perform fiduciary functions in connection with employee benefit plans. The Secretary may provide individual or class exemptions so that the established practices of these institutions and others are not unduly disrupted, so long as they serve the participants interests, and are not inconsistent with the purposes of this Act.

Next, there are listed transactions in which fiduciaries are expressly allowed to engage. This listing is necessary for reasons similar to those which required inclusion of the exemption provision. That is, the breadth of proscriptions, which was considered necessary for the reasons stated above, would operate in some cases to prohibit transactions which are deemed desirable to the sound, efficient functioning of employee benefit plans. It was, therefore, necessary to specify that certain transactions, likely to be engaged in by fiduciaries of virtually all plans, will be allowed notwithstanding the proscriptions.

It is emphasized, however, that even with respect to the transactions expressly allowed, the fiduciary's conduct must be consistent with the prudent man standards.

In this connection, the Subcommittee, after careful deliberation, deleted a prior provision, section 15(d), which expressly permitted a "party in interest" to provide multiple services to a plan, regardless of whether the "party in interest" was also serving in a fiduciary capacity and receiving fees or compensation for the performance of discretionary functions with respect to plan funds.

Section 15(d) had been predicated on the recognition that fiduciaries, subject to regulation and supervision under laws affecting banking, insurance and securities, performed a variety of services and functions, some customary and rooted in the historical development of the fiduciary's role, and some newly arisen as a means of strengthening the fiduciary's competitive position.

Many of these multiple services or functions are or could be rendered in connection with a variety of trusts or funds other than pension trusts or funds. Examples are widows' estates, mutual funds, college endowment funds, variable annuity funds, etc. Because the fiduciary's conduct relative to the performance of multiple functions was subject to regulation under laws affecting insurance, banking and securities, the Committee originally took the position that additional regulation in this field should proceed *sui generis* under these laws. The Committee believed that the bill provided ample remedy in the event, for example, the fiduciary breached his trust by "churning" pension fund accounts to generate profit for himself or ancillary activities under his control, or by channeling pension fund investments to shore up vulnerable investments made by a commercial adjunct.

Upon review by the Subcommittee of section 15(d), however, a competing school of thought emerged, which emphasized the difficulty of securing an adequate system of control over fiduciary-commercial relationships in the context of pension fund management. It was argued that these relationships tend to subordinate the strict professionalism expected of fund managers to business pressures and that, inevitably, certain fund managers are bound to yield to these pressures and cause trust fund abuse in a manner which is not always accessible to timely discovery. Because the interests of pension fund beneficiaries deserve the strongest protection, it was urged that the Subcommittee adopt a rule which would bar a fiduciary from performing multiple business services for the pension trust unless, after application by the fiduciary, the Secretary waives the proscription on grounds that it is consistent with the purposes of the Act and is in the interest of the fund or classes of funds and the participants and beneficiaries.

The Committee is aware that there exist various established and recognized practices which are accepted in commercial banking, trust and insurance companies, investment companies and other advisors in connection with employee benefit plans. However, notwithstanding current acceptance of such practices, the Subcommittee has found it difficult to establish definitive criteria concerning those practices which should be specifically proscribed. This difficulty was weighed by the Committee against the overriding need to protect workers' pension funds, and it concluded that the latter's interest out-weighed any current attempt to define all practices and relationships which constitute not only actual but real potential threats to the security and preservation of the pension funds. Accordingly, the Secretary of Labor, is authorized by the Act to waive any proscribed practice as long as it is consistent with the purposes of the Act and determined to be in the interests of pension plan participants. The Committee is not unaware of the possible impact of these prohibitions, and accordingly has made provision in the bill for an adequate transition period of 3 years, or longer, if warranted.

In the exercise of his exemption authority, the Secretary is expected to consult with other officials responsible for the administration of laws affecting insurance, banking, and securities, to ascertain their views. However, it is to be understood that in determining what is in the interest of participants and beneficiaries of pension plans, the judgment of the Secreatry of Labor shall be controlling.

The Secretary's exemption authority under section 15(b)(3) also extends to certain party-in-interest transactions which are proscribed under section 15(b). In exercising this authority, consideration should be given to developing criteria which, if met by the plan, would provide adequate safeguards to the interests of participants and beneficiaries, and thus, provide a basis for approving certain types or classes of party in interest transactions. The Committee believes,

however, that such transactions should not be sanctioned solely on the basis that the transaction is for "adequate consideration" since it has sufficient evidence that the application of this standard has not, by itself, curbed conflict-of-interest abuse. Rather, the Committee intends that in developing criteria for adequate safeguards the Secretary should consider such matters as the nature and purpose of the plan, and the indispensability of the proscribed transaction to effectively carrying out the purposes of the plan, the extent to which participants under the plan possess alternative methods of investing or managing their accounts, the existence of independent safeguards or guarantees that provide adequate security to participant interests, etc.

Especially significant among the expressly allowed transactions is that which permits, in most type of plans, investment of up to ten percent of the fund assets in securities issued by the employer of employees who are participants in the plan. Since such an employer will often be an administrator of his plan, or will function as a trustee or in some other fiduciary capacity, this provision creates a limited exception to the listed proscription against self-dealing. The exception is made in recognition of the symbiotic relationship existing between the employer and the plan covering his employees. Such investments are commonly made under provisions in a trust agreement expressly allowing them.

The ten percent limitation applies to present holdings of plan funds as well as to prospective transactions. The Committee believes that where plan funds are presently heavily invested in securities of the employer, the participants are placed at jeopardy if the financial of the employer should deteriorate.

In recognition of the special purpose of profit-sharing and similar plans, the limitation does not apply to such plans if they explicitly provide for greater investment in the employer securities, nor should any diversification principle that may develop from application of the prudent man principle be deemed to restrict investment by profit-sharing plans in employer securities. On the other hand, diversification standards, whether based on percentage or amount of plan funds, may be appropriately applied to investments by profit-sharing plans in other than employer securities. An appropriate transitional period is provided for securing compliance with these requirements with discretion to the Secretary to provide additional time where needed.

The next two subsections (15(d) and (e)) are intended to codify, with respect to employee benefit fund fiduciaries, rules developed under the law of trusts. Thus a fiduciary is made personally liable for his breach of any responsibility, duty, or obligation owed to the fund, and must reimburse the fund for any loss resulting from such a breach. He must also pay over to the fund any personal profit realized through use of fund assets. Where two or more fiduciaries manage a fund, each must use care to prevent a co-fiduciary from committing a breach or to compel a co-fiduciary to redress a breach. Plan business is to be conducted by joint fiduciaries in accordance with the governing instruments of the plan, or in the absence of such provisions by a majority of fiduciaries and a fiduciary who objects in writing to a specific action and files a copy of his objections with the Secretary is not liable for the consequences of such action.

Exculpatory and similar clauses which purport to relieve a fiduciary from any responsibility, obligation, or duty which under the Act are expressly prohibited and made void as against public policy. Whatever the validity such provisions might have with respect to testamentary trust, they are inappropriate in the case of employee benefit plans.

The large numbers of people and enormous amounts of money involved in such plans coupled with the public interest in their financial soundness, as expressed in the Act, require that no such exculpatory provision be permitted.

In this connection, it should be noted that while co-fiduciaries are permitted to allocate responsibilities among themselves and, by so doing, generally limit their liability to the extent of their specified duties, a co-fiduciary who has specific knowledge of a breach of trust committed by a co-fiduciary or who could have reasonably been expected to realize that another co-fiduciary was breaching his trust, can be held personally liable for failure to compel redress of the breach or prevent the breach, unless he has filed in a timely fashion his objections with the Secretary.

Subsection 15(h) prohibits persons convicted of certain listed crime from serving, for a period of five years after conviction or the end of imprisonment for such conviction, in a responsible position in connection with an employee benefit plan. The prohibition is considered necessary because of the large funds involved and the attendant great risk of a loss affecting a large number of persons. Section 15 is modeled after Section 504 of the Labor-Management Reporting and Disclosure Act (LMRDA) which bars persons convicted of certain crimes from serving as union officers. The presence of the LMRDA prohibition is another reason for including a similar provision in the Protection Act. Without such a provision persons barred from serving as union officers might take positions with employee benefit plans. The danger inherent in such a transfer is especially great where elements of organized crime are involved.

The crimes listed have been chosen with care and have been specifically expanded from those listed in Section 504, LMRDA, to assure adequate protection to participants and beneficiaries.

It is to be noted, however, that the Secretary is empowered by the Act to waive the prohibition during the 5-year period where he determines that a person's services in such capacity would not be contrary to the purposes of the Act. It is intended that in the exercise of this discretionary power, the Secretary may not only inquire into the extent of rehabilitation of the convicted person, but also into the circumstances surrounding or attendant to the commission of the disqualifying offense in order to ascertain mitigating factors which would affect the gravity of such offense. Such mitigating circumstances would include technically disqualifying offenses committed in the context of, and related to, a genuine labor dispute, and should be considered by the Secretary in passing upon a waiver application.

In addition, the Committee has found that a substantial number of plans fail to provide adequate and fair procedures to participants and beneficiaries when their benefit claims or applications are denied. Subsection 15(l) is intended to rectify this inequity by requiring plans to provide adequate notice in writing to participants or beneficiaries whose benefits have been denied, setting forth the specific reasons in terms that can be readily grasped by the participant, and to afford a reasonable opportunity for a full and fair review by the plan administrator of any decision denying benefits.

Finally, the Committee has become aware of numerous instances in which the widows of deceased pension plan participants have failed to receive the survivorship or death benefits which they have relied on because the husband while alive had through inadvertance or misunderstanding, failed to exercise the survivorship or death benefit option in his retirement plan. In order to correct the loss of survivorship or death benefits which arise by reason of failure to comply with plan technicalities, the Committee adopted a provision which assures that survivorship or death benefit options cannot be lost by default on the part of the worker. The provision adopted by the Committee specifies that in order for the death benefit option to be waived by the participant, there must be a writing signed by the participant to such effect, after such participant has received a written explanation of the terms and conditions of the option and the effect of such waiver.

TITLE VI.—ENFORCEMENT

The enforcement provisions have been designed specifically to provide both the Secretary and participants and beneficiaries with broad remedies for redressing or preventing violations of the Retirement Income Security for Employees Act as well as the amendments made to the Welfare and Pension Plans Disclosure Act. The intent of the Committee is to provide the full range of legal and equitable remedies available in both state and federal courts and to remove jurisdictional and procedural obstacles which in the past appear to have hampered effective enforcement of fiduciary responsibilities under state law or recovery of benefits due to participants. For actions in federal courts, nationwide service of process is provided in order to remove a possible procedural obstacle to having all proper parties before the court.

Except where plans are not subject to the Retirement Income Security for Employees Act or the Welfare and Pension Plans Disclosure Act, and in certain other enumerated circumstances, state law is preempted. Because of the interstate character of employee benefit plans, the Committee believes it essential to provide for a uniform source of law in the areas of vesting, funding, insurance and portability standards, for evaluating fiduciary conduct, and for creating a single reporting and disclosure system in lieu of burdensome multiple reports. As indicated previously, however, the Act expressly authorizes cooperative arrangements with state agencies as well as other federal agencies, and provides that state laws regulating banking, insurance or securities remain unimpaired.

Section 610 makes it unlawful for any person to discharge, fine, suspend, expel, discipline or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of the plan or the Act or the Welfare and Pension Plans Disclosure Act or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan or the Act or the Welfare and Pension Plans Disclosure Act.

Section 611 makes it a criminal offense for any person to use fraud, force, or violence or threats thereof to restrain, coerce, intimidate or attempt to restrain, coerce, intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan, the Act, or the WPPDA.

These provisions were added by the Committee in the face of evidence that in some plans a worker's pension rights or the expectations of those rights were interfered with by the use of economic sanctions or violent reprisals. Although the instances of these occurrences are relatively small in number, the Committee has concluded that safeguards are required to preclude this type of abuse from being carried out and in order to completely secure the rights and expectations brought into being by this landmark reform legislation.

TITLE VII.—EFFECTIVE DATES

In order to provide sufficient time for pension and profit-sharing retirement plans to adjust to the new vesting and funding standards, to make provision for additional costs which may be experienced, and to permit negotiated agreements to transpire, the Committee has provided a three-year delayed effective date for compliance with the vesting and funding standards. Since the portability program is voluntary, it is believed that a one-year delayed effective date is sufficient to permit the Secretary to set in motion the administrative apparatus appropriate for this program. In order to assure as expeditiously as possible, termination insurance coverage for unfunded vested liabilities incurred prior to enactment, a one-year delayed effective date is provided for plans to obtain termination insurance pursuant to the provisions of Title IV. All other provisions are to become effective upon enactment.

VII. Section-by-Section Analysis

TITLE 1.—ORGANIZATION, POWERS, AND DUTIES OF THE SECRETARY OF LABOR

Section 101.—This section requires the Secretary of Labor to promote programs and plans for the administration and operation of employee benefit plans in furtherance of the findings and policies set forth in the Act. He shall determine the eligibility for registration of such plans upon compliance with the requirements specified in the Act. Where plans are unqualified, he is authorized to cancel the registration. The Secretary is directed to administer and enforce the provisions of this Act and the Welfare and Pension Plans Disclosure Act. The Secretary is empowered to conduct inquiries reasonably necessary to ascertain violations of the Act or its regulations. He may not conduct an examination of books and records more than once annually unless he has reasonable cause to believe there has been a violation. He may exercise subpoena powers, if necessary, in the enforcement of the Act. The Secretary is authorized to institute civil actions to enforce the provisions of the Act with attorneys appointed by him except for proceedings in the Supreme Court.

The Secretary is authorized to prescribe rules and regulations to govern standards and qualifications and actuaries performing services under the Act, and to certify actuaries as qualified for purposes of the Act. He is authorized to establish and maintain reasonable limitations on actuarial assumptions. The Secretary is directed to conduct studies on the effects of and the subjects covered in the Act, including the sufficiency of vesting provisions for high-mobility employees.

Before promulgating regulations, the Secretary is directed to consult with appropriate government agencies to avoid duplication or conflicts. He may also make arrangements with federal or state agency facilities for the purposes of enforcing the Act on a reimbursable basis.

Office of Administration

Section 103.—This section establishes within the Department of Labor an Office of Pension and Welfare Plan Administration headed by an Assistant Secretary of Labor appointed by the President with Senate advice and consent. Under supervision of the Secretary of Labor, he shall exercise that power and authority delegated to him by the Secretary for the purpose of administration and enforcement of the Act.

The functions, records and personnel of the Office of Labor Management Services Administration necessary for the administration of the Welfare and Pension Plans Disclosure Act, are transferred to the new Office of Pension and Welfare Plan Administration.

Coverage and Exemptions

Section 104.—This section requires that, unless exempt, the provisions of the Act apply to any pension or profit-sharing-retirement plan established or maintained by an employer, a union, or both together in any industry or activity affecting interstate commerce. The fiduciary and disclosure provisions of the Act apply to all employee benefit plans unless exempt.

The Act does not apply to plans established by federal or state governments, plans, established by religious organizations, plans for the self-employed, plans covering not more than 25 participants, plans established outside the territorial jurisdiction of the United States for citizens of other countries unless they maintain funds in the United States, certain plans for key executives, and plans for members of labor organizations which are financed exclusively from the members' dues.

The funding and plan termination insurance requirements are not applicable to profit-sharing or money purchase plans, because of the nature of these plans.

Registration of Plans

Section 105.—This section requires administrators of pension and profit-sharing retirement plans to file applications with the Secretary of Labor for registration of such plans. The filing by the administrator shall be within six months after a plan has been established, or, if a plan was in effect at the time of enactment of this Act, such filing shall be within six months after the effective date of regulations promulgated by the Secretary of Labor, but in no event later than 12 months.

Upon finding by the Secretary that a plan is qualified, it shall be issued a certificate of registration by the Secretary. The criterion for the grant of such certificate shall be compliance with the requirements of the Act.

Where a plan is deficient, the administrator or other appropriate person shall be given an opportunity to remove the deficiency, and in the event that such deficiency is not removed, the Secretary may order cancellation or denial of such certificate.

Reports on Registered Plans

Section 106.—This section provides that the Secretary may, by regulation, provide for the filing of one single report which will satisfy the reporting requirements of this Act and the WPPDA.

Amendments of Registered Plans

Section 107.—This section provides that amendments to pension or profit-sharing-retirement plans shall be registered with the Secretary; that copies of such amendments shall be filed with the Secretary; and that the Secretary may require additional information in order that he may determine the initial unfunded liability which has been created by the amendment and to further determine special payments which may be required to remove such liability.

Certificate of Rights

Section 108.—This section requires the Secretary to promulgate regulations requiring each plan to furnish or make available to its participants (whichever is most practicable), upon termination of service with vested rights, with a certificate reciting the benefits due to such participants and the location of the entity responsible for the payments and pertinent data relating thereto. A copy of such certificate shall be filed with the Secretary.

TITLE II.—VESTING AND FUNDING REQUIREMENTS

Part A—Vesting

Section 201.—This section requires that no pension or profit-sharing-retirement plan may require as a condition of eligibility to participate in the plan, a period of service longer than one year or an age greater than 25, whichever occurs later, except that any plan which provides 100 percent immediate vesting upon entry into the plan may restrict participation to those who have attained age 30, or three years of service, whichever occurs later.

Section 202.—This section provides that all pension and profit-sharing-retirement plans are required to vest accrued benefits in participants with respect to service rendered both before, as well as after, the effective date of the title at the rate of a 30 percent vested interest, commencing with eight years of service, and increasing by 10 percent each year thereafter in order that 100 percent vesting is attained after 15 years of service. Vested plan benefits acquired under the Act may not be assigned or alienated, except that where a plan fails to make such provision, the Secretary shall be required to provide for final disposition of such benefits.

It further provides that no more than three of the eight years required to qualify for a 30 percent vested right need be continuous, but that service prior to age 25 may be ignored in determining eligibility for a vested right unless the participant or his employer has made contributions to the plan with respect to service prior to age 25.

In addition, in the event a participant has achieved 100 percent full vesting when permanently separated from the plan and subsequently returns to coverage under the same plan, he may be treated as a new participant for purposes of vesting schedule.

Any plan may allow more liberal vesting than required by the Act. If, upon application by a plan, the Secretary determines that a plan's vesting provisions assures a degree of vesting protection as equitable as the vesting schedules required by the Act, he may waive the Act's requirements and permit the plan's vesting schedule to remain unchanged.

Part B—Funding

Section 210.—This section requires that plans provide for compulsory funding of its obligations to its employees, Every employer is required to provide contributions for funding of his pension plan in a manner adequate to amortize all pension benefit liabilities which may accrue under the terms of the plan. Employers must fund all normal service costs annually and must fund initial unfunded liabilities existing on the effective date of this title (or in any plan established after the effective date of the title) within 30 years from the applicable date, in no less than equal amounts annually. If any amendment to the plan results in substantial increase to the plan's unfunded liabilities, the increase shall be funded separately as if it were a new plan and shall be regarded as a new plan for purposes of the plan termination insurance program established under this Act.

If a plan has an experience deficiency (resulting from actuarial error) for any particular year, the deficiency must be removed in no more than a five-year period, except that where such deficiency cannot be removed within such period without exceeding allowable limits for tax deductions under the Internal Revenue Code for a given year during such period, the Secretary may prescribe necessary additional time to permit removal of such deficiency within allowable tax deduction limitations.

Within six months after the effective date of rules promulgated by the Secretary to implement this title, but not later than 12 months after the effective date of the title or within six months after date of plan establishment, whichever is later, the plan is required to submit a report by an actuary who has been certified by the Secretary, stating information necessary to determine the appropriate application of the funding requirements to the plan. Plans are also required to be reviewed every five years by certified actuaries who are to report the funding obligations which must be met and any surplus or experience deficiencies. The Secretary is authorized to exempt certain plans from these filing requirements if consistent with the purpose of the Act.

Section 211.—This section provides that subject to the authority of the Secretary to provide exemptions in cases of hardship, and certain other circumstances all assets of terminated pension plans must be distributed according to the following priorities:

First, to refund to nonretired participants in the plan the amount of contributions made by them; second, to retirees; third, to persons eligible to retire on date of plan termination; fourth, to participants who have vested rights under the plan but who have not reached retirement age; and fifth, to other participants. In addition, employers are held liable for contributions (including amounts withheld from employees) owing to the plan which were required to be made by virtue of the funding requirements of the Act, but which were not made as of the date of plan termination. Upon either complete or substantial termination of a profit-sharing plan, the interests of all participants shall fully vest.

The Secretary may approve payment of benefits due to survivors in accordance with priorities which are equal to those of the employees whose service had acquired such benefits.

Part C.—Variances

Section 216.—This section authorizes the Secretary to defer, in whole or in part, applicability of the vesting provisions for a period not to exceed five years from the effective date of such requirements where a plan makes a showing that the vesting requirements would increase the employer's costs or contributions to the plan to an extent

that "substantial economic injury" would result to the employer and to the interests of the participants.

The definition of "substantial economic injury" is defined to include, but not to be limited to, a substantial risk to plan continuance, inability to discharge benefit obligations, substantial curtailment of pension or other employee benefits, or the production of an adverse effect upon employment levels of the work force of the employer contributing to the plan.

In collectively-bargained plans, both employer and union are required to submit application for the variance, and where such a submission is made, the Secretary is required to give due weight to the experience, competence, and knowledge of the parties concerning the necessity for the variance.

Section 217.—This section provides that where an employer can make a showing to the Secretary of Labor that he cannot make the required annual contribution to the pension plan, the Secretary may waive such contributions and authorize that such deficiency be funded over a period not to exceed five years in no less than equal annual payments. However, to authorize such variance, the Secretary must be satisfied that such waiver will not have an adverse effect upon the interests of employees and will not impair the financial position of the Pension Benefit Insurance Fund. No waiver may be granted for more than five years, and when a plan has been granted five consecutive waivers, the Secretary has the authority to: (1) merge or consolidate a deficiently funded plan with another plan of the employer, if feasible; (2) order termination of a plan if necessary to protect the interests of the participants or the position of the plan termination insurance program; (3) or such other action as may be appropriate to carry out the purposes of the Act.

No amendments increasing plan benefits are permitted during any period that a funding waiver is in effect.

The Secretary is required to promulgate regulations governing funding of multi-employer plans that cover a substantial portion of the industry or employees in a specific geographic area to assure that such plans are provided with sufficient assets to cover benefits under the plan. In promulgating such regulations, the Secretary is required to set a funding period that will reflect an adequate basis for funding the plan's benefit commitments and which takes into account the particular situation pertaining to the plan, industry, and circumstances involved. In no event is the Secretary authorized to prescribe a funding period for such a multi-employer plan which is less than 30 years, and no such plan is permitted to increase benefits beyond a point for which the contribution rate would be inadequate unless such rate is increased commensurately.

The Secretary may determine also that an employer's withdrawal from a multi-employer plan will significantly reduce the rate of aggregate contributions to the plan. He may then require the fund to be allocated between the nonworking and working participants, and treat the nonworkers' share of the fund as terminated for insurance purposes, and the remaining portion of the fund as a new one for funding, variances, and insurance purposes.

In considering the experience of multi-employer plans for new premium rates for insurance, the Secretary shall take into account the withdrawal of employers from the plan.

TITLE III.—VOLUNTARY PORTABILITY PROGRAM FOR VESTED PENSIONS

Program Established

Section 301.—This section establishes a voluntary program for portability of vested pension credits. The program will be administered by and under the Secretary's direction, and will be designed to facilitate the voluntary transfer of vested credits between registered plans. Plans registered under the Act may voluntarily apply for membership in the program and upon approval be issued a certificate of membership by the Secretary.

Acceptance of Deposits

Section 302.—This section requires that, upon request of a plan participant, plans which are members of this program are required to pay, to a central portability fund administered by the Secretary, monies representing the value of the participant's vested rights when he is separated from the plan prior to retirement. The Secretary will prescribe the terms and circumstances of deposits to be made.

Special Fund

Section 303.—This section establishes a Voluntary Portability Program Fund under the supervision of the Secretary into which payments will be made in accordance with regulations prescribed by the Secretary under the portability program. The Secretary shall be the trustee of the fund and shall administer the fund and report to the Congress annually of the fund's operations and fiscal status. The Secretary is authorized to deposit the amounts received in financial institutions insured by the FDIC or FSLIC but not more than 10 percent in any one financial institution.

Individual Accounts

Section 304.—This section requires the Fund to establish individual accounts for each participant for whom it has received monies under the portability program.

Payments From Individual Accounts

Section 305.—This section provides that, at the request of a participant transferring into a new plan, the Secretary is required to pay out if his account the accumulated amounts to purchase pension credits from the new plan which are actuarially equivalent. Unless the monies in a participant's account have been transferred to another employer's plan at the participant's request, the Secretary is required to use the monies in the participant's account to purchase a single-premium life annuity from a qualified life insurance carrier when the participant reaches age 65, and in the event of the participant's death, to pay out monies in this account to his designated beneficiary.

Technical Assistance

Section 306.—This section authorizes the Secretary to furnish technical assistance to unions, administrators, and all others affected by this Act who wish to develop portability or reciprocity arrangements of their own.

TITLE IV.—PLAN TERMINATION INSURANCE PROGRAM ESTABLISHED

Section 401.—This section establishes a Private Pension Plan Termination Insurance Program administered by the Secretary, which requires plans to insure unfunded vested liabilities incurred prior to enactment of the Act, as well as after enactment of the Act. The Secretary may provide insurance to cover unfunded vested liabilities of a plan not subject to the Act where he determines that such plan conforms to the vesting, funding and all other standards required by the Act.

Condition of Insurance

Section 402.—This section requires the insurance program to insure participants against loss of vested benefits arising from plan termination.

The amount of vested benefit insurance is limited to 50 percent of highest average monthly wage of participants earned over a five-year period, or $500 monthly, whichever is the lesser.

No insurance shall be paid if the plan is terminated less than three years from date of establishment or registration unless the Secretary determines that a registered plan was otherwise in substantial compliance with the Act and that the reserve position of the insurance program will not be adversely affected.

Insurance will not cover vested rights created by any plan amendment which took effect less than three years prior to plan termination.

No coverage is extended to participants who own 10 percent or more of employer voting stock.

Assement and Premiums

Section 403.—This section requires plans to pay an initial uniform assessment to be prescribed by the Secretary to cover administrative costs of the program. The Secretary shall prescribe an annual premium rate based upon unfunded vested liabilities. For the first three years, the insurance premium shall not exceed 0.2 percent of unfunded vested liabilities incurred after enactment of the Act. With respect to those unfunded vested liabilities incurred prior to enactment, the premium shall be 0.2 percent, provided that the unfunded vested liabilities of the plan were funded at least 75% during the five-year period preceding enactment.

As to plans which on date of enactment were less than five years old, the premium shall be 0.2 percent, provided that the plan had been reducing its unfunded vested liabilities at a rate of no less than 5 percent annually. In the event plans do not meet the above funding standards, they can be charged a premium not to exceed 0.4 percent or less than 02. percent of pre-enactment unfunded vested liabilities.

Also, in the case of multi-employer plans (as defined in the Act), the premium rate for the initial three years shall not exceed 0.2 percent of unfunded vested liabilities, regardless of when such liabilities were incurred.

After the initial three-year period, the Secretary may prescribe an annual rate based upon experience, and unless Congress objects within 90 days, the new premium shall become effective.

The Secretary is required to consult with appropriate private and government agencies on matters relating to the assessment and premium rates before prescribing rates.

Payment of Insurance

Section 404.—This section requires that plans must notify the Secretary of intent to terminate, and failing to do so will make such persons personally liable for any losses incurred by the Pension Benefit Insurance Fund in connection with plan termination.

The insurance to be paid shall be the difference between the plan's assets and unfunded vested benefits owed at the time of plan termination.

In addition, the Secretary is required to prescribe procedures under which funds of terminated plans shall be liquidated and paid out to cover vested benefits of participants. In implementing this authority, the Secretary may transfer terminated funds under his supervision or purchase annuities from qualified insurance carriers for participants or take such other action as may be appropriate. Persons who terminate a plan with intent to circumvent the Act or the WPPDA shall be personally liable for losses.

Recovery

Section 405.—This section provides that, where employers in terminated plans are not insolvent, they or their successors-in-interest may be liable for reimbursement of a portion of insurance benefits paid. The liability of the employer is to pay 100% of the unfunded vested liabilities and in no event shall it exceed 50% of the employer's net worth.

The Secretary shall make arrangements with employers on equitable terms for the reimbursement of insurance paid.

The amount or amounts of any unpaid liability owed by an employer shall constitute a lien in favor of the government, but junior to any lien for unpaid taxes owed to the government.

Pension Benefit Insurance Fund

Section 406.—This section establishes within the Labor Department a fund for the deposit of premiums, assessments, etc., made under the Act and for payment of such claims thereunder.

TITLE V.—DISCLOSURE AND FIDUCIARY STANDARDS

The new Disclosure and Fiduciary Requirements of this Act are accomplished by amendment to the Welfare and Pension Plans Disclosure Act. (WPPDA).

Disclosure

Section 501.—This section requires that annual reports filed are required to be accompanied by a certificate designating the Secretary as agent for service of process in any action arising under this Act.

Section 502.—This section amends Section 3 of the Welfare and Pension Plans Disclosure Act by adding new paragraphs containing revised definitions of terms such as "relative," "administrator," "employee benefit plan," "employee benefit fund," "separate account," "adequate consideration," "nonforfeitable pension benefit," "covered service," and various other terms which are intended to reconcile definitions contained in the Act with the new amendments. The definition of "employee welfare benefit plan" is expanded to include all benefit arrangements described or permitted by Section 302 of the Taft-Hartley Act, such as vacation funds, scholarship, child care funds, etc.

Section 503.—This section amends Sec. 4(a) of the Welfare and Pension Plans Disclosure Act by making editorial changes required by the terms of the current Act in order that the definitions of the WPPDA will be reconciled with those of the current amendments.

Section 504.—This section amends Sec. 5(b) of the WPPDA by permitting the Secretary to require the filing of a special terminal report in the event that there are monies or other assets remaining in the plan. Additionally, it is amended to grant the Secretary the right to exempt from the reporting and disclosure requirements of the Act a certain class of employee benefit plans if the same does not serve the purposes of the Act.

Section 505.—This section amends Sec. 6 of the WPPDA and requires plan descriptions under this Act to be comprehensive and written in a language and manner calculated to be understood by the average participant. In addition, the prior filing requirements are revised to authorize plan amendments to be filed in accordance with regulations prescribed by the Secretary. Heretofore, plan amendments had to be filed within 60 days after they were effective.

Section 506.—This section provides for two significant changes to the WPPDA. The first is a new requirement that the annual financial report must include an opinion of the plan's financial condition by an independent accountant based upon the results of an annual audit. Second, plans must include in their reports more detailed financial information, particularly in connection with party-in-interest transactions, and more detailed actuarial information relating to the plan's funding method and its overall financial soundness.

Section 507.—This section broadens the WPPDA requirements by requiring administrators to furnish reports to employees or to make available (whichever is more practicable) to every participant upon his enrollment in the plan a summary of the plan's important provisions written in a manner calculated to be understood by the average participant. (This requirement covers major amendments as well). This summary should include an explanation of a participant's rights and obligations under the plan and the circumstances which may disqualify him from benefits, as well as the requirements of WPPDA. Administrators are also required to furnish or make available to participants every three years a revised, up-to-date summary of the plan's important provisions (including major amendments).

Additionally, the plan administrator must furnish to participants and beneficiaries, upon request, copies of the plan description, annual report, or bargaining agreement, trust agreement, contract, or instrument under which the plan is established and operated. The plan administrator may make a reasonable charge to cover the costs of such copies.

Plan administrators are also required to furnish participants with notices of any vesting or funding variance the plan has received under other provisions of the Act.

Section 508.—This section amends Section 9(d) of the WPPDA to permit the Secretary to make necessary inquiries to determine violations provided that plans cannot be investigated more than once annually without reasonable cause. This provision eliminates the requirement of certification previously required to examine reports and records of a plan. The annual audit required by the Act dispenses with the need for such certification.

Section 509.—This section amends Section 14 of the WPPDA to restructure the Advisory Council on Employee Welfare and Pension Benefit Plans so that it will serve as an advisory council for both the WPPDA and the Retirement Income Security for Employees Act. The Advisory Council is expanded from its present number of 13 members to 21 members. New permanent categories of membership are added to include the fields of actuarial counseling, investment counseling, and accounting. Five representatives of management have also been added. The period of advisory council meetings is changed from its requirement of twice a year to meetings of at least four times a year.

Fiduciary Standards

Section 510.—This section adds new Section 15 to the WPPDA which establishes fiduciary standards for employee pension and welfare plans.

In general, this section requires plans to be established pursuant to a written document and requires plan funds to be treated as a trust for the exclusive purpose of (1) providing benefits to participants and their beneficiaries and (2) paying reasonable administrative expenses, and (3) assets remaining after satisfaction of all rights, attributable to employee contributions, shall be distributed equitably on basis of the rate of employee contributions.

This section also requires a fiduciary (i.e., a person who is responsible for handling plan funds) to act as a prudent man in a similar situation and other like conditions would act. The fiduciary must adhere to trust principles established by the Act, and to trust terms which are consistent with the Act and is prohibited from receiving any consideration from any party dealing with such fund, in connection with fund transactions. However, transactions which are otherwise prohibited may be permitted by the Secretary if he finds that the participants' interests would be served by such action. A fiduciary is prohibited from investing, or maintaining investment of more than 10 percent of a pension fund's assets in securities of the employer.

In general, fiduciaries may be reasonably compensated and entitled to receive benefits which belong to them by reason of being participants in the plan and may also make certain loans to participants or beneficiaries or make reasonable arrangements with parties-in-interest for office space or other services, including providing more than one type of service to fiduciaries or other parties-in-interest which are customarily furnished.

Any fiduciary who breaches his trust is personally liable for losses resulting from such breach, and co-fiduciaries are jointly and severally liable except that a co-fiduciary may avoid liability by objecting promptly to any action which may constitute a breach of trust.

Exculpatory clauses in trust agreements are prohibited; however, fiduciaries are permitted to allocate specific responsibilities among themselves, and, thereby, subject to disapproval by the Secretary, delineate the responsibility of each fiduciary.

The bill further prohibits any individual who has been convicted of certain specified crimes from serving as an administrator, officer, trustee, employee, or consultant of, or with respect to a plan, for five years following his conviction or release from imprisonment, unless the Secretary determines that a waiver is justified.

The bill also requires all investments and deposits of plan funds to be made in the name of the fund or its nominee and prohibits employees of either the employer or an employee organization from receiving commissions, or brokerage fees with respect to plan investments; and provides for a transitional period as determined by the Secretary for a plan to dispose of conflict-in-interest investments.

Every plan, in accordance with regulations of the Secretary, is required to provide adequate notice in writing to a participant whose benefit claim has been denied, setting forth the specific reason for the denial in understandable language and providing reasonable review procedures with respect to any denial of benefits. The bill also requires that where a plan offers the option of survivorship benefits to a participant, he can only lose such option if he waives it in writing.

TITLE VI.—ENFORCEMENT

Sec. 601.—This section empowers the Secretary to petition the federal courts to compel a pension or profit-sharing-retirement plan to comply with the Act or effect recoveries of moneys which may be due under the Act.

Sections 602, 603, 604, and 605.—These sections provide that when the Secretary has reason to believe that a pension, profit-sharing, retirement plan, or other employee benefit plan is violating the Act or the plan's governing documents, he may seek relief in the federal courts to compel the return of assets to the fund, to require payments to be made, to require the removal of a fiduciary, and to obtain other appropriate relief. Plan participants also may seek relief in federal and state courts against violations committed by a fiduciary, including his removal from office. They may also seek relief to recover benefits required to be paid under the plan in the same courts. The Secretary has the right to remove an action pending in a state court to the federal courts for relief provided under this Act.

Sections 607 and 608.—These sections provide that administrators and fiduciaries have the right to obtain judicial review of the actions of the Secretary. The bill provides a statute of limitations of five years for actions arising under the Act.

Section 609.—This section provides that this Act supersedes state laws covering the same matters. However, the Act does not exempt or relieve any person from complying with any state law regulating insurance, banking, and related matters, and does not remove state jurisdiction over plans not subject to the Act. State courts are not prevented from asserting jurisdiction in compelling the accounting of a fiduciary or requiring clarification of the plan. The Secretary or a plan participant may remove such a case from the state to the federal court if it involves the applicability of the Act.

Section 610.—This section makes it unlawful for any person to discharge, fine, suspend, expel, discipline or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of the plan or the Act or the Welfare and Pensions Plans Disclosure Act or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan or the Act or the WPPDA.

Section 611.—This section makes it a criminal offense for any person to use fraud, force, or violence or threats thereof to restrain, coerce, intimidate or attempt to restrain, coerce, intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan, the Act or the WPPDA.

TITLE VII.—EFFECTIVE DATES

Section 701.—This section provides that the registration, administration, disclosure, government procurement, fiduciary, and enforcement provisions of the Act become effective upon enactment.

The vesting and funding provisions of the Act shall become effective three years after enactment of the Act, and portability and insurance provisions one year after enactment.

VIII. Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by sections 1 through 9 and titles I through VI of the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter printed in italic):

WELFARE PENSION PLANS DISCLOSURE ACT

Pub. L. No. 85–836, 85th Cong., 2d Sess., 1958, 72 Stat. 997, as amended by Pub. L. No. 87–420, 87th Cong., 2d Sess., 1962, 76 Stat. 35; 29 U.S.C. §§ 301–09; F.C.A. 29 §§ 301–09

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Welfare and Pension Plans Disclosure Act."

Findings and Policy

Sec. 2. (a) The Congress finds that the growth in size, scope, and numbers of employee welfare and pension benefit plans in recent years has been rapid and substantial; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that owing to the lack of employee information concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made with respect to the operation and administration of such plans.

(b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee welfare and pension benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto.

Definitions

Sec. 3. When used in this Act—

(1) The term "employee welfare benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established *or maintained* by an employer or by an employee organization, or by

both, for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident disability death or [unemployment.] *unemployment or benefits of the type described or permitted by section 302(c) of the Labor-Management Relations Act.*

(2) The term "employee pension benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established *or maintained* by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, by the purchase of insurance or annuity contracts or otherwise, retirement benefits, and includes any profit-sharing plan which provides benefits at or after retirement.

(3) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or [plan,] *program* in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee [welfare or pension] benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(4) The term "employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to an employee [welfare or pension] benefit plan, and includes a group or association of employers acting for an employer in such capacity.

(5) The term "employee" means any individual employed by an employer.

(6) The term "participant" means any employee or former employee of an employer or any member of an employee organization who is or may become leigible to receive a benefit of any type from an employee [welfare or pension] benefit plan, or whose beneficiaries may be eligible to receive any such benefit.

(7) The term "beneficiary" means a person designated by a participant or by the terms of an employee [welfare or pension] benefit plan who is or may become entitled to a benefit thereunder.

(8) The term "person" means an individual, partnership, corporation, mutual company, joint-stock company, trust, unincorporated organization, association, or employee organization.

(9) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343).

(10) The term "commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place outside thereof.

(11) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(12) The term "Secretary" means the Secretary of Labor.

(13) The term "party in interest" means *as to an employee benefit plan or fund,* any administrator, officer, *fiduciary,* trustee, custodian, counsel, or employee of any employee [welfare] benefit plan [or employee pension benefit plan,] or a person providing benefit plan services to any such plan, or an [employer] *employer,* any of whose employees are covered by such a plan *or any person controlling, controlled by, or under common control with such employer* or officer or employee or agent of such [employer, or an officer or agent or employee of] *employer or such person, or* an employee organization having members covered by such [plan.] *plan, or an officer or employee or agent of such an employee organization, or a relative, partner, or joint venturer or any of the above-described persons. Whenever the term "party in interest" is used in this Act, it shall mean a person known to be a party in interest. If any moneys or other property of an employee benefit fund are invested in shares of an investment company registered under the Investment Company Act of 1940, such investment shall not cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a "fiduciary" or a "party in interest" as those terms are defined in this Act, except insofar as such investment company or its investment adviser or principal underwriter acts in connection with an employee benefit fund established or maintained pursuant to an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter.*

Nothing contained herein shall limit the duties imposed on such investment company, investment adviser, or principal underwriter by any other provision of law.

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

(15) The term "administrator" means—

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

(B) in the absence of such designation (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) the association, committee, joint board of trustees, or other similar group of representatives of the parties who established or maintained the plan, in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations.

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

(17) The term "employee benefit fund" or "fund" means a fund of money or other assets maintained pursuant to or in connection with an employee benefit plan and includes employee contributions withheld but not yet paid to the plan by the employer. The term does not include: (A) any assets of an investment company subject to regulation under the Investment Company Act of 1940; (B) premium, subscription charges, or deposits received and retained by an insurance carrier or service or other organiza-

tion, except for any separate account established or maintained by an insurance carrier.

(18) The term "separate account" means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(19) The term "adequate consideration" when used in section 15 means either (A) at no more than the price of the security prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (B) if the security is not traded on such a national securities exchange, at a price not less favorable to the fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer, or (C) if the price of the security is not quoted by persons independent of the issuer, a price determined to be the fair value of the security.

(20) The term "nonforfeitable pension benefit" means a legal claim obtained by a participant or his beneficiary to that part of an immediate or deferred pension benefit which, notwithstanding any conditions subsequent which would affect receipt of any benefit flowing from such right, arises from the participant's covered service under the plan and is no longer contingent on the participant remaining covered by the plan.

(21) The term "covered service" means that period of service performed by a participant for an employer or as a member of an employee organization which is recognized under the terms of the plan or the collective-bargaining agreement (subject to the requirements of the Retirement Income Security for Employees Act), for purposes of determining a participant's eligibility to receive pension benefits or for determining the amount of such benefits.

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

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

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

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

(C) in the case of other types of pension plans, that portion of the prospective normal retirement benefit of a participant that, pursuant to rule or regulation under the Retirement Income Security for Employees Act, is determined to constitute the participant's accrued portion of the normal retirement benefit under the terms of the appropriate plan.

(24) The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in, or, in general, any interest or instrument commonly known as a

security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(25) The term "fiduciary" means any person who exercises any power of control, management, or disposition with respect to any moneys or other property of any employee benefit fund, or has authority or responsibility to do so.

(26) The term "market value" or "value" when used in this Act means fair market value where available, and otherwise the fair value as determined pursuant to rule or regulation under this Act.

COVERAGE

SEC. 4. (a) Except as provided in subsection (b), this Act shall apply to any employee [welfare or pension] benefit plan if it is established or maintained by any employer [or employers] engaged in commerce or in any industry or activity affecting commerce or by any employee organization [or organizations] representing employees engaged in commerce or in any industry or activity affecting commerce or by both.

(b) This Act shall not apply to an employee [welfare or pension] benefit plan if—

(1) such plan is administered by the Federal Government or by the government of a State, by a political subdivision of a State, or by an agency or instrumentality of any of the foregoing;

(2) such plan was established and is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation disability insurance laws; or

[(3) such plan is administered by an organization which is exempt from taxation under the provisions of section 501(a) of the Internal Revenue Code of 1954 and is administered as a corollary to membership in a fraternal benefit society described in section 501(c)(8) of such Code or by organizations described in sections 501(c)(3) and 501(c)(4) of such Code: *Provided*, That the provisions of this paragraph shall not exempt any plan administered by a fraternal benefit society or organization which represents its members for purposes of collective bargaining; or]

(3) Such plan is administered by a religious organization described under section 501(c) of the Internal Revenue Code of 1954 which is exempt from taxation under the provisions of section 501(a) of such Code;

(4) such plan covers not more than twenty-five [.] *participants, except that participants and beneficiaries of such plan shall be entitled to maintain an action to recover benefits or to clarify their rights to future benefits as provided in section 604 of the Retirement Income Security for Employees Act.*

(5) such plan is established or maintained outside the United States primarily for the benefit of employees who are not citizens of the United States and the situs of the employee benefit plan fund established or maintained pursuant to such plan is maintained outside the United States.

Duty of Disclosure and Reporting

Sec. 5. (a) The administrator of an employee welfare benefit plan or an employee pension benefit plan shall publish in accordance with section 8 to each participant or beneficiary covered thereunder (1) a description of the plan and (2) an annual financial report. Such description and such report shall contain the information required by sections 6 and 7 of this Act in such form and detail as the Secretary shall by regulations prescribe and copies thereof shall be executed, published, and filed in accordance with the provisions of this Act and the Secretary's regulations thereunder. No regulation shall be issued under the preceding sentence which relieves any administrator of the obligation to include in such description or report any information relative to his plan which is required by section 6 or 7. Notwithstanding the foregoing, if the Secretary finds, on the record after giving interested persons an opportunity to be heard, that specific information on plans of certain kinds or on any class or classes of benefits described in section 3(1) and (2) which are provided by such plans cannot, in the normal method of operation of such plans, be practicably ascertained or made available for publication in the manner or for the period prescribed in any provision of this Act, or that the information if published in such manner or for such period would be duplicative or uninformative, the Secretary may by regulations prescribe such other manner or such other period for the publication of such information as he may determine to be necessary and appropriate to carry out the purposes of this Act.

[(b) The term "administrator" whenever used in this Act, refers to—

[(1) the person or persons designated by the terms of the plan or the collective bargaining agreement with responsibility for the ultimate control, disposition, or management of the money received or contributed; or

[(2) in the absence of such designation, the person or persons actually responsible for the control, disposition, or management of the money received, or contributed, irrespective of whether such control, disposition, or management is exercised directly or through an agent or trustee designated by such person or persons.]

(b) The Secretary may require the filing of special terminal reports on behalf of an employee benefit plan which is winding up its affairs, so long as moneys or other assets remain in the plan. Such reports may be required to be filed regardless of the number of participants remaining in the plan and shall be in such form and filed in such manner as the Secretary may prescribe.

(c) The Secretary may by regulation provide for the exemption from all or part of the reporting and disclosure requirements of this Act of any class or type of employee benefit plans if the Secretary finds that the application of such requirements to such plans is not required in order to implement the purposes of this Act.

Description of the Plan

Sec. 6. (a) [Except as provided in section 4, the] *A* description of any employee [welfare or pension] benefit plan shall be published as

required herein within ninety days [of the effective date of this Act or within ninety days] after the establishment of such [plan, whichever is later.] *plan or when such plan becomes subject to this Act.*

(b) The description of the plan shall be [published, signed and sworn to by the person or persons defined as the "administrator" in section 5, and shall include their names and addresses, their official positions with respect to the plan, and their relationship, if any, to the employer or to any employee organizations, and any other officer, positions, or employment held by them; the name, address, and description of the plan and the type of administration; the schedule of benefits; the names, titles, and addresses of any trustee or trustees (if such persons are different from those persons defined as the "administrator"); whether the plan is mentioned in a collective bargaining agreement; copies of the plan or of the bargaining agreement, trust agreement, contract, or other instrument, if any, under which the plan was established and is operated;] *comprehensive and shall include the name and type of administration of the plan; the name and address of the administrator; the names and addresses of any person or persons responsible for the management or investment of plan funds; the schedule of benefits; a description of the provisions providing for vested benefits written in a manner calculated to be understood by the average participant;* the source of the financing of the plan and [the] identity of any organization through which benefits are provided; whether [the] records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. Amendments to the plan reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 7, shall be included in the description on and after the effective date of such amendments. Any change in the information required by this subsection shall be reported [to the Secretary within sixty days after the change has been effectuated.] *in accordance with regulations prescribed by the Secretary.*

Annual Reports

Sec. 7. (a) (*1*) [The administrator of any employee welfare or pension benefit plan, a description of which is required to be published under section 6, shall also publish an annual report with respect to such plan]. *An annual report shall be published with respect to any employee benefit plan if the plan provides for an employee benefit fund subject to section 15 of this Act or* if it covers one hundred or more participants. However, the Secretary, after [investigation,] *notice and opportunity to be heard,* may require the administrator of any plan otherwise *not* covered by the Act to publish such report when necessary and appropriate to carry out the purposes of the Act. Such report shall be published as required under section 8, within one hundred and fifty days after the end of the calendar [year (or, if] *policy or fiscal year on which* the records of the plan are [kept on a policy or other fiscal year basis, within one hundred and fifty days after the end of such policy or fiscal year).] *kept.*

(2) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization, such carrier or organization shall certify to, the administrator of such plan, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, such information as determined by the Secretary to be necessary to enable such administrator to comply with the requirements of this Act.

(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 in accordance with generally accepted standards of auditing by an independent certified or licensed public accountant, but 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.

(b) A report under this section shall [be signed by the administrator and such report shall include the following:] *include—*

(1) The amount contributed by each employer: the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number of employees covered; a statement of [assets specifying the total amount in each of the following types of assets: cash, Government bonds, non-Government bonds and debentures, common stocks, preferred stocks, common trust funds, real estate loans and mortgages, operated real estate, other real estate, and other assets; a statement of liabilities, receipts, and disbursements of the plan; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in what amount, and for what purposes. The Secretary, when he has determined that an investigation is necessary in accordance with section 9(d) of this Act, may require the filing of supporting schedules of assets and liabilities. The information required by this section shall be sworn to by the administrator, or certified to by an independent certified or licensed public accountant, based upon a comprehensive audit conducted in accordance with accepted standards of auditing, but nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing an insurance, investment, or related function for the plan, if such books or records are subject to examination by an agency of the Federal Government or the government of any State. In the case of reports sworn to, but not certified. the Secretary, when he determines that it may be necessary to investigate the plan in accordance with section 9(d) of this Act, shall, prior to investigation by the Department of Labor, require certification of the report by an independent certified or licensed public accountant.] *assets, liabilities, receipts, and disbursements of the plan; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in what amount, and for what purpose; the name and address of each fiduciary, his official position with respect to the plan, his relationship to the employer of the employees covered by the plan, or the employee organization, and any*

other office, position, or employment he holds with any party in interest;

(2) a schedule of all investments of the fund showing as of the end of the fiscal year:

(A) the aggregate cost and aggregate value of each security, by issuer,

(B) the aggregate cost and aggregate value, by type or category, of all other investments, and separately identifying (i) each investment, the value of which exceeds 3 per centum of the value of the fund and (ii) each investment in securities or properties of any person known to be a party in interest;

(3) a schedule showing the aggregate amount, by type of security, of all purchases, sales, redemptions, and exchanges of securities made during the reporting period; a list of the issuers of such securities; and in addition, a schedule showing, as to each separate transaction with or without respect to securities issued by any person known to be a party in interest, the issuer, the type and class of security, the quantity involved in the transaction, the gross purchase price, and in the case of a sale, redemption, or exchange, the gross and net proceeds (including a description and the value of any consideration other than money) and the net gain or loss, except that such schedule shall not include distribution of stock or other distributions in kind from profit-sharing or similar plans to participants separated from the plan;

(4) a schedule of purchases, sales, or exchanges during the year covered by the report of investment assets other than securities—

(A) by type or category of asset the aggregate amount of purchases, sales, and exchanges; the aggregate expenses incurred in connection therewith; and the aggregate net gain (or loss) on sales, and

(B) for each transaction involving a person known to be a party in interest and for each transaction involving over 3 per centum of the fund, and indication of each asset purchased, sold, or exchanged (and, in the case of fixed assets such as land, buildings, and leaseholds, the location of the asset); the purchase or selling price; expenses incurred in connection with the purchase, sale, or exchange; the cost of the asset and the net gain (or loss) on each sale; the identity of the seller in the case of a purchase, or the identity of the purchaser in the case of a sale, and his relationship to the plan, the employer, or any employee organization;

(5) a schedule of all loans made from the fund during the reporting year or outstanding at the end of the year, and a schedule of principal and interest payments received by the fund during the reporting year, aggregated in each case by type of loan, and in addition, a separate schedule showing as to each loan which—

(A) was made to a party in interest, or

(B) was in default, or

(C) was written off during the year as uncollectable, or

(D) exceeded 3 per centum of the value of the fund

the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the loan obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and the material terms), the amount of principal and interest overdue (if any) and as to loans written off as uncollectable an explanation thereof;

(6) a list of all leases with—

(A) persons other than parties in interest who are in default, and

(B) any party in interest,

including information as to the type of property leased (and, in the case of fixed assets such as land, buildings, leaseholds, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; if property is leased from persons described in (B) the amount of rental and other expenses paid during the reporting year; and if property is leased to persons described in (A) or (B), the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, the expenses paid for the leased property during the reporting period, the net receipt from the lease, and with respect to any such leases in default, their identity, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(7) a detailed list of purchases, sales, exchanges, or any other transactions with any party in interest made during the year, including information as to the asset involved, the price, any expenses connected with the transaction, the cost of the asset, the proceeds, the net gain or loss, the identity of the other party to the transaction and his relationship to the plan;

(8) subject to rules of the Secretary designed to preclude the filing of duplicate or unnecessary statements if, some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier, the report shall include a statement of assets and liabilities and a statement of receipts and disbursements of such common or collective trust or separate account and such of the information required under paragraphs (2), (3), (4), (5), (6), and (7) of section 7(h) with respect to such common or collective trust or separate account as the Secretary may determine appropriate by regulation. In such case the bank or similar institution or insurance carrier shall certify to the administrator of such plan or plans, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, the information determined by the Secretary to be necessary to enable the plan administrator to comply with the requirements of this Act, and

(9) in addition to reporting the information called for by this subsection the administrator may elect to furnish other information as to investment or reinvestment of the fund as additional disclosures to the Secretary.

[(c) If the plan is unfunded, the report shall include only the total benefits paid and the average number of employees eligible for participation, during the past five years, broken down by year; and a statement, if applicable, that the only assets from which claims against the plan may be paid are the general assets of the employer.]

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

(d) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization such report shall include with respect to such plan (in addition to the information required by subsection (b)) the following:

(1) [The] *the* premium rate or subscription charge and the total premium or subscription charges paid to each such carrier or organization and the approximate number of persons covered by each class of such benefits.

(2) [The] *the* total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such carrier or other organization: dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs, paid by such carrier or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose: *Provided,* That if any such carrier or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the carrier or other organization and (B), if such carrier or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

[(e) Details relative to the manner in which any funds held by an employee welfare benefit plan are held or invested shall be reported as provided under paragraphs (B), (C), and (D) of subsection (f)(1).]

(e) Every employee pension benefit plan shall include with its annual report (to the extent applicable) the following information:

(1) the type and basis of funding,

(2) the number of participants, both retired and nonretired, covered by the plan,

(3) the amount of all reserves or net assets accumulated under the plan,

(4) the present value of all liabilities for all nonforfeitable pension benefits and the present value of all other accrued liabilities,

(5) the ratios of the market value of the reserves and assets described in (3) above to the liabilities described in (4) above,

(6) a copy of the most recent actuarial report, and

(A)(i) the actuarial assumptions used in computing the contributions to a trust or payments under an insurance contract, (ii) the actuarial assumptions used in determining the level of benefits, and (iii) the actuarial assumptions used in connection with the other information required to be furnished under this subsection, insofar as any such actuarial assumptions are not included in the most recent actuarial report,

(B)(i) if there is no such report, or (ii) if any of the actuarial assumptions employed in the annual report differ from those in the most recent actuarial report, or (iii) if different actuarial assumptions are used for computing contributions or payments

than are used for any other purpose, a statement explaining same; and

(7) *such other reasonable information pertinent to disclosure under this subsection as the Secretary may by regulation prescribe.*

[(f) Reports on employee pension benefit plans shall include, in addition to the applicable information required by the foregoing provisions of this section, the following:

[(1) If the plan is funded through the medium of a trust, the report shall include—

[(A) the type and basis of funding, actuarial assumptions used, the amount of current and past service liabilities, and the number of employees, both retired and nonretired covered by the plan;

[(B) a statement showing the assets of the fund as required by section 7(b). Such assets shall be valued on the basis regularly used in valuing investments held in the fund and reported to the United States Treasury Department, or shall be valued at their aggregate cost or present value, whichever is lower, if such a statement is not so required to be filed with the United States Treasury Department;

[(C) a detailed list, including information as to cost, present value, and percentage of total funds, of all investments in securities or properities of the employer or employee organization, or any other party in interest, but the identity of all securities and the detail of brokerage fees and commissions incidental to the purchase or sale of such securities need not be revealed if such securities are listed and traded on an exchange subject to regulation by the Securities and Exchange Commission or securities in an investment company registered under the Investment Company Act of 1940, or securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, and the statement of assets contains a statement of the total investments in common stock, preferred stock, bonds and debentures, respectively, valued as provided in subparagraph (B);

[(D) a detailed list of all loans made to the employer, employee organization, or other party in interest, including the terms and conditions of the loan and the name and address of the borrower: *Provided*, That if the plan is funded through the medium of a trust invested, in whole or in part, in one or more insurance or annuity contracts with an insurance carrier, the report shall include, as to the portion of the funds so invested, only the information required by paragraph (2) below.

[(2) If the plan is funded through the medium of a contract with an insurance carrier, the report shall include—

[(A) the type and basis of funding, actuarial assumptions used in determining the payments under the contract, and the number of employees, both retired and nonretired, covered by the contract; and

[(B) except for benefits completely guaranteed by the carrier, the amount of current and past service liabilities, based on those assumptions, and the amount of all reserves accumulated under the plan.

[(3) If the plan is unfunded, the report shall include the total benefits paid to retired employees for the past five years, broken down by year.

[(g) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, such reasonable information determined by the Secretary to be necessary to enable such administrator to comply with the requirements of this Act.

[(h) The Secretary shall prescribe by general rule simplified reports for plans which he finds that by virtue of their size or otherwise a detailed report would be unduly burdensome, but the Secretary may revoke such provisions for simplified forms for any plan if the purposes of the Act would be served thereby.]

PUBLICATION

SEC. 8. [(a) Publication of the description of the plan and the latest annual report required under this Act shall be made to the participants and to the beneficiaries covered by the particular plan as follows:

[(1) The administrator shall make copies of such description of the plan (including all amendments or modifications thereto upon their effective date) and of the latest annual report available for examination by any participant or beneficiary in the principal office of the plan.

[(2) The administrator shall deliver upon written request to such participant or beneficiary a copy of the description of the plan (including all amendments or modifications thereto upon their effective date) and an adequate summary of the latest annual report, by mailing such documents to the last known address of the participant or beneficiary making such request.

[(b) The administrator of any plan subject to the provisions of this Act shall file with the Secretary two copies of the description of the plan and each annual report thereon. The Secretary shall make available for examination in the public document room of the Department of Labor copies of descriptions of plans and annual reports filed under this subsection.]

[(c)] (*a*) The Secretary shall prepare forms for the descriptions of plans and the annual reports required by the provisions of this Act, and shall make such forms available to the administrators of such plans on request.

(*b*) *The administrator of any employee benefit plan subject to this Act shall file with the Secretary a copy of the plan description and each annual report. The administrator shall also furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated, and any document so furnished shall be available for public inspection. The Secretary shall make copies of such descriptions and annual reports available for public inspection.*

(*c*) *Publication of the plan descriptions and annual reports required by this Act shall be made to participants and beneficiaries of the particular plan as follows:*

(*1*) *the administrator shall make copies of the plan description (including all amendments or modifications thereto) and the latest annual report and the bargaining agreement, trust agreement, con-*

tract, or other instrument under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator;

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

(3) the administrator shall furnish or make available, whichever is most practicable: (i) to every participant upon his enrollment in the plan and within one hundred and twenty days after each major amendment to the plan, a summary of the plan's important provisions, including the names and addresses of any person or persons responsible for the management or investment of plan funds, and requirements of the amendment, whichever is applicable, written in a manner calculated to be understood by the average participant; such explanation shall include a description of the benefits available to the participant under the plan and circumstances which may result in disqualification or ineligibility, and the requirements of the Welfare and Pension Plans Disclosure Act with respect to the availability of copies of the plan, bargaining agreement, trust agreement, contract or other instrument under which the plan is established or operated; and (ii) to every participant every three years (commencing January 1, 1975), a revised up-to-date summary of the plan's important provisions and major amendments thereto, written in a manner calculated to be understood by the average participant; and (iii) to each 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 any bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or 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) In the event a plan is provided a variance with respect to standards of vesting, funding, or both, pursuant to title II of the Retirement Income Security for Employees Act, the administrator shall furnish or make available, whichever is most practicable, notice of such action to each participant in a manner calculated to be understood by the average participant, and in such form and detail and for such periods as may be prescribed by the Secretary.

ENFORCEMENT

SEC. 9. (a) Any person who willfully violates any provision of this Act shall be fined not more than $1,000, or imprisoned not more than six months, or both.

(b) Any administrator of a plan who fails or refuses, upon the written request of a participant or beneficiary covered by such plan, to make publication to him within thirty days of such request, in accordance with the provisions of section 8, of a description of the plan or an annual report containing the information required by sections 6 and 7, may in the court's discretion become liable to any such participant or beneficiary making such request in the amount of $50 a day from the date of such failure or refusal.

(c) Action to recover such liability may be maintained in any court of competent jurisdiction by any participant or beneficiary. The court

in such action may in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

[(d) The Secretary may, after first requiring certification in accordance with section 7(b), upon complaint of violation not satisfied by such certification, or on his own motion, when he continues to have reasonable cause to believe investigation may disclose violations of this Act, make such investigations as he deems necessary, and may require or permit any person to file with him a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated.]

(d) The Secretary may make appropriate and necessary inquiries to determine violations of the provisions of this Act, or any rule or regulation issued thereunder: Provided, however, That no periodic examination of the books and records of any plan or fund shall be conducted more than once annually unless the Secretary has reasonable cause to believe there may exist a violation of this Act or any rule or regulation issued thereunder.

(e) For the purposes of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

(f) Whenever it shall appear to the Secretary that any person is engaged in any violation of the provisions of this Act, he may in his discretion bring an action in the proper district court of the United States or United States court of any place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted.

(g) The United States district courts and the United States courts of any place subject to the jurisdiction of the United States shall have jurisdiction, for cause shown, to restrain violations of this Act.

[(h) Nothing contained in this Act shall be so construed or applied as to authorize the Secretary to regulate, or interfere in the management of, any employee welfare or pension benefit plan, except that the Secretary may inquire into the existence and amount of investments, actuarial assumptions, or accounting practices only when it has been determined that investigation is required in accordance with section 9(d) of this Act.]

[(i)] *(h)* The Secretary shall immediately forward to the Attorney General or his representative any information coming to his attention in the course of the administration of this Act which may warrant consideration for criminal prosecution under the provisions of this Act or other Federal law.

REPORTS MADE PUBLIC INFORMATION

SEC. 10. The contents of the descriptions and regular annual reports filed with the Secretary pursuant to this Act shall be public information, and the Secretary, where to do so would protect the interests of participants or beneficiaries of a plan, may publish any such inofrmation and data. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

Retention of Records

Sec. 11. Every person required to file any description or report or to certify any information therefor under this Act shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolution, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

Reliance on Administrative Interpretations and Forms

Sec. 12. In any action or proceeding based on any act or omission in alleged violation of this Act, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with any provision of this Act if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Secretary, or (2) publish and file any information required by any provision of this Act if he pleads and proves that he published and filed such information in good faith, on the description and annual report forms prepared by the Secretary and in conformity with the instructions of the Secretary issued under this Act regarding the filing of such forms. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this Act.

Bonding

Sec. 13. (a) Every administrator, officer, and employee of any employee welfare benefit plan or of any employee pension benefit plan subject to this Act who handles funds or other property of such plan shall be bonded as herein provided; except that, where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers and employees of such plan shall be exempt from the bonding requirements of this section. The amount of such bond shall be fixed at the beginning of each calendar, policy, or other fiscal year, as the case may be, which constitutes the reporting year of such plan. Such amount shall be not less than 10 per centum of the amount of funds handled, determined as herein provided, except that any such bond shall be in at least the amount of $1,000 and no such bond shall be required in an amount in

excess of $500,000: *Provided*, That the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, which in no event shall exceed 10 per centum of the funds handled. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of such administrator, officer, or employee, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to the Act of July 30, 1947 (6 U.S.C. 6–13). Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) It shall be unlawful for any administrator, officer, or employee to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee welfare benefit plan or employee pension benefit plan, without being bonded as required by subsection (a) and it shall be unlawful for any administrator, officer, or employee of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any such person, with respect to whom the requirements of subsection (a) have not been met.

(c) It shall be unlawful for any person to procure any bond required by subsection (a) from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any significant control or financial interest, direct or indirect.

(d) Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) because he handles funds or other property of an employee welfare benefit plan or of an employee pension benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

(e) The Secretary shall from time to time issue such regulations as may be necessary to carry out the provisions of this section. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section.

Advisory Council

Sec. 14. (a)(*1*) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter referred to as the "Council") [which shall consist of thirteen members to be appointed in the following manner: One from the insurance field, one from the corporate trust field, two from management, four from labor, and two from other interested groups, all appointed by the Secretary from among persons recommended by organizations in the respective groups; and three representatives of the general public appointed by the Secretary.] *consisting of twenty-one members appointed by the Secretary. Not more than eleven members of the Council shall be members of the same political party.*

(2) Members shall be appointed from among persons recommended by groups or organizations which they shall represent and shall be persons qualified to appraise the programs instituted under this Act and the Retirement Income Security for Employees Act.

(3) Of the members appointed, five shall be representatives of labor organizations; five shall be representatives of management; one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, and the accounting field; and six representatives shall be appointed from the general public.

(4) Members shall serve for terms of three years, except that of those first appointed, six shall be appointed for terms of one year, seven shall be appointed for terms of two years, and eight shall be appointed for terms of three years. A member may be reappointed, and a member appointed to fill a vacancy shall be appointed only for the remainder of such term. A majority of members shall constitute a quorum and action shall be taken only by a majority vote of those present.

(5) Members shall be paid compensation at the rate of $150 per day when engaged in the actual performance of their duties except that any such member who holds another office or position under the Federal Government shall serve without additional compensation. Any member shall receive travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(b) It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this Act, *and the Retirement Income Security for Employees Act* and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least [twice] *four times* each year and at such other times as the Secretary requests. At the beginning of each regular session of the Congress, the Secretary shall transmit to the Senate and House of Representatives each recommendation which he has received from the Council during the preceding calendar year and a report covering his activities under the Act *and the Retirement Income Security for Employees Act* for [such] *the* preceding [calendar] *fiscal* year, including full information as to the number of plans and their size, the results of any studies he may have made of such plans and the [Act's] operation *of this Act and the Retirement Income Security for Employees Act* and such other information and data as he may deem desirable in connection with employee welfare and pension benefit plans.

(c) The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to [the] conduct [of] its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

(d) Appointed members of the Council shall be paid compensation at the rate of $50 per diem when engaged in the work of the Council, including travel time, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 73b–2) for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis.

(e)(1) Any member of the Council is hereby exempted, with respect to such appointment, from the operation of sections 281, 283, and 1914 of title 18 of the United State Code, and section 190 of the Revised Statues (5 U.S.C. 99), except as otherwise specified in paragraph (2) of this subsection.

(2) The exemption granted by paragraph (1) of this subsection shall not extend—

(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the private employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

"*Fiduciary Standards*

Sec. 15. (a) Every employee benefit fund established to provide for the payment of benefits under an employee's benefit plan shall be established or maintained pursuant to a duly executed written document which shall set forth the purpose or purposes for which such fund is established and the detailed basis on which payments are to be made into and out of such fund. Such fund shall be deemed to be a trust and shall be held for the exclusive purpose of (1) providing benefits to participants in the plan and their beneficiaries and (2) defraying reasonable expenses of administering the plan.

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

(A) with the care under the circumstances then prevailing that 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; and

(B) subject to the standards in subsection (a) and in accordance with the documents and instruments governing the fund insofar as is consistent with this Act, except that (i) any assets of the fund remaining upon dissolution or termination of the fund shall, after complete satisfaction of the rights of all beneficiaries to benefits accrued to the date of dissolution or termination, be distributed ratably to the beneficiaries thereof, or if the trust agreement so provides, to the contributors thereto; (ii) that in the case of a registered pension or profit-sharing-retirement plan, such distribution shall be subject to the requirements of the Retirement Income Security for Employees Act and (iii) any assets of the fund, attributable to employee contributions, remaining after complete satisfaction of the rights of all beneficiaries accrued to the date of dissolution or termination shall be equitably distributed to the employee contributors according to their rate of contribution.

(2) *Except as permitted hereunder, a fiduciary shall not—*

(A) rent or sell property of the fund to any person known to be a party in interest of the fund;

(B) rent or purchase on behalf of the fund any property known to be owned by a party in interest of the fund;

(C) deal with such fund in his own interest or for his own account;

(D) represent any other party with such fund, or in any way act on behalf of a party adverse to the fund or adverse to the interests of its participants or beneficiaries;

(E) receive any consideration from any party dealing with such fund in connection with a transaction involving the fund;

(F) loan money or other assets of the fund to any party in interest of the fund;

(G) furnish goods, services, or facilities of the fund to any party in interest of the fund;

(H) permit the transfer of any assets or property of the fund to, or its use by or for the benefit of, any party in interest of the fund; or

(I) permit any of the assets of the fund to be held, deposited, or invested outside the United States unless the indicia of ownership remain within the jurisdiction of a United States District Court, except as authorized by the Secretary by rule or regulation.

(3) The Secretary, by rules or regulations or upon application of any fiduiciary or party in interest, by order, shall provide for the exemption conditionally or unconditionally of any fiduciary or class of fiduciaries or transactions or class or transactions from all or part of the proscriptions contained in this subsection 15(b)(2) when the Secretary finds that to do so is consistent with the purposes of this Act and is in the interest of the fund or class of funds and the participants and beneficiaries: Provided, however, That any such exemption shall not relieve a fiduciary from any other applicable provisions of this Act.

(c) Nothing in this section shall be construed to prohibit the fiduciary from—

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan under which the fund was established;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the fund, or receiving in a fiduciary capacity proceeds from any transaction involving plan funds, except that no person so serving who already receives full-time pay from an employer or an association of employers whose employees are participants in the plan under which the fund was established, or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred and not otherwise reimbursed;

(3) serving in such position in addition to being an officer, employee, agent, or other representative of a party in interest;

(4) engaging in the following transactions:

(A) holding or purchasing on behalf of the fund any security which has been issued by an employer whose employees are participants in the plan, under which the fund was established or a corporation controlling, controlled by, or under common control with such employer, except that (i) the purchase of any security is for no more than adequate consideration in money or money's worth, and (ii) that if an employee benefit fund is one which provides primarily for benefits of a stated amount, or an amount determined by an employee's compensation, an employee's period of service, or a combination of both, or money purchase type benefits based on fixed contributions which are not geared to the employer's profits, no investment shall be held or made by a fiduciary of such a fund in securities of such employer or of a corporation controlling, controlled by, or under common control with such employer, if such investment, when added to such securities already held, exceeds 10 per centum of the fair market value of the assets of the fund. Notwithstanding the foregoing, such 10 per centum limitation shall not apply to profit sharing, stock bonus, thrift and savings or other similar plans which explicitly provide that some or all of the plan funds may be invested in securities of such employer or a corporation controlling, controlled by, or under common control with such employer, nor shall said plans be deemed to be limited by any diversification rule which may be invested in such securities. Profit-sharing, stock bonus, thrift, or other similar plans, which are in existence on the date of enactment and which allow investment in such securities without explicit provision in the plan, shall remain exempt from the 10 per centum limitation until the expiration of one year from the date of enactment of Retirement Income Security for Employees Act. Nothing contained in this subparagraph shall be construed to relieve profit-sharing, stock bonus thrift and savings or other similar plans from any other applicable requirements of this section;

(B) purchasing on behalf of the fund any security or selling on behalf of the fund any security which is acquired or held by the fund, to or from a party in interest, if (i) at the time of such purchase or sale the security is of a class of securities which is listed on a national securities exchange registered under the Securities Exchange Act of 1934 or which has been listed for more than one month (at the time of such sale or purchase) on an electronic quotation system administered by a national securities association registered under the Securities Exchange Act of 1934, (ii) no brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with such transaction, (iii) adequate consideration is paid, and (iv) that in the event the security is one described in subparagraph (A), the transaction has received the prior approval of the Secretary;

(5) making any loan to participants or beneficiaries of the plan under which the fund was established where such loans are available to all participants or beneficiaries on a nondiscriminatory basis and are made in accordance with specific provisions regarding such loans set forth in the plan and are not otherwise inconsistent with the purposes of this Act;

(6) contracting or making reasonable arrangements with a party in interest for office space and other services necessary for the operation of the plan and paying reasonable compensation therefor;

(7) following the specific instructions in the trust instrument or other document governing the fund insofar as consistent with the specific prohibitions listed in subsection (b)(2);

(8) taking action pursuant to an authorization in the trust instrument or other document governing the fund, provided such action is consistent with the provisions of subsection (b).

(d) Any fiduciary who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this Act shall be personally liable to such fund for any losses to the fund resulting from such breach, and to pay to such fund any profits which have inured to such fiduciary through use of assets of the fund.

(e) When two or more fiduciaries undertake jointly the performance of a duty or the exercise of a power, or where two or more fiduciaries are required by an instrument governing the fund to undertake jointly the performance of a duty or the exercise of power, but not otherwise, each of such fiduciaries shall have the duty to prevent any other such cofiduciary from committing a breach of responsibility, obligation, or duty of a fiduciary or to compel such other cofiduciary to redress such a breach, except that no fiduciary shall be liable for any consequence of any act or failure to act as a cofiduciary who is undertaking or is required to undertake jointly any duty or power if he shall object in writing to the specific action and promptly file a copy of his objection with the Secretary.

(f) No fiduciary may be relieved from any responsibility, obligation, or duty imposed by law, agreement, or otherwise. Nothing herein shall preclude any agreement allocating specific duties or responsibilities among fiduciaries, or bar any agreement of insurance coverage or indemnification affecting fiduciaries, unless specifically disapproved by the Secretary.

(g) A fiduciary shall not be liable for a violation of this Act committed before he became a fiduciary or after he ceased to be a fiduciary.

(h) No individual who has been convicted of, or has been imprisoned as a result of his conviction of: robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, kidnaping, perjury, assault with intent to kill, assault which inflicts grievous bodily injury, any crime described in section 9(a) (1) of the Investment Company Act of 1940, or a violation of any provision of the Welfare and Pension Plans Disclosure Act, or a violation of section 302 of the Labor-Management Relations Act of 1947 (61 Stat. 157, as amended), or a violation of chapter 63 of title 18, United States Code, or a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, or a violation of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, as amended), or conspiracy to commit any such crimes or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element, shall serve—

(1) as an administrator, officer, trustee, custodian, counsel, agent, employee (other than as an employee performing exclusive clerical or janitorial duties) or other fiduciary position of any employee benefit plan; or

(2) as a consultant to any employee benefit plan, during or for five years after such conviction or after the end of such imprisonment, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights having been revoked as a result of such conviction, have been fully restored, or (B) the Secretary determines that such person's service in any capacity referred to in clause (1) or (2) would not be contrary to the purposes of this Act. No person shall knowingly permit any other person to serve in any capacity referred to in clause (1) or (2) in violation of this subsection. Any person who willfully violates this subsection shall be fined not more than $10,000 or imprisoned for not more than one year, or both. For the purposes of this subsection, any person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event, regardless of whether such conviction occurred before or after the date of enactment of this section. For the purposes of this subsection, the term "consultant" means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

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

(j) In order to provide for an orderly disposition of any investment, or termination of any service, the retention or continuation of which would be deemed to be prohibited by this Act, and in order to protect the interest of the fund and its participants and its beneficiaries, the fiduciary may in his discretion effect the disposition of such investment or termination of such service within three years after the date of enactment of this Act, or within such additional time as the Secretary may by rule or regulation allow, and such action shall be deemed to be in compliance with this Act.

(k) In accordance with regulations of the Secretary, every employee benefit plan subject to this Act shall—

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits from the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the plan administrator of the decision denying the claim.

(l) An employee benefit plan subject to this Act or the Retirement Income Security for Employees Act, which provides an optional death benefit or any kind, or in any form, shall not provide that such option may be waived by default or in any manner other than in a writing signed by the participant, after such participant receives an explanation of their terms and conditions of the option and the effect of such waiver.

ADMINISTRATION

SEC. [15.] *16.* (a) The provisions of the Administrative Procedure Act shall be applicable to this Act.

(b) No employee of the Department of Labor shall administer or enforce this Act with respect to any employee organization of which he is a member or employer organization in which he has an interest.

(c) No more than 260 employees shall be employed by the Department of Labor to administer or enforce this Act for the first two years after the enactment of the Welfare and Pension Plans Disclosure Act Amendments of 1962.

(d) Not more than two million two hundred thousand dollars per year is authorized to be appropriated for the administration and enforcement of this Act, for the first two years after the enactment of the Welfare and Pension Plans Disclosure Act Amendments of 1962.

Effect of Other Laws

Sec. [16.] *17.* (a) In the case of an employee welfare or pension benefit plan providing benefits to employees employed in two or more States, no person shall be required by reason of any law of any such State to file with any State agency (other than an agency of the State in which such plan has its principal office) any information included within a description of the plan or an annual report published and filed pursuant to the provisions of this Act if copies of such description of the plan and of such annual report are filed with the State agency, and if copies of such portion of the description of the plan and annual report, as may be required by the State agency, are distributed to participants and beneficiaries in accordance with the requirements of such State law with respect to scope of distribution. Nothing contained in this subsection shall be construed to prevent any State from obtaining such additional information relating to any such plan as it may desire, or from otherwise regulating such plan.

(b) The provisions of this Act, except subsection (a) of this section and section 13, and any action taken thereunder, shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the United States or of any State affecting the operation or administration of employee welfare or pension benefit plans, or in any manner to authorize the operation or administration of any such plan contrary to any such law.

Separability of Provisions

Sec. [17.] *18.* If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

APPENDIX

GRUBBS & COMPANY

DONALD S. GRUBBS, JR.
Fellow of the Society of Actuaries
Member of the American Academy of Actuaries

SUMMARY OF REPORT

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

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 5. 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%

93D CONGRESS
1st Session } HOUSE OF REPRESENTATIVES { REPORT
No. 93–533

EMPLOYEE BENEFIT SECURITY ACT OF 1973

OCTOBER 2, 1973.—Committeed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

SUPPLEMENTAL, ADDITIONAL, AND INDIVIDUAL VIEWS

[To accompany H.R. 2]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2) to revise the Welfare and Pension Plans Disclosure Act, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass. The amendment substitutes all after the enacting clause and inserts a substitute text which appears in italic type in the reported bill.

I. SYNOPSIS

The Employee Benefit Security Act as reported by the Committee is designed to remedy certain defects in the private retirement system which limit the effectiveness of the system in providing retirement income security. The primary purpose of the bill is the protection of individual pension rights, but the committee has been constrained to recognize the voluntary nature of private retirement plans. The relative improvements required by this Act have been weighed against the additional burdens to be placed on the system. While modest cost increases are to be anticipated when the Act becomes effective, the adverse impact of these increases have been minimized. Additionally, all of the provisions in the Act have been analysed on the basis of their projected costs in relation to the anticipated benefit to the employee participant. In broad outline, the bill is designed to:

(1) establish equitable standards of plan administration;

(2) mandate minimum standards of plan design with respect to the vesting of plan benefits;

99–006 O

(3) require minimum standards of fiscal responsibility by requiring the amortization of unfunded liabilities;

(4) insure the vested portion of unfunded liabilities against the risk of premature plan termination; and

(5) promote a renewed expansion of private retirement plans and increase the number of participants receiving private retirement benefits.

Provision is made for the imposition of criminal penalties on those willfully violating their duties under the Act. The Labor Department is given primary authority to administer the provisions of the Act, but the Committee has placed the principal focus of the enforcement effort on anticipated civil litigation to be initiated by the Secretary of Labor as well as participants and beneficiaries.

II. Background

The private pension system is a relatively modern economic institution tracing its role as an important social and economic factor only from the mid 1940's. A variety of converging financial and social trends in our society have created a favorable environment for the growth and expansion of private deferred compensation schemes and retirement programs in general. As our economy has matured, an ever increasing number of employers have recognized their responsibility for the physical and economic welfare of their employees, even for the years beyond retirement. Its development parallels and is a response to the transition of the American life style from its rural agrarian antecedents into its present urbanized, wage earner society. The dynamic asset growth necessary to meet its responsibilities has placed the private pension system in a position to influence the level of savings, the operation of our capital markets, and the relative financial security of millions of consumers, three of the fundamental elements of our national economic security.

The growth of the private pension movement in the United States proceeded slowly until the years preceding World War II. As the full implications of the economic changes sweeping the nation were felt, American beliefs and attitudes regarding retirement security changed. The passage of the Railroad Retirement Act and the Social Security Act marked the turning point in American thinking, and dissatisfaction with those early governmental programs contributed to an accelerated interest in private retirement plans. The wage freezes imposed during World War II and the Korean conflict focused increased attention on the deferred component of compensation as a means of avoiding the freeze restrictions.

In 1947 a series of administrative proceedings and court decisions under the National Labor Relations Act of 1935 held that pensions were a form of remuneration for the purposes of that Act, and they accordingly became mandatory subjects of collective bargaining. (Inland Steel Company v. NLRB, 170 f.2d 247 (7th Cir. 1948), cert. denied, 336 U.S. 960 (1949)). In the same time period a Presidential fact finding commission in presenting its report on the steel industry labor dispute in 1949 stated that:

> We think all industry in the absence of adequate Government programs, owes an obligation to workers to provide for maintenance of the human body in the form of medical and similar benefits and full depreciation in the form of old age retirement—in the same way as it now does for plant and machinery.

In 1940, an estimated four million employees were covered by private pension plans; in 1950, the figure had increased to almost 10 million and in 1960 over 21 million were covered. Currently, over 30 million employees or almost one half of the private non-farm work force are covered by these plans. This phenomenal expansion of coverage has been matched by an even more startling accumulation of assets to back the benefit structure. Today, in excess of $150 billion in assets are held in reserve to pay benefits credited to private plan participants.

This rapid growth has constituted the basis for legislative efforts at both the federal and state levels to assure equitable and fair administration of all pension plans.

Various aspects of pension plans have been affected to some degree by most of the major labor legislation of the twentieth century, including the National Labor Relations Act (1935), the Labor Management Relations Act (1947), and the Labor Management Reporting and Disclosure Act (1959). However, not until 1958, with the enactment of the Welfare and Pension Plans Disclosure Act, was legislation effected which was specifically designed to exercise regulatory controls over pension and welfare funds. Based upon disclosure of malfeasance and improper activities by pension administrators, trustees, or fiduciaries, the Act was amended in 1962 to designate certain acts of conduct as federal crimes when they occurred in connection with welfare and pension plans. The amendments also conferred investigatory and various regulatory powers upon the Secretary over pension and welfare funds. In the decade since the amendments were enacted, experience has shown that, despite intermittent enforcement of the reporting requirements and the criminal provisions, the protection accomplished by statute has not been sufficient to accomplish Congressional intent.

The Existing Law

The growth and development of the private pension system in the past two decades has been substantial. Yet, regulation of the private system's scope and operation has been minimal and its effectiveness a matter of debate. The assets of private plans, estimated to be in excess of $150 billion, constitute the only large private accumulation of funds which have escaped the imprimatur of effective federal regulation.

At the federal level, there are essentially three federal statutes which, although accomplishing different purposes and vested within different federal departments for enforcement, are all compatible in their regulatory responsibilities. These are the Welfare and Pension Plans Disclosure Act (29 U.S.C. Sec. 301 et. seq.), the Labor Management Relations Act (29 U.S.C. Sec. 141, et. seq.) and the Internal Revenue Code I.R.C. of 1954, Secs. 401–404, 501–503).

A complete description of the federal regulation affecting the administration of private plans can be found in Interim Report of The Private Welfare and Pension Plan Study, 1971, Senate Report No. 92–634 of the 92d Congress 2d Session.

After a comprehensive investigation of abuses in the administration and investment of private fund assets, Congress adopted the Welfare and Pension Plan Disclosure Act in 1958. The policy underlying enactment of this Act was purportedly to protect the interest of welfare and pension plan participants and beneficiaries through disclosure of information with respect to such plans. The essential requirement of the Act was that the plan administrator compile, file with the Secretary of Labor, and send to participants and their beneficiaries upon written request, a description and annual report of the plan. It was expected that the knowledge thus disseminated would enable participants to police their plans. The Act was amended in 1962 to make theft, embezzlement, bribery, and kickbacks federal crimes if they occur in connection with welfare and pension plans. The 1962 amendments also conferred limited investigatory and regulatory powers upon the Secretary of Labor, and required bonding of plan officials.

Experience in the decade since the passage of the above amendments has demonstrated the inadequacy of the Welfare and Pension Plans Disclosure Act in regulating the private pension system for the purpose of protecting rights and benefits due to workers. It is weak in its limited disclosure requirements and wholly lacking in substantive fiduciary standards. Its chief procedural weakness can be found in its reliance upon the initiative of the individual employee to police the management of his plan.

The Labor Management Relations Act, Sec. 302, provides the fundamental guidelines for the establishment and operation of pension funds administered jointly by an employer and a union. The Act is not intended to establish nor does it provide standards for the preservation of vested benefits, funding adequacy, security of investment, or fiduciary conduct.

Tax deduction benefits accruing to employers are prescribed by the Internal Revenue Code under which the employer is granted a deduction within certain limits for contributions made to a qualified plan, and the investment earnings on such plans are made tax-exempt. To attain "qualified status" under the Code, the plan must be (1) for the exclusive benefit of the participants; (2) for the purpose of distributing the corpus or income to the participants; (3) established in such a manner to make it impossible for the employer to use or divert funds before satisfying the plan's liabilities; and (4) not discriminate in favor of officers, stockholders, or highly-compensated or supervisory employees.

The Internal Revenue Code provides only limited safeguards for the security of anticipated benefit rights in private plans since its primary functions are designed to produce revenue and to prevent evasion of tax obligations. The essence of enforcement under the Code lies in the power of the Internal Revenue Service to grant or disallow qualified status to a pension plan, thus determining the availability of statutory tax advantages. The Internal Revenue Service jurisdiction and enforcement capabilities are solely to allow various tax advantages to accrue to employers who establish and maintain pension plans which can qualify for such tax benefit privileges.

In the absence of adequate federal standards, the participant is left to rely on the traditional equitable remedies of the common law of trusts. A few states, including New York, Washington, Wisconsin, Massachusetts, and California have codified existing trust principles and enacted legislation which requires in many instances a degree of disclosure similar to that required by federal statute.

The fact that statutory rules exist says little as to their efficacy in adjusting inequities that are visited upon plan participants, as evidenced by the hearings before this Committee. In almost every instance, participants lose their benefits not because of some violation of federal law, but rather because of the manner in which the plan is executed with respect to its contractual requirements of vesting or funding. Courts strictly interpret the plan indenture and are reluctant to apply concepts of equitable relief or to disregard technical document wording. Thus, under present law, accumulated pension credits can be lost even when separated employees are within a few months, or even days, of qualifying for retirement.

The proposed bill would, therefore, establish minimum standards of vesting, funding, and fiduciary and a system of compulsory benefit insurance to protect the security of pension rights.

As suggested by the President's Cabinet Committee Report of 1965; "As a matter of equity and fair treatment an employee covered by a pension plan is entitled, after a reasonable period of service, to protection of his future retirement benefit against any termination of his employment." Concern for loss of benefits by workers after long years of labor through circumstances beyond their control was similarly expressed by President Richard M. Nixon on December 8, 1971, when, in a message to the Congress he said, "When a pension plan is terminated, an employee participating in it can lose all or a part of the benefits which he has long been relying on, even if his plan is fully vested . . . even one worker whose retirement security is destroyed by the termination of a plan is one too many."

III. Major Issues

Although the need for legislative reform has been and continues to be widely acknowledged among all persons and sectors affected, federal mandation of essential improvements has been resisted due to the belief that such legislation might impede plan growth. However, the Committee's inquiries have revealed that the costs associated with the vesting and funding proposals in the Act are sufficiently modest as not to constitute a major impediment to plan growth. Additionally, any added cost attributable to the imposition of vesting and funding standards will innure directly to the benefit of the participants in each plan in the form of increased availability of benefits and added security.

The principal issues affecting the vital and basic needs for legislation involve consideration of the essential elements of pensions:

A. Vesting

One of the major private pension plan considerations centers around the concept of vesting. Vesting refers to the nonforfeitable right of interest which an employee participant acquires in the pension fund. The benefit credits may vest in the employee immediately, although in most cases participants do not become eligible for vesting of benefits until a stipulated age or period of service, or a combination of both, is attained.

Upon compliance with the basic requirements of age or service, many plans will grant their participants vested rights to those benefits earned to that time. However, should employment terminate prior to such time, the employee will receive no benefits. Some pension plans, however, specify "graded" vesting formulas, whereby only a defined percentage of the accrued benefits earned will vest upon fulfillment of minimum requirements, and such percentage may increase periodically, as the employee continues in his employment and completes additional service.

Despite the recognized and acknowledged need for pension plans to provide for vesting of earned benefits, if pension promises are to be meaningful to workers, there is need for federal statutory requirements which will compel an employer to grant such vesting benefits. The difficulties and hardships resulting from non-existent or inadequate plan provisions for vesting of benefits have been vividly established by the Committee's studies and hearings.

It is noteworthy that in 1965, the President's Commission on Public Policy and Private Pensions, while acknowledging that there had been some improvement in private plans by increased adoption of vesting provisions, nonetheless found and recommended legislation to make minimum vesting provisions mandatory. That Commission concluded that ". . . the degree of retirement protection in private pension plans varies widely and in many cases remains quite inadequate." (President's Committee on Corporate Pension Funds and other Private Retirement and Welfare Programs, Public Policy and Private Pension Programs: A Report to the President on Private Employee Retirement Plans, January, 1965, p. 39).

The vesting concept recommended by the Cabinet Committee suggested preference for deferred graded vesting. It specifically favored a vesting formula under which 50 percent of an accrued pension would be vested in a plan participant upon completion of 15 years of service, with rights to full vesting of accrued pension credits to occur after 20 years of service. In general, although there has been some discernible progress to permit early vesting of benefits to employees, some employers incline to defer such vesting until the employee reaches a normal or early retirement eligibility formula. This is essentially based upon the belief that it will discourage and deter such employee from leaving the job before reaching retirement age.

Despite claims by opponents that progress made in pension plan provisions to provide vesting manifest movement toward an eventual voluntary vesting system, plans involving substantial numbers of workers which contain no vesting are still not uncommon. Opponents of mandatory vesting believe that compulsory vesting provisions will discourage development of new plans and impede flexibility and latitude in formulating employee benefits because of excessive costs that are certain to result. However, in the face of Committee findings relative to projected costs to plans for imposed vesting, indications are that the resistance of opponents to universal vesting is essentially structured upon extreme reluctance to submit to governmental regulatory measures concerning pension plan administration and operations. In its final analysis, the issue basically resolves itself into whether workers, after many years of labor, whose jobs terminate voluntarily or otherwise, should be denied benefits that have been placed for them in a fund for retirement purposes.

B. FUNDING

Another major issue in private pension plans relates to the adequacy of plan funding. "Funding" refers to the accumulation of sufficient assets in a pension plan to assure the availability of funds for payment of benefits due to the employees as such obligations arise. Today, funding of pension plans for the limited and specific purpose of qualifying for tax benefits permitted by law for contributions made is governed by statutory and regulatory requirements which are under the jurisdiction of the Internal Revenue Service (I.R.S. Code of 1954, Sections 401–404). The minimum funding rules (Treasury Regulations, Sections 1.401–404(c) (1963)) require an employer to make contributions to a pension fund, qualified by the Internal Revenue Service, of amounts at least equal to the pension liabilities being created currently, and the interest due upon those amounts of monies which reflect unfunded accrued liabilities. The inherent weakness of this required minimum funding is that the employer is not required under law to make payments toward the principal of the unfunded accrued liabilities. Without mandatory funding of past service liabilities, a pension plan may never be in a financial posture to meet its pension obligations to its employees.

The pension plan which offers full protection to its employees is one which is funded with accumulated assets which at least are equal to the accrued liabilities, and with a contribution rate sufficient to maintain that status at all times. However, since plans are revised and amended to provide new benefits which create new and different liabilities for the plan, opponents of compulsory funding argue that it is unrealistic to expect that plans maintain a full funding status at all times. The same opposition is voiced for new plans, which invariably assume a large unfunded liability at the outset of the plan, due to the granting of credit for past service by employees to the employer.

The ineffectiveness of funding requirements was acknowledged in the President's Cabinet Committee Report of 1965, when it concluded that ". . . the minimum standards for funding under present tax law do not assure adequate funding. The setting of standards for adequate funding therefore becomes an important public concern." (Public Policy and Private Pension Programs, 1965, pp. 50–51). The promise and commitment of a pension can be fulfilled only when funds are available to pay the employee participant what is owed to him. Without adequate funding, a promise of a pension may be illusory and empty.

C. FIDUCIARY RESPONSIBILITY AND DISCLOSURE

Another area of concern of the Subcommittee has involved the conduct of administration and operations of pension plans. Of particular interest has been the course of conduct in fund transactions, the degree of responsibility required of the fiduciaries, the types of persons who should be deemed pension "fiduciaries," and the standards of accountability they shall be governed by in the management and disposition of pension funds. The only current federal requirement is that the Secretary of Labor require fiduciaries, trustees, etc., to make disclosure of the provisions and financial operations of the pension plan under the Welfare and Pension Plans Disclosure Act.

An important issue relates to the effectiveness of communication of plan contents to employees. Descriptions of plans furnished to employees should be presented in a manner that an average and reasonable worker participant can understand intelligently. It is grossly unfair to hold an employee accountable for acts which disqualify him from benefits, if he had no knowledge of these acts, or if these conditions were stated in a misleading or incomprehensible manner in plan booklets. Subcommittee findings were abundant in establishing that an average plan participant, even where he has been furnished an explanation of his plan provisions, often cannot comprehend them because of the technicalities and complexities of the language used.

IV. Committee Studies and Activities

The General Subcommittee on Labor, pursuant to House Resolution 225, 93d Congress, February 20, 1973 and a prior resolution from the 92d Congress, has conducted a comprehensive and exhaustive study of the private pension system in the United States, with particular emphasis on the impact which such plans have upon the workers covered. The Subcommittee's implementation of the House Resolutions has been a methodical collection and analysis of vital statistics and information from individual and group cases reflecting the internal administration and operations of private pension and welfare plans. An interim staff report was issued in April of 1972 and an in-depth analysis of the cost of vesting proposals was published in February of 1973. During February, March, April and May over twenty days were devoted by the Subcommittee to taking testimony on pension reform issues. These hearings were conducted in Washington, D.C., Pittsburgh, Pennsylvania, Waterbury, Connecticut, Chicago, Illinois, South Bend, Indiana, Seattle, Washington, Honolulu, Hawaii, and San Francisco, California.

Because of the Subcommittee's concern for the cost impact of mandated vesting requirements, an outside consultant, Dr. Howard Winklevoss, Associate Professor of Insurance at the Wharton School of Finance, was retained to prepare an analysis of the various vesting cost proposals. This analysis utilized the computer facilities of both the Wharton School and the House. The complete text of this analysis was published in February 1973.

V. Committee Action

The Committee endorses the concept of a comprehensive private pension reform program. It believes that expeditious enactment of H.R. 2 will institute a program which will achieve a strengthening of the role played by private retirement plans within the fabric of our economic and social structures. Its most important purpose will be to assure American workers that they may look forward, with anticipation, to a retirement with financial security and dignity, and without fear that this period of life will be lacking in the necessities to sustain them as human beings within our society. The enactment of progressive and effective pension legislation is also certain to increase stability within the framework of our nation's economy, since the tremendous resources and assets of the private pension plan system are an integral part of our economy. It will also serve to restore credibility and faith

in the private pension plans designed for American working men and women, and this should serve to encourage rather than diminish efforts by management and industry to expand pension plan coverage and to improve benefits for workers.

The Committee believes that the legislative approach of establishing minimum standards and safeguards for private pensions is not only consistent with retention of the freedom of decision-making vital to pension plans, but in furtherance of the growth and development of the private pension system. At the same time, the Committee recognizes the absolute need that safeguards for plan participants be sufficiently adequate and effective to prevent the numerous inequities to workers under plans which have resulted in tragic hardship to so many.

The Bill reported by the Committee represents an effort to strike an appropriate balance between the interests of employers and labor organizations in maintaining flexibility in the design and operation of their pension programs, and the need of the workers for a level of protection which will adequately protect their rights and just expectations. In adopting this approach, the Committee believes it has designed a bill, which, like the National Labor Relations Act, the wage-hour laws and other labor standards laws, brings the workers' interests up to parity with those of employers. This legislation strikes an appropriate and equitable balance between two opposing schools of thought—those who advocate complete and stringent control of private pensions and those who oppose any form of government supervisory or regulatory control.

The Act does provide for coverage of public employee plans under Title I but excludes them from the other substantive provisions. The Committee is convinced that legislation seeking reform in the public sector must proceed with a thorough study of the effects of such proposals. There are literally thousands of public employee retirement systems operated by towns, counties, authorities and cities in addition to the state and Federal plans. Eligibility, vesting, and funding provisions are at least as diverse as those in the private sector with the added uniqueness added by the legislative process. For this reason the Committee is convinced that additional data and study is necessary before any attempt is made to address the issues of vesting and funding with respect to public plans.

The Committee on Education and Labor ordered H.R. 2 reported unanimously on September 25, 1932.

Estimate of Costs

In accordance with clause 7 of Rule XIII the Committee estimates that the projected cost of administering this act will not exceed that amount currently being expended for the present act.

VI. Committee Views

Policy of "Employee Benefit Security Act"

Underlying the provisions of this Act is a recognition of the necessity for a comprehensive legislative program dealing not only with malfeasance and maladministration in the plans, or the consequences of lack of adequate vesting, but also with the broad spectrum of questions such as adequacy of funding, plant shut downs and plan terminations, adequate communication to participants, and, in short, the establishment of certain minimum standards to which all private pension plans must conform if the private pension promise is to become real rather than illusory.

DEFINITIONS

The Committee has the following technical notes concerning definitions:

The definition of "employee" is intended to encompass any person who has the status of an "employee" under a collective bargaining agreement.

The exclusion of assets of investment companies regulated under the Investment Company Act of 1940 from the definition of "fund" is not intended to exclude participating shares in an investment company held by the fund.

With respect to the term "profit-sharing retirement plan", it is intended that stock bonus, thrift and savings or similar plans with retirement features be treated as the equivalent of profit-sharing retirement plans for purposes of this Act unless expressly indicated otherwise.

With respect to the term "normal service cost", it is intended that this definition be applied consistent with such cost methods recognized by the Internal Revenue Service unless there is an effort to avoid or evade the funding requirements of this Act.

With respect to the term "non-forfeitable right" or "vested right", it is not contemplated that vesting be required in benefits such as death benefits, disability benefits, or other forms of ancillary benefits provided by the plan. The plan may, of course, at its option, provide for vesting in such benefits.

With respect to "adequate consideration," it is intended that this term be read to include the fair market value of the use of leased property.

In formulating the definition of "multi-employer plan" the Committee was guided by the concept that such a plan, if sufficiently comprehensive in size or scope, would be unlikely to terminate because its existence did not depend on the economic fortunes of one employer or employer entity. The Committee recognized that certain single employer plans have characteristics similar to those of the multi-employer type described in the definition, but, on balance, it is believed that experience on plan terminations provides a reasonable basis for the distinction.

TITLE I—DISCLOSURE AND FIDUCIARY STANDARDS

Title I represents a major departure from current law. First, by additions to and changes in the reporting requirements designed to disclose more significant information about plans and the transactions engaged in by those controlling plan operations and to provide specific data to participants and beneficiaries concerning the rights and benefits they are entitled to under the plans and the circumstances

which may result in their not being entitled to benefits. Second, by the addition of a new section setting forth responsibilities and proscriptions applicable to persons occupying a fiduciary relationship to employee benefit plans, including a "prudent man" standard for evaluating the conduct of all fiduciaries, and by barring from responsible fiduciary provisions in such plans for a period of five years all persons convicted of certain listed criminal offenses.

REPORTING AND DISCLOSURE

The underlying theory of the Welfare and Pension Plans Disclosure Act to date has been that reporting of generalized information concerning plan operations to plan participants and beneficiaries and to the public in general would, by subjecting the dealings of persons controlling employee benefit plans to the light of public scrutiny, insure that the plan would be operated according to instructions and in the best interests of participants and beneficiaries. The Secretary's role in this scheme was minimal. Disclosure has been seen as a device to impart to employees sufficient information and data to enable them to know whether the plan was financially sound and being administered as intended. It was expected that the information disclosed would enable employees to police their plans. But experience has shown that the limited data available under the present Act is insufficient. Changes are therefore required to increase the information and data required in the reports both in scope and detail. Experience has also demonstrated a need for a more particularized form of reporting so that the individual participant knows exactly where he stands with respect to the plan—what benefits he may be entitled to, what circumstances may preclude him from obtaining benefits, what procedures he must follow to obtain benefits, and who are the persons to whom the management and investment of his plan funds have been entrusted. At the same time, the safeguarding effect of the fiduciary responsibility section will operate efficiently only if fiduciaries are aware that the details of their dealings will be open to inspection, and that individual participants and beneficiaries will be armed with enough information to enforce their own rights as well as the obligations owed by the fiduciary to the plan in general.

FIDUCIARY RESPONSIBILITY

A fiduciary is one who occupies a position of confidence or trust. As defined by the Act, a fiduciary is a person who exercises any power of control, management or disposition with respect to monies or other property of an employee benefit fund, or who has authority or responsibility to do so. It is not the intent of the Committee, however, that where the sole power of control, management or disposition with respect to plan funds rests with the participants themselves, as may be the case with respect to certain plans where the participant has the sole discretion over an individual account established in his name, that such participants shall be regarded as fiduciaries. The fiduciary responsibility section, in essence, codifies and makes applicable to these fiduciaries certain principles developed in the evolution of the law of trusts. The section was deemed necessary for several reasons.

First, a number of plans are structured in such a way that it is unclear whether the traditional law of trusts is applicable. Predominantly, these are plans, such as insured plans, which do not use the trust form as their mode of funding. Administrators and others exercising control functions in such plans under the present Act are subject only to minimal restrictions and the applicability of present State law to employee benefit plans is sometimes unclear. Second, even where the funding mechanism of the plan is in the form of a trust, reliance on conventional trust law often is insufficient to adequately protect the interests of plan participants and beneficiaries. This is because trust law had developed in the context of testamentary and inter vivos trusts (usually designed to pass designated property to an individual or small group of persons) with an attendant emphasis on carrying out the instructions of the settlor. Thus, if the settlor incldes in the trust document an exculpatory clause under which the trustee is relieved from liability for certain actions which would otherwise constitute a breach of duty, or if the settler specifies that the trustee shall be allowed to make investments which might otherwise be considered imprudent, the trust law in many states will be interpreted to allow the deviation. In the absence of a fiduciary responsibility section in the present Act, courts applying trust law to employee benefit plans have allowed the same kinds of deviations, even though the typical employee benefit plan, covering hundreds or even thousands of participants, is quite different from the testamentary trust both in purpose and in nature.

Third, even assuming that the law of trusts is applicable, without detailed information about the plan, access to the courts, and without standards by which a participant can measure the fiduciary's conduct he is not equipped to safeguard either his own rights or the plan assets. Furthermore, a fiduciary standard embodied in Federal legislation is considered desirable because it will bring a measure of uniformity in an area where decisions under the same set of facts may differ from state to state. It is expected that courts will interpret the prudent man rule and other fiduciary standards bearing in mind the special nature and purposes of employee benefit plans intended to be effectuated by the Act.

Finally, it is evident that the operations of employee benefit plans are increasingly interstate. The uniformity of decision which the Act is designed to foster will help administrators, fiduciaries and participants to predict the legality of proposed actions without the necessity of reference to varying state laws.

It is to be noted that the definition of "employee benefit fund" excludes assets of an investment company regulated under the Investment Company Act of 1940 but any participating shares held by the employee benefit fund in an investment company are assets of the fund and subject to coverage under this section.

The Committee also has made provision for contributory plans to equitably distribute any surplus funds remaining on plan termination to the participants in accordance with their rate of contribution. This requirement is applicable only after plan assets have been used to satisfy all liabilities. The Committee believes it is unfair to permit the complete recapture by employers of surplus funds in terminated contributory plans, without regard to the fact that contributions by

the workers helped to generate the surplus. The Committee wishes to emphasize that while it is not passing judgment on any particular case now pending, it has concluded that equitable principles require that this particular subject be governed by a specific rule which reflects what the Committee regards as essential protection for the interests of workers in such plans.

The principles of fiduciary conduct are adopted from existing trust law, but with modifications appropriate for employee benefit plans. These salient principles place a twofold duty on every fiduciary: to act in his relationship to the plan's fund as a prudent man in a similar situation and under like conditions would act, and to act consistently with the principles of administering the trust for the exclusive purposes previously enumerated, and in accordance with the documents and instruments governing the fund unless they are inconsistent with the fiduciary principles of the section.

There follows a list of proscriptions which represent the most serious type of fiduciary misconduct which in one way or another has occurred in connection with some welfare or pension plans. While the magnitude of these improper practices is small in relation to the total number of plans in existence, the seriousness of the improper practices disclosed indicates the need for additional precautions to insure that these specific examples do not become general conditions. The list of proscriptions is intended to provide this essential protection.

Title II—Vesting

Section 201 provides that no pension plan shall require, as a condition for eligibility to participate, a period of service longer than one year or an age greater than 25, whichever occurs later; however, a plan which provides 100% immediate vesting upon entry into plan, may restrict participation to those who are 30 years of age or have three years of service, whichever occurs later.

Earlier eligibility standards were considered and appeared to impose an unwarranted additional cost on plans. Additionally, the Committee believes on the basis of substantial evidence presented that until age 25 a large portion of the work force is still transient and accounting for such employees would impose unduly burdensome and costly record-keeping requirements on plan administrators. The Committee believes that an age 25 entry standard approaches the norm for the majority of plans today.

The exception for plans which provide 100% full vesting upon plan entry is based on the fact that such plans, like the TIAA-CREF plan for college teachers, provide earlier vesting in larger amounts than provided under the bill, and requiring such plans to install earlier membership requirements would impose burdens well beyond the minimum standards approach intended by the Committee, and might compel such plans to sacrifice immediate full vesting on plan entry.

The Act presumes that promised pension benefits are in the form of a conditional deferred wage. While popular attention focuses on the deferred wage aspect of pensions, the Act recognizes that the pension promise is conditional upon completion of minimum periods of service. The imposition of equitable standards to limit the conditions precedent to receipt of pension rights will eliminate most of the situations where workers have lost out on their pensions.

The alternative vesting standards provided for under the bill should impact individual participants on a roughly equivalent basis. The potential for manipulation by carefully shopping for the most stringent standard to limit the incidence of vesting is considered to be modest. In all cases some vesting will occur no later than 10 years after initial employment and full vesting will occur between the 10th and 15th year of employment.

The Committee has endorsed a major innovation which provides for retrospective credit in accrued benefits attributable to service rendered prior to the effective date of the vesting provisions.

Title III—Funding

The Committee believes that actuarially sound funding procedures are indispensable to effective implementation of the purposes of the Act. If employers never went out of business or terminated pension plans before they were completely funded, there would, no doubt, be no persuasive justification for funding standards aside from whatever tax considerations might be applicable. Nevertheless, employers do experience financial or economic difficulties or they undergo varying degrees of corporate reorganization, all of which can lead to premature termination of underfunded plans. A plan termination insurance program provides the essential safeguard to the rights of workers who are trapped by these unforeseen economic hazards but such a program cannot be made practical without being coupled to required standards of funding. To create a plan termination insurance program without appropriate funding standards would permit those who present the greatest risk in terms of exposure to benefit at the expense of employers who have developed conscientious funding programs. The funding standards contained in the Act are designed to lessen that unnecessary exposure by requiring every plan to be funded in a manner which will fully amortize unfunded liabilities.

The basic rights granted by the imposition of vesting standards are of real benefit to the participant only to the extent that adequate provision is made to pay the benefits when due. The vesting standards may be viewed as controlling the volume of the benefit promises made by the plan and the funding provisions as controlling the quality of those promises. The Act recognizes as a basic principle that defined benefit pension plans must be funded on some regular and current fashion. All current accruals of benefits based on current service are required to be paid for immediately. To the extent that a plan has offered benefits not based on current service, i.e. past service credit, the present value of such benefits is required to be amortized over a period of time not to exceed forty years, but over a shorter time period (not less than 30 years) if the average period remaining until retirement is very short.

Title IV—Plan Termination Insurance

Section 401.—Establishment and Applicability of Program

The bill reported by the Committee requires plan termination insurance to cover unfunded vested liabilities incurred prior to, as well as subsequent to, enactment of the Act, in order to prevent employees from being deprived of insurance protection for retirement credits earned before enactment.

The Secretary may provide insurance to plans to cover unfunded vested liabilities of a plan not subject to the Act so long as there is compliance with the vesting, funding and other requirements of the Act and the plan pays the requisite assessments and premiums. This is intended to make insurance-coverage under the Act available on a voluntary basis to plans not subject to the Act.

Section 403.—Assessments and premiums

The Committee adopted a provision which requires an initial three-year premium to be paid by the plan, as follows:

(a) For funded vested liabilities incurred after enactment—0.2 percentum of unfunded vested liabilities;

(b) For unfunded vested liabilities incurred prior to enactment—0.2 percentum of unfunded vested liabilities provided the plan was 75 percent funded during the five-year period preceding Act, or if the plan is less than five years old on date of enactment, and if it was reducing unfunded vested liabilities at rate of five percent each year;

(c) For unfunded vested liabilities incurred prior to Act, but where the funding tests above in (b) have not been met—more than .4 percentum and not less than 0.2 percentum of such unfunded vested liabilities;

(d) As to multi-employer plans, both as to unfunded vested liabilities incurred before or after Act—not to exceed 0.2 percentum of all such unfunded vested liabilities.

In order to minimize the risk of shifting to the reinsurance program substantially all unfunded liabilities created prior to enactment, it was believed essential to create two classes of risks for purposes of setting the premium rate. If the plan was being funded in an adequate fashion, i.e., was 75 percent funded or was amortizing unfunded vested liabilities at the rate of five percent each year, it was believed that such a plan was an acceptable risk and the .2 percentum premium rate was appropriate. In the event the plan did not meet the test of funding adequacy, as indicated, it falls in the category of being a higher risk and therefore, can be charged up to twice the amount of normal premium, but no more. Since multi-employer plans, as defined in the bill, have a much lower risk of plan termination, it was believed appropriate to continue charging the .2 percent premium regardless of when the unfunded vested liabilities were incurred.

Section 404.—Payment of Insurance

There are a variety of circumstances under which pension plans terminate. In some cases, the termination proceeds by stages. In other cases, it may happen fairly rapidly. In order to carry out the purpose of the reinsurance program while at the same time protecting the program from undue exposure owing to delays, manipulation, or unforeseen economic hazards following plan termination, the Secretary is provided with sufficient flexibility to determine the most appropriate procedure for winding up terminated plans and assuring effective implementation of the insurance program.

It is also required that plans furnish to the Secretary adequate prior notice of intent to terminate the plan. Persons responsible for giving such notice who fail to do so, or who terminate plans in order to circumvent or avoid the Act, are held personally liable for losses sustained by the insurance program.

Section 405.—Recovery

The Committee recognizes that in order to provide adequate protection to employees against loss of vested benefits owing to premature plan termination, it is necessary for the insurance program to cover all forms of plan termination regardless of the circumstances giving rise to the termination. The Committee also recognized that some degree of employer liability was essential where the employer was not insolvent at the point of plan termination in order to preclude abuse by shifting the financial burden to the plan termination insurance program despite the fact that the employer had available funds to continue funding the plan.

One approach to this problem would be to require financially responsible employers to, in effect, act as self-insurers for the unfunded vested liabilities and those who are not financially responsible to obtain plan termination insurance. This approach, which is supported by precedent in the field of workmen's compensation, for example, was considered and rejected because of the potentially enormous liabilities involved. To require the Secretary to evaluate the financial capabilities of particular employers to assume such potentially enormous liabilities might have an adverse effect on the employer's competitive position and on his continued healthy growth.

Having determined that participation in the plan termination insurance program was essential for all plans, and that some degree of employer liability was necessary, the question of the degree of such liability becomes important. The Committee had concern that if the degree of liability was absolute to the extent of the employer's assets, it might drive some employers to the brink of bankruptcy, impose substantial economic hardship, or discourage the establishment of plans or the reasonable liberalization of benefits.

Accordingly, the Committee endorsed a formula of employer liability which requires the employer to reimburse the plan termination insurance program for the total amount of insurance paid, but in no event greater than 50% of employer's net worth at time of plan termination.

In addition, as a result of plan termination field hearings held by the Subcommittee, numerous instances were disclosed where acquiring companies that terminated pension plans failed to take over the liability for vested benefits owed to the employees of the predecessor company. Since this circumstance could also arise in connection with the reinsurance provision, it is necessary to strengthen the reinsurance provisions by requiring successors-in-interest to be liable for reimbursements owned by predecessor companies.

In order to make the liability of the employer for reimbursement of insurance paid meaningful, it was considered essential to provide a mechanism for enforcement of such liability through giving the government a lien on employer property for unpaid amounts due.

With respect to the Secretary's authority to treat portions of multi-employer plans as terminated for purposes of applying the plan termination insurance provisions, it should be noted that the contributing employers in such arrangements are free to arrange indemnification agreements among themselves in connection with the plan's application for insurance coverage under Title IV, so that employer liability for reimbursement of insurance paid under Title IV can be allocated under terms that the parties themselves have agreed to as equitable.

Title V—Enforcement

The enforcement provisions have been designed specifically to provide both the Secretary and participants and beneficiaries with broad remedies for redressing or preventing violations of the Act. The intent of the Committee is to provide the full range of legal and equitable remedies available in both state and federal courts and to remove jurisdictional and procedural obstacles which in the past appear to have hampered effective enforcement of fiduciary responsibilities under state law for recovery of benefits due to participants. For actions in federal courts, nationwide service of process is provided in order to remove a possible procedural obstacle to having all proper parties before the court.

Except where plans are not subject to this Act and in certain other enumerated circumstances, state law is preempted. Because of the interstate character of employee benefit plans, the Committee believes it essential to provide for a uniform source of law in the areas of vesting, funding, insurance and portability standards, for evaluation of fiduciary conduct, and for creating a single reporting and disclosure system in lieu of burdensome multiple reports. As indicated previously, however, the Act expressly authorizes cooperative arrangements with state agencies as well as other federal agencies, and provides that state laws regulating banking, insurance or securities remain unimpaired.

The Act makes it unlawful for any person to discharge, fine, suspend, expel, discipline or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of the plan or the Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan or the Act.

The Act makes it a criminal offense for any person to use fraud, force, or violence or threats thereof to restrain, coerce, intimidate or attempt to restrain, coerce, intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan, or the Act.

Although the instances of these occurrences are relatively small in number, the Committee has concluded that safeguards are required to preclude this type of abuse from being carried out and in order to completely secure the rights and expectations brought into being by this legislation.

VII. Section-by-Section Analysis

PURPOSES

The Employee Benefit Security Act is designed (1) to establish minimum standards of fiduciary conduct for Trustees, Administrators and others dealing with retirement plans, to provide for their enforcement through civil and criminal sanctions, to require adequate public disclosure of the plan's administrative and financial affairs, and (2) to improve the equitable character and soundness of private pension plans by requiring them to: (a) vest the accrued benefits of employees with significant periods of service with an employer, (b) meet minimum standards of funding and (c) guarantee the adequacy of the plan's assets against the risk of plan termination prior to completion of the normal funding cycle by insuring the unfunded portion of the benefits promised.

Section 2. Findings and declaration of policy

Section 3. Definitions:

1. Employee Welfare Benefit Plan
2. Employee Pension Benefit Plan
3. Employee Benefit Plan (or Plan)
4. Employee Organization
5. Employer
6. Employee
7. Participant
8. Beneficiary
9. Person
10. State
11. Commerce
12. Industry or Activity Affecting Commerce
13. Secretary
14. Party in interest
15. Relative
16. Administrator
17. Separate Account
18. Adequate Consideration
19. Nonforfeitable (Pension Benefit or Right)
20. Security
21. Fiduciary
22. Regular Retirement Benefit
23. Accrued Portion of the Regular Retirement Benefit
24. Regular Retirement Age
25. Vested Liabilities
26. Current Value
27. Present Value
28. Investment Company not a Fiduciary
29. Normal Service Cost
30. Present Value of an Annuity Certain
31. Accrued Liability
32. Multi-Employer Plan
33. Unfunded Accrued Liability
34. Advanced Funding Actuarial Cost Method (Actuarial Cost Method)

TITLE I—FIDUCIARY RESPONSIBILITY AND DISCLOSURE

Section 101. Coverage

Title I would cover all private employee benefit plans under Commerce Clause jurisdiction except:

1. Plans of the Federal government;
2. Plans required under workmen's compensation, unemployment compensation, and disability insurance laws;
3. Plans established or maintained outside the United States for the benefit of non-United States citizens;
4. Unfunded deferred compensation schemes of top executives.

Section 102. Duty of disclosure and reporting

The administrator of a pension or welfare plan would be required to publish to each participant or beneficiary a description of the plan as set forth in section 103 and a summary of the annual financial report as set forth in section 104. The report would be in such form and detail as the administrator finds necessary to disclose fully and fairly all pertinent facts.

Upon termination of a pension or welfare plan, the administrator would be required to file a special terminal report as prescribed by the Secretary of Labor.

Section 103. Description of the plan

Plan descriptions would be required to be published within 120 days after the establishment of a plan or within 120 days after a plan becomes subject to this title, whichever is later. Amendments to plans would have to be published within 120 days, and descriptions would have to be republished at least every five years. The description would have to be comprehensive and written in a manner calculated to be understood by the average plan participant. Among other things it would have to include: the name and address of the administrator; the schedule of benefits; a description of the plan's vesting provisions; the source of the plan's financing; and the procedures to be followed in presenting claims for benefits as well as those for appealing claims which are denied.

Section 104. Annual reports

An annual financial report to the Secretary of Labor would be required by this section for all plans. Sec. 105 provides that the Secretary shall exempt plans with less than 26 and may exempt plans with less than 100 participants. Information required in the report would include:

An audit and opinion by an independent qualified public accountant (with exceptions for public plans and when financial statements are certified by a bank or insurance carrier);

An actuarial statement of valuation (where appropriate) accompanied by a certification from the actuary preparing the valuation;

The number of employees, benefits paid, and information fiduciaries, trustees and administrators and compensation paid them;

A summary financial statement of assets and liabilities;

A summary of receipts and disbursements;

A schedule of all assets listed by issuer;

A schedule of known party-in-interest transactions;

A schedule of loans which are in default and uncollectible;

A schedule of leases which are in default and uncollectible;

A bank or insurance carrier statement of assets and liabilities for common and collective trusts.

If some or all of the plan's assets are held in common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier, the bank or carrier would also be required to file a statement of assets and liabilities.

If some or all of the benefits under the plan are provided by an insurance carrier or other organization, such report would also have to include: The premium rate or subscription charge and the total premium or subscription charges paid to each carrier and the approximate number of persons covered by each class of benefits; the total premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such carriers, or, if separate experience ratings are not kept, a statement as to the basis of a carrier's premium rate or a copy of the financial report of the carrier.

Section 105. Publication

The Secretary would be authorized to reject any report which after a hearing before him was found to be incomplete or to contain a qualified opinion by an accountant or an actuary.

A copy of the plan description and each annual report would have to be filed with the Secretary of Labor who would make them available for inspection in the public document room of the Department of

Labor. The administrator would be required to make copies of the annual report and plan description as well as the bargaining agreement, and trust instrument creating the plan available for examination by any plan participant or beneficiary in the administrator's principal office, and in such other places as necessary to fully and fairly disclose all pertinent facts.

All pension and welfare plan participants would be furnished with a copy of the plan description initially and at the time of amendment, including:

A schedule of benefits;
Eligibility and vesting provisions;
Claim procedures and remedies;
Basis of financing;
Other relevant plan provisions affecting their rights and the annual report, including a summary financial statement of assets and receipts and disbursements, and the ratio of assets to value of nonforfeitable pension benefits.

Upon written request to the plan administrator, a participant could receive a copy of a statement as to his or her rights and the amount of any nonforfeitable benefit; and a copy of the plan, trust, bargaining agreement or other document. All newly vested would receive notification at the time their benefits became nonforfeitable. These copies would be furnished at the cost of reproduction.

Upon termination, all pension plan participants would receive a statement showing his or her benefits, indicating when and how they may be claimed, and including any other information affecting their rights.

A statement of a pension plan participant's right to deferred vested benefits from former pension plans would be furnished upon request to the Social Security Administration and when action is taken on the participant's Social Security account. To assure timely filings and payment of vested benefits, the address and identity of all plans would be kept up-to-date.

Section 106. Disclosure of benefit rights to participants

The administrator is required to inform each participant when his benefits become nonforfeitable. Upon written request of any participant or beneficiary, the administrator is required to disclose the rights of that participant.

Violation of the provisions dealing with the retention of records subjects a person to a fine of up to $5,000 and/or imprisonment of up to two years. Violations of the provisions of 111(b)(2) (dealing with prohibited transactions) would subject a person to a fine of up to $10,000 and/or up to five years' imprisonment.

This section would give the Secretary of Labor authority to investigate any plan. He would be given authority to demand sufficient information as he may deem necessary to enable him to conduct his investigations.

Plan participants, beneficiaries, or the Secretary of Labor on behalf of the participants and beneficiaries would be allowed to bring civil actions to redress breaches of a fiduciary's responsibility or to remove a fiduciary who has failed to carry out his duties. The Secretary would also be empowered to bring an action to enjoin any act or practice

which appears to him to violate the title. Civil actions brought by a participant or beneficiary may be brought in any court, State or Federal. However, the Secretary would have the right to intervene in a case and remove it to a Federal district court. In any actions by a participant or beneficiary, the court could, at its discretion, allow reasonable attorneys' fees and costs of action to either party. Class actions shall be brought where requirements for class actions could be met.

Section 107.

All reports filed with the Secretary shall be public information.

Section 108.

Detailed records must be retained for six years.

Section 109.

Proven reliance upon a regulation or written interpretation by the Secretary of Labor would constitute a defense in a criminal or civil proceeding under certain sections of the act.

Section 110.

Every person subject to the fiduciary provisions of the act would have to be bonded.

Section 111. Fiduciary responsibility

This section would deem every employee benefit fund to be a trust held for the exclusive purpose of providing benefits to participants and their beneficiaries as well as defraying reasonable administrative expenses. Each plan would have to be in writing.

A fiduciary is defined in section 3 (29) as anyone who exercises any power of control, management or disposition with regard to a fund's assets or who has authority to do so or who has authority or responsibility in the plan's administration. Fiduciaries would be required to discharge their duties with respect to the fund ". . . solely in the interest of the participants and with the care, skill, prudence and diligence under the circumstances then prevailing that 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."

A fiduciary would also have to diversify the investments, except in the case of profit-sharing, stock bonus, or thrift and savings plans, so as to minimize the risk of large losses unless under the circumstances it is prudent not to do so and in accordance with the documents and instruments governing the fund.

A fiduciary would be specifically prohibited from making the following transactions:

Dealing with such fund for his own account . . .
Acting in any transaction involving the fund on behalf of a party adverse to the interests of the plan or participants . . .
Receiving personal consideration from any party dealing with the fund in connection with a transaction involving the fund . . .
Transferring property to any party in interest for less than adequate consideration . . .
Permitting the acquisition of property from any party in interest for more than adequate consideration.

Section 112. Pension plan termination

An equitable priority distribution of assets would be provided upon plan termination. Assets not previously allocated to individual accounts would have to be distributed according to the following priorities:

(a) Contributions by employees would be returned;

(b) Those presently receiving benefits and those who could voluntarily elect to receive benefits;

(c) Those other than in (b)—to the extent of their vested benefits;

(d) All others, including the non-vested benefits of those in (c).

Benefit increases within the five years prior to plan termination would trigger an allocation based on the prior benefit formula, any remaining assets being distributed on the basis of increases in the more recent benefit formulas:

(e) Investment income attributable to employee contributions would be distributed pro rata to the employees' accounts.

(f) Any benefit liabilities incurred as a result of plan termination would be given last priority.

(g) Any remaining assets would be returned to the employer if the plan so provides; otherwise, they would be distributed pro ratably to the employees.

Section 113.

Certain persons convicted of crimes may not serve as officers, administrators, trustees, or paid consultants.

Section 114.

A 15-member Advisory Council on Employee Welfare and Pension Benefit Plans would be established.

Section 115.

The Welfare and Pension Plans Disclosure Act would be repealed upon the effective date of the act, which would be six months after enactment.

TITLE II—VESTING AND ELIGIBILITY REQUIREMENTS

Section 201. Coverage

Title II would cover all private pension benefit plans including profit-sharing plans which provide benefits after retirement, except:

1. Federal, State and local plans;
2. Keogh plans benefiting the self-employed and owner-employees;
3. Plans established or maintained outside the United States for the benefit of workers who are not United States citizens;
4. Executive deferred compensation plans; and
5. Secondary plans providing class year vesting.

Section 202. Eligibility requirements

No plan, after the effective date of this title, would be allowed to require as a condition for eligibility to participate in it an age greater than 25 or a period of service longer than one year (three years for plans which provide for immediate 100% vesting or for crediting of

all pre-participation service for benefit purposes), whichever is the later. Existing plans would be permitted to retain their eligibility requirements for three years or until they are amended, whichever is sooner.

Section 203. Nonforfeitable benefits

Every pension plan would be given a choice of one of three vesting rules:

1. Ten-Year Service Rule (100% vested at 10 years of covered service);
2. Graded Fifteen-Year Service Rule (30% vested at eight years of covered service, such percentage increasing by 10% each year until 100% is reached after 15 years of covered service);
3. Rule of 45 (50% vested when age plus covered service equals 45, such percentage increasing by 10% each year until 100% is reached).

The vesting rules use a fully retroactive service provision in calculating the vesting percentage and the amount of the accrued portion of the regular retirement benefit. A plan would be permitted to change vesting rules at any time if provision is made that vested benefits not be reduced or delayed for participants in the plan at the time of change. A plan would always be permitted to allow for vesting of benefits after a lesser period and in a greater amount than is required under any of the three vesting rules.

Class year profit-sharing plans.—Class year plans would be required to vest 100% of the employer's contribution no later than five years after the contribution was made.

Covered service.—In computing the period of covered service under a plan, an employee's entire service with the employer contributing to or maintaining the plan shall be considered. However, service prior to age 25, service during which the employee declined to contribute to a plan requiring employee contributions, service with a predecessor of the employer contributing to or maintaining the plan (except where the plan has been continued in effect by the successor employer), service broken by periods of suspension of employment (provided the rules governing such breaks in service are not unreasonable or arbitrary), and service where a participant has previously attained a 100% nonforfeitable right may be disregarded.

Contributory plans.—No plan may provide for forfeiture (1) of any employee contributions unless agreed to in writing, or (2) of the accrued portion of the regular retirement benefit to the extent that such portion is nonforfeitable and is attributable to employer contributions.

Section 204. Distribution of nonforfeitable benefits to terminating participants

Vested benefits to participants terminating before 65 would have to be distributed, at the option of the participant, at regular retirement age or age 65. Vested benefits to participants terminating after age 65 would have to commence immediately at the option of the participant. Survivor annuity and other options offered by a plan to normal retirees would have to be extended to all terminated vested participants.

Social Security offset plans. Any pension plan with a Social Security offset feature would be required at the time of the first plan amendment, to provide that the amount of any offset not increase (1) for participants receiving benefits and (2) after the date of termination of a vested participant.

Section 205. Effective date

The effective date of this title would be two years after enactment. Collectively bargained plans would be extended up to 30 additional months to conform their bargaining agreements to this title.

TITLE III—FUNDING

Section 301. Coverage

Title III would cover all private pension benefit plans covered under title II except for profit-sharing and other individual account plans and unfunded voluntary fraternal type plans.

Section 302. Minimum funding standard

Every pension plan subject to title III (other than the above) must make annual minimum contributions equal to:

1. Normal cost plus no less than 30 but no more than 40-year amortization of unfunded accrued liabilities for all plan benefits; any accumulated actuarial gains and losses would be spread over the future service of active participants;

or, if larger,

2. A percentage of the unfunded portion of the present value of the nonforfeitable pension benefits. The unfunded portion would be recalculated each year so that an interest assumption of 5% would reduce the remaining unfunded portion by about 9.2% per annum or by about 57% in 20 years or 72% in 30 years.

Contributions made in excess of the minimum could be used to offset future minimum contributions, thereby permitting funding flexibility. Required minimum contributions in excess of tax deductible limits would be permitted to be carried over to succeeding years where tax deductions would be allowed.

Section 303. Enforcement of funding requirements; variances

Application would have to be made to the Secretary for a waiver of part or all of a minimum funding contribution. Benefits could not be increased until all such waived contributions had been paid off. After five waivers in a ten-year period, the Secretary could, after notice and hearing, order the termination of the plan or the merger of the plan with another plan of the employer. Benefits could not be increased by amendment during a period of waiver.

Section 305. Effective date

The effective date of this title would be two years after enactment. Collectively bargained plans would be extended up to 7 years to conform their bargaining agreements to this title.

TITLE IV—PLAN TERMINATION INSURANCE

Section 401.

This section establishes a Private Pension Plan Termination Insurance Program administered by the Secretary, which requires plans to

insure unfunded vested liabilities incurred prior to enactment of the Act, as well as after enactment of the Act. The Secretary may provide insurance to cover unfunded vested liabilities of a plan not subject to the Act where he determines that such plan conforms to the vesting, funding and all other standards required by the Act.

Section 402. Conditions of insurance

This section requires the insurance program to insure participants against loss of vested benefits arising from plan termination.

The amount of vested benefit insurance is limited to 50 percent of highest average monthly wage of participants earned over a five year period, or $500 monthly, whichever is the lesser.

No insurance shall be paid if the plan is terminated less than three years from date of establishment or registration unless the Secretary determines that a registered plan was otherwise in substantial compliance with the Act and that the reserve position of the insurance program will not be adversely affected.

Insurance will not cover vested rights created by any plan amendment which took effect less than three years prior to plan termination.

No coverage is extended to participants who own 10 percent or more of employer voting stock.

Section 403. Assessments and premiums

This section requires plans to pay an initial uniform assessment to be prescribed by the Secretary to cover administrative costs of the program. The Secretary shall prescribe an annual premium rate based upon unfunded vested liabilities. For the first three years, the insurance premium shall not exceed 0.2 percent of unfunded vested liabilities incurred after enactment of the Act. With respect to those unfunded vested liabilities incurred prior to enactment the premium shall be 0.2 percent provided that the unfunded vested liabilities of the plan were funded at least 75% during the five-year period preceding enactment.

As to plans which on date of enactment were less than five years old, the premium shall be 0.2 percent, provided that the plan had been reducing its unfunded vested liabilities at a rate of no less than 5 percent annually. In the event plans do not meet the above funding standards, they can be charged a premium not to exceed 0.4 percent or less than 0.2 percent of pre-enactment unfunded vested liabilities.

Also, in the case of multiemployer plans (as defined in the Act), the premium rate for the initial three years shall not exceed 0.2 percent of unfunded vested liabilities, regardless of when such liabilities were incurred.

After the initial three-year period, the Secretary may prescribe an annual rate based upon experience, and unless Congress objects within 90 days, the new premium shall become effective.

The Secretary is required to consult with appropriate private and government agencies on matters relating to the assessment and premium rates before prescribing rates.

Section 404. Payment of insurance

This section requires that plans must notify the Secretary of intent to terminate, and failing to do so will make such persons personally liable for any losses incurred by the Pension Benefit Insurance Fund in connection with plan termination.

The insurance to be paid shall be the difference between the plan's assets and unfunded vested benefits owed at the time of plan termination.

In addition, the Secretary is required to prescribe procedures under which funds of terminated plans shall be liquidated and paid out to cover vested benefits of participants. In implementing this authority, the Secretary may transfer terminated funds under his supervision or purchase annuities from qualified insurance carriers for participants or take such other action as may be appropriate. Persons who terminate a plan with intent to circumvent the Act or the WPPDA shall be personally liable for losses.

Section 405. Recovery

This section provides that, where employers in terminated plans are not insolvent, they or their successors-in-interest may be liable for reimbursement of a portion of insurance benefits paid. The liability of the employer is to pay 100% of the unfunded vested liabilities and in no event shall it exceed 50% of the employer's net worth.

The Secretary shall make arrangements with employers on equitable terms for the reimbursement of insurance paid.

The amount or amounts of any unpaid liability owned by an employer shall constitute a lien in favor of the government, but junior to any lien for unpaid taxes owed to the government.

Section 406. Pension Benefit Insurance Fund

This section establishes within the Labor Department a fund for the deposit of premiums, assessments, etc., made under the Act and for payment of such claims thereunder.

TITLE V. GENERAL PROVISIONS

Section 501. Variations; Appeals Board

The Secretary is authorized to grant variations from the requirements of titles II and III and Section 112. A Variation Appeal Board would be established to hear and determine appeals from decisions denying grants of variations.

Section 502. Studies

This section directs the Secretary to conduct research relating to the effects of the act, the role of private pensions, the operation of public and private pension plans, and methods to encourage the growth of the private pension system.

Section 503. Enforcement

This section would give the Secretary authority to conduct such investigations as may be necessary to determine whether any person has violated or is about to violate any provisions of title II or III or any rules or regulations which would result from enactment of titles II and III. Information about such investigations would be made available to any interested person and included in an annual report by the Secretary. Criminal penalties of five years imprisonment and $10,000 fine or up to a $200,000 fine in the case of a corporate felon would be assessed for willful violation of the Act. Civil actions by the Secretary, participants or beneficiaries to enforce the provisions of the Act are authorized in Federal Court.

Section 504. Annual report of the Secretary

The Secretary would be required to submit an annual report to the Congress covering his administration of the Act.

Section 505. Rules and regulations

This section would authorize the Secretary to prescribe such rules and regulations as he finds necessary to carry out the provisions of the Act.

Section 506. Other agencies and departments

The Secretary would be authorized to enter into agreements that would avoid unnecessary expense and duplication and would permit cooperation among government agencies in performing his functions under title II, or III. He would also be authorized to reimburse other Federal agencies for facilities or services he utilized in doing so. The Attorney General would be authorized to receive such evidence as developed by the Secretary which may be found to warrant consideration for criminal prosecution.

Section 507. Administration

Chapters 5 and 7 of Title 5, United States Code (relating to administrative procedure) would be applicable to this Act.

No employee of the Department of Labor would be able to administer or enforce the Act with respect to any employee organization of which he is a member or employer organization in which he has an interest.

Section 508. This section would authorize to the Secretary such sums as may be necessary to carry out this Act

Section 509. If any provision of this Act were held invalid, the remainder of the Act would not be affected

Section 510. Interference with the rights protected under the Act would be unlawful.—The provisions of sections 404 and 405 would be applicable in the enforcement of this section

Section 511.

Any person who used coercion to interfere with the rights protected under the act would be subject to a $10,000 fine and/or imprisonment for up to one year.

Section 512. Registration

Within six months after the effective date of titles II and III, each pension and profit-sharing plan would have to file an application with the Secretary of Labor for qualification and registration. Plans established after that date would have six months in which to file such application. Plan amendments similarly would have to be reported to the Secretary. A certificate would be issued and continued in force so long as the eligibility, vesting and funding requirements of the Act are met.

Section 513. Enforcement of Registration

The Secretary of Labor may seek a court order to secure compliance whenever a determination is made that no application for registration has been filed, that the application should be denied or the registration cancelled, or that a plan has failed to make the required contributions or to pay such other assessments or fees as are required.

Section 514. Effect on other laws

All State laws would be pre-empted except for those covering plans not subject to titles II and III.

VIII. Changes in Existing Law Made by the Bill as Reported

In compliance with Clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

[WELFARE AND PENSION PLANS DISCLOSURE ACT

[Pub. L. No. 85–836, 85th Cong., 2d Sess., 1958, 72 Stat. 997, as amended by Pub. L. No. 87–420, 87th Cong., 2d Sess., 1962, 76 Stat. 35; 29 U.S.C. §§ 301–09; F.C.A. 29 §§ 301–09.

[*Be it enacted by the Senate and House of Representatives of the United of America in Congress assembled*, That this Act may be cited as the "Welfare and Pension Plans Disclosure Act."

[FINDINGS AND POLICY

[Sec. 2. (a) The Congress finds that the growth in size, scope, and numbers of employee welfare and pension benefit plans in recent years has been rapid and substantial; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that owing to the lack of employee information concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made with respect to the operation and administration of such plans.

[(b) It is hereby declared to be the policy of this Act to protect interstate commerce and the interests of participants in employee welfare and pension benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto.

[DEFINITIONS

[Sec. 3. When used in this Act.

[(1) The term "employee welfare benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, death, or unemployment.

[(2) The term "employee pension benefit plan" means any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, by the purchase of insurance or annuity contracts or otherwise, retirement benefits, and includes any profit-sharing plan which provides benefits at or after retirement.

[(3) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee welfare or pension benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

[(4) The term "employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to an employee welfare or pension benefit plan, and includes a group or association of employers acting for an employer in such capacity.

[(5) The term "employee" means any individual employed by an employer.

[(6) The term "participant" means any employee or former employee of an employer or any member of an employee organization who is or may become eligible to receive a benefit of any type from an employee welfare or pension benefit plan, or whose beneficiaries may be eligible to receive any such benefit.

[(7) The term "beneficiary" means a person designated by a participant or by the terms of an employee welfare or pension benefit plan who is or may become entitled to a benefit thereunder.

[(8) The term "person" means an individual, partnership, cooperation, mutual company, joint-stock company, trust, unincorporated organization, association, or employee organization.

[(9) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331–1343).

[(10) The term "commerce" means trade, commerce, transportation, or communication among the several States or between any foreign country and any State, or between any State and any place outside thereof.

[(11) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

[(12) The term "Secretary" means the Secretary of Labor.

[(13) The term "party in interest" means any administrator, officer, trustee, custodian, counsel, or employee of any employee welfare benefit plan or employee pension benefit plan, or a person providing benefit plan services to any such plan, or an employer any of whose employees are covered by such a plan or officer or employee or agent of such employer, or an officer or agent or employee of an employee organization having members covered by such plan.

[COVERAGE

[SEC. 4. (a) Except as provided in subsection (b), this Act shall apply to any employee welfare or pension benefit plan if it is established or maintained by any employer or employers engaged in commerce or in any industry or activity affecting commerce or by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce or by both.

[(b) This Act shall not apply to an employee welfare or pension benefit plan if—

[(1) such plan is administered by the Federal Government or by the government of a State, by a political subdivision of a State, or by an agency or instrumentality of any of the foregoing;

[(2) such plan was established and is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation disability insurance laws;

[(3) such plan is administered by an organization which is exempt from taxation under the provisions of section 501(a) of the Internal Revenue Code of 1954 and is administered as a corollary to membership in a fraternal benefit society described in section 501(c)(8) of such Code or by organizations described in sections 501(c)(3) and 501(c)(4) of such Code: *Provided*, That the provisions of this paragraph shall not exempt any plan administered by a fraternal benefit society or organization which represents its members for purposes of collective bargaining; or

[(4) such plan covers not more than twenty-five participants.

[DUTY OF DISCLOSURE AND REPORTING

[SEC. 5. (a) The administrator of an employee welfare benefit plan or an employee pension benefit plan shall publish in accordance with section 8 to each participant or beneficiary covered thereunder (1) a description of the plan and (2) an annual financial report. Such description and such report shall contain the information required by sections 6 and 7 of this Act in such form and detail as the Secretary shall by regulations prescribe and copies thereof shall be executed, published, and filed in accordance with the provisions of this Act and the Secretary's regulations thereunder. No regulation shall be issued under the preceding sentence which relieves any administrator of the obligation to include in such description or report any information relative to his plan which is required by section 6 or 7. Notwithstanding the foregoing, if the Secretary finds, on the record after giving interested persons an opportunity to be heard, that specific information on plans of certain kinds or on any class or classes of benefits described in section 3 (1) and (2) which are provided by such plans cannot, in the normal method of operation of such plans, be practicably ascertained or made available for publication in the manner or for the period prescribed in any provision of this Act, or that the information if published in such manner or for such period would be duplicative or uninformative, the Secretary may by regulations prescribe such other manner or such other period for the publication of such information as he may determine to be necessary and appropriate to carry out the purposes of this Act."

[(b) The term "administrator" whenever used in this Act, refers to—

[(1) the person or persons designated by the terms of the plan or the collective bargaining agreement with responsibility for the ultimate control, disposition, or management of the money received or contributed; or

[(2) in the absence of such designation, the person or persons actually responsible for the control, disposition, or management of the money received or contributed, irrespective of whether such control, disposition, or management is exercised directly or through an agent or trustee designated by such person or persons.

[DESCRIPTION OF THE PLAN

[SEC. 6. (a) Except as provided in section 4, the description of any employee welfare or pension benefit plan shall be published as required herein within ninety days of the effective date of this Act or within ninety days after the establishment of such plan, whichever is later.

[(b) The description of the plan shall be published, signed, and sworn to by the person or persons defined as the "administrator" in section 5, and shall include their names and addresses, their official positions with respect to the plan, and their relationship, if any, to the employer or to any employee organizations, and any other offices, positions, or employment held by them; the name, address, and description of the plan and the type of administration; the schedule of benefits; the names, titles, and addresses of any trustee or trustees (if such persons are different from those persons defined as the "administrator"); whether the plan is mentioned in a collective bargaining agreement; copies of the plan or of the bargaining agreement, trust agreement, contract, or other instrument, if any, under which the plan was established and is operated; the source of the financing of the plan and the identity of any organization through which benefits are provided; whether the records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. Amendments to the plan reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 7, shall be included in the description on and after the effective date of such amendments. Any change in the information required by this subsection shall be reported to the Secretary within sixty days after the change has been effectuated.

[ANNUAL REPORTS

[SEC. 7. (a) The administrator of any employee welfare or pension benefit plan, a description of which is required to be published under section 6, shall also publish an annual report with respect to such plan "if it covers one hundred or more participants. However, the Secretary, after investigation, may require the administrator of any plan otherwise covered by the Act to publish such report when necessary and appropriate to carry out the purposes of the Act. Such report shall be published as required under section 8, within one hundred and fifty days after the end of the calendar year (or, if the records of the plan are kept on a policy or other fiscal year basis, within one hundred and fifty days after the end of such policy or fiscal year).

[(b) A report under this section shall be signed by the administrator and such report shall include the following:

[The amount contributed by each employer; the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number of employees covered; a statement of assets specifying the total amount in each of the following types of assets: cash, Government bonds, non-Government bonds and debentures, common stocks, preferred stocks, common trust funds, real estate loans and mortgages, operated real estate, other real estate, and other assets; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in which amount, and for what purposes. The Secretary, when he has determined that an investigation is necessary in accordance with section 9(d) of this Act, may require the filing, of supporting schedules of assets and liabilities." The information required by this section shall be sworn to by the administrator, or certified to by an independent certified or licensed public accountant, based upon a comprehensive audit conducted in accordance with accepted standards of auditing, but nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing an insurance, investment, or related function for the plan. If such books or records are subject to examination by any agency of the Federal Government or the government of any State. In the case of reports sworn to, but not certified, the Secretary, when he determines that it may be necessary to investigate the plan in accordance with section 9(d) of this Act, shall, prior to investigation by the Department of Labor, require certification of the report by an independent certified or licensed public accountant.

[(c) If the plan is unfunded, the report shall include only the total benefits paid and the average number of employees eligible for participation, during the past five years, broken down by years; and a statement, if applicable, that the only assets from which claims against the plan may be paid are the general assets of the employer.

[(d) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization such report shall include with respect to such plan (in addition to the information required by subsection (b)) the following:

[(1) The premium rate or subscription charge and the total premium or subscription charges paid to each such carrier or organization and the approximate number of persons covered by each class of such benefits.

[(2) The total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such carrier or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs, paid by such carrier or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purposes: *Provided*, That if any such carrier or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the carrier or other organization and (B), if such carrier or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

[(e) Details relative to the manner in which any funds held by an employee welfare benefit plan are held or invested shall be reported as provided under paragraphs (B), (C), and (D) of subsection (f)(1).

[(f) Reports on employee pension benefit plans shall include, in addition to the applicable information required by the foregoing provisions of this section, the following:

[(1) If the plan is funded through the medium of a trust, the report shall include—

[(A) the type and basis of funding, actuarial assumptions used, the amount of current and past service liabilities, and the number of employees, both retired and nonretired covered by the plan;

[(B) a statement showing the assets of the fund as required by section 7(b). Such assets shall be valued on the basis regularly used in valuing investments held in the fund and reported to the United States Treasury Department, or shall be valued at their aggregate cost or present value, whichever is lower, if such a statement is not so required to be filed with the United States Treasury Department;

[(C) a detailed list, including information as to cost, present value, and percentage of total funds of all investments in securities or properties of the employer or employee organization, or any other party in interest, but the identity of all securities and the detail of brokerage fees and commissions incidental to the purchase or sale of such securities need not be revealed if such securities are listed and traded on an exchange subject to regulation by the Securities and Exchange Commission or securities in an investment company registered under the Investment Company Act of 1940, or securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, and the statement of assets contains a statement of the total investments in common stock, preferred stock, bonds and debentures, respectively, valued as provided in subparagraph (B).

[(D) a detailed list of all loans made to the employer, employee organization, or other party in interest, including the terms and conditions of the loan and the name and address of the borrower: *Provided*, That if the plan is funded through the medium of a trust invested, in whole or in part, in one or more insurance or annuity contracts with an insurance carrier, the report shall include, as to the portion of the funds so invested, only the information required by paragraph (2) below.

[(2) If the plan is funded through the medium of a contract with an insurance carrier, the report shall include—

[(A) the type and basis of funding, actuarial assumptions used in determining the payments under the contract, and the number of employees, both retired and nonretired, covered by the contract; and

[(B) except for benefits completely guaranteed by the carrier, the amount of current and past service liabilities, based on those assumptions, and the amount of all reserves accumulated under the plan.

[(3) If the plan is unfunded, the report shall include the total benefits paid to retired employees for the past five years, broken down by year.

[(g) If some or all of the benefits under the plan are provided by an insurance carrier or service or other organization, such carrier or organization shall certify to the administrator of such plan, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, such reasonable information determined by the Secretary to be necessary to enable such administrator to comply with the requirements of this Act.

[(h) The Secretary shall prescribe by general rule simplified reports for plans which he finds that by virtue of their size or otherwise a detailed report would be unduly burdensome, but the Secretary may revoke such provisions for simplified forms for any plan if the purposes of the Act would be served thereby.

[PUBLICATION

[SEC. 8. (a) Publication of the description of the plan and the latest annual report required under this Act shall be made to the participants and to the beneficiaries covered by the particular plan as follows:

[(1) The administrator shall make copies of such description of the plan (including all amendments or modifications thereto upon their effective date) and of the latest annual report available for examination by any participant or beneficiary in the principal office of the plan.

[(2) The administrator shall deliver upon written request to such participant or beneficiary a copy of the description of the plan (including all amendments or modifications thereto upon their effective date) and an adequate summary of the latest annual report, by mailing such documents to the last known address of the participant or beneficiary making such request.

[(b) The administrator of any plan subject to the provisions of this Act shall file with the Secretary of Labor two copies of the description of the plan and each annual report thereon. The Secretary of Labor shall make available for examination in the public document room of the Department of Labor copies of descriptions of plans and annual reports filed under this subsection.

[(c) The Secretary of Labor shall prepare forms for the descriptions of plans and the annual reports required by the provisions of this Act, and shall make such forms available to the administrators of such plans on request.

[ENFORCEMENT

[SEC. 9. (a) Any person who willfully violates any provision of this Act shall be fined not more than $1,000 or imprisoned not more than six months, or both.

[(b) Any administrator of a plan who fails or refuses, upon the written request of a participant or beneficiary covered by such plan, to make publication to him within thirty days of such request, in accordance with the provisions of section 8, of a description of the plan or an annual report containing the information required by sections 6 and 7, may in the court's discretion become liable to any such participant or beneficiary making such request in the amount of $50 a day from the date of such failure or refusal.

[(c) Action to recover such liability may be maintained in any court of competent jurisdiction by any participant or beneficiary. The court in such action may in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

[(d) The Secretary may, after first requiring certification in accordance with section 7(b), upon complaint of violation not satisfied by such certification, or on his own motion, when he continues to have reasonable cause to believe investigation may disclose violations of this Act, make such investigations as he deems necessary, and may require or permit any person to file with him a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated.

[(e) For the purposes of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

[(f) Whenever it shall appear to the Secretary that any person is engaged in any violation of the provisions of this Act, he may in his discretion bring an action in the proper district court of the United States or United States court of any place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted.

[(g) The United States district courts and the United States courts of any place subject to the jurisdiction of the United States shall have jurisdiction, for cause shown, to restrain violations of this Act.

[(h) Nothing contained in this Act shall be so construed or applied as to authorize the Secretary to regulate, or interfere in the management of, any employee welfare or pension benefit plan, except that the Secretary may inquire into the existence and amount of investments, actuarial assumptions, or accounting practices only when it has been determined that investigation is required in accordance with section 9(d) of this Act.

[(i) The Secretary shall immediately forward to the Attorney General or his representative any information coming to his attention in the course of the administration of this Act which may warrant consideration for criminal prosecution under the provisions of this Act or other Federal law.

[REPORTS MADE PUBLIC INFORMATION

[SEC. 10. The contents of the descriptions and regular annual reports filed with the Secretary pursuant to this Act shall be public information, and the Secretary, where to do so would protect the interests of participants or beneficiaries of a plan, may publish any such information and data. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

[RETENTION OF RECORDS

[SEC. 11. Every person required to file any description or report or to certify any information therefor under this Act shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

[RELIANCE ON ADMINISTRATIVE INTERPRETATIONS AND FORMS

[SEC. 12. In any action or proceeding based on any act or omission in alleged violation of this Act, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with any provision of this Act if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Secretary, or (2) publish and file any information required by any provision of this Act if he pleads and proves that he published and filed such information in good faith, on the description and annual report forms prepared by the Secretary and in conformity with the instructions of the Secretary issued under this Act regarding the filing of such forms. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this Act.

[BONDING

[SEC. 13. (a) Every administrator, officer, and employee of any employee welfare benefit plan or of any employee pension benefit plan subject to this Act who handles funds or other property of such plan shall be bonded as herein provided; except that, where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers and employees of such plan shall be exempt from the bonding requirements

of this section. The amount of such bond shall be fixed at the beginning of each calendar, policy, or other fiscal year, as the case may be, which constitutes the reporting year of such plan. Such amount shall be not less than 10 per centum of the amount of funds handled, determined as herein provided, except that any such bond shall be in at least the amount of $1,000 and no such bond shall be required in an amount in excess of $500,000: *Provided*, That the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, which in no event shall exceed 10 per centum of the funds handled. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of such administrator, officer, or employee, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to the Act of July 30, 1947 (6 U.S.C. 6–13). Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

[(b) It shall be unlawful for any administrator, officer, or employee to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee welfare benefit plan or empolyee pension benefit plan, without being bonded as required by subsection (a) and it shall be unlawful for any administrator, officer, or empolyee of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any such person, with respect to whom the requirements of subsection (a) have not been met.

[(c) It shall be unlawful for any person to procure any bond required by subsection (a) from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any significant control or financial interest, direct or indirect.

[(d) Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) because he handles funds or other property of an employee welfare benefit plan or of an employee pension benefit plan, to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

[(e) The Secretary shall from time to time issue such regulations as may be necessary to carry out the provisions of this section. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section.

[ADVISORY COUNCIL

[SEC. 14. (a) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter referred to as the Council) which shall consist of thirteen members to be appointed in the following manner: One from the insurance field, one from the corporate trust field, two from management, four from labor, and two from other interested groups, all appointed by the Secretary from among persons recommended by organizations in the respective groups; and three representatives of the general public appointed by the Secretary.

[(b) It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this Act, and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least twice each year and at such other times as the Secretary requests. At the beginning of each regular session of the Congress, the Secretary shall transmit to the Senate and House of Representatives each recommendation which he has received from the Council during the preceding calendar year and a report covering his activities under the Act for such preceding calendar year, including full information as to the number of plans and their size, the results of any studies he may have made of such plans and the Act's operation and such other information and data as he may deem desirable in connection with employee welfare and pension benefit plans.

[(c) The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

[(d) Appointed members of the Council shall be paid compensation at the rate of $50 per diem when engaged in the work of the Council, including travel time, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 73b–2) for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis.

[(e)(1) Any member of the Council is hereby exempted, with respect to such appointment, from the operation of sections 281, 283, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99), except as otherwise specified in paragraph (2) of this subsection.

[(2) The exemption granted by paragraph (1) of this subsection shall not extend—

[(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the private employer of the appointee at the time of his appointment, or

[(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

[ADMINISTRATION

[SEC. 15. (a) The provisions of the Administrative Procedure Act shall be applicable to this Act.

[(b) No employee of the Department of Labor shall administer or enforce this Act with respect to any employee organization of which he is a member or employer organization in which he has an interest.

[(c) No more than 260 employees shall be employed by the Department of Labor to administer or enforce this Act for the first two years after the enactment of the Welfare and Pension Plans Disclosure Act Amendments of 1962.

[(d) Not more than two million two hundred thousand dollars per year is authorized to be appropriated for the administration and enforcement of this Act, for the first two years after the enactment of the Welfare and Pension Plans Disclosure Act Amendments of 1962.

[EFFECT OF OTHER LAWS

[SEC. 16. (a) In the case of an employee welfare or pension benefit plan providing benefits to employees employed in two or more States, no person shall be required by reason of any law of any such State to file with any State agency (other than an agency of the State in which such plan has its principal office) any information included within a description of the plan or an annual report published and filed pursuant to the provisions of this Act if copies of such description of the plan and of such annual report are filed with the State agency, and if copies of such portion of the description of the plan and annual report, as may be required by the State agency, are distributed to participants and beneficiaries in accordance with the requirements of such State law with respect to scope of distribution. Nothing contained in this subsection shall be construed to prevent any State from obtaining such additional information relating to any such plan as it may desire, or from otherwise regulating such plan.

[(b) The provisions of this Act, except subsection (a) of this section and section 13, and any action taken thereunder, shall not be held to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of the United States or of any State affecting the operation or administration of employee welfare or pension benefit plans, or in any manner to authorize the operation or administration of any such plan contrary to any such law.

[SEPARABILITY OF PROVISIONS

[SEC. 17. If any provision of this Act or the application of such provision, to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

[EFFECTIVE DATE

[SEC. 18. The provisions of this Act shall become effective January 1, 1959.]

SUPPLEMENTAL VIEWS

First, we are satisfied that, after extended hearings and serious discussion, the committee bill generally is a good bill.

However, our deliberations have not led to full or complete agreement on the question of the necessity, economic desirability, cost or legal correctness of plan termination insurance. Initially, provision for this type of insurance was made in a separate bill (H.R. 462) because, without additional information, agreement on this provision (Title IV) was not possible.

Our primary consideration in writing pension reform legislation has been to help assure that workers now covered by pension plans get their expected benefits. At the same time, we have been careful not to inhibit benefit improvements for these covered workers and not to retard the expansion of the pension system in such a way as to deny retirement benefits to workers not now covered.

Accordingly, we reasoned that, by requiring stringent vesting and funding standards, the need for insurance could be realistically negated. Further, inasmuch as it was recognized by the Members of the Committee that legislation could not eliminate all plan terminations, we agreed that the possible losses due to any termination would be mitigated to considerable extent by including provisions in the bill:

(*a*) to prevent dilution of benefit security in business acquisition and merger situations;

(*b*) to provide for partial plan terminations with the approval of the Secretary of Labor;

(*c*) to provide fund distribution priorities on termination so there will be a more equitable distribution of all assets;

(*d*) to prevent "raiding" of assets by participants who leave the plan.

The Committee provision to impose a premium to insure the benefit already being funded on a sound actuarial basis creates an employer liability for the benefit if not funded, and thus radically changes the basic legal structure of all plans. It also increases the cost of funding by the amount of the premium rate, which at this time is not susceptible of determination, but is only estimated.

Because the determination of insufficient funding would in substantial part stem from market value losses of plan assets, the Committee bill is, in effect, insuring against fluctuations in the market. We know of no counterpart obligation in business compelling such insurance.

Additionally, we do not believe it possible to provide such a guartee without ultimate reliance on the Federal treasury.

Finally, Title IV raises a serious constitutional question as to whether by legislation we can change the contract of the employer from a promise to make certain contributions to a fund to a promise to pay the pension supported by a pledge of the employer's assets.

Title IV would require that an employer reimburse the insurance fund for 100% of any amounts paid out by the fund, up to an amount equal to 50% net worth of the employer. Accordingly, on passage of the Committee bill, an employer would be obligated to carry that liability in his balance sheet. This contingent liability would be such as to make the financial structure of any business appear unsound. Such liability would inevitably discourage additional employers from beginning new pension plans and existing plans from increasing benefits and thereby increasing the employer's liability.

In summary, other provisions of the Committee bill impose minimum eligibility and vesting, require adequate funding, and prevent other events which could dilute benefit security. We believe these additional standards should be effectuated and the need for insurance re-assessed. Pending such re-assessment, Title IV should be deleted.

Albert H. Quie.
John M. Ashbrook.
John N. Erlenborn.
Edwin D. Eshleman.
Orval Hansen.

ADDITIONAL VIEWS

As indicated by my vote to report H.R. 2 out of Committee, I favor legislation to provide reasonable pension protection for the 35 million people enrolled in private pension plans. However, I believe employees covered by State and local government retirement plans are entitled to similar protection, and I fail to understand the Committee's unwillingness to provide them that protection.

To the Committee's credit, it was agreed that public retirement plans should meet the bill's fiduciary standards and requirements for disclosure of information to participants. Minimum vesting and funding standards were rejected, however—the former in the assumption that most public plans provide adequate vesting, and the latter on the grounds that State and local governments and their taxing authority will be with us forever.

Public plans, for the most part, are known to be generous so far as vesting is concerned. Unfortunately, statistics are not available to support this assumption. Notwithstanding this lack of data, my point is that no public employee should be denied the minimum vesting rights the Committee bill asserts every private employee deserves.

The Committee bill provides for a study of these plans. Yet I am constained to point out that the original version of H.R. 2 would have covered these plans and that, in the course of our hearings on pension reform, we did invite interested parties to testify. Only a few accepted the invitation, but those representatives of public employee organizations, legislators, and actuaries who did submit testimony on this aspect endorsed the blanketing of public employees under Federal pension legislation. In spite of this support for inclusion, and with no apparent justification, the provision was dropped.

Presumably, the study recommended in the bill will reveal the funding status of various State and local plans. I submit that public plans are as notorious for their pay-as-you-go, or worse, funding schemes as they are for their comparative generosity in vesting.

Proof of concern by the participants themselves can be found in the courts. Public employees in Philadelphia, for example, have filed suit to compel adequate funding of a $36 million liability. In Detroit, a similar suit involves an $18.2 million liability; and, in my own State, the Illinois Education Association successfully conducted legal action to bring about sounder financing of a $1.7 billion unfunded past service liability together with current liabilities for new benefits.

The seeming perpetual life of the States and their political subdivisions gives us a false confidence, as these court cases attest. Acceptance of the premise that these governments will not go out of business as an argument against funding only postpones the inevitable.

At Thomas Bleakney, a respected actuary and author of *Retirement Systems for Public Employees*, points out, "The basic argument for funding with respect to public systems, in my opinion, is honesty in government—the cost of any governmental service should be known (and paid for) when the service is provided, and not ignored to be paid for at some future date."

Absent funding, which permits taxpayers to know the effect of new benefits on the government's budget, there is a decided tendency on the part of elected officials to increase benefits substantially and to leave the day of reckoning to their successors. Compounding the problem is the fact that these elected officials are frequently beneficiaries of these plans and so are in the position of negotiating from both sides of the bargaining table.

Not inconceivably, when the already burdened taxpayer is awakened to the true scope of this obligation, objection by court challenges could leave the security of the expected benefits in doubt, if not non-existent.

Court challenges, and the possible loss of benefits, could emanate as well from the premise that an unfunded public retirement plan amounts to deficit financing. Unlike the Federal Government, States are generally prohibited from operating with a deficit and from borrowing to balance the budget. By deferring until another day pension promises made today, a debt is undeniably created.

In some cases, the sudden imposition of a minimal funding requirement on public plans such as that recommended in H.R. 2 for the private sector could create a considerable burden for taxpayers. I do not suggest that identical rules apply to the public sector; but a separate, graded funding formula would mitigate this possibility.

In short, the Committee missed the opportunity in H.R. 2 to foster honesty in government and to give public employees the comprehensive protections and guarantees we deem vital to private employees. To do so is a mistake at the expense of taxpayers and State and local employees.

JOHN N. ERLENBORN,
Member of Congress.

INDIVIDUAL VIEWS

H.R 2 addresses itself to the fundamental concern of pension reform and insofar as the provisions extend, I am in general support of the action taken by the full Committee in reporting out this legislation.

However, I believe there are a number of areas which must be more carefully thought out in the days ahead if this Congress is to truly guarantee the rights of the American worker to a retirement free from financial worry.

In the area of reinsurance, the provisions in H.R. 2 would insure pension benefits in the event of program failure. If we are to truly have a "Retirement Bill of Rights" then we must recognize the inherent interdependence of the reinsurance program, the vesting and other provisions of any proposed legislation. To delete reinsurance would be to create a faulty and untested mechanism of guaranteeing pension benefits.

Earlier this session, I introduced H.R. 9999, the Omibus Pension Security Act. While several provisions of H.R. 9999, including reinsurance, are included in H.R. 2, there are significant factors that must be considered by the House if we are to truly have effective pension reform legislation.

First, it is fundamental to provide the American worker not only with the capability, but the right to appeal through the Secretary into the Courts any time he feels his rights have been violated. Although H.R. 2 and H.R. 4200 recently passed by the Senate does provide for administrative review, the Secretary should be empowered to "go to bat" for a plan participant. Accordingly, Congress and the Ways and Means Committee should consider Section 512 of H.R. 9999 which clearly defines the providing of legal assistance to plan participants.

Second, it is essential that to avoid administrative confusion that we centralize the responsibility for carrying out any pension reform legislation enacted in one agency. H.R. 9999 establishes a Pension Security Administration which would oversee the operation of every aspect of pension reform including vesting, funding, reporting and reinsurance. Whether or not responsibility is eventually lodged in the Department of Labor or the Department of the Treasury, administrative responsibility should be reserved for *one* agency, so that the working American will have to deal with one agency, not two, or three, or four.

Third, even given the above reform areas substantial procedural problems will remain to be worked out in the years ahead. Even with the passage of H.R. 2 and companion legislation from the House Ways and Means Committee no clear mechanism currently exists through which sufficient data and information can be channeled to the Congress to enable us to insure an effective and functional program. H.R. 9999 establishes a Bureau of Pension Statistics designed to keep careful tabs on the problems we encounter down the road after passage of a pension reform law. This is a full-time job and must be done separate of any operating agency. Accordingly, Congress should move to include such a Bureau in any legislation considered.

Fourth, the issue of "portability" should be considered. While it should be recognized that any attempt to make vested funds portable from one plan to another is impracticable and administratively unfeasible, it is possible, and indeed, imperative, that we provide for a system through which an individual may accrue vested funds from several plans throughout his work life-time. It is therefore imperative that Congress carefully consider a means to expedite portability in this matter.

In sum, these are some of the areas which should be addressed in addition to the provisions of H.R. 2. Hopefully, Congress will move to enact legislation including these concepts before the end of the session.

MARVIN L. ESCH,
Member of Congress.

O

Calendar No. 361

93D CONGRESS
1st Session

SENATE

REPORT
No. 93–383

PRIVATE PENSION PLAN REFORM

REPORT

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

TOGETHER WITH ADDITIONAL AND SUPPLEMENTAL VIEWS

ON

S. 1179

AUGUST 21, 1973.—Ordered to be printed
Filed under authority of the order of the Senate on August 1, 1973

This lengthy publication was not digitized. Please contact the Gerald R. Ford Presidential Library or the government documents department of a local library to obtain a copy of this item.

93D CONGRESS
2d Session } HOUSE OF REPRESENTATIVES { REPORT
No. 93-779

PRIVATE PENSION TAX REFORM

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

TOGETHER WITH SUPPLEMENTAL VIEWS

ON

H.R. 12481

FEBRUARY 5, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

28-010 WASHINGTON : 1974

This lengthy publication was not digitized. Please contact the Gerald R. Ford Presidential Library or the government documents department of a local library to obtain a copy of this item.

93D CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
No. 93–807

PRIVATE PENSION TAX REFORM

REPORT

OF THE

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

TOGETHER WITH SUPPLEMENTAL VIEWS

ON

H.R. 12855

FEBRUARY 21, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

28–726 O WASHINGTON : 1974

This lengthy publication was not digitized. Please contact the Gerald R. Ford Presidential Library or the government documents department of a local library to obtain a copy of this item.