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P38 PENSION AND WELFARE PLANS

GOVERNMENT
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HEARING BEFORE THE SUBCOMMITTEE ON LABOR OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE UNITED STATES SENATE NINETIETH CONGRESS SECOND SESSION

S. 3421

TO PROVIDE ADDITIONAL PROTECTION FOR THE RIGHTS OF PARTICIPANTS IN PRIVATE PENSION PLANS, TO ESTABLISH MINIMUM STANDARDS FOR VESTING AND FUNDING OF PRIVATE PENSION PLANS, TO PROVIDE AN INSURANCE PROGRAM GUARANTEEING PLAN TERMINATION PROTECTION, AND FOR OTHER PURPOSES

S. 1024

TO AMEND THE WELFARE AND PENSION PLANS DISCLOSURE ACT

S. 1103

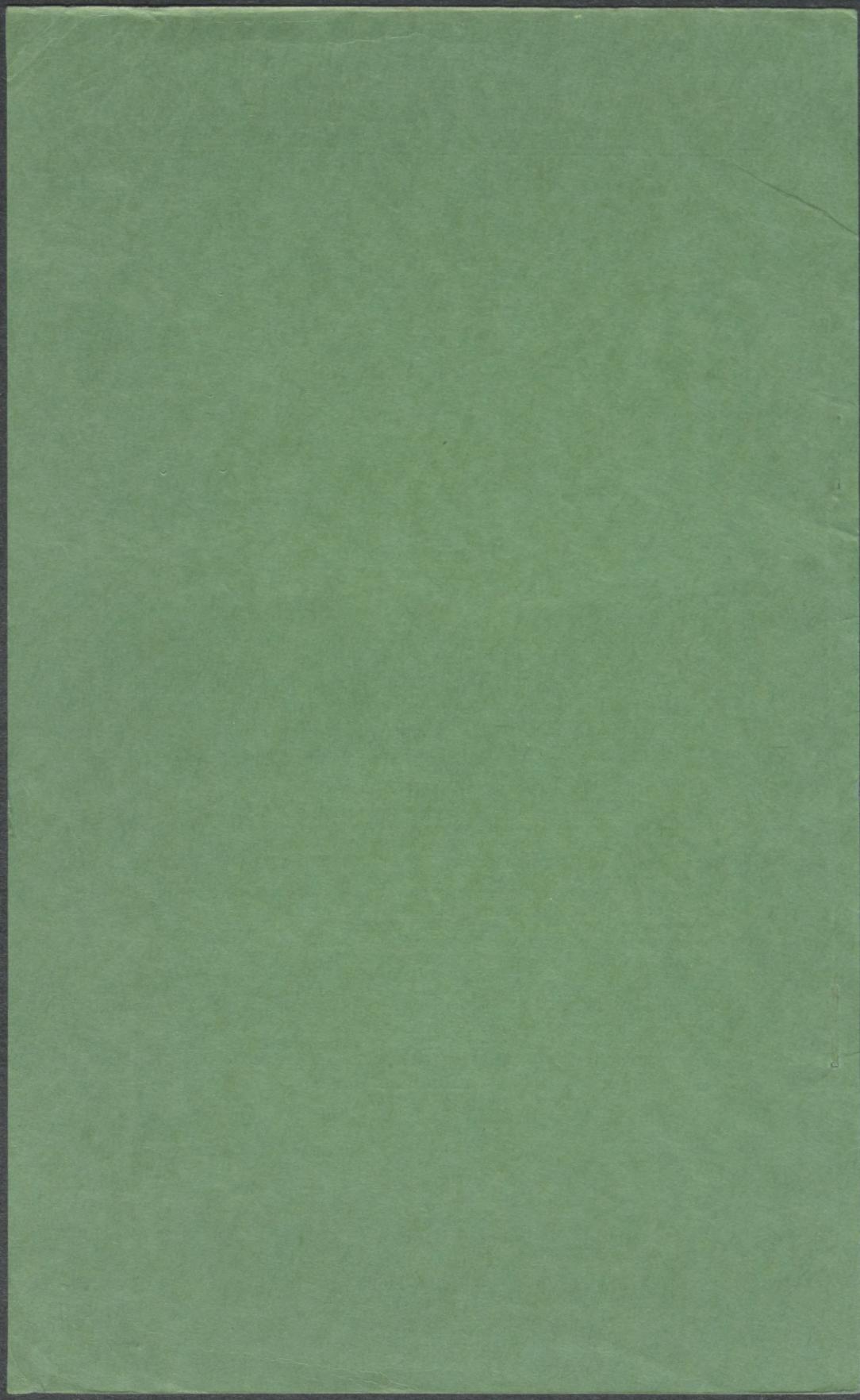
TO PROVIDE ADDITIONAL PROTECTION FOR THE RIGHTS OF PARTICIPANTS IN EMPLOYEE PENSION AND PROFIT-SHARING-RETIREMENT PLANS, TO ESTABLISH MINIMUM STANDARDS FOR PENSION AND PROFIT-SHARING-RETIREMENT PLAN VESTING AND FUNDING, TO ESTABLISH A PENSION PLAN REINSURANCE PROGRAM, TO PROVIDE FOR PORTABILITY OF PENSION CREDITS, TO PROVIDE FOR REGULATION OF THE ADMINISTRATION OF PENSION AND OTHER EMPLOYEE BENEFIT PLANS, TO ESTABLISH A U.S. PENSION AND EMPLOYEE BENEFIT PLAN COMMISSION, AND FOR OTHER PURPOSES

S. 1255

TO AMEND THE WELFARE AND PENSION PLANS DISCLOSURE ACT FOR THE PURPOSE OF PROVIDING ADDITIONAL PROTECTION FOR THE INTERESTS OF PARTICIPANTS IN AND BENEFICIARIES OF EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

JULY 25, 1968

Printed for the use of the
Committee on Labor and Public Welfare



PENSION AND WELFARE PLANS

HEARING
BEFORE THE
SUBCOMMITTEE ON LABOR
OF THE
COMMITTEE ON
LABOR AND PUBLIC WELFARE
UNITED STATES SENATE
NINETIETH CONGRESS
SECOND SESSION

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JULY 25, 1968

Printed for the use of the
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U.S. GOVERNMENT PRINTING OFFICE
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PENSION AND WELFARE PLANS

THURSDAY, JULY 25, 1968

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

The subcommittee met at 10:20 a.m., pursuant to notice, in room 4232, New Senate Office Building, Senator Ralph W. Yarborough (chairman of the subcommittee) presiding.

Present: Senators Yarborough, Javits, and Prouty.

Committee staff members present: John S. Forsythe, general counsel of the committee; Robert O. Harris, counsel of the subcommittee; Peter C. Benedict, minority counsel to the subcommittee; and Eugene Mittleman, minority counsel.

Senator YARBOROUGH. The Labor Subcommittee will come to order.

Today we begin hearings on S. 1024 and S. 3421, bills which I have introduced dealing with the field of pensions, as well as S. 1103 by Senator Javits and S. 1255 by Senator McClellan.

Private retirement plans represent a major element in the economic security of millions of workers and their dependents. The contributions to these plans by workers and employers have built up huge tax-free funds which are a source of great economic power and of significance to the public at large.

While the public interest in sound private pension plans justifies special tax concessions, unless the funds ultimately are used for the workers, this purpose is not met. The management of the funds, as well as the basic nature of these plans, is therefore of direct concern to the Federal Government.

Although the vast majority of such funds are soundly managed, there have been trustees who, for personal profit, have engaged in conduct which endangered the interests of the actual or potential beneficiaries.

In addition, we have received numerous complaints that certain plans were not paying employees the benefits that were expected. When the funds were a minor factor in the retirement plans of the workers of this country, inequities in the distribution of retirement benefits were not as widely noticed. However, with a large proportion of the working population of the country now anticipating income from pension plans, the failure of plans to pay expected benefits has led to disillusionment on the part of many workers—I might say millions—and has focused the public spotlight on this issue.

Last year I introduced the Welfare and Pension Plan Protection Act, S. 1024, to require fiduciary responsibility in the administration of pension plans, and this year I introduced the Pension Benefit

Security Act, S. 3421, which is designed to protect pension participants through the three-pronged approach to regulating vesting, funding, and reinsurance of pension plans.

S. 3421 will impose minimum standards for all pension plans in order to provide vested retirement benefits to all participants who have worked for the same employer for 10 or more years after reaching the age of 25.

Employees may now work a lifetime for the same employer and yet be entitled to nothing on leaving, even though a sound pension plan exists.

More than 12 million employees are now covered by pension plans under which benefits do not vest after 10 years service. Some 3 million persons under single employer plans and 3½ million covered by multi-employer plans do not have the protection of vested benefits.

It is not just or equitable that a man, when he changes jobs, should lose rights acquired over so long a period even though the necessity of private circumstances may compel him to seek employment elsewhere.

Some 500 pension plans covering more than 25,000 workers terminate each year with all the losses that this entails. The bill will require minimum standards of funding to assure that sufficient assets are accumulated to carry out promises to employees and their dependents.

Too often, the protection offered by private pension plans is illusory, and a worker, at the age of 60, suddenly discovers that he will not get the promised monthly income so important to his future plans.

Further, to assure that such promises are kept, the bill provides insurance against losses to pension funds caused by involuntary termination of a plan before it is fully funded, as in cases of bankruptcy or plant closure.

My bill, S. 3421, will avoid a severe immediate impact upon current pension plans by permitting various arrangements by which such plans can make careful transitions in order to permit easy adjustment.

In addition, the Secretary of Labor is authorized to approve alternative methods of meeting standards in special cases.

Finally, my bill, S. 3421, provides for continuing studies of all aspects of pension plans, including the possibility of portability of pension credits.

I might add here, gentlemen, this question of portability is one that is discussed more than all others. The fact is that with the modern economic system, with its frequent job changes, results in a great injustice for workers in the absence of portability provisions in pension plans.

The private pension system has done an effective job in building supplemental retirement security for a major section of the Nation's work force. We must make sure that it continues to do its job or the Government will have to do it.

In 1950, private pension plans held funds of \$12.1 billion. Today, private pension plans have assets of over \$100 billion and cover more than 25 million American workers. They are a major part of the financial security of millions of workingmen and their families.

The present bills will require that this security be real and not an illusion. It is true that the majority of pension plans are secure, but without the protection of these bills the individual employee has no way of knowing whether his plan is one of that majority.

In the 10 years since the Committee on Labor and Public Welfare last studied pension plans, these plans have grown enormously. It is time for us to again look at how pension plans are operating.

The final report of the Subcommittee on Welfare and Pension Funds so ably chaired by Senator Douglas during the 83d and 84th Congresses will be printed as an appendix to the hearings.

(The report will be found on p. 317.)

Senator YARBOROUGH. I order that the text of all the pending bills and departmental reports be printed at this point in the hearings.

(The bills and departmental reports referred to follow:)

1 and their dependents; that because of the present and antici-
2 pated size and importance of these plans they have a sig-
3 nificant bearing on industrial relations, on employment, and
4 on the national economy; that owing to their interstate char-
5 acter they have become an important factor in commerce;
6 that a large volume of the activities carried on by such plans
7 are effected by means of the mails and instrumentalities of
8 interstate commerce; that they substantially affect the reve-
9 nues of the United States because they are afforded pref-
10 erential Federal tax treatment; that despite the enormous
11 growth in such plans many employees with long years of
12 employment are losing anticipated retirement benefits owing
13 to the lack of vesting provisions in such plans; that owing
14 to the inadequacy of current minimum standards, the sound-
15 ness and stability of plans with respect to adequate funds
16 to pay promised benefits may be endangered; that owing
17 to the involuntary termination of plans before requisite funds
18 have been accumulated, employees and their dependents have
19 been deprived of anticipated benefits; and that it is therefore
20 desirable in the interests of employees and their beneficiaries,
21 for the protection of the revenue of the United States, and
22 to provide for the free flow of commerce, that minimum
23 standards be provided assuring the equitable character of
24 such plans, their financial soundness, and protection of bene-
25 fits in the event of involuntary plan termination.

1 (b) It is hereby declared to be the policy of this Act to
2 protect interstate commerce, the Federal taxing power, and
3 the interests of participants in private pension plans and their
4 beneficiaries by improving the equitable character and the
5 soundness of such plans by requiring them to vest the accrued
6 benefits of employees with significant periods of service, to
7 meet minimum standards of funding, and to protect the
8 vested rights of participants against losses due to involuntary
9 plan termination.

10

DEFINITIONS

11

SEC. 3. When used in this Act—

12

(a) The term "Secretary" means the Secretary of
13 Labor.

14

(b) The term "pension plan" means any plan, fund or
15 program which is communicated or its benefits described in
16 writing to the employees as a group and which was hereto-
17 fore or is hereafter established or maintained by an employer
18 or by an employer together with an employee organization,
19 for the purpose of providing for its participants or their
20 beneficiaries, by the purchase of insurance or annuity con-
21 tracts or otherwise, retirement benefits, including any profit-
22 sharing plan which provides benefits at or after retirement;
23 providing that nothing herein shall be construed to include
24 any plan, fund or program to which only employees
25 contribute.

1 (c) The term "employee organization" means any labor
2 union or any organization of any kind, or any agency of
3 employee representation committee, association, group, or
4 plan, in which employees participate and which exists for the
5 purpose, in whole or in part, of dealing with employers con-
6 cerning an employee pension plan, or other matters incidental
7 to employment relationships.

8 (d) The term "employee" means any individual em-
9 ployed by an employer.

10 (e) The term "participant" means any employee or
11 former employee of an employer or any member of an
12 employee organization who is or may become eligible to
13 receive a benefit of any type from a pension plan, or whose
14 beneficiaries may be eligible to receive any such benefit.

15 (f) The term "beneficiary" means a person designated
16 by a participant or by the terms of a pension plan who is or
17 may become entitled to a benefit thereunder.

18 (g) The term "employer" means any person acting
19 directly as an employer or indirectly in the interest of an
20 employer in relation to a pension plan, and includes a group
21 or association of employers acting for an employer in such
22 capacity.

23 (h) The term "person" means an individual, partner-
24 ship, corporation, mutual company, joint stock company,

1 trust, unincorporated organization, association, or employee
2 organization.

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

9 (j) The term "administrator" whenever used in this
10 Act means, in the case of a pension plan established or
11 maintained by a single employer, the employer; in the case
12 of a plan established or maintained by two or more em-
13 ployers or jointly by one or more employers and one or more
14 employee organizations, the association, committee, joint
15 board of trustees or other similar group of representatives
16 of the parties who established or maintained the plan.

17 (k) The term "regular retirement benefit" means only
18 that benefit payable under the plan in the event of retire-
19 ment at the regular retirement age.

20 (1) The term "accrued portion of the regular retirement
21 benefit" means—

22 (1) Under a plan which provides for payment of
23 a fixed benefit, that portion of such benefit which would
24 have been payable at regular retirement age, computed

1 as of the day of termination of employment, as the num-
2 ber of years of credited service under the plan bears to
3 the total possible years of credited service had employ-
4 ment continued to the regular retirement age.

5 (2) Under a plan which provides for benefits based
6 solely upon the amount contributed to the employee's
7 account, the amount credited to such account toward
8 regular retirement benefits at the time of termination of
9 employment.

10 (m) The term "regular retirement age" means not later
11 than age 65.

12 (n) The term "vested liabilities" means the present
13 value of the immediate or deferred benefits for participants
14 and their beneficiaries which are nonforfeitable and for
15 which all conditions of eligibility have been fulfilled under
16 the provisions of the plan prior to its termination.

17 **COVERAGE**

18 **SEC. 4.** (a) Except as provided in subsections (b) and
19 (c), this Act shall apply to any pension plan—

20 (1) if it is established or maintained by any em-
21 ployer engaged in commerce or in any industry or ac-
22 tivity affecting commerce or by such employer together
23 with any employee organization representing employees

1 engaged in commerce or in any industry or activity
2 affecting commerce; or

3 (2) if such plan is established or maintained by any
4 employer or by any employer together with any em-
5 ployee organization and if, in the course of its activities,
6 such plan, directly or indirectly, uses any means or
7 instruments of transportation or communication in inter-
8 state commerce or the mails.

9 (b) This Act shall not apply to any pension plan if—

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

14 (2) such plan is established and maintained out-
15 side the United States primarily for the benefit of per-
16 sons who are not citizens of the United States;

17 (3) such plan provides contributions or benefits for
18 a sole proprietor or in the case of a partnership, a
19 partner who owns more than 10 per centum of either
20 the capital interest or the profits interest in such part-
21 nership.

22 (c) In addition, titles II, III, and IV, shall not apply
23 to any pension plan if—

1 (1) the plan has a fixed contribution rate and does
2 not provide an amount expected to be paid as a fixed
3 benefit;

4 (2) the plan is a profit-sharing plan which provides
5 benefits at or after retirement;

6 (3) the plan is one in which benefits are paid
7 solely from the general assets of the employer.

8 (d) For purposes of this section—

9 (1) the term “commerce” means trade, traffic, com-
10 merce, transportation, transmission, or communication
11 among the several States or between any State and any
12 place outside thereof; and

13 (2) the term “industry affecting commerce” means
14 any activity, business, or industry in commerce or in
15 which a labor dispute would hinder or obstruct com-
16 merce or the free flow of commerce and includes any
17 activity or industry “affecting commerce” within the
18 meaning of the Labor-Management Relations Act, 1947,
19 as amended, or the Railway Labor Act, as amended.

20 EFFECTIVE DATE

21 SEC. 5. The provisions of titles I, II, and III of this
22 Act shall become effective two years after enactment of this
23 Act. The provisions of titles IV and V of this Act shall
24 become effective upon the date of enactment of this Act.

9

1 TITLE I—VESTING

2 ELIGIBILITY REQUIREMENTS

3 SEC. 101. No pension plan subject to this title which
4 was adopted after the date of enactment of this Act shall,
5 after the effective date of this title, provide as a condition for
6 eligibility to participate in such plan a period of service
7 longer than three years or an age higher than age twenty-
8 five. Any pension plan subject to this title which was in
9 effect on or before the date of enactment of this Act may
10 retain its eligibility requirements until such plan is amended
11 to provide increased benefits to participants or beneficiaries
12 or ten years after the date of enactment of this Act, which-
13 ever occurs first. Thereafter, such pension plan shall comply
14 with the eligibility requirements applicable to pension plans
15 adopted after the date of enactment of this Act.

16 NONFORFEITABLE BENEFITS

17 SEC. 102. Every pension plan subject to this title shall
18 provide for nonforfeitable rights to regular retirement benefits
19 when the plan has been in effect for five years or more, as
20 follows:

21 (a) PRESENT PLANS.—Every pension plan created be-
22 fore the date of enactment of this Act shall, in accordance
23 with one of the following alternatives, provide that the rights
24 of employees to receive benefits are nonforfeitable—

1 (1) after a specified period of service not exceeding
2 ten years, as to that part of the accrued portion of the
3 regular retirement benefit (including benefits provided
4 under amendment) which is attributable to periods after
5 the effective date of this title; or

6 (2) after a specified period of service not exceed-
7 ing ten years, as to not less than 10 per centum of the
8 entire accrued portion of the regular retirement benefit
9 (including benefits provided under amendment) which
10 percentage shall increase at a rate equivalent to at least
11 10 percentage points for each year the plan has been in
12 effect after the effective date of this title, so that the
13 percentage will reach 100 per centum no more than
14 nine years after the effective date of this title; or

15 (3) after a specified period of service not to exceed
16 twenty years, as to the entire accrued portion of the
17 regular retirement benefit (including benefits provided
18 under amendment) which period shall be reduced at a
19 rate equivalent to at least one year for each year the
20 plan has been in effect after the effective date of this
21 title, so that ten years after the effective date of this
22 title the required period of service does not exceed ten
23 years; or

24 (4) in accordance with such other provisions mak-
25 ing nonforfeitable, after a specified period of service, the

1 entire accrued portion of the regular retirement benefit,
2 which are approved by the Secretary, after notice and
3 opportunity to be heard, as substantially consistent with
4 the purposes of this section as expressed in subsection
5 (a), paragraphs 2 and 3.

6 (b) NEW PLANS.—Every pension plan created on or
7 after the date of enactment of this Act shall provide that the
8 rights of the employees to receive benefits shall be non-
9 forfeitable—

10 (1) after a specified period of service not to ex-
11 ceed fifteen years, as to the entire accrued portion of the
12 regular retirement benefit as of the sixth year of the
13 plan's operation, which period shall be reduced at a rate
14 equivalent to at least one year for each year after the
15 sixth year of the plan's operation, so that in the eleventh
16 year of the plan's operation, the required period of serv-
17 ice does not exceed ten years; or

18 (2) After a specified period of service not to ex-
19 ceed ten years, as to 50 per centum of the entire ac-
20 crued portion of the regular retirement benefit as of the
21 sixth year of the plan's operation, which percentage shall
22 increase at a rate equivalent to at least 10 percentage
23 points for each year the plan has been in effect after the
24 sixth year of the plan's operation, so that in the eleventh
25 year of the plan's operation, the entire accrued portion

1 of the regular retirement benefit shall be nonforfeitable
2 after a period of service not to exceed ten years.

3 (c) COLLECTIVE BARGAINING AGREEMENTS.—With
4 respect to a pension plan created or operated under a col-
5 lective bargaining agreement in existence as of the date of
6 enactment of this Act but due to expire after the effective
7 date of this title, the provisions of this title shall apply after
8 the expiration date of such collective bargaining agreement
9 but in no event later than one year after the effective date of
10 this title.

11 (d) PERIOD OF SERVICE.—In computing the period of
12 service under the plan, an employee's entire service with the
13 employer contributing to or maintaining the plan shall be con-
14 sidered, except the following may be disregarded—

15 (1) service prior to age twenty-five;

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

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

22 (4) service broken by periods of suspension of
23 employment, provided that the rules governing such
24 breaks in service are not unreasonable or arbitrary as
25 determined under regulation of the Secretary.

13

1 (e) PROVISIONS DEALING WITH FORFEITURE OF
2 BENEFITS.—Nothing contained in this title shall be con-
3 strued to disallow any plan provision—

4 (1) making benefits forfeitable for misconduct such
5 as theft, dishonesty, or divulging the employer's trade
6 secrets to competitors, provided that such provisions are
7 not unreasonable or arbitrary as determined under regu-
8 lation of the Secretary; or

9 (2) adopted pursuant to regulations of the Secre-
10 tary of the Treasury or his delegate to preclude dis-
11 crimination in the event of early termination of a plan.

12 (f) CONTRIBUTORY PLANS.—No pension plan subject
13 to this title to which employees contribute shall provide for
14 forfeiture of benefits which accrued during participation in
15 the plan by the employee and which were attributable to
16 employer contributions, solely because of withdrawal by such
17 employee of amounts attributable to his own contributions.

18 DISTRIBUTION OF NONFORFEITABLE BENEFITS TO

19 TERMINATING PARTICIPANTS

20 SEC. 103. (a) Nonforfeitable benefits accrued by termi-
21 nating participants may be distributed in the manner set
22 forth in the plan, provided that distribution of such benefits
23 shall commence no later than the regular retirement age and
24 that such benefits are paid in the same form as retirement
25 benefits are paid.

1 (b) The administrator shall, upon termination of a
2 vested participant's employment prior to regular retirement
3 age, report to the Secretary of Health, Education, and Wel-
4 fare such information as the Secretary of Health, Education,
5 and Welfare may prescribe by regulation to facilitate notifica-
6 tion of vested rights to such participants or their beneficiaries.
7 The Secretary of Labor shall reimburse the Secretary of
8 Health, Education, and Welfare for use by the latter of
9 personnel and facilities in the performance of his functions
10 under this subsection.

11 ENFORCEMENT OF VESTING STANDARDS

12 SEC. 104. Whenever the Secretary finds it necessary or
13 appropriate for the enforcement of the provisions of this title
14 or any rule or regulation thereunder, he may require a certifi-
15 cate of approval with respect to the vesting provisions of
16 any pension plan. Denial of any such certificate shall be by
17 order of the Secretary, and only after reasonable opportunity
18 for hearing. A certificate of approval shall be issued by the
19 Secretary when he determines that the vesting provisions
20 in question do not violate the requirements of this title.
21 Whenever a certificate of approval is required for any pension
22 plan, it shall be unlawful for the administrator of any such
23 plan to maintain or operate such plan unless a certificate has
24 been obtained.

1 TITLE II—FUNDING

2 FUNDING SCHEDULE

3 SEC. 201. (a) GENERAL RULE.—Every pension plan
4 subject to this title shall—

5 (1) provide for contributions to the plan in amounts
6 necessary to meet an amount equal to the normal cost
7 since inception of the plan plus interest on any unfunded
8 past service costs, and

9 (2) maintain a minimum ratio of assets to vested
10 liabilities according to the following schedule:

If the plan has been in effect (in years)	The ratio of assets to vested liabilities shall be at least (in percent)
5.....	20
6.....	24
7.....	28
8.....	32
9.....	36
10.....	40
11.....	44
12.....	48
13.....	52
14.....	56
15.....	60
16.....	64
17.....	68
18.....	72
19.....	76
20.....	80
21.....	84
22.....	88
23.....	92
24.....	96
25.....	100

11 (b) SPECIAL PROVISIONS FOR PLANS FIVE OR MORE
12 YEARS OLD.—In the case of a plan which on the effective
13 date of this title has been in effect for five or more years, the

1 administrator, when he files the first funding status report
2 required by section 202 of this Act, may choose as the re-
3 quired funding ratio—

4 (1) the ratio specified by the schedule in subsec-
5 tion (a) (2), or

6 (2) the actual funding ratio of the plan.

7 Beginning with the ratio thus chosen, the required ratio shall
8 increase by 3 percentage points each year for the next five
9 years and 4 percentage points each year thereafter until
10 the ratio becomes 100 per centum.

11 (c) SPECIAL PROVISION FOR PLANS LESS THAN FIVE
12 YEARS OLD.—A plan which, on the effective date of this title,
13 has been in effect for less than five years shall become sub-
14 ject to (a) (2) above as soon as the plan has been in effect
15 for five years. The options provided in subsection (b) shall
16 be available to a plan in this category except that the time
17 allowed for increasing the required ratio by 3 percentage
18 points each year shall be limited to a period equal to the
19 number of years the plan has been in effect prior to the
20 effective date of this title.

21 (d) SPECIAL PROVISION FOR PLAN AMENDMENTS.—
22 If, after the effective date of this title, a plan which has been
23 in existence for five or more years is amended with a re-
24 sulting increase in vested liabilities, the administrator may

1 adjust the required funding schedule according to one of
2 the following methods:

3 (1) The plan's funding ratio may be decreased in pro-
4 portion to the ratio which the additional vested liabilities
5 bear to the total vested liabilities after the amendment. The
6 resulting ratio will be increased each year by percentage
7 point increments according to the applicable funding rate
8 specified in subsection (a) (2) or (b).

9 (2) If the amendment results in a 25 per centum or
10 greater increase in vested liabilities, the portion of vested
11 liabilities created by the amendment may be regarded as a
12 new plan subject to the funding schedule imposed by subsec-
13 tion (a) (2). In this case, the administrator shall keep sepa-
14 rate records for ascertaining the funding status of the vested
15 liabilities created by the amendment.

16 FUNDING STATUS REPORTS

17 SEC. 202. (a) Within one hundred and fifty days after
18 the end of the plan's first fiscal year during which it is subject
19 to section 201 (a) (2), and within one hundred and fifty
20 days after the end of each third fiscal year thereafter, or
21 within one hundred and fifty days after the end of any fiscal
22 year in which the plan is amended so as to increase vested
23 liabilities, the administrator of the plan shall file with the
24 Secretary, a statement containing the following information:

1 (1) the amount of normal cost since inception of
2 the plan plus interest on any unfunded past service costs;

3 (2) the total amount of the plan's vested liabilities
4 at the close of its preceding fiscal year;

5 (3) the assets held by the plan as of the close of its
6 preceding fiscal year valued at market value or by any
7 other method approved by the Secretary pursuant to
8 regulation;

9 (4) the number of years the plan has been in effect;

10 (5) a statement of the amount, if any, by which the
11 assets held by the plan either exceed or fall below the
12 amount of assets required in order for the plan to meet
13 the funding ratio required under section 201 (a) (2) ;

14 (6) such other information determined by the Sec-
15 retary by regulation to be necessary for adequate dis-
16 closure of a plan's funding status.

17 (b) At such times as the administrator of a plan subject
18 to this title is required to file a report with the Secretary pur-
19 suant to (a) above, the administrator shall make available,
20 to each person having a vested benefit, such report, by post-
21 ing such report in a prominent location at the employer's
22 place or places of business or through such other means that
23 will insure that persons with vested benefits have adequate ac-
24 cess to such information.

1 ENFORCEMENT OF FUNDING STANDARDS

2 SEC. 203. (a) When the contributions to a pension plan
3 fall below amounts necessary to meet the requirements of sec-
4 tion 201 (a) (1), the Secretary shall require by order, after
5 notice and opportunity for hearing, that the administrator
6 take such steps as the Secretary shall find necessary to guar-
7 antee that the rights of each participant to benefits accrued
8 to the date of such failure to make appropriate contributions,
9 to the extent then funded, or the rights of each participant to
10 the amounts credited to his account at such time, are non-
11 forfeitable in the event of the participant's termination, ex-
12 cept that nonforfeitable benefits resulting other than through
13 operation of this subsection shall take priority over non-
14 forfeitable benefits resulting exclusively from operation of
15 this subsection with respect to any allocation of plan assets
16 or distribution to participants.

17 (b) When a pension plan's ratio of assets to vested
18 liabilities falls below the funding ratio required by section
19 201 (a) (2) as determined by the Secretary—

20 (1) the plan's vested liabilities shall not be in-
21 creased by an amendment until the plan's actual funding
22 ratio is equal to or greater than the required funding
23 ratio; and

24 (2) the administrator shall inform, in writing, each

1 person having a vested benefit as to (A) the amount of
2 his vested benefit, (B) the portion of his vested benefit
3 protected by assets and insurance and (C) the portion
4 of his vested benefit not protected by assets and insur-
5 ance. Such reports shall be made annually until the
6 plan's actual funding ratio is equal to or greater than
7 the required funding ratio;

8 (3) the administrator shall make such additional
9 reports to the Secretary as the Secretary may by rule
10 or regulation prescribe to aid in the enforcement of this
11 title.

12 (c) When a pension plan's ratio of assets to vested
13 liabilities falls below the funding ratio required by section
14 201 (a) (2) for five consecutive years the Secretary shall
15 require by order, after notice and opportunity for hearing,
16 that the administrator take such steps as the Secretary shall
17 find necessary to suspend further accumulation of vested
18 liabilities until such time as the funding deficiency has been
19 removed: *Provided, however,* That the Secretary may, after
20 notice and opportunity for hearing, order the action specified
21 herein to be taken at any time after a funding deficiency
22 has occurred but prior to expiration of the five-year period
23 whenever, in his discretion, such action is necessary to pro-
24 tect the interests of participants. The Secretary may by order
25 revoke or modify any order previously made under this

1 subsection, if, after notice and opportunity for hearing, he
2 finds that the circumstances upon which the order was
3 predicated do not exist.

4 (d) During any time that a pension plan is in suspended
5 status pursuant to action taken under subsection (c), the
6 Secretary, whenever he finds it necessary to protect the
7 interests of participants, may, after notice and opportunity
8 for hearing, require by order that the plan terminate and
9 wind up its affairs in accordance with the provisions of title
10 III and procedures established by the Pension Benefit Insur-
11 ance Corporation.

12 TITLE III—VESTED LIABILITY INSURANCE

13 INSURANCE COVERAGE

14 SEC. 301. (a) Every pension plan required to meet a
15 specified funding ratio in accordance with section 201 (a) (2)
16 of this Act shall obtain insurance covering unfunded vested
17 liabilities to protect participants and beneficiaries against
18 possible loss of vested benefits arising from an essentially
19 involuntary termination of the plan. The amount of insurance
20 shall be the plan's vested liabilities less the greater of—

- 21 (1) 90 per centum of the assets needed to meet
22 the funding ratio required under section 201 (a) (2), or
23 (2) 90 per centum of the plan's actual assets.

24 (b) The Pension Benefit Insurance Corporation shall

1 issue a certificate of insurance coverage to each plan adminis-
2 trator after receipt by the Corporation from the Secretary of
3 a copy of the statement required by section 202 (a). A
4 plan's insurance coverage shall be continuous from the date
5 of issuance of the certificate until canceled.

6 (c) The Pension Benefit Insurance Corporation shall not
7 insure—

8 (1) any unfunded vested liabilities created by a
9 plan amendment which took effect within three years
10 immediately preceding termination of the plan; or

11 (2) any unfunded vested liabilities resulting from
12 the participation in the plan by a participant owning 10
13 per centum or more of the voting stock of the employer
14 contributing to the plan or by any participant owning
15 a 10 per centum or more interest in a partnership con-
16 tributing to the plan.

17 **PREMIUMS**

18 **SEC. 302.** (a) Each plan shall pay a premium for in-
19 surance under this title at such uniform rates prescribed by
20 the Pension Benefit Insurance Corporation, based upon the
21 amount of unfunded vested liability which is to be insured
22 and upon such other factors as the Corporation determines to
23 be appropriate. The premium for the initial three-year period
24 shall be not more than 0.6 per centum of the amount insured.

25 (b) Should any administrator of a plan subject to this

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

10 CLAIMS PROCEDURE

11 SEC. 303. (a) The administrator of a plan insured under
12 the provisions of this title shall file a claim with the Pension
13 Benefit Insurance Corporation in the event the plan is termi-
14 nated for reasons of financial difficulty or bankruptcy, plant
15 closing, by order of the Secretary, or such other reasons as
16 the Corporation by regulation shall specify as reflecting an
17 essentially involuntary plan termination. The Corporation
18 shall be authorized to honor such claim up to the limits pre-
19 scribed by section 304 if it finds that the assets of the plan
20 may not be sufficient to pay vested liabilities.

21 (b) Claims shall be made as specified in the rules and
22 regulations of the Pension Benefit Insurance Corporation.
23 The Corporation shall also require the administrator who
24 files a claim to submit proof of all facts necessary to estab-
25 lish a claim, but in any event, the Corporation may in its

1 discretion independently make such investigation as may be
2 necessary for it to determine the validity of any claim. The
3 Corporation shall require the payment of any contributions
4 owing to the plan and required to meet the funding ratio
5 specified in section 201 (a) (2) of this Act, and may sue
6 to recover such contributions on behalf of the plan in con-
7 nection with settling any claim.

8 (c) The Pension Benefit Insurance Corporation shall
9 give written notice to the administrator of its decision on
10 any claim. Upon notice that a claim will be honored the
11 administrator shall wind up the affairs of the plan by arrang-
12 ing for the purchase of single premium annuities from a
13 qualified life insurance company for each person entitled
14 to vested benefits, or by making such other arrangements for
15 the distribution of vested benefits as the Corporation may
16 by regulation approve as providing adequate protection to
17 persons with vested benefits. The administrator shall be
18 allowed a reasonable period in which to liquidate the assets
19 of the plan. Upon completing the process of liquidation he
20 shall thereafter submit to the Corporation, within such period
21 specified by regulation of the Corporation, a plan termination
22 report. Such report shall fully disclose the amount of the
23 vested benefit payable to each person under the terms of
24 the plan as of the date the plan was terminated, the amount

1 presented for such relief is a decline in the value of the
2 assets of the plan;

3 (b) in any case where Pension Benefit Insurance
4 Corporation is unable to recover any contributions or
5 portions thereof owing to a terminating pension plan to
6 meet the funding ratio specified in section 201 (a) (2),
7 the amount of insurance to be paid shall be adjusted to
8 take into account such unpaid contributions.

9 (c) in any case where a plan is terminated as the
10 result of the closing of a plant of an employer contribut-
11 ing to such plan and the vested liabilities of such termi-
12 nated plan are less than 20 per centum of the vested
13 liabilities of all the pension plans maintained by such
14 employer, such employer shall be liable to reimburse the
15 Pension Benefit Insurance Corporation for any insurance
16 paid by the Corporation in satisfaction of a claim pre-
17 sented by such terminated plan, and the Corporation is
18 authorized to sue such employer to recover the amount
19 of any unpaid liability lawfully payable under this
20 provision.

21

UNINSURED PLANS

22

SEC. 305. It shall be unlawful for any administrator of
23 a plan subject to this title to maintain or operate such a
24 plan without the certificate of insurance required by this title.

1 sive original jurisdiction, without regard to the amount in
2 controversy, of all suits brought by or against the Corpora-
3 tion.

4 (e) May adopt, amend, and repeal bylaws, rules, and
5 regulations governing the manner in which its business may
6 be conducted and the powers vested in it may be exercised.

7 (f) Shall be entitled to the use of the United States
8 mails in the same manner and upon the same conditions as
9 the executive departments of the Federal Government.

10 (g) Shall have power when necessary to carry out the
11 provisions of title III, to make investigations and in con-
12 nection therewith to enter such places and inspect such
13 records and accounts and question such persons as the Corpo-
14 ration may deem necessary to determine the facts relative
15 thereto. For the purpose of any investigation provided for
16 herein, the provisions of sections 9 and 10 (relating to the
17 attendance of witnesses and the production of books, papers,
18 and documents) of the Federal Trade Commission Act of
19 September 16, 1914, as amended (15 U.S.C. 49, 50), are
20 hereby made applicable to the jurisdiction, powers, and
21 duties of the Corporation or any officers designated by the
22 Corporation.

23 (h) Shall determine the character of and the necessity
24 for its obligations and expenditures and the manner in which
25 they shall be incurred, allowed, and paid, subject to provisions

1 of law specifically applicable to wholly owned Government
2 corporations.

3 (i) Shall have such powers as may be necessary or
4 appropriate for the exercise of the powers specifically vested
5 in the Corporation and all such incidental powers as are
6 customary in corporations generally.

7 SPECIFIC POWERS OF CORPORATION

8 SEC. 403. In the fulfillment of its purposes and in carry-
9 ing out its annual budget programs submitted to and ap-
10 proved by the Congress pursuant to the Government Corpo-
11 ration Control Act, the Corporation is authorized to use its
12 general powers in accordance with the provisions of title III
13 of this Act to—

14 (a) Establish adequate premium rates to cover the in-
15 surance of vested liabilities of private pension plans and the
16 administrative expenses of the Corporation. In determining
17 such premium rates, the Corporation shall consult with the
18 Technical Advisory Committee on Pension Benefit Insurance
19 established by section 405.

20 (b) Establish procedures for the application, renewal,
21 and cancellation of insurance, including the prescribing of
22 such forms and reports as may be necessary or appropriate
23 to implement such procedures.

24 (c) Collect premiums and manage and invest the funds
25 of the Corporation.

1 (d) Adjust and pay claims for insurance under rules
2 prescribed by the Corporation.

3 (e) Conduct research, surveys, and investigations relat-
4 ing to pension plan insurance and assemble data for the
5 purpose of establishing sound bases for insurance.

6 (f) Bring an action in the proper district court of the
7 United States or United States court of any place subject
8 to the jurisdiction of the United States, to enjoin any acts or
9 practices that constitute or will constitute a violation of title
10 III or IV or of any regulation or order issued thereunder,
11 or obtain any other appropriate relief, and the United States
12 district courts and the United States courts of any place
13 subject to the jurisdiction of the United States shall have
14 jurisdiction for cause shown, to restrain violations of title III
15 or title IV and provide for any other appropriate relief.

16 (g) Carry out such other functions as are required by
17 this Act and as Congress may specifically authorize or pro-
18 vide for.

19 PENSION BENEFIT INSURANCE FUND

20 SEC. 404. (a) There is hereby created within the
21 Treasury a separate fund for pension benefit insurance (here-
22 after in this section called "the fund") which shall be avail-
23 able to the Corporation without fiscal year limitation for
24 the purposes of this title.

25 (b) There is hereby authorized to be appropriated such

1 sums as are necessary to provide capital for the fund. All
2 amounts received as premiums and any other moneys, prop-
3 erty, or assets derived from operations in connection with
4 this title shall be deposited in the fund.

5 (c) All claims, expenses, and payments pursuant to
6 operation of the Corporation under this title shall be paid
7 from the fund. From time to time, and at least at the close
8 of each fiscal year, the Corporation shall pay from the
9 fund into the Treasury as miscellaneous receipts interest on
10 the cumulative amount of appropriations provided as capital
11 to the fund, less the average undisbursed cash balance in
12 the fund during the year. The rate of such interest shall be
13 determined by the Secretary of the Treasury, taking into
14 consideration the average market yield during the month
15 preceding each fiscal year on outstanding marketable Treas-
16 ury obligations. Interest payments may be deferred with
17 the approval of the Secretary of the Treasury, but any
18 interest payments so deferred shall themselves bear interest.

19 BOARD OF DIRECTORS: TECHNICAL ADVISORY COMMITTEE

20 SEC. 405. (a) The management of the Corporation shall
21 be vested in a Board of Directors (hereinafter referred to as
22 the "Board"). The Board shall consist of the Secretaries of
23 Labor and Commerce ex officio and three other Directors
24 appointed by the President, by and with the advice and

1 consent of the Senate. The President shall designate a Chair-
2 man of the Board from among the three Directors he ap-
3 points. Of the first three Directors, one shall be appointed
4 to serve for a term of two years; one shall be appointed to
5 serve for a term of four years; one shall be appointed to
6 serve for a term of six years. Thereafter, upon the expira-
7 tion of the term of office, each succeeding Director shall be
8 appointed to serve for a term of six years. Not more than
9 three of the members of such Board of Directors shall be
10 members of the same political party. Each appointed Di-
11 rector shall receive compensation at the rate of \$150 per
12 diem when engaged in the actual performance of duties of
13 the Board, and may be allowed travel expenses, including
14 per diem in lieu of subsistence, as authorized by section 5703
15 of title 5, United States Code, for persons in the Government
16 employed intermittently, except that any such Director who
17 holds another office or position under the Federal Govern-
18 ment shall serve without additional compensation. A major-
19 ity of the Directors shall constitute a quorum of the Board
20 and action shall be taken only by a majority vote of those
21 present.

22 (b) In addition to the Board of Directors there shall
23 be a Technical Advisory Committee on Pension Benefit
24 Insurance which shall consist of five members to be ap-
25 pointed by the Secretary after consultation with the Secre-

1 tary of Commerce, to advise and consult with the Corpora-
2 tion with respect to carrying out the purposes of this title.
3 The Secretary shall select for appointment to the Committee
4 individuals who are, by reason of training or experience or
5 both, familiar with and competent to deal with, problems
6 involving employees' pension plans and problems relating
7 to the insurance of such plans. Members of the Committee
8 shall be appointed for a term of two years. Members shall be
9 compensated at the rate of \$100 per day for each day they
10 are engaged in the duties of the Committee and, while serv-
11 ing away from their homes or regular places of business, may
12 be allowed travel expenses, including per diem in lieu of
13 subsistence, as authorized by section 5703 of title 5, United
14 State Code, for persons in the Government employed inter-
15 mittently. The Committee shall meet at Washington, Dis-
16 trict of Columbia, upon call of the Chairman of the Board of
17 Directors who shall serve as Chairman of the Committee.
18 Meetings shall be called by such Chairman not less often
19 than twice a year.

20

PERSONNEL OF CORPORATION

21

SEC. 406. The Corporation shall appoint and fix the
22 compensation of such officers, attorneys, and employees as
23 may be necessary for the conduct of its business in accord-
24 ance with the provisions of title 5, United States Code, gov-
25 erning appointment in the competitive service, and chapter

1 51 and subchapter III of chapter 53 of such title relating to
2 classification and General Schedule pay rates, and may ob-
3 tain the services of experts and consultants in accordance with
4 section 3109 of title 5, United States Code, at rates for in-
5 dividuals not to exceed the per diem equivalent for GS-18.

6 COOPERATION WITH OTHER GOVERNMENTAL AGENCIES

7 SEC. 407. The provisions of section 509 shall be appli-
8 cable to the Corporation.

9 INVESTMENT OF FUNDS

10 SEC. 408. All money of the Corporation, except appro-
11 priated funds, may be invested in obligations of the United
12 States or in obligations guaranteed as to principal and interest
13 by the United States.

14 TAX EXEMPTION

15 SEC. 409. The Corporation, including its franchise, its
16 capital, reserves, and surplus, and its income and property
17 shall be exempt from all taxation imposed by any State,
18 county, municipality, or subdivision thereof, except nothing
19 herein exempts from taxation any real property acquired
20 and held by the Corporation.

21 RECORDS; ANNUAL REPORT

22 SEC. 410. The Corporation shall at all times maintain
23 complete and accurate books of account and shall file an-
24 nually with the Secretary of Labor a complete report as to
25 the business of the Corporation, a copy of which shall be

1 forwarded by the Secretary of Labor to the President for
2 transmission to the Congress.

3 GOVERNMENT CORPORATION CONTROL ACT

4 SEC. 411. The provisions of the Government Corporation
5 Control Act (59 Stat. 597; 31 U.S.C. 841), as applicable
6 to wholly owned Government corporations, shall be applica-
7 ble to the Corporation.

8 TITLE V—ADMINISTRATION, CIVIL PROCEED-
9 INGS, AND MISCELLANEOUS PROVISIONS

10 RULES AND REGULATIONS

11 SEC. 501. The Secretary shall prescribe such rules and
12 regulations as he finds necessary or appropriate to carry out
13 the provisions of titles I, II, and V. Among other things,
14 such rules and regulations may define accounting, technical,
15 and trade terms used in such provisions; and may prescribe
16 the form and detail of all reports required to be made under
17 such provisions; and may provide for the keeping of books
18 and records, and for the inspection of such books and records.

19 VARIATIONS; APPEALS BOARD

20 SEC. 502. (a) PROCEDURE FOR VARIATIONS.—The
21 Secretary on his own motion or after having received the
22 petition of an administrator may, after giving interested
23 persons an opportunity to be heard, and in accordance with
24 the provisions of subsection (b) or (c) below, prescribe
25 an alternative method for satisfying the requirements of title

1 I or II, or both, with respect to any pension plan or any
2 type of pension plan subject to this Act.

3 (b) GENERAL RULE FOR GRANTING VARIATIONS.—

4 The Secretary may prescribe an alternative method for satis-
5 fying the requirements of titles I and II, or both, for such
6 limited periods of time as is necessary or appropriate to
7 carry out the purposes of this Act and which will provide
8 adequate protection to the participants and beneficiaries in
9 the plan, whenever he finds that the application of titles I
10 or II, or both, would (1) increase the costs of the parties
11 to the plan to such an extent that there would result a sub-
12 stantial risk to the voluntary continuation of the plan or a
13 substantial curtailment of pension benefit levels or the levels
14 of employees' compensation, or (2) impose unreasonable
15 administrative burdens with respect to the operation of the
16 plan, having due regard to the particular characteristics of the
17 plan or the type of plan involved. Nothing herein shall be
18 construed to authorize the Secretary to grant a permanent
19 variation from the requirements of titles I or II, or both,
20 except as indicated in subsection (c) below.

21 (c) SPECIAL RULE FOR MULTIEMPLOYER PLANS.—

22 On the basis of the factors described in (b) above, the Secre-
23 tary may grant a variation from the provisions of title I on
24 a permanent basis to any plan jointly entered into by five
25 or more employers within a single industry (other than

1 employers under common ownership or control) in which
2 (1) employees in the plan represent a substantial proportion
3 of employees in the industry, either nationally or in a par-
4 ticular region or labor market area, (2) the plan provides
5 for complete transferability of pension benefit credits within
6 the group of employers who are parties to the plan, and (3)
7 a substantial proportion of job changes involving a shift of
8 employers by plan participants takes place within the scope
9 of the plan. No permanent variation shall be authorized which
10 has the effect of permitting the adoption of a period of service
11 longer than fifteen years for vesting accrued portions of
12 regular retirement benefits.

13 (d) VARIATION APPEALS BOARD.—There is hereby
14 established a Variation Appeals Board which shall hear and
15 determine appeals from decisions denying grants of variations
16 in accordance with procedures promulgated by the Secretary
17 pursuant to regulation. Such Board shall include the Secre-
18 tary of Labor or his designee, the Secretary of Commerce or
19 his designee, and a person jointly selected by the Secretaries of
20 Labor and Commerce from outside the Federal Government
21 who is, by reason of training or experience or both, familiar
22 with and competent to deal with, problems involving em-
23 ployees' pension plans. The Secretary of Labor or his desig-
24 nate shall serve as presiding officer on such Board. Such non-
25 Federal Government member of the Board shall be com-

1 pensated at the rate of \$100 per day for each day he is
2 engaged in the work of the Board, and, while serving away
3 from his home or regular place of business, may be allowed
4 travel expenses, including per diem in lieu of subsistence,
5 as authorized by section 5703 of title 5, United States Code,
6 for persons in the Government employed intermittently.

7

INVESTIGATIONS

8 SEC. 503. (a) The Secretary, in his discretion, may in-
9 vestigate any facts, conditions, practices, or matters which he
10 may deem necessary or appropriate to determine whether
11 any person has violated or is about to violate any provisions
12 of titles I, II, and V or any rule, regulation, variation or
13 order thereunder, or to aid in the enforcement of the provi-
14 sions of titles I, II, and V, in the prescribing of rules, regu-
15 lations, variations or orders thereunder, or in obtaining in-
16 formation with respect to studies undertaken pursuant to sec-
17 tion 506. The Secretary, in his discretion, may publish or
18 make available to any interested person or official, informa-
19 tion concerning any matter which may be the subject of
20 investigation.

21 (b) For the purpose of any investigation provided for
22 in (a), the provisions of sections 9 and 10 (relating to the
23 attendance of witnesses and the production of books, papers,
24 and documents) of the Federal Trade Commission Act of
25 September 16, 1914, as amended (15 U.S.C. 49, 50), are

1 hereby made applicable to the jurisdiction, powers and duties
2 of the Secretary or any officers designated by him.

3 CIVIL ENFORCEMENT

4 SEC. 504. (a) Whenever it shall appear to the Secre-
5 tary that any person is engaged or about to engage in any
6 acts or practices that constitute or will constitute a violation
7 of any provision of titles I, II, or V or of any regulation,
8 variation or order issued thereunder, he may in his discretion,
9 bring an action in the proper district court of the United
10 States or United States court of any place subject to the juris-
11 diction of the United States, to enjoin such acts or practices,
12 and upon a proper showing a permanent or temporary in-
13 junction or restraining order shall be granted.

14 (b) The United States district courts and the United
15 States courts of any place subject to the jurisdiction of the
16 United States shall have exclusive jurisdiction with respect
17 to violations of titles I, II, or V or regulations, variations, or
18 orders issued thereunder, and of all suits in equity and actions
19 at law brought to enforce any liability or duty created by, or
20 to enjoin any violation of, titles I, II, or V or regulations,
21 variations, or orders thereunder, and to provide such other
22 relief as may be appropriate.

23 COURT REVIEW OF ORDERS

24 SEC. 505. The administrator of any pension plan who
25 has been denied a certificate of approval under title I, or

1 whose plan has been suspended or ordered terminated under
2 title II or who has been aggrieved by any final decision with
3 respect to any claim for payment of insurance under title III
4 or with respect to denial of a request for a variation under
5 this title, may obtain a review of the order denying such
6 application for a certificate of approval, such order suspend-
7 ing or terminating the plan, such final decision with respect
8 to an insurance claim or denial of a request for a variation,
9 or any other order or final decision made under this Act, in
10 the United States district court for the district where the prin-
11 cipal office of the plan is located. Such court shall have juris-
12 diction to affirm, modify or set aside such order or decision,
13 in whole or in part. The administrative findings as to the
14 facts, if supported by the evidence, shall be conclusive.

15 STUDIES

16 SEC. 506. The Secretary is authorized and directed to
17 undertake research studies relating to pension plans, includ-
18 ing but not limited to (1) the effects of this Act upon the
19 provisions and costs of pension plans, (2) the role of private
20 pensions in meeting the economic security needs of the
21 Nation, and (3) the operation of private pension plans
22 including types and levels of benefits, degree of reciprocity
23 or portability, and financial characteristics and practices.

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ANNUAL REPORTS

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SEC. 507. The Secretary shall submit annually a report to the Congress covering his administration of this Act for the preceding year and including such information, data, research findings, and recommendations for further legislation in connection with the matters covered by this Act as he may find advisable.

9

ADMINISTRATIVE PROCEDURE ACT

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SEC. 508. The provisions of the Administrative Procedure Act shall be applicable to this Act.

OTHER AGENCIES AND DEPARTMENTS

SEC. 509. In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this Act and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize, on a reimbursable basis, the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency,

1 or establishment of the United States is authorized and
2 directed to cooperate with the Secretary and, to the extent
3 permitted by law, to provide such information and facilities
4 as he may request for his assistance in the performance of
5 his functions under this Act. The Attorney General or his
6 representative shall receive from the Secretary for appropriate
7 action such evidence developed in the performance of his
8 functions under this Act as may be found to warrant con-
9 sideration for criminal prosecution under the provisions of
10 this Act or other Federal law.

11 SEPARABILITY PROVISIONS

12 SEC. 510. If any provision of this Act, or the application
13 of such provision to any person or circumstances, shall be
14 held invalid, the remainder of this Act or the application
15 of such provision to persons or circumstances other than
16 those as to which it is held invalid, shall not be affected
17 thereby.

18 PENALTIES

19 SEC. 511. Any person who wilfully—
20 (a) violates any provision of this Act or any rule,
21 regulation, variation, or order issued thereunder,
22 (b) makes, passes, utters, or publishes any statement
23 in any application, report, document, account, or record
24 filed or kept or required to be filed or kept under the
25 provisions of this Act or any rule, regulation, variation,

1 or order thereunder, knowing such statement or entry
2 to be false or misleading in any material respect,

3 (c) forges or counterfeits any instrument, paper,
4 or document, or utters, publishes, or passes as true any
5 instrument, paper, or document, knowing it to have been
6 forged or counterfeited, for the purpose of influencing
7 in any way the action of the Secretary or the Pension
8 Benefit Insurance Corporation,

9 (d) destroys (except after such time as may be
10 prescribed under any rules or regulations under this
11 Act), mutilates, alters, or by any means or device falsi-
12 fies any account, correspondence, memorandum, book,
13 paper, or other record kept or required to be kept under
14 this Act or any rule, regulation, variation, or order
15 thereunder,

16 (e) influences or induces or attempts to influence
17 or induce the Secretary or the Pension Benefit Insur-
18 ance Corporation with respect to any action of the
19 Secretary or the Corporation, by fraud, deceit, misrepre-
20 sentation, or by any manipulative or deceptive device or
21 contrivance,

22 shall upon conviction be fined not more than \$10,000 or
23 imprisoned not more than five years, or both, except that in
24 the case of such violation by a person not an individual, the

1 fine imposed upon such person shall be a fine not exceeding
2 \$200,000.

3 ADMINISTRATIVE ASSESSMENTS AND APPROPRIATIONS

4 SEC. 512. (a) The Secretary shall, pursuant to regu-
5 lation, assess each plan which is subject to this Act such fees
6 or charges as the Secretary deems appropriate to cover ad-
7 ministrative costs incurred by the Secretary, and as are con-
8 sistent with the policy of title V of the Independent Offices
9 Appropriation Act of 1952 (31 U.S.C. 483a, 65 Stat. 290).

10 (b) There is hereby authorized to be appropriated such
11 sums without fiscal limitation as may be necessary to enable
12 the Secretary to carry out his functions and duties under
13 this Act.

90TH CONGRESS
1ST SESSION

S. 1024

IN THE SENATE OF THE UNITED STATES

FEBRUARY 20, 1967

Mr. YARBOROUGH introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend the Welfare and Pension Plans Disclosure Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That, in order to strengthen and improve the protections
4 for the interests of participants in and beneficiaries of
5 employee welfare and pension benefit plans, under the
6 Act of August 28, 1958, as amended (72 Stat. 997), such
7 Act is amended to read as follows:

8 "SHORT TITLE, FINDINGS, AND DECLARATION OF POLICY

9 "SECTION 1. This Act may be cited as the 'Welfare and
10 Pension Plan Protection Act of 1967.'

VII—O

"FINDINGS AND POLICY

1
2 "SEC. 2. (a) The Congress finds that the growth in size,
3 scope, and numbers of employee welfare and pension benefit
4 plans in recent years has been rapid and substantial; that the
5 continued well-being and security of millions of employees
6 and their dependents are directly affected by these plans; that
7 they are affected with a national public interest; that they
8 have become an important factor affecting the stability of em-
9 ployment and the successful development of industrial rela-
10 tions; that they have become an important factor in com-
11 merce because of the interstate character of their activities,
12 and of the activities of their participants, and the employers,
13 employee organizations, and other entities by which they are
14 established or maintained; that owing to the lack of employee
15 information and adequate safeguards concerning their opera-
16 tion, it is desirable in the interests of employees and their
17 beneficiaries, and to provide for the general welfare and the
18 free flow of commerce, that disclosure be made and safe-
19 guards be provided with respect to the operation and adminis-
20 tration of such plans.

21 "(b) It is hereby declared to be the policy of this Act
22 to protect interstate commerce and the interests of partici-
23 pants in employee welfare and pension benefit plans and their
24 beneficiaries, by requiring the disclosure and reporting to
25 participants and beneficiaries of financial and other informa-

1 tion with respect thereto, by establishing fiduciary standards
2 of conduct, responsibility, and obligation upon all persons en-
3 gaged in, or responsible for receiving, disbursing, or exercis-
4 ing any control or authority with respect to employee welfare
5 and pension benefit funds, and by providing for sanctions in
6 the case of a breach of such fiduciary standards as well as for
7 recovery of losses suffered by such funds by reason of such
8 breach.

9 "DEFINITIONS

10 "SEC. 3. When used in this Act—

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

20 "(2) The term 'employee pension benefit plan' means
21 any plan, fund, or program which is communicated or its
22 benefits described in writing to the employees, and which
23 was heretofore or is hereafter established by an employer or
24 by an employee organization, or by both, for the purpose
25 of providing for its participants or their beneficiaries, by the

1 purchase of insurance or annuity contracts or otherwise,
2 retirement benefits, and includes any profit-sharing plan
3 which provides benefits at or after retirement.

4 “(3) The term ‘employee organization’ means any
5 labor union or any organization of any kind, or any agency
6 or employee representation committee, association, group,
7 or plan, in which employees participate and which exists
8 for the purpose, in whole or in part, of dealing with em-
9 ployers concerning an employee welfare or pension benefit
10 plan, or other matters incidental to employment relationships;
11 or any employees’ beneficiary association organized for the
12 purpose, in whole or in part, of establishing such a plan.

13 “(4) The term ‘employer’ means any person acting
14 directly as an employer or indirectly in the interest of an
15 employer in relation to an employee welfare or pension
16 benefit plan, and includes a group or association of employers
17 acting for an employer in such capacity.

18 “(5) The term ‘employee’ means any individual em-
19 ployed by an employer.

20 “(6) The term ‘participant’ means any employee or
21 former employee of an employer or any member of an em-
22 ployee organization who is or may become eligible to receive
23 a benefit of any type from an employee welfare or pension
24 benefit plan, or whose beneficiaries may be eligible to receive
25 any such benefit.

1 “(7) The term ‘beneficiary’ means a person designated
2 by a participant or by the terms of an employee welfare or
3 pension benefit plan who is or may become entitled to a
4 benefit thereunder.

5 “(8) The term ‘person’ means an individual, partner-
6 ship, corporation, mutual company, joint-stock company,
7 trust, unincorporated organization, association, or employee
8 organization.

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

14 “(10) The term ‘commerce’ means trade, commerce,
15 transportation, or communication among the several States,
16 or between any foreign country and any State, or between
17 any State and any place outside thereof.

18 “(11) The term ‘industry or activity affecting com-
19 merce’ means any activity, business, or industry in commerce
20 or in which a labor dispute would hinder or obstruct com-
21 merce or the free flow of commerce and includes any activity
22 or industry affecting commerce within the meaning of the
23 Labor-Management Relations Act, 1947, as amended, or the
24 Railway Labor Act, as amended.

1 ployer or employers engaged in commerce or in any industry
2 or activity affecting commerce or by any employee organi-
3 zation or organizations representing employees engaged in
4 commerce or in any industry or activity affecting commerce
5 or by both.

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

8 “(1) such plan is administered by the Federal Gov-
9 ernment or by the government of a State, by a political
10 subdivision of a State, or by an agency or instrumen-
11 tality of any of the foregoing;

12 “(2) such plan was established and is maintained
13 solely for the purpose of complying with applicable
14 workmen’s compensation laws or unemployment com-
15 pensation disability insurance laws;

16 “(3) such plan is administered by an organization
17 which is exempt from taxation under the provisions
18 of section 501 (a) of the Internal Revenue Code of
19 1954 and is administered as a corollary to member-
20 ship in a fraternal benefit society described in section
21 501 (c) (8) of such Code or by organizations described
22 in sections 501 (c) (3) and 501 (c) (4) of such Code:
23 *Provided*, That the provisions of this paragraph shall
24 not exempt any plan administered by a fraternal bene-

1 fit society or organization which represents its members
2 for purposes of collective bargaining; or
3 “(4) such plan covers not more than twenty-five
4 participants.

5 “DUTY OF DISCLOSURE AND REPORTING

6 “SEC. 5. The administrator of an employee welfare bene-
7 fit plan or an employee pension benefit plan shall publish in
8 accordance with section 8 to each participant or beneficiary
9 covered thereunder (1) a description of the plan and (2)
10 an annual financial report. Such description and such report
11 shall contain the information required by sections 6 and 7 of
12 this Act in such form and detail as the Secretary shall pre-
13 scribe and such other information as the Secretary shall de-
14 termine to be necessary and appropriate to carry out the
15 purposes of this Act, and copies thereof shall be executed,
16 published, and filed in accordance with the provisions of this
17 Act and the Secretary’s regulations thereunder. The Secre-
18 tary may by regulations provide for the exemption from all
19 or any part of the reporting and disclosure requirements of
20 this Act of any class or type of welfare or pension benefit
21 plans, if the Secretary finds that the application of such
22 requirements to such plans is not required in order to effec-
23 tuate the purposes of this Act.

24 “DESCRIPTION OF THE PLAN

25 “SEC. 6. (a) Except as provided in section 4, the de-

1 description of any employee welfare or pension benefit plan
2 shall be published as required herein within ninety days of
3 the effective date of this Act or within ninety days after the
4 establishment of such plan, whichever is later.

5 “(b) The description of the plan shall be published and
6 signed by the person or persons defined as the ‘administrator’
7 and shall include their names and addresses, their official
8 positions with respect to the plan, and their relationship, if
9 any, to the employer or to any employee organizations, and
10 any other offices, positions, or employment held by them;
11 the name, address, and description of the plan and the type
12 of administration; the schedule of benefits; the names, titles,
13 and addresses of any trustee or trustees (if such persons are
14 different from those persons defined as the ‘administrator’);
15 whether the plan is mentioned in a collective bargaining
16 agreement; copies of the plan or of the bargaining agree-
17 ment, trust agreement, contract, or other instrument, if any,
18 under which the plan was established and is operated; the
19 source of the financing of the plan and the identity of any
20 organization through which benefits are provided; whether
21 the records of the plan are kept on a calendar year basis, or
22 on a policy or other fiscal year basis, and if on the latter basis,
23 the date of the end of such policy or fiscal year; the procedures
24 to be followed in presenting claims for benefits under the plan

1 and the remedies available under the plan for the redress of
2 claims which are denied in whole or in part. Amendments
3 to the plan reflecting changes in the data and information
4 included in the original plan, other than data and information
5 also required to be included in annual reports under section 7,
6 shall be included in the description on and after the effective
7 date of such amendments. Any change in the information
8 required by this subsection shall be reported in accordance
9 with regulations prescribed by the Secretary.

10

"ANNUAL REPORTS

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"SEC. 7. (a) The administrator of any employee wel-
12 fare or pension benefit plan, a description of which is
13 required to be published under section 6, shall also publish
14 an annual report with respect to such plan if the plan is
15 subject to section 14 of this Act or if it covers one hundred
16 or more participants. However, the Secretary, after investi-
17 gation, may require the administrator of any plan otherwise
18 covered by the Act to publish such report when necessary
19 and appropriate to carry out the purposes of the Act. Such
20 report shall be published as required under section 8 within
21 one hundred and fifty days after the end of the calendar year
22 (or, if the records of the plan are kept on a policy or other
23 fiscal year basis, within one hundred and fifty days after the
24 end of such policy or fiscal year).

25

"(b) A report under this section shall be signed by

1 the administrator and such report shall include the follow-
2 ing: 'The amount contributed by each employer; the amount
3 contributed by the employees; the amount of benefits paid
4 or otherwise furnished; the number of employees covered;
5 a statement of assets, liabilities, receipts, and disbursements
6 of the plan; a detailed statement of the salaries and fees and
7 commissions charged to the plan, to whom paid, in what
8 amount, and for what purposes.'

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

15 " (d) If some or all of the benefits under the plan are
16 provided by an insurance carrier or service or other organiza-
17 tion such report shall include with respect to such plan (in
18 addition to the information required by subsection (b)) the
19 following:

20 " (1) The premium rate or subscription charge and the
21 total premium or subscription charges paid to each such car-
22 rier or organization and the approximate number of persons
23 covered by each class of such benefits.

24 " (2) The total amount of premiums received, the

1 approximate number of persons covered by each class of
2 benefits, and the total claims paid by such carrier or other
3 organization; dividends or retroactive rate adjustments, com-
4 missions, and administrative service, or other fees or other
5 specific acquisition costs, paid by such carrier or other orga-
6 nization; any amounts held to provide benefits after retire-
7 ment; the remainder of such premiums; and the names and
8 addresses of the brokers, agents, or other persons to whom
9 commissions or fees were paid, the amount paid to each, and
10 for what purpose: *Provided*, That if any such carrier or other
11 organization does not maintain separate experience records
12 covering the specific groups it serves, the report shall include
13 in lieu of the information required by the foregoing provisions
14 of this paragraph (A) a statement as to the basis of its pre-
15 mium rate or subscription charge, the total amount of pre-
16 miums or subscription charges received from the plan, and a
17 copy of the financial report of the carrier or other organiza-
18 tion and (B), if such carrier or organization incurs specific
19 costs in connection with the acquisition or retention of any
20 particular plan or plans, a detailed statement of such costs.

21 “(e) Details relative to the manner in which any funds
22 held by an employee welfare benefit plan are held or in-
23 vested shall be reported as provided under paragraphs (B),
24 (C), (D), (E), (F), and (G) of subsection (f) (1).

25 “(f) Reports on employee pension benefit plans shall

1 include, in addition to the applicable information required
2 by the foregoing provisions of this section, the following:

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

5 “(A) the type and basis of funding, actuarial as-
6 sumptions used, the amount of current and past service
7 liabilities, and the number of employees, both retired
8 and nonretired, covered by the plan;

9 “(B) a statement showing the assets of the fund
10 which shall be valued on the basis regularly used in
11 valuing investments held in the fund and reported to
12 the United States Treasury Department, or shall be
13 valued at their aggregate cost or present value, which-
14 ever is lower, if such a statement is not so required to be
15 filed with the United States Treasury Department;

16 “(C) a detailed list, including information as to
17 cost and present value, of all investments of the fund,
18 separately identifying investments in securities or prop-
19 erties of the employer or employee organization or any
20 other party in interest;

21 “(D) a statement of the aggregate purchases, sales,
22 redemptions and exchanges of investment securities (in-
23 cluding bonds and debentures) made during the period
24 covered by the report, identified by issuer and by each
25 type of security such as, common stock, preferred stock,

1 bond issues, and so forth, and including information as
2 to the number of shares of stock or the principal amount
3 of bonds or debentures; in the case of purchase, the pur-
4 chase price; and in the case of sale, redemption or ex-
5 change, the cost, proceeds (including a description and
6 value of consideration other than cash, if any), and the
7 net gain (or loss);

8 “(E) a detailed list of all purchases, sales or ex-
9 changes of investment assets other than securities, in-
10 cluding information as to the identity of the asset pur-
11 chased, sold or exchanged (and, in the case of fixed
12 assets such as land, buildings, leaseholds, and so forth,
13 the location of the asset); the purchase or selling price;
14 expenses incurred in connection with the purchase or
15 sale; the cost of the asset and proceeds, and the net gain
16 (or loss) on each sale; the identity of the seller in the
17 case of a purchase, and the identity of the purchaser in
18 the case of a sale, and their relationship, if any, to the
19 plan, the employer, or any employee organization;

20 “(F) a detailed list of all loans made by the plan
21 during the year and all loans outstanding at the end of
22 the year, separately identifying loans made to the em-
23 ployer or employee organization or any other party in
24 interest, including information as to the identity and
25 address of the debtors, dates made and maturity dates,

1 interest rate, face amount of the loans, amount out-
2 standing at the end of the year, type and value of
3 collateral held, and any other terms and conditions:
4 *Provided, however,* That Veterans' Administration and
5 Federal Housing Administration insured mortgage loans
6 and mortgages on single-unit residences which were
7 purchased on a block basis from banks or similar in-
8 stitutions need not be listed, nor loans made to plan
9 participants where such loans are available to all partic-
10 ipants on a nondiscriminatory basis and are made in
11 accordance with specific provisions regarding loans to
12 participants set forth in the plan, but the total amounts
13 of each category of such loans outstanding at the end of
14 the year shall be reported;

15 " (G) if some or all of the assets of a plan or plans
16 are held in a common or collective trust maintained by a
17 bank or similar institution or in a separate account
18 maintained by an insurance carrier, the report shall in-
19 clude a statement of assets and liabilities and a statement
20 of receipts and disbursements of such common or collec-
21 tive trust or separate account and such of the informa-
22 tion required under section 7 (f) (1) (C), (D), (E),
23 and (F) with respect to such common or collective
24 trust or separate account as the Secretary may determine

1 appropriate by regulation. In such case the bank or
2 similar institution or insurance carrier shall certify to the
3 administrator of such plan or plans, within one hundred
4 and twenty days after the end of each calendar or other
5 fiscal year, as the case may be, the information deter-
6 mined by the Secretary to be necessary to enable the
7 plan administrator to comply with the requirements of
8 this Act.

9 “(2) If the plan is funded through the medium of a con-
10 tract with an insurance carrier, the report shall include—

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

15 “(B) except for benefits completely guaranteed by
16 the carrier, the amount of current and past service liabili-
17 ties, based on those assumptions, and the amount of all
18 reserves accumulated under the plan.

19 “(3) If the plan is funded through the medium of a trust
20 invested, in whole or in part, in one or more insurance or
21 annuity contracts with an insurance carrier, the report shall
22 include, as to the portion of the funds so invested, only the
23 information required by paragraph (2) above.

24 “(4) If the plan is unfunded, the report shall include the

1 total benefits paid to retired employees for the past five
2 years, broken down by year.

3 “(g) If some or all of the benefits under the plan are
4 provided by an insurance carrier or service or other organi-
5 zation, such carrier or organization shall certify to the admin-
6 istrator of such plan, within one hundred and twenty days
7 after the end of each calendar, policy, or other fiscal year, as
8 the case may be, such reasonable information determined by
9 the Secretary to be necessary to enable such administrator to
10 comply with the requirements of this Act.

11 “(h) The administrator of an employee welfare or pen-
12 sion benefit plan shall cause an audit to be made annually of
13 an employee benefit fund established in connection with or
14 pursuant to the provisions of the plan. Such audit shall be
15 conducted in accordance with accepted standards of auditing
16 by an independent certified or licensed public accountant, but
17 nothing herein shall be construed to require such an audit of
18 the books or records of any bank, insurance company, or
19 other institution providing an insurance, investment, or re-
20 lated function for the plan, if such books or records are sub-
21 ject to periodic examination by an agency of the Federal
22 Government or the government of any State. The auditor’s
23 opinion and comments with respect to the financial informa-

1 tion required to be furnished in the annual report by the
2 plan administrator shall form a part of such report.

3 "PUBLICATION

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

8 "(1) The administrator shall make copies of such de-
9 scription of the plan (including all amendments or modifica-
10 tions thereto upon their effective date) and of the latest an-
11 nual report available for examination by any participant or
12 beneficiary in the principal office of the plan.

13 "(2) The administrator shall deliver upon written re-
14 quest to such participant or beneficiary a copy of the de-
15 scription of the plan (including all amendments or modifica-
16 tions thereto upon their effective date) and a copy of the
17 latest annual report, by mailing such documents to the last
18 known address of the participant or beneficiary making
19 such request.

20 "(b) The administrator of any plan subject to the pro-
21 visions of this Act shall file with the Secretary a copy of the
22 description of the plan and each annual report thereon. The
23 Secretary shall make available for examination in the public
24 document room of the Department of Labor copies of descrip-
25 tions of plans and annual reports filed under this subsection.

1 it necessary in order to determine whether any person has
2 violated or is about to violate any provision of this Act, to
3 make an investigation and in connection therewith he may
4 enter such places and inspect such records and accounts and
5 question such persons as he may deem necessary to enable
6 him to determine the facts relative thereto. The Secretary
7 may report to interested persons or officials concerning the
8 facts required to be shown in any report required by this Act
9 and concerning the reasons for failure or refusal to file such
10 a report or any other matter which he deems to be appro-
11 priate as a result of such an investigation.

12 “(e) For the purposes of any investigation provided
13 for in this Act, the provisions of sections 9 and 10 (relat-
14 ing to the attendance of witnesses and the production of
15 books, records, and documents) of the Federal Trade Com-
16 mission Act of September 16, 1914, as amended (15 U.S.C.
17 49, 50), are hereby made applicable to the jurisdiction,
18 powers, and duties of the Secretary or any officers desig-
19 nated by him.

20 “(f) Whenever it shall appear to the Secretary that
21 any person is engaged in any violation of the provisions of
22 this Act, he may in his discretion bring an action in the
23 proper district court of the United States or United States
24 court of any place subject to the jurisdiction of the United
25 States, to enjoin such acts or practices, and upon a proper

1 showing a permanent or temporary injunction or restraining
2 order shall be granted.

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

7 “(h) In addition to the rights of action specified above,
8 the Secretary or any participant or beneficiary may bring
9 an action—

10 “(1) to recover the liability specified in section 14
11 or to enjoin any acts or practices which constitute or
12 will constitute a violation of section 14 and for such
13 other relief as may be appropriate,

14 “(2) to remove any person occupying a fiduciary
15 position under section 14 and, pending the replacement
16 of such person, to appoint an appropriate individual to
17 carry out the duties of the person removed, in any dis-
18 trict court of the United States and in the United States
19 courts of any place subject to the jurisdiction of the
20 United States where the fund is administered or where
21 the breach took place or where the defendant is an in-
22 habitant or may be found, and process in such cases
23 may be served in any other district of which the de-
24 fendant is an inhabitant or wherever the defendant may

1 be found. No proceeding specified in clause (1) or
2 (2) shall be brought by a participant or beneficiary
3 except upon leave of the court obtained upon verified
4 application and for good cause shown which applica-
5 tion may be made ex parte. The court in any such
6 action may in its discretion, in addition to any judgment
7 awarded to the participant or beneficiary, allow a reason-
8 able attorney's fee to be paid by the defendant, and
9 costs of the action. Upon the filing of a complaint by
10 the Secretary to enforce the provisions of section 14 or
11 to remove a fiduciary, the jurisdiction of the district
12 court over the subject matter of the action shall be
13 exclusive and the final judgment shall be res judicata.

14 “(i) The district courts of the United States and the
15 United States courts of any place subject to the jurisdiction
16 of the United States shall have jurisdiction—

17 “(1) to award the liability specified in section 14,
18 and, for cause shown, to grant injunctive and other ap-
19 propriate relief in any action involving a violation of
20 section 14,

21 “(2) to order the removal of any person serving as
22 a fiduciary, and to appoint a replacement pending the
23 appointment or election of a person to fill the vacancy
24 created, if the court finds (A) that such person is failing

1 to carry out his fiduciary responsibilities, or (B) such
2 person is disqualified from serving in a fiduciary capacity
3 under the provisions of section 15.

4 “(j) In order to avoid unnecessary expense and dupli-
5 cation of functions among Government agencies, the Secre-
6 tary may make such arrangements or agreements for coop-
7 eration or mutual assistance in the performance of his func-
8 tions under this Act and the functions of any such agency as
9 he may find to be practicable and consistent with law. The
10 Secretary may utilize the facilities or services of any depart-
11 ment, agency, or establishment of the United States or of any
12 State or political subdivision of a State, including the services
13 of any of its employees, with the lawful consent of such de-
14 partment, agency, or establishment; and each department,
15 agency, or establishment of the United States is authorized
16 and directed to cooperate with the Secretary and, to the
17 extent permitted by law, to provide such information and
18 facilities as he may request for his assistance in the perform-
19 ance of his functions under this Act. The Attorney General
20 or his representative shall receive from the Secretary for
21 appropriate action such evidence developed in the perform-
22 ance of his functions under this Act as may be found to war-
23 rant consideration for criminal prosecution under the provi-
24 sions of this Act or other Federal law.

1 "REPORTS MADE PUBLIC INFORMATION

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

11 "RETENTION OF RECORDS

12 "SEC. 11. Every person required to file any description
13 or report or to certify any information therefor under this
14 Act shall maintain records on the matters of which disclosure
15 is required which will provide in sufficient detail the neces-
16 sary basic information and data from which the documents
17 thus required may be verified, explained, or clarified, and
18 checked for accuracy and completeness, and shall include
19 vouchers, worksheets, receipts, and applicable resolutions,
20 and shall keep such records available for examination for a
21 period of not less than five years after the filing of the docu-
22 ments based on the information which they contain.

1 "RELIANCE ON ADMINISTRATIVE INTERPRETATIONS AND
2 FORMS

3 "SEC. 12. In any action or proceeding based on any act
4 or omission in alleged violation of this Act, no person shall
5 be subject to any liability or punishment for or on account of
6 the failure of such person to (1) comply with any provision
7 of this Act if he pleads and proves that the act or omission
8 complained of was in good faith, in conformity with, and in
9 reliance on any written interpretation or opinion of the Secre-
10 tary, or (2) publish and file any information required by
11 any provision of this Act if he pleads and proves that he
12 published and filed such information in good faith, on the
13 description and annual report forms prepared by the Secre-
14 tary and in conformity with the instructions of the Secretary
15 issued under this Act regarding the filing of such forms.
16 Such a defense, if established, shall be a bar to the action
17 or proceeding, notwithstanding that (A) after such act or
18 omission, such interpretation or opinion is modified or re-
19 scinded or is determined by judicial authority to be invalid
20 or of no legal effect, or (B) after publishing or filing the
21 description and annual reports, such publications or filing is

1 determined by judicial authority not to be in conformity with
2 the requirements of this Act.

3 "BONDING

4 "SEC. 13. (a) Every administrator, officer, and em-
5 ployee of any employee welfare benefit plan or of any em-
6 ployee pension benefit plan subject to this Act who handles
7 funds or other property of such plan shall be bonded as
8 herein provided; except that, where such plan is one under
9 which the only assets from which benefits are paid are the
10 general assets of a union or of an employer, the administra-
11 tor, officers and employees of such plan shall be exempt from
12 the bonding requirements of this section. The amount of
13 such bond shall be fixed at the beginning of each calendar,
14 policy, or other fiscal year, as the case may be, which consti-
15 tutes the reporting year of such plan. Such amount shall be
16 not less than 10 per centum of the amount of funds handled,
17 determined as herein provided, except that any such bond
18 shall be in at least the amount of \$1,000 and no such bond
19 shall be required in an amount in excess of \$500,000: *Pro-*
20 *vided*, That the Secretary, after due notice and opportunity
21 for hearing to all interested parties, and after consideration of
22 the record, may prescribe an amount in excess of \$500,000,
23 which in no event shall exceed 10 per centum of the funds
24 handled. For purposes of fixing the amount of such bond,
25 the amount of funds handled shall be determined by the funds

1 handled by the person, group, or class to be covered by such
2 bond and by their predecessor or predecessors; if any, during
3 the preceding reporting year, or if the plan has no preceding
4 reporting year, the amount of funds to be handled during the
5 current reporting year by such person, group, or class, esti-
6 mated as provided in regulations of the Secretary. Such
7 bond shall provide protection to the plan against loss by rea-
8 son of acts of fraud or dishonesty on the part of such admin-
9 istrator, officer, or employee, directly or through connivance
10 with others. Any bond shall have as surety thereon a cor-
11 porate surety company which is an acceptable surety on
12 Federal bonds under authority granted by the Secretary of
13 the Treasury pursuant to the Act of July 30, 1947 (6 U.S.C.
14 6-13). Any bond shall be in a form or of a type approved
15 by the Secretary, including individual bonds or schedule or
16 blanket forms of bonds which cover a group or class.

17 “(b) It shall be unlawful for any administrator, offi-
18 cer, or employee to whom subsection (a) applies, to receive,
19 handle, disburse, or otherwise exercise custody or control
20 of any of the funds or other property of any employee wel-
21 fare benefit plan or employee pension benefit plan, without
22 being bonded as required by subsection (a) and it shall be
23 unlawful for any administrator, officer, or employee, of such
24 plan, or any other person having authority to direct the per-
25 formance of such functions, to permit such functions, or any

1 of them, to be performed by any such person, with respect
2 to whom the requirements of subsection (a) have not been
3 met.

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

10 “(d) Nothing in any other provision of law shall re-
11 quire any person, required to be bonded as provided in sub-
12 section (a) because he handles funds or other property of
13 an employee welfare benefit plan or of an employee pension
14 benefit plan, to be bonded insofar as the handling by such
15 person of the funds or other property of such plan is
16 concerned.

17 “(e) The Secretary shall from time to time issue such
18 regulations as may be necessary to carry out the provisions of
19 this section. When, in the opinion of the Secretary, the ad-
20 ministrator of a plan offers adequate evidence of the financial
21 responsibility of the plan, or that other bonding arrange-
22 ments would provide adequate protection of the beneficiaries
23 and participants, he may exempt such plan from the require-
24 ments of this section.

1 "FIDUCIARY RESPONSIBILITY

2 "SEC. 14. (a) Except as provided in subsection (b),
3 the term 'employee benefit fund', when used in this section,
4 means a fund of money or other assets established pursuant
5 to or in connection with an employee welfare or pension
6 benefit plan or plans and includes contributions to a plan
7 made by employees, either through withholding or otherwise.

8 "(b) This section shall not apply to—

9 "(1) an employee welfare or pension benefit plan
10 in which the benefits payable to participants or other
11 beneficiaries are provided solely from the general assets
12 of an employer or of an employee organization;

13 "(2) premiums or subscription charges for which
14 benefits are guaranteed and which are received by an
15 insurance carrier or service or other organization;

16 "(3) moneys deposited with an insurance carrier,
17 the repayment of which including interest thereon is
18 guaranteed;

19 "(4) any investment company registered under the
20 Investment Company Act of 1940.

21 "(c) An employee benefit fund whenever established,
22 shall be deemed to be a trust fund available only for the sole
23 and exclusive purpose of (1) providing the benefits to par-

1 participants in the plan and their beneficiaries, and (2) defray-
2 ing the reasonable costs of administering the plan.

3 “(d) Every person who receives, disburses, or exercises
4 any control or authority with respect to any employee bene-
5 fit fund is a fiduciary and occupies a position of trust with
6 relation to such fund and to the participants and their bene-
7 ficiaries for whose benefit the fund was established. Each
8 such fiduciary shall handle, manage, invest, and expend such
9 fund with the same degree of care and skill as a man of ordi-
10 nary prudence would exercise in dealing with his own
11 property.

12 “(e) Except to the extent permitted by subsection (g),
13 no person who is a fiduciary of an employee benefit fund
14 shall—

15 “(1) sell or lease property of the fund to any
16 employer of employees for whose benefit such fund is
17 established, to any employee organization for whose
18 members such fund is established, or to any official of
19 such employer or employee organization;

20 “(2) purchase or lease on behalf of the fund any
21 property of such employer, employee organization, or
22 official thereof;

23 “(3) deal with such fund in his own interest or
24 account;

25 “(4) represent any other party dealing with such

1 fund, or in any way act on behalf of an adverse party
2 relating to the fund or to the interests of the participants
3 or beneficiaries for whose benefit the fund was estab-
4 lished; or

5 “(5) receive any consideration from any other
6 party dealing with such fund on account of any of the
7 foregoing transactions or dealings whether or not such
8 fiduciary participates in such transactions or dealings on
9 behalf of such fund.

10 “(f) No loan of money or other assets shall be made
11 from an employee benefit fund to a fiduciary with relation to
12 such fund, or to any relative of such fiduciary, or to his em-
13 ployer, employee, partner, or other business associate, or to a
14 labor organization for the benefit of whose members the fund
15 was established or to any official thereof, or to an employer
16 who contributes to the fund on account of his employees or
17 any official of such employer. For the purposes of this sub-
18 section, the term ‘relative’ means a spouse, ancestor, descend-
19 ant, brother, sister, son-in-law, daughter-in-law, father-in-
20 law, mother-in-law, brother-in-law, or sister-in-law.

21 “(g) Nothing in this section shall be construed to pro-
22 hibit any fiduciary from—

23 “(1) receiving any benefit to which he may be en-
24 titled as a participant or beneficiary in the plan under
25 which the fund was established;

1 “(2) receiving any reasonable compensation for
2 services rendered, or for the reimbursement of expenses
3 properly and actually incurred, in the performance of his
4 duties as a fiduciary of such fund;

5 “(3) serving as a fiduciary in addition to being an
6 officer, employee, agent, or other representative of an
7 employer whose employees are participants in the plan
8 under which the fund was established, or of an employee
9 organization whose members are participants in such a
10 plan;

11 “(4) Engaging in the following transactions:

12 “(A) purchasing on the market on behalf of
13 the fund any security, as defined in the Securities
14 Act of 1933, which has been issued by an employer
15 whose employees are participants in the plan under
16 which the fund was established: *Provided*, That the
17 purchase of any security is for no more than ade-
18 quate consideration in money or money’s worth:
19 *Provided, further*, That if an employee benefit fund
20 is one which provides primarily for benefits of a
21 stated amount, or an amount determined by an
22 employee’s compensation, an employee’s period of
23 service, or a combination of both, or money pur-
24 chase type benefits based on fixed contributions
25 which are not geared to the employer’s profits, no

1 investment shall be made subsequent to the enact-
2 ment of this Act by a fiduciary of such a fund in
3 stock or securities of such an employer or of a
4 corporation owned or controlled by such an em-
5 ployer, if such investment, when added to such
6 securities previously held, exceeds 10 per centum
7 of the fair market value of the assets of the fund,
8 regardless of the ability of such an investment to
9 meet a fiduciary test. Notwithstanding the fore-
10 going, such 10 per centum limitation shall not apply
11 to profit-sharing plans, nor to stock bonus, thrift
12 and savings, or other similar plans which have the
13 requirement that some or all of the plan funds shall
14 be invested in stock or securities of the employer.

15 “(B) selling on the market on behalf of the
16 fund any security, as defined in the Securities Act
17 of 1933, which is acquired or held by the fund, to
18 an employer whose employees are participants in
19 the plan under which the fund was established, to
20 an employee organization whose members are par-
21 ticipants in such a plan, or to an officer, employee,
22 agent, or other representative of the foregoing:
23 *Provided*, That the sale of such security is for no
24 less than adequate consideration in money or
25 money's worth;

1 “(C) for purposes of this paragraph, the term
2 ‘on the market’ means through a securities ex-
3 change, regardless of whether it is a national securi-
4 ties exchange registered with the Securities and
5 Exchange Commission, or a purchase or sale in an
6 over-the-counter transaction.

7 “(D) for purposes of this paragraph, the term
8 ‘adequate consideration’ means either (i) at the
9 price of the security prevailing on a national securi-
10 ties exchange which is registered with the Securities
11 and Exchange Commission, or (ii) if the security is
12 not traded on such a national securities exchange, at
13 a price not less favorable to the fund than the offer-
14 ing price for the security as established by current
15 bid and asked prices quoted by persons independent
16 of the issuer.

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

23 “(6) contracting or making reasonable arrange-
24 ments with an employer or an employee organization of
25 which he is an officer for office space and other services

1 necessary for the operation of the plans and paying rea-
2 sonable compensation therefor.

3 “(h) Any fiduciary in relation to an employee benefit
4 fund who breaches any of the responsibilities, obligations, or
5 duties imposed upon fiduciaries by this section shall be per-
6 sonally liable to make good to such fund any losses to the
7 fund resulting from such breach, and to restore to such fund
8 any profits of such fiduciary which have been made through
9 use of assets of the fund by the fiduciary.

10 “(i) When an employee benefit fund is held by and un-
11 der the management and control of two or more trustees each
12 shall participate in the administration of the trust and shall
13 use reasonable care to prevent a cotrustee from committing a
14 breach of trust, or to compel a cotrustee to redress a breach
15 of trust. If there are more than two trustees any power
16 vested in such trustees shall be exercised by no less than a
17 majority of such trustees but no trustee who has not joined
18 in exercising a power shall be liable for the consequences of
19 such exercise: *Provided, however,* That nothing in this pro-
20 vision shall excuse a cotrustee for liability for inactivity in the
21 administration of the trust nor for failure to prevent a breach
22 of trust.

23 “(j) Each employee benefit plan shall contain specific
24 provisions for the disposition of its fund assets upon termina-
25 tion. In the event of termination, whether under the ex-

1 press terms of the plan or otherwise, such fund, or any
2 part thereof, shall not be expended, transferred, or other-
3 wise disposed of, except for the exclusive benefit of the plan
4 participants and their beneficiaries. Notwithstanding the
5 foregoing, after the satisfaction of all liabilities with respect
6 to the participants and their beneficiaries under a pension
7 plan in accordance with the Internal Revenue Code and
8 regulations promulgated thereunder, any remaining fund as-
9 sets may be returned to any person who has a legal or equi-
10 table interest in such assets by reason of having made fi-
11 nancial contributions thereto.

12 “(k) Any exculpatory provisions in the agreement
13 establishing an employee benefit fund or any resolution or
14 agreement by the parties thereto which purports to relieve
15 any fiduciary with relation to any such fund from liability
16 for breach of the responsibilities, obligations, or duties de-
17 clared by this section shall be void as against public policy.

18 “PROHIBITION AGAINST CERTAIN PERSONS HOLDING OFFICE

19 “SEC. 15. (a) No person who has been convicted of,
20 or has been imprisoned as a result of his conviction of, rob-
21 bery, bribery, extortion, embezzlement, grand larceny, bur-
22 glary, arson, violation of narcotics laws, murder, rape, kid-
23 napping, perjury, assault with intent to kill, assault which
24 inflicts grievous bodily injury, any crime described in section
25 15 (b) (5) (B) of the Securities Exchange Act of 1934 (15

1 U.S.C. 78o(b) (5) (B)), or in section 9(e) (1) of the
2 Investment Company Act of 1940 (15 U.S.C. 80a—9(a)
3 (1)), any crime involving the misuse of the funds of a labor
4 organization or the funds of an employee welfare or pension
5 benefit plan, or a violation of any provision of this Act, or
6 a violation of section 302 of the Labor-Management Rela-
7 tions Act of 1947 (61 Stat. 157, as amended, 29 U.S.C.
8 186), or a violation of chapter 63 or 73 of title 18, United
9 States Code, or a violation of section 1027 of title 18, United
10 States Code, or a violation of the Labor-Management Re-
11 porting and Disclosure Act of 1959 (chapter 11 of title 29,
12 United States Code) or conspiracy to commit any such
13 crimes or attempt to commit any such crimes, or a crime
14 in which any of the foregoing crimes is an element, shall
15 serve—

16 “(1) as an administrator, officer, trustee, custodian,
17 counsel, agent, or employee of any employee welfare or
18 pension benefit plan, or

19 “(2) as a consultant to any employee welfare or
20 pension benefit plan,

21 during or for five years after such conviction or after the
22 end of such imprisonment, unless prior to the end of such
23 five-year period, in the case of a person so convicted or
24 imprisoned, (A) his citizenship rights, having been revoked
25 as a result of such conviction, have been fully restored, or

1 (B) the Board of Parole of the United States Department
2 of Justice determines that such person's service in any capac-
3 ity referred to in clause (1) or (2) would not be contrary
4 to the purposes of this Act. Prior to making any such deter-
5 mination the Board shall hold an administrative hearing and
6 shall give notice of such proceeding by certified mail to the
7 State, County, and Federal prosecuting officials in the juris-
8 diction or jurisdictions in which such person was convicted.
9 The Board's determination in any such proceeding shall be
10 final. No person shall knowingly permit any other person
11 to serve in any capacity referred to in clause (1) or (2) in
12 violation of this subsection.

13 " (b) Any person who willfully violates this section shall
14 be fined not more than \$10,000 or imprisoned for not more
15 than one year, or both.

16 " (c) For the purposes of this section, any person shall
17 be deemed to have been 'convicted' and under the disability
18 of 'conviction' from the date of the judgment of the trial
19 court or the date of the final sustaining of such judgment on
20 appeal, whichever is the later event, regardless of whether
21 such conviction occurred before or after the date of enact-
22 ment of this section.

23 " (d) For the purposes of this section, the term 'con-
24 sultant' means any person who, for compensation, advises or
25 represents an employee welfare or pension benefit plan or

1 who provides other assistance to such a plan, concerning the
2 establishment or operation of such plan.

3 "ADVISORY COUNCIL

4 "SEC. 16. (a) There is hereby established an Advi-
5 sory Council on Employee Welfare and Pension Benefit
6 Plans (hereinafter referred to as the 'Council') which shall
7 consist of thirteen members to be appointed in the following
8 manner: One from the insurance field, one from the cor-
9 porate trust field, two from management, four from labor,
10 and two from other interested groups, all appointed by the
11 Secretary from among persons recommended by organiza-
12 tions in the respective groups; and three representatives of
13 the general public appointed by the Secretary.

14 "(b) It shall be the duty of the Council to advise the
15 Secretary with respect to the carrying out of his functions
16 under this Act, and to submit to the Secretary recommenda-
17 tions with respect thereto. The Council shall meet at least
18 twice each year and at such other times as the Secretary
19 requests. At the beginning of each regular session of the
20 Congress, the Secretary shall transmit to the Senate and
21 House of Representatives each recommendation which he
22 has received from the Council during the preceding calendar
23 year and a report covering his activities under the Act for
24 the preceding fiscal year, including full information as to the
25 number of plans and their size, the results of any studies

1 organization of which he is a member or employer organiza-
2 tion in which he has an interest.

3 "EFFECT OF OTHER LAWS

4 "SEC. 18. (a) In the case of an employee welfare or
5 pension benefit plan providing benefits to employees em-
6 ployed in two or more States, no person shall be required by
7 reason of any law of any such State to file with any State
8 agency (other than an agency of the State in which such
9 plan has its principal office) any information included within
10 a description of the plan or an annual report published and
11 filed pursuant to the provisions of this Act if copies of such
12 description of the plan and of such annual report are filed
13 with the State agency, and if copies of such portion of the
14 description of the plan and annual report, as may be required
15 by the State agency, are distributed to participants and bene-
16 ficiaries in accordance with the requirements of such State
17 law with respect to scope of distribution. Nothing con-
18 tained in this subsection shall be construed to prevent any
19 State from obtaining such additional information relating to
20 any such plan as it may desire, or from otherwise regulating
21 such plan.

22 " (b) The provisions of this Act, except subsection (a)
23 of this section and section 13, shall not be held to exempt or
24 relieve any person from compliance with any Federal or State
25 law imposing obligations, duties, responsibilities, or other

1 standards of conduct with respect to the operation or admin-
2 istration of employee welfare or pension benefit plans; nor,
3 except as explicitly provided to the contrary, shall anything
4 in this Act take away any right or bar any remedy to which
5 participants or beneficiaries are entitled to under such other
6 Federal or State law: *Provided, however,* That no State law
7 shall relieve any persons of the obligations, duties, respon-
8 sibilities, and standards provided in this Act.

9 "SEPARABILITY OF PROVISIONS

10 "SEC. 19. If any provision of this Act or the application
11 of such provision to any person or circumstance is held in-
12 valid, the remainder of this Act and the application of such
13 provision to other persons or circumstances shall not be af-
14 fected.

15 "EFFECTIVE DATE

16 "SEC. 20. The amendments made by this Act shall take
17 effect upon enactment of this Act, except that the amend-
18 ments made by this Act which modify the reporting require-
19 ments of section 7 shall take effect one year after enactment
20 or upon publication of implementing regulations in the Fed-
21 eral Register, whichever is sooner."

22 AMENDMENT OF SECTIONS 664, 1027, AND 1945 OF

23 TITLE 18, UNITED STATES CODE

24 SEC. 3. Sections 664, 1027, and 1954 of title 18,

1 United States Code, are hereby amended so that the term
2 "Welfare and Pension Plan Protection Act" is substituted
3 for "Welfare and Pension Plans Disclosure Act" or "Welfare
4 and Pension Plans Disclosure Act, as amended," wherever
5 these terms appear in sections 664, 1027, and 1954.

90TH CONGRESS
1ST SESSION

S. 1103

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 1967

Mr. JAVITS introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To provide additional protection for the rights of participants in employee pension and profit-sharing-retirement plans, to establish minimum standards for pension and profit-sharing-retirement plan vesting and funding, to establish a pension plan reinsurance program, to provide for portability of pension credits, to provide for regulation of the administration of pension and other employee benefit plans, to establish a United States Pension and Employee Benefit Plan Commission, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Pension and Employee
4 Benefit Act of 1967".

VI —O

DEFINITIONS

1

2 SEC. 2. As used in this Act—

3 (1) The term “Commission” means the United States
4 Pension and Employee Benefit Plan Commission established
5 under section 3.

6 (2) The term “employee” means an individual who per-
7 forms service for a continuous period of not less than six
8 months in one or more States for an employer, and includes
9 an officer or director of a corporation or of an unincorporated
10 organization and an agent acting for his principal on a sub-
11 stantially full-time basis.

12 (3) The term “employees’ benefit plan” means any
13 plan providing for the payment of any of the benefits specified
14 in section 2 (4).

15 (4) The term “employees’ benefit fund” means any
16 fund, whether established pursuant to a collective bargaining
17 agreement or unilaterally by an employer or by a labor orga-
18 nization, which is available for the payment either from
19 principal or income, or both, to persons who are employed
20 in an industry affecting commerce or who are members of
21 a labor organization representing employees in an industry
22 affecting commerce, or to members of the families, depend-
23 ents, or beneficiaries of such persons, of one or more of the
24 following benefits: Medical or hospital care, pension on retire-
25 ment or death of employees, benefits under a profit-sharing-

1 retirement plan, compensation for injuries or illness resulting
2 from occupational activity or insurance to provide any of
3 the foregoing, or unemployment benefits or life insurance,
4 disability and sickness benefits, or accident benefits, or pooled
5 vacation, holiday, severance or similar benefits, or defraying
6 the costs of apprenticeship training programs, or, in the case
7 of a fund subject to the restrictions of section 302 (c) of the
8 Labor-Management Relations Act, providing any other ben-
9 efit which may be permitted by subsections 302 (c) (5) or
10 302 (c) (6) of that Act: *Provided*, That any fund to which
11 contributions are made solely to provide workmen's compen-
12 sation benefits, disability benefits, or other benefits required
13 by State or local law to be provided to employees shall not
14 be deemed to be an employees' benefit fund. To the extent
15 that benefits under an employees' benefit plan are provided
16 through the medium of an insurance contract under which
17 benefits are guaranteed by the insurance company to the
18 extent that insurance premiums are paid, and under which
19 neither the employer nor any labor organization retains the
20 power to instruct the insurance carrier with respect to en-
21 titlement to receipt of benefits, disposition of assets or any
22 other matter relating to the moneys received by the insur-
23 ance carrier pursuant to the plan, such plan shall not be
24 deemed to involve an employees' benefit fund subject to the
25 provisions of title IV.

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

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

10 (7) The term "State" means any State of the United
11 States, the District of Columbia, Puerto Rico, the Virgin
12 Islands, American Samoa, Guam, Wake Island, the Canal
13 Zone, and Outer Continental Shelf Lands defined in the
14 Outer Continental Shelf Lands Act.

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

19 (9) The term "industry affecting commerce" means any
20 activity, business, or industry in commerce or in which a
21 labor dispute would hinder or obstruct commerce or the free
22 flow of commerce and includes any activity or industry
23 "affecting commerce" within the meaning of the Labor-
24 Management Relations Act, 1947, as amended, or the Rail-
25 way Labor Act, as amended.

1 (10) The term "life annuity" means an annuity that
2 continues for the duration of the life of the annuitant, whether
3 or not it is thereafter continued to some other person.

4 (11) The term "deferred life annuity" means a life
5 annuity that commences at retirement age under a pension
6 plan, but in no event later than age seventy.

7 (12) The term "pension benefit" means the aggregate
8 annual, monthly, or other amounts to which an employee
9 will become entitled upon retirement or to which any other
10 person is entitled by virtue of such employee's death.

11 (13) The term "pension plan" means a pension fund
12 or plan, other than a profit-sharing-retirement plan, organ-
13 ized and administered to provide pension benefits for em-
14 ployees or their beneficiaries, and includes, without limiting
15 the generality of the foregoing:

16 (A) a unit benefit plan under which pension bene-
17 fits are determined with reference to remuneration of an
18 employee for each year of service, or for a selected num-
19 ber of years of service.

20 (B) a money purchase plan under which pension
21 benefits are determined at the retirement of an employee
22 with reference to the accumulated amount of the aggre-
23 gate contributions paid by or for the credit of the em-
24 ployee, and

25 (C) a flat benefit plan under which the pension

1 benefits are expressed either as a fixed amount in respect
2 of each year of employment or as a fixed periodic
3 amount.

4 (14) The terms "registered pension plan" and "regis-
5 tered profit-sharing-retirement plan" mean, respectively, a
6 pension plan or profit-sharing-retirement plan registered with
7 and certified by the Commission as a plan organized and
8 administered in accordance with title I.

9 (15) The term "reinsured pension plan" means a
10 registered pension plan which has been reinsured under
11 title II and which has been in operation for at least five years
12 and, for each of such years, has met the registration require-
13 ments of title I: *Provided*, That any addition to or amend-
14 ment of a reinsured pension plan shall, if such addition or
15 amendment involves a significant increase, as determined by
16 the Commission, in the initial unfunded liability of such pen-
17 sion plan, be regarded as a new and distinct pension plan
18 which may become a "reinsured pension plan" only after
19 meeting the five-year operation requirements of this para-
20 graph and section 202 (c) and the registration requirements
21 of title I.

22 (16) The term "supplemental pension plan" includes
23 a pension plan established for employees whose member-
24 ship in another pension plan is a condition precedent to mem-
25 bership in the supplemental pension plan.

26 (17) The term "voluntary additional contribution"

1 means an additional contribution by an employee to or under
2 a pension or profit-sharing-retirement plan except a contri-
3 bution the payment of which, under the terms of the plan,
4 imposes upon the employer an obligation to make concurrent
5 additional contribution to or under the plan.

6 (18) The term "experience deficiency" with respect to
7 a pension plan means any actuarial deficit, determined at the
8 time of a review of the plan, that is attributable to factors
9 other than (i) the existence of an initial unfunded liability,
10 or (ii) the failure of the employer to make any payment as
11 required by the terms of the plan or by the provisions of
12 title I, other than as required by section 108 (b) (3).

13 (19) The term "fully funded" with respect to any pen-
14 sion plan means that such plan at any particular time has
15 assets actuarily determined by a person authorized under
16 section 108 (e) to be sufficient to provide for the payment
17 of all pension and other benefits to all employees and former
18 employees then entitled to an immediate or deferred benefit
19 under the terms of the plan.

20 (20) The term "provisionally funded" with respect to
21 any pension plan means that such plan at any particular
22 time has insufficient assets to make it fully funded, but has
23 made provision pursuant to section 108 for special payments
24 sufficient to liquidate all initial unfunded liabilities or experi-
25 ence deficiencies.

1 (21) The term "initial unfunded liability" means the
2 amount, on the first day of January, 1968, or the effective
3 date of a pension plan or any amendment thereto, whichever
4 is later, by which the assets are required to be augmented
5 to ensure that the plan is fully funded.

6 (22) The term "special payment" means a payment
7 made to or under a pension plan for the purpose of liquidat-
8 ing an initial unfunded liability or experience deficiency.

9 (23) The term "fund" shall mean a trust fund, but
10 shall also include a contractual right pursuant to an agree-
11 ment with an insurance company.

12 (24) The term "funding" shall mean payment or trans-
13 fer of assets into a fund, but shall also include payment to an
14 insurance company to secure a contractual right from such
15 company.

16 (25) The term "profit-sharing-retirement plan" means
17 a plan established and maintained by an employer to pro-
18 vide for the participation in his profits by his employees in
19 accordance with a definite predetermined formula for allo-
20 cating the contributions made to the plan among the par-
21 ticipants and for distributing the funds accumulated under
22 the plan upon retirement or death. Such plan may include
23 provisions permitting the withdrawal or distribution of the
24 funds accumulated upon contingencies other than, and in
25 addition to, retirement and death.

1 (26) The term "interest in a profit-sharing-retirement
2 plan" means the amount allocated to the account of a partici-
3 pant in a profit-sharing-retirement plan.

4 (27) The term "service for a continuous period" means
5 service for a period of time without regard to periods of
6 temporary suspension of employment.

7 (28) The term "administrator" means the person or
8 persons designated by the terms of a pension plan, collective
9 bargaining agreement, trust agreement, or other document
10 establishing or relating to a pension plan or employees'
11 benefit fund as having responsibility for the effective control,
12 disposition or management of the money or other assets
13 contributed to or received by a pension plan or employees'
14 benefit fund; or, in the absence of such designation, the per-
15 son or persons actually responsible for the control, disposi-
16 tion, or management of such money or other assets, irrespec-
17 tive of whether such control, disposition, or management is
18 exercised directly or through an agent or trustee designated
19 by such person or persons.

20 ESTABLISHMENT OF PENSION AND EMPLOYEE BENEFIT
21 PLAN COMMISSION

22 SEC. 3. (a) There is hereby established in the execu-
23 tive branch of the Government an independent agency to
24 be known as the "United States Pension and Employee

1 Benefit Plan Commission". The Commission shall be com-
2 posed of five members to be appointed by the President,
3 by and with the advice and consent of the Senate. Members
4 of the Commission shall serve for terms of six years, except
5 that (i) of the members first appointed, two shall be
6 appointed for a term of two years, two shall be appointed
7 for a term of four years, and one shall be appointed for a
8 term of six years, and (ii) members appointed to fill vacan-
9 cies occurring by reason of death or resignation shall be
10 appointed for the unexpired terms of their predecessors.
11 Not more than three members of the Commission shall be
12 members of the same political party, and in making appoint-
13 ments members of different political parties shall be appointed
14 alternately as nearly as may be practicable. No member
15 of the Commission shall engage in any business, vocation,
16 or employment other than that as serving as a member, nor
17 shall any member participate, directly or indirectly (except
18 as a beneficiary) in the management of any plan or fund
19 subject to regulation under this Act. One of the members
20 shall be designated by the President as Chairman of the
21 Commission. Three members shall constitute a quorum of
22 the Commission.

23 (b) (1) Section 5314 of title 5, United States Code

1 (which lists positions in level III of the Executive Sched-
2 ule) is amended by adding at the end thereof the following:

3 “(46) Chairman, United States Pension Commission.”

4 (2) Section 5315 of such title (which lists positions in
5 level IV of the Executive Schedule) is amended by adding
6 at the end thereof the following:

7 “(78) Members, United States Pension Commission.”

8 (c) The Commission is authorized to appoint and fix
9 the compensation of such officers and employees, and to
10 incur such expenses, as may be necessary to enable it to
11 carry out its functions.

12 POWERS AND DUTIES OF COMMISSION

13 SEC. 4. (a) It shall be the duty of the Commission—

14 (1) to promote the establishment, extension, and
15 improvement of pension, profit-sharing-retirement and
16 other employee benefit plans;

17 (2) to accept for registration all pension and
18 profit-sharing-retirement plans required and qualified
19 to be registered with the Commission under title I, and
20 to reject any pension or profit-sharing-retirement plan
21 that does not qualify for registration;

22 (3) to cancel certificates of registration of pension
23 and profit-sharing-retirement plans registered under

1 such title which cease to be qualified for such registra-
2 tion;

3 (4) to direct and administer the pension reinsur-
4 ance program established by title II;

5 (5) to direct and administer the pension portability
6 program established by title III;

7 (6) to enforce the provisions of title IV; and

8 (7) to perform such other functions as may be
9 necessary to administer the provisions of this Act.

10 (b) The Commission or its duly authorized representa-
11 tives shall have power, at any reasonable time—

12 (1) to inspect the books, files, documents, and other
13 records respecting pension and profit-sharing-retirement
14 plans kept by an administrator, employer, insurer,
15 trustee, or other person in relation to such plans: *Pro-*
16 *vided*, That the Commission may delegate its powers
17 under this subsection (b) to the Comptroller of the
18 Currency, the Board of Governors of the Federal Re-
19 serve System, or the Federal Deposit Insurance Corpo-
20 ration in cases involving books, files, documents, or other
21 records held by a bank or trust company, subject to their
22 respective supervisory power, and

23 (2) to require any such administrator, employer,
24 insurer, trustee, or other person to furnish, in a form
25 acceptable to the Commission, such information as the

1 Commission deems necessary for the purpose of ascer-
2 taining whether this Act and regulations of the Commis-
3 sion hereunder have been or are being complied with.

4 (c) The Commission is authorized by regulation to
5 prescribe minimum standards and qualifications for persons
6 performing services required by the provisions of this Act
7 to be performed by actuaries and, upon application of any
8 person, to determine whether such person meets the stand-
9 ards and qualifications so prescribed. The Commission shall
10 issue certificates of qualification to applicants determined
11 by the Commission after such examination, investigation, or
12 other procedure as it may deem necessary, to meet such
13 standards and qualifications.

14 (d) The Commission is authorized by regulation to pre-
15 scribe reasonable fees for the registration of pension and
16 profit-sharing-retirement plans and other services to be per-
17 formed by it in connection with such plans under this Act,
18 and to make and enforce such other regulations as may be
19 necessary to enable it to carry out its functions and duties
20 under this Act. All fees collected by the Commission shall
21 be paid into the general fund of the Treasury.

22 (e) The Commission shall transmit to the Congress
23 annually a report of its activities under this Act during the
24 preceding fiscal year.

14

1 (f) All regulations issued by the Commission under
2 authority of this Act shall be promulgated pursuant to the
3 procedures prescribed by the Administrative Procedure Act.

4 APPROPRIATIONS

5 SEC. 5. There are authorized to be appropriated such
6 sums as may be necessary to enable the Commission to carry
7 out its functions and duties.

8 ADMINISTRATION OF WELFARE AND PENSION PLANS

9 DISCLOSURE ACT

10 SEC. 6. (a) The functions of the Secretary of Labor
11 and the Department of Labor under the Welfare and Pension
12 Plans Disclosure Act, as amended, are hereby transferred
13 to and shall be administered by the Commission.

14 (b) All personnel, property, records, and unexpended
15 balances of appropriations, which the Director of the Bureau
16 of the Budget determines are used or intended for use by the
17 Secretary of Labor or the Department of Labor primarily
18 in the administration of functions transferred under the pro-
19 vision of this section, are transferred to the Commission.

20 (c) In addition to the filing requirements of the Welfare
21 and Pension Plan Disclosure Act, it shall be a condition of
22 compliance with section 7 of such Act that each annual
23 report hereinafter filed under that section shall be accom-
24 panied by a certificate or certificates in the name of and on
25 behalf of the plan, the administrator, and any employer or

1 labor organization participating in the establishment of the
2 plan, designating the Commission as agent for service of
3 process on the persons and entities executing such certifi-
4 cate or certificates in any action arising under the Welfare
5 and Pension Plans Disclosure Act or this Act.

6 TITLE I—BENEFIT STANDARDS

7 PLANS TO WHICH TITLE APPLIES

8 SEC. 101. (a) Except as provided by subsection (b),
9 this title applies to any pension plan and, to the extent
10 hereinafter provided, to any profit-sharing-retirement plan,
11 established by an employer engaged in commerce or in any
12 industry or activity affecting commerce or by any employee
13 organization or organizations representing employees en-
14 gaged in commerce or in an industry or activity affecting
15 commerce or by both.

16 (b) This title shall not apply to a pension or profit-
17 sharing-retirement plan if—

18 (1) such plan is administered by the Federal Gov-
19 ernment or the government of a State or subdivision
20 thereof, or by an agency or instrumentality thereof;

21 (2) such plan is administered by an organization
22 which is exempt from taxation under the provisions of
23 section 501 (a) of the Internal Revenue Code of 1954
24 and is administered as a corollary to membership in a
25 fraternal benefit society described in section 501 (c) (8)

1 of the Internal Revenue Code of 1954 or by an organi-
2 zation described in section 501 (c) (3) or (4) of such
3 Code: *Provided*, That the provisions of this paragraph
4 shall not exempt any plan administered by a fraternal
5 benefit society or organization which represents its mem-
6 bers for purposes of collective bargaining;

7 (3) such plan is established by a self-employed indi-
8 vidual for his own benefit or for the benefit of his sur-
9 vivors or established by one or more owner-employers
10 exclusively for his or their benefit or for the benefit of
11 his or their survivors;

12 (4) such plan covers not more than twenty-five
13 participants;

14 (5) such plan is established and maintained out-
15 side the United States by an employer primarily for
16 the benefit of employees who are not citizens of the
17 United States; or

18 (6) such plan is unfunded and is established by
19 an employer primarily for the purpose of providing
20 deferred compensation for a select group of manage-
21 ment employees and is declared by the employer as not
22 intended to meet the requirements of section 401 (a)
23 of the Internal Revenue Code.

REGISTRATION OF PLANS

1

2 SEC. 102. (a) Every administrator of a pension or
3 profit-sharing-retirement plan to which this title applies shall
4 file with the Commission an application for registration of
5 such plan. Such application shall be in such form as shall
6 be prescribed by regulation of the Commission, and shall
7 be accompanied by a copy of the plan, a copy of the trust
8 deed, insurance contract, by law, or other document under
9 which the plan is constituted. Thereafter, while such plan
10 is in force, the administrator shall maintain its qualification for
11 registration under this title.

12 (b) In the case of plans established on or after Jan-
13 uary 1, 1968, the filing required by subsection (a) shall
14 be made within six months after such plan is established.
15 In the case of plans established prior to January 1, 1968,
16 such filing shall be made on such date or on such later date
17 as may be specified by the Commission.

18 (c) If after examination of a pension or profit-sharing-
19 retirement plan filed under this section, the Commission is
20 satisfied that such plan is qualified for registration under
21 this title the Commission shall issue a certificate of registra-
22 tion with respect to such plan. If the Commission is not so
23 satisfied it shall notify the administrator.

1 (d) If at any time subsequent to the issuance of a
2 certificate under subsection (c) with respect to any plan,
3 the Commission determines that such plan is no longer
4 qualified for registration under this title, it shall notify the
5 administrator.

6 (e) A notification under subsection (c) or (d) shall set
7 forth the deficiency or deficiencies in the plan or in its ad-
8 ministration by reason of which the notification is given, and
9 shall give the administrator, the employer of the employees
10 covered by the plan, and the labor organization, if any,
11 representing such employees a reasonable time within which
12 to remove such deficiency or deficiencies. If the Commis-
13 sion thereafter determines that the deficiency or deficiencies
14 have been removed it shall issue or continue in effect the
15 certificate, as the case may be. If it determines that the
16 deficiency or deficiencies have not been removed it shall enter
17 an order denying or canceling the certificate of registration.

18 ANNUAL REPORTS ON REGISTERED PLANS

19 SEC. 103. The Commission may, by regulations pro-
20 mulgated pursuant to the Administrative Procedures Act,
21 provide for the filing of single reports satisfying the report-
22 ing requirements of this Act and the Welfare and Pension
23 Plans Disclosure Act.

1 AMENDMENTS OF REGISTERED PLANS

2 SEC. 104. Where a pension or profit-sharing-retirement
3 plan filed for registration under this title is amended sub-
4 sequent to such filing, the administrator shall within six
5 months after the effective date or the date of adoption of
6 such amendment, whichever is later, within sixty days
7 after the effective date of such amendment file with the
8 Commission a copy of the amendment and such additional
9 information and reports as the Commission by regulation
10 requires to determine the amount of any initial unfunded
11 liability created by the amendment and the special payments
12 required to liquidate such liability.

13 QUALIFICATION OF PLAN FOR REGISTRATION

14 SEC. 105. A pension or profit-sharing-retirement plan
15 shall be deemed to be qualified for registration under section
16 102 if it conforms to, and is administered in accordance
17 with, the standards and requirements set forth in section
18 102 and sections 106 to 110, inclusive.

19 GENERAL REQUIREMENTS

20 SEC. 106. (a) Every pension plan and, to the extent
21 required by regulations issued by the Commission, every
22 profit-sharing-retirement plan shall define the benefits pro-

1 vided by such plan, the method of determination and pay-
2 ment of benefits, conditions for qualification for membership
3 in the plan and the financial arrangements made to ensure
4 provisional or full funding of benefits under the plan. Each
5 such plan shall provide for the furnishing of a written
6 explanation to each member of the plan of the terms and
7 conditions of the plan and amendments thereto applicable
8 to him, together with an explanation of the rights and
9 duties of the employee with reference to the benefits avail-
10 able to him under the terms of the plan and such other
11 information as may be required by regulations of the Com-
12 mission. The Commission may also by regulation re-
13 quire each plan to furnish a participant, upon termination
14 of service with a vested right to a deferred life annuity,
15 pension, or other vested interest, with a certificate setting
16 forth the benefits to which he is entitled.

17 (b) A pension or profit-sharing-retirement plan filed
18 for registration under this title, and any trust forming a
19 part of such plan, shall meet all the requirements set forth
20 in section 401 of the Internal Revenue Code of 1954, as
21 determined by the Commission, except to the extent such
22 requirements are inconsistent with the provisions of subsec-
23 tion (a) of this section or of sections 107 to 110, inclusive.

VESTING OF BENEFITS

1

2 SEC. 107. (a) A pension or profit-sharing-retirement
3 plan filed for registration under this title shall provide, under
4 the terms of the plan in respect of service on or after January
5 1, 1968, or by amendment to the terms of the plan or by
6 the creation of a new plan on or after such date in respect
7 of service on or after the effective date of such amendment
8 or new plan, that—

9 (1) a member of the plan who has been in the
10 service of the employer, or has been a member of the
11 plan,

12 (A) for a continuous period of fifteen years,
13 and who has attained the age of forty-five years, is
14 entitled upon termination of his employment or
15 membership in the plan prior to attaining retire-
16 ment age (i) in the case of a pension plan to a
17 deferred life annuity commencing at his normal re-
18 tirement age equal to the full pension benefits as
19 provided by the plan in respect of such service
20 and (ii) in the case of a profit-sharing-retirement
21 plan to a nonforfeitable right to his interest in such
22 plan, or

1 (B) for a continuous period of ten years, and
2 who has attained the age of forty-five years, is en-
3 titled upon termination of his employment or mem-
4 bership in the plan prior to attaining retirement age
5 (i) in the case of a pension plan to a deferred life
6 annuity commencing at his normal retirement age,
7 and (ii) in the case of a profit-sharing-retirement
8 plan to a nonforfeitable right to his interest in such
9 plan, equal to 50 per centum of full pension benefits
10 as provided by the plan in respect of such service
11 or of such interest, respectively, and such entitle-
12 ment shall increase by at least 5 per centum per
13 year of continuous service thereafter until the com-
14 pletion of twenty years of continuous service, after
15 which such member shall be entitled upon termi-
16 nation of employment or membership in the plan
17 prior to attaining retirement age to a deferred life
18 annuity commencing at his normal retirement age
19 equal to the full pension benefits as provided by
20 the plan in respect of such service, or to the full
21 amount of such interest in the profit-sharing-retire-
22 ment plan, respectively;

23 (2) the pension benefits provided under the terms
24 of a pension plan, the deferred life annuity referred to
25 in paragraph (1), and an interest in a profit-sharing-
26 retirement plan referred to in paragraph (1) shall not

1 be capable of assignment or alienation and shall not
2 confer upon any employee, personal representative or
3 dependent, or any other person, any right or interest
4 in such pension benefits, deferred life annuity, or profit
5 sharing retirement plan, capable of being assigned or
6 otherwise alienated: *Provided*, That the Commission
7 may by regulation provide for the final disposition of
8 plan assets when beneficiaries cannot be located or as-
9 certained within a reasonable time.

10 (b) Anything in subsection (a) to the contrary not-
11 withstanding, a pension or profit-sharing-retirement plan
12 may provide for—

13 (1) vesting at an earlier age than forty-five years
14 or upon service or membership in the plan for a lesser
15 period than is provided in such subsection or both; and

16 (2) in the case of a pension plan, payment to an
17 employee of an amount equal to the commuted value
18 of the deferred life annuity or pension benefit to which
19 such employee is entitled.

20 (c) Anything in subsection (a) to the contrary not-
21 withstanding, when a plan so provides, an employee may
22 receive in discharge of his rights thereunder upon termination
23 of employment prior to attaining normal retirement age as
24 defined in the plan, or upon attaining such retirement age, a
25 lump sum amount equal to the commuted value of the annuity

1 prescribed by the plan, or, in the case of a profit-sharing-
2 retirement plan, the value of his interest in such plan.

3 (d) If a pension plan so provides, a person who is
4 entitled to a deferred life annuity under subsection (a) may,
5 before the commencement of payment of such life annuity,
6 elect to receive, partly or wholly in lieu of the deferred life
7 annuity described by subsection (a)—

8 (1) a deferred life annuity the amount of which is
9 reduced or increased by reason of early or deferred
10 retirement, by provision for the payment of an optional
11 annuity to a survivor or to the estate of the employee, or
12 by variation of the terms of payment of such annuity to
13 any person after the employee's death, and

14 (2) a payment or series of payments by reason of
15 a mental or physical disability as prescribed by regula-
16 tions of the Commission.

17 (e) For the purposes of subsections (b) (2) and (c),
18 the commuted value of a deferred life annuity shall be com-
19 puted on the basis of such interest rate and mortality tables
20 and in such manner as may be approved by the Commission.

21 FUNDING OF PLANS

22 SEC. 108. (a) A pension plan filed for registration
23 under this title shall provide for funding, in accordance with
24 the tests for solvency prescribed by this title, that is adequate
25 to provide for payment of all pension benefits, deferred life

1 annuities and other benefits required to be paid under the
2 terms of the plan. A pension plan shall be deemed to be
3 solvent for the purposes of this title if it is fully funded or
4 provisionally funded.

5 (b) Provisions for funding shall set forth the obligation
6 of the employer to contribute both in respect of the current
7 service cost of the plan and in respect of any initial unfunded
8 liability and experience deficiency. The contribution of the
9 employer, including any contributions made by employees,
10 shall consist of the payment currently into the plan or
11 fund of—

12 (1) all current service costs;

13 (2) where the plan has an initial unfunded lia-
14 bility, special payments consisting of equal annual
15 amounts sufficient to liquidate such initial unfunded lia-
16 bility over a term not exceeding,

17 (A) in the case of an initial unfunded liability
18 existing on January 1, 1968, in any plan estab-
19 lished before that date, forty years from that date,
20 and

21 (B) in the case of an initial unfunded liability
22 resulting from an amendment to a pension plan
23 made on or after January 1, 1968, or resulting from
24 the establishment of a pension plan on or after Jan-

1 uary 1, 1968, thirty years from the date of such
2 amendment or establishment; and

3 (3) where the plan has an experience deficiency,
4 special payments consisting of equal annual amounts
5 sufficient to liquidate such experience deficiency over a
6 term not exceeding five years from the date on which
7 the experience deficiency was determined: *Provided*,
8 that the Commission may suspend the special payments
9 requirements or extend the five year period provided in
10 this subparagraph (3) in cases involving business neces-
11 sity or substantial risk to the continuation of the em-
12 ploying enterprise.

13 Notwithstanding the provisions of this subsection, (i) the
14 liquidation of initial unfunded liabilities or experience defi-
15 ciencies may be accelerated at any time, and (ii) where an
16 insured pension plan established before January 1, 1968,
17 is funded by level annual premiums to retirement age for
18 each individual member and benefits are guaranteed by the
19 insurance company to the extent that premiums have been
20 paid, it shall be deemed to meet the requirements of par-
21 agraph (2) (A) of this subsection.

22 (c) on or before January 1, 1969, in the case of pen-
23 sion plans registered on or before that date, or within six
24 months after the date of establishment of the plan in other

1 cases, the Administrator shall submit a report of the person
2 authorized by subsection (e) certifying—

3 (1) the estimated cost of benefits in respect of
4 service in the first year during which such plan is re-
5 quired to register and the rule for computing such cost
6 in subsequent years up to the date of the next report;

7 (2) the initial unfunded liability, if any, for bene-
8 fits under the pension plan as of the date on which the
9 plan is required to be registered; and

10 (3) the special payments required to liquidate such
11 initial unfunded liability in accordance with subsec-
12 tion (b).

13 Where an insured pension plan is funded by level annual
14 premiums extending not beyond the retirement age for each
15 individual member and benefits are guaranteed by the in-
16 surance company to the extent that premiums have been
17 paid, the report required by this subsection may certify the
18 adequacy of the premiums to provide for the payment of
19 all benefits under the plan in lieu of the matters required to
20 be certified under clauses (1), (2), and (3).

21 (d) The administrator in respect of a registered pension
22 plan shall cause the plan to be reviewed by a person author-
23 ized by subsection (e) not more than three years after regis-
24 tration and at intervals of not more than three years there-

1 after and the person reviewing the plan shall prepare a
2 report certifying—

3 (1) the estimated cost of benefits in respect of
4 service in the next succeeding year and the rule for com-
5 puting such cost in subsequent years up to the date of
6 the next report;

7 (2) the surplus or the experience deficiency in the
8 pension plan after making allowance for the present
9 value of all special payments required to be made in the
10 future by the employer as determined by previous re-
11 ports; and

12 (3) the special payments which will liquidate any
13 such experience deficiency over a term not exceeding
14 five years.

15 If any such report discloses a surplus in a pension plan, the
16 amount of any future payments required to be made to the
17 fund or plan may be reduced by the amount of such surplus.

18 A report under this subsection shall be filed with the Com-
19 mission by the administrator upon its receipt.

20 (e) The reports and certificates referred to in subsec-
21 tions (c) and (d) shall be made by an actuary certified by
22 the Commission under section 4 (c): *Provided*, That the
23 Commission may exempt any plan, in whole or in part, from
24 the requirement that such reports and certificates be filed
25 where the Commission finds such filing to be unnecessary.

1 (f) Anything in this section 108 to the contrary not-
2 withstanding, if evidence satisfactory to the Commission shall
3 be filed on behalf of a pension plan in connection with an
4 application for registration under this title demonstrating that
5 (i) such pension plan is a multiemployer plan in which at
6 least 25 per centum of the employees in the industry covered
7 by the plan, either nationally or in a particular region in
8 which a substantial number of employees in such industry is
9 employed, participate, and (ii) no single employer employs
10 more than 20 per centum of the employees covered by the
11 plan, and (iii) the history and present business condition of
12 the industry make it improbable that there will be a sub-
13 stantial decrease in employment in the industry within the
14 foreseeable future—

15 (I) the Commission may register such plan without
16 regard to the funding requirements of section 108 if such
17 plan meets the following alternative funding require-
18 ments:

19 (1) annual payment into the fund of all current
20 service costs;

21 (2) annual payment into the fund of an amount
22 equal to the interest, at such rate of interest as the
23 Commission shall prescribe, but not more than 6
24 per centum per annum, on the unfunded liability of
25 such fund at the date each such payment is made;

1 (3) annual payment into the fund of an amount
2 equal to the insurance premium for such year
3 required to be paid on behalf of such fund by section
4 203 of title II of this Act; and

5 (4) In computing unfunded liability under this
6 subsection (f), the Commission may permit a multi-
7 employer plan to compute such liability solely on
8 the basis of information obtained from participants
9 pursuant to a requirement of the plan under which
10 each such participant, upon reaching the age of
11 forty and completing ten years of continuous service,
12 is required to file with the Administrator of the
13 plan notification of his status under the plan.

14 (II) the Commission may by regulation approve
15 alternative requirements for payments into the fund
16 other than those specified in subparagraph I of this
17 subsection (f) when, in the opinion of the Commission,
18 such standards will provide reasonable assurance of suf-
19 ficient assets in the fund of the multiemployer plan to
20 provide for payment of anticipated benefits.

21 (g) Each pension plan shall, as a condition of registra-
22 tion under this title, apply for reinsurance and pay the rein-
23 surance premiums provided in title II.

24 (h) For the purpose of this section, a profit-sharing-
25 retirement plan, within the meaning of section 2(26) of
26 this Act, which meets the requirements of title I insofar as

1 they are made specifically applicable to such a plan by section
2 105 shall be deemed fully funded.

3 DISCONTINUANCE OF PLANS

4 SEC. 109. (a) Upon complete termination, or substan-
5 tial termination as determined by the Commission, of a
6 pension plan—

7 (1) All contributions by an employer, a labor organ-
8 ization, an employee or other person made after January 1,
9 1968, in respect of the deferred life annuity prescribed in
10 section 107 (a) shall be applied under the terms of the
11 plan—

12 (A) first, in the case of persons who have already
13 retired and begun to draw benefits under the plan, or
14 who, on the date of such termination, had the right to
15 retire and begin to draw such benefits immediately, to
16 provide the life annuities to which such persons were
17 entitled at the date of termination of their employment;

18 (B) second, in the case of persons who have vested
19 rights under the plan but have not reached retirement
20 age and begun to draw benefits, to provide the deferred
21 life annuities to which they were entitled at the date of
22 such termination of the plan; and

23 (C) third, in the case of any other participants in
24 the plan, to provide deferred life annuities to which they
25 are entitled under the plan pursuant to the requirements

1 of section 401 (a) (7) of the Internal Revenue Code of
2 1954, as amended; and

3 (D) in any case, the Commission may approve
4 payment of survivor benefits with priorities equal to
5 those of the employees or former employees on whose
6 service such benefits are based.

7 (2) The employer, and the employees if the plan so
8 provided, shall be liable to pay all amounts that would
9 otherwise have been required to be paid to meet the tests
10 of solvency prescribed by section 108, up to the date of
11 such termination, to the insurer, trustee, or administrator of
12 the plan.

13 (3) No part of the assets of the plan shall revert to the
14 employer until provision has been made for all pensions and
15 other benefits vested or otherwise payable under section 109
16 according to the plan in respect of age and service up to the
17 date of the discontinuance to members of the plan and for
18 all benefits to pensioners and their pension beneficiaries in
19 accordance with the terms of the plan.

20 (b) Upon complete termination, or substantial termi-
21 nation as determined by the Commission, of a profit-sharing-
22 retirement plan, the interests of all participants in such plan
23 shall fully vest.

24 PAYMENTS TO SURVIVORS

25 SEC. 110. (a) Where in accordance with the terms of
26 a pension or profit-sharing-retirement plan an employee or

1 former employee has designated a person or persons to re-
2 ceive a benefit payable under the plan in the event of the
3 employee's death—

4 (1) the employer's liability to provide the benefit
5 shall be discharged upon payment to such person or per-
6 sons of the amount of the benefit; and

7 (2) such person or persons may upon death of the
8 employee or former employee enforce payment of the
9 benefit, but the employer shall be entitled to set up any
10 defense that he could have set up against the employee
11 or former employee. As used in this subsection, the
12 term "employer" includes a trustee or insurer under a
13 pension or profit-sharing-retirement plan.

14 (b) An employee or former employee may from time
15 to time alter or revoke a designation made under a pension
16 or profit-sharing-retirement plan, but any such alteration
17 or revocation may be made only in the manner set forth in
18 the plan.

19 AMENDMENT TO INTERNAL REVENUE CODE

20 SEC. 111. (a) Section 401 of the Internal Revenue
21 Code of 1954 (relating to qualified pension, etc. plans) is
22 amended by redesignating subsection (j) as (k) and by
23 inserting after subsection (i) the following new subsection:

24 "(j) PENSION AND PROFIT-SHARING-RETIREMENT
25 PLANS TO WHICH THE PENSION AND WELFARE BENEFITS

1 ACT OF 1967 APPLIES.—For purposes of this part, any
2 pension or profit-sharing-retirement plan to which title I of
3 the Pension and Welfare Benefits Act of 1967 applies, and
4 any trust forming a part of such plan—

5 “(1) shall be treated as meeting the requirements
6 of this section during any period for which a certificate
7 of registration with respect to such plan issued by the
8 United States Pension Commission under such title is
9 in effect or an application therefor is pending before
10 the Commission, and

11 “(2) shall be treated as not meeting the require-
12 ments of this section during any period for which such
13 application has not been timely filed or such certificate
14 has been denied or cancelled by such Commission.”

15 (b) The amendment made by subsection (a) shall
16 apply with respect to periods after December 31, 1967,
17 except that with respect to any pension plan established
18 before January 1, 1968, such amendment shall not apply
19 to any period before the date specified by the Commission
20 under section 102 (b).

21 MINIMUM WAGE QUALIFICATION

22 SEC. 112. Contributions by an employer to a registered
23 pension or profit-sharing-retirement plan shall not be deemed
24 to be part of or to affect the “regular rate” as that term is
25 used in section 7 of the Fair Labor Standards Act.

1 TITLE II—PENSION REINSURANCE

2 ESTABLISHMENT OF PROGRAM

3 SEC. 201. There is hereby established a program to be
4 known as the Federal pension reinsurance program (herein-
5 after referred to as the "program"). The program shall be
6 administered by, or under the direction and control of, the
7 Commission.

8 CONTINGENCY INSURED AGAINST UNDER PROGRAM

9 SEC. 202. (a) The program shall insure (to the extent
10 provided in subsection (b)) beneficiaries of a reinsured pen-
11 sion plan against loss of benefits to which they are entitled
12 under such pension plan arising from substantial cessation of
13 one or more of the operations carried on by the contributing
14 employer in one or more facilities of such employer before
15 funding of the unfunded liabilities of the fund.

16 (b) The rights of beneficiaries of a reinsured pension
17 plan shall be insured under the program only to the extent
18 that such rights do not exceed—

19 (1) in the case of a right to a monthly retirement
20 or disability benefit for the employee himself, the lesser
21 of 50 per centum of the average monthly wage he re-
22 ceived from the contributing employer in the five-year
23 period after the registration date of the plan for which
24 his earnings were the greatest, or \$500 per month;

25 (2) in the case of a right on the part of one or

1 more dependents, or members of the family, of the em-
2 ployee, or in the case of a right to a lump sum survivor
3 benefit on account of the death of an employee, an
4 amount found by the Commission to be reasonably re-
5 lated to the amount determined under subparagraph (1).
6 In the case of a periodic benefit which is paid on other than
7 a monthly basis, the monthly equivalent of such benefit shall
8 be regarded as the amount of the monthly benefit for pur-
9 poses of clauses (1) and (2) of the preceding sentence.

10 (c) If a registered pension plan has not been registered
11 under title I for each of at least the five years preceding the
12 time when there occurs the contingency insured against, the
13 rights of beneficiaries shall not be insured: *Provided*, That
14 the Commission may, in its discretion, credit against the five
15 year requirement of section 202 (c) one or more years prior
16 to the effective date of this Act for any pension plan which,
17 during such prior years, would have satisfied the registration
18 requirements of title I had this Act been in effect.

19 PREMIUM FOR PARTICIPATION IN PROGRAM

20 SEC. 203. (a) Each registered pension plan shall pay
21 an annual premium for reinsurance under the program upon
22 payment of such annual premium as may be established by
23 the Commission. Premium rates established under this sec-
24 tion shall be uniform for all pension funds insured by the
25 program and shall be applied to the amount of the unfunded

1 liability to each insured pension fund. The premium rates
2 may be changed from year to year by the Commission, when
3 the Commission determines changes to be necessary or desir-
4 able to give effect to the purposes of this title; but in no
5 event shall the premium rate exceed 1 per centum for each
6 dollar of unfunded liability. Premiums under this title shall
7 be payable as of January 1, 1968, or, for plans adopted
8 after that date, as of the effective date of such plans.

9 (b) If the Commission determines that, because of the
10 limitation on rate of premium established under subsection
11 (a) or for other reasons, it is not feasible to insure against
12 loss of rights of all beneficiaries of reinsured pension plans,
13 then the Commission shall insure the rights of beneficiaries
14 in accordance with the following order of priorities—

15 First: individuals who, at the time when there oc-
16 curs the contingency insured against, are receiving ben-
17 efits under the pension plan, and individuals who have
18 attained normal retirement age or if no normal retire-
19 ment age is fixed have reached the age when an unre-
20 duced old-age benefit is payable under title II of the
21 Social Security Act, as amended, and who are eligible,
22 upon retirement, for retirement benefits under the pen-
23 sion plan;

24 Second: individuals who, at such time, have attained
25 the age for early retirement and who are entitled, upon

1 early retirement, to early retirement benefits under the
2 pension plan; or, if the pension plan does not provide for
3 early retirement, individuals who, at such time, have
4 attained age sixty and who, under such pension plan, are
5 eligible for benefits upon retirement;

6 Third: in addition to individuals described in the
7 above priorities, such other individuals as the Commis-
8 sion shall prescribe.

9 (c) Participation in the program by a pension plan shall
10 be terminated by the Commission upon failure, after such
11 reasonable period as the Commission shall prescribe, of such
12 pension fund to make payment of premiums due for par-
13 ticipation in the program.

14 REVOLVING FUND

15 SEC. 204. (a) In carrying out its duties under this title,
16 the Commission shall establish a revolving fund into which
17 all amounts paid into the program as premiums shall be
18 deposited and from which all liabilities incurred under the
19 program shall be paid.

20 (b) The Commission is authorized to borrow from the
21 Treasury such amounts as may be necessary, for deposit into
22 the revolving fund, to meet the liabilities of the program.
23 Moneys borrowed from the Treasury shall bear a rate of
24 interest determined by the Secretary of the Treasury to be
25 equal to the average rate on outstanding marketable obliga-

1 tions of the United States as of the period such moneys are
2 borrowed. Such moneys shall be repaid by the Commission
3 from premiums paid into the revolving fund.

4 (c) Moneys in the revolving fund not required for cur-
5 rent operations shall be invested in obligations of, or guar-
6 anteed as to principal and interest by, the United States.

7 TITLE III—PENSION PORTABILITY PROGRAM

8 ACCEPTANCE OF DEPOSITS

9 SEC. 301. (a) It is declared to be the policy of the
10 Congress that a system of pension portability should be
11 established by the Federal Government to facilitate the
12 voluntary transfer of credits between registered pension or
13 profit-sharing-retirement plans having similar benefit features
14 and actuarial assumptions. Nothing in this title nor in the
15 regulations issued by the Commission hereunder shall be
16 construed to require participation in such portability system
17 by a plan as a condition of registration under this Act.

18 (b) The Commission is authorized and directed, in
19 accordance with regulations prescribed by it, to receive
20 amounts which are transferred to it from a registered pension
21 or profit-sharing-retirement plan and which are in settlement
22 of an individual's rights under the plan when such individual
23 is separated from employment covered by the plan before
24 the time prescribed for payments under the plan to such
25 individual or to his beneficiaries.

1 SPECIAL FUND

2 SEC. 302. Amounts received by the Commission pur-
3 suant to section 301 shall be deposited in a special fund which
4 shall be established by it for the purposes of this title. The
5 amounts in the fund which are not needed to meet current
6 withdrawals shall be invested as provided under regulations
7 prescribed by the Commission.

8 INDIVIDUAL ACCOUNTS

9 SEC. 303. There shall be established and maintained in
10 accordance with regulations prescribed by the Commission,
11 an account for each individual with respect to whom the
12 Commission receives amounts under this title. The amount
13 credited to each such account shall be adjusted at the times
14 and in the manner provided by such regulations to reflect
15 earnings of the special fund and transfers from the special
16 fund for costs of administration.

17 PAYMENTS FROM INDIVIDUAL ACCOUNTS

18 SEC. 304. Amounts credited to the account of any indi-
19 vidual under this title may, in accordance with regulations
20 prescribed by the Commission, be paid by the Commission—

21 (1) to a registered plan, if such individual becomes
22 an employee covered by such plan and if such plan has
23 benefit features and actuarial assumptions similar to
24 those of the plan from which such amount was originally
25 transferred, or

1 procuity arrangements between plans in the same industry or
2 area, and (2) the development of special arrangements for
3 portability of credits within a particular industry or area.

4 TITLE IV—ADMINISTRATION OF EMPLOYEES'
5 BENEFIT FUNDS

6 SEC. 401. Every employees' benefit fund established to
7 provide for the payment of benefits under an employees'
8 benefit plan shall be established pursuant to a duly executed
9 trust agreement which shall set forth the purpose or pur-
10 poses for which such fund is established and the detailed
11 basis on which payments are to be made into and out of such
12 fund.

13 SEC. 402. Moneys in an employees' benefit fund shall
14 be available for expenditure only for the sole and exclusive
15 purpose of paying to employees or their families, dependents,
16 or beneficiaries the benefits for which it was established, and
17 for defraying the reasonable costs of administration of such
18 fund. None of the assets of an employees' benefit fund shall
19 be held, deposited, or invested outside the United States
20 unless the indicia of ownership remain within the jurisdic-
21 tion of a United States district court. Any such assets re-
22 maining upon dissolution or termination of the fund shall,
23 after complete satisfaction of the rights of all beneficiaries to
24 benefits accrued to the date of dissolution or termination,
25 be distributed ratably to the beneficiaries thereof or, if the

1 trust agreement so provides, to the contributors thereto:
2 *Provided*, That in the case of a registered pension or profit-
3 sharing-retirement plan, such distribution shall be subject to
4 the requirements of the previous titles of this Act.

5 SEC. 403. The person or persons responsible for the
6 administration of an employees' benefit fund shall cause an
7 independent audit to be made of the fund annually, and shall
8 make the results thereof available for inspection by interested
9 persons at the principal office of the fund and at such other
10 places as may be designated in the agreement or instrument
11 pursuant to which the fund is established.

12 SEC. 404. No person who is an officer or employee of
13 an employer or association of employers or a labor organiza-
14 tion, which is a party to any agreement establishing or re-
15 lating to an employee's benefit fund, shall receive or accept,
16 directly or indirectly, whether through a corporation or other
17 entity owned or controlled in any substantial degree by such
18 person or otherwise, any payment, loan, pledge, hypothe-
19 cation, assignment, or other transfer out of the assets of such
20 fund (other than benefits to which such person is entitled as
21 an employee), except that if such person is an officer or em-
22 ployee of such fund, reasonable fees or expenses of attend-
23 ing meetings in connection with the business thereof may be
24 paid from the fund to any such officer or employee attending
25 such meetings in an official capacity. Nothing herein con-

1 tained shall prohibit the purchase by a profit-sharing-retire-
2 ment plan or other profit-sharing plan, in the ordinary course
3 of business, of the securities or indebtedness of any corpora-
4 tion or other business entity employing directly or through
5 a subsidiary or parent entity a substantial number of the
6 beneficiaries of such fund.

7 SEC. 405. All investments and deposits of the funds of
8 an employees' benefit fund and all loans made out of any
9 such fund shall be made in the name of the fund or its
10 nominee, and no officer or employee of the fund, no trustee
11 or administrator or officer or employee thereof, no employer
12 or officer or employee thereof, and no labor organization, or
13 officer or employee thereof shall either directly or indirectly
14 accept or be the beneficiary of any fee, brokerage, commis-
15 sion, gift, or other consideration for or on account of any
16 loan, deposit, purchase, sale payment or exchange made by
17 or on behalf of the fund.

18 SEC. 406. The provisions of this title shall not be appli-
19 cable to a bank, trust company, or insurance company which
20 is subject to examination and regulation by the Federal Gov-
21 ernment or a State government, nor to the employees or
22 representatives, acting in an authorized capacity, of such a
23 bank, trust company, or insurance company, nor to the assets
24 owned or held by such a bank, trust company, or insurance
25 company: *Provided*, That this section shall not exempt from
26 the coverage of this title any person other than such a bank,

1 trust company, insurance company, or their employees or
2 representatives, acting in an authorized capacity, issuing
3 instructions or otherwise dealing with such a bank, trust com-
4 pany, or insurance company in connection with an em-
5 ployees' benefit fund.

6 TITLE V—ENFORCEMENT

7 SEC. 501. Whenever the Commission—

8 (1) determines, in the case of a pension or profit-
9 sharing-retirement plan required to be registered under
10 title I, that no application for registration has been filed
11 in accordance with section 102 (a), or

12 (2) issues an order under section 102 (e) denying
13 or canceling the certificate of registration of a pension or
14 profit-sharing-retirement plan,

15 the Commission may petition any district court of the United
16 States having jurisdiction of the parties, or the United States
17 District Court for the District of Columbia, for an order
18 requiring the employer or other person responsible for the
19 administration of such plan to comply with such requirements
20 of title I as will qualify such plan for registration under title I.

21 SEC. 502. Whenever the Commission has reasonable
22 cause to believe that an employees' benefit fund is being or
23 has been administered in violation of the requirements of
24 title IV, the Commission may petition any district court of
25 the United States having jurisdiction of the parties or the

1 United States District Court for the District of Columbia for
2 an order (1) requiring return to such fund of assets trans-
3 ferred from such fund in violation of the requirements of
4 such title, (2) requiring payment of benefits denied to any
5 beneficiary in violation of the requirements of such title, and
6 (3) restraining conduct in violation of the requirements of
7 such title by any person performing duties in connection
8 with the administration of such fund.

9 SEC. 503. Upon the filing of any petition pursuant to
10 section 501 or 502, the district court may, in its discretion,
11 appoint a receiver to take possession of the assets of the plan
12 or fund which is the subject of the petition and to administer
13 them until such time as the violations of law alleged in such
14 petition no longer exist.

15 SEC. 504. Suits by persons entitled, or who may become
16 entitled, to benefits from employees' benefit funds or plans
17 may be brought in any district court of the United States
18 having jurisdiction of the parties, or in the United States
19 District Court for the District of Columbia without respect to
20 the amount in controversy and without regard to the citizen-
21 ship of the parties (1) against any such fund or plan to
22 recover benefits required to be paid from an employees'
23 benefit fund or plan pursuant to the terms of the agreement
24 pursuant to which such fund or plan is established or other

1 constituent instrument; or (2) on behalf of and in the name
2 of an employees' benefit fund against any person who shall
3 have transferred or received any of the assets of such fund
4 in violation of any such agreement or of the requirements of
5 title IV.

6 SEC. 505. The provisions of the Act entitled "An Act to
7 amend the Judicial Code and to define and limit the juris-
8 diction of courts sitting in equity, and for other purposes",
9 approved March 23, 1932 (29 U.S.C. 101-115) shall not
10 be applicable with respect to suits brought under this title.

11 SEC. 506. Suits by an administrator of a pension plan,
12 a profit-sharing-retirement plan, or an employees' benefit
13 fund, to review any final order of the Commission, to re-
14 strain the Commission from taking any action contrary to
15 the provisions of this Act, or to compel action required under
16 this Act, may be brought in the name of the plan or fund
17 in the district court of the United States for the district where
18 the fund has its principal office, or in the United States Dis-
19 trict Court for the District of Columbia.

20 SEC. 507. In any case in which a trust agreement relat-
21 ing to a fund subject to this Act contains a provision stating
22 that it shall be construed under the law of a particular State,
23 such provision shall be controlling in any suit arising under

1 this Act for breach of any agreement or trust relating to an
2 employees' benefit fund.

3 SEC. 508. Nothing in this Act shall be deemed to nul-
4 lify any provision of any State or Federal law not in direct
5 conflict with a provision of this Act. If any provision of
6 this Act or the application of such provision to any person
7 or circumstance is held invalid, the remainder of this Act
8 and the application of such provision to other persons or
9 circumstances shall not be affected.

90TH CONGRESS
1ST SESSION

S. 1255

IN THE SENATE OF THE UNITED STATES

MARCH 13, 1967

Mr. McCLELLAN introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend the Welfare and Pension Plans Disclosure Act for the purpose of providing additional protection for the interests of participants in and beneficiaries of employee welfare and pension benefits plans.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the Welfare and Pension Plans Disclosure Act, as
- 4 amended, is amended by adding the following new title:

VII—O

1 "TITLE II—SAFEGUARDS FOR THE PROTECTION
2 OF EMPLOYEE WELFARE AND PENSION
3 BENEFIT FUNDS

4 "STATEMENT OF PURPOSE

5 "SEC. 201. It is the purpose of this title to provide ad-
6 ditional safeguards for the protection of the interests of par-
7 ticipants in and beneficiaries of employee welfare and pen-
8 sion benefit plans (1) by providing certain minimum
9 standards and requirements for the maintenance and man-
10 agement of employee welfare and pension benefit funds;
11 (2) by providing certain minimum fiduciary standards of
12 conduct, responsibility, and obligation, upon all persons en-
13 gaged in, or responsible for, receiving, holding, managing,
14 investing, lending, disbursing, or otherwise handling any of
15 such funds; (3) by providing sanctions and penalties for
16 breaches of such fiduciary standards; and (4) by providing
17 for the recovery of losses suffered by such funds by reason
18 of the refusal or failure of such persons to maintain and abide
19 by such fiduciary standards.

20 "DEFINITIONS

21 "SEC. 202. As used in this title—

22 "(1) The term 'employee welfare benefit fund' means
23 any fund established pursuant to or in connection with an
24 employee welfare benefit plan subject to this Act, for the
25 purpose of providing medical, surgical, or hospital care or

1 benefits, or benefits in the event of sickness, accident, dis-
2 ability, death, or unemployment, for the participants in such
3 welfare benefit plan and/or their beneficiaries.

4 “(2) The term ‘employee pension benefit fund’ means
5 any fund established pursuant to or in connection with an
6 employee pension benefit plan (including a profit-sharing
7 plan) subject to this Act, for the purpose of providing pen-
8 sions, annuities, or other retirement benefits for the partici-
9 pants in such pension benefit plan, and/or their beneficiaries.

10 “(3) The term ‘fund’, when employed in a context
11 which refers to the holding, distribution, investment, or earn-
12 ings thereof, or to payments or transfers therefrom, means
13 the moneys, stocks, bonds, debentures, or other assets
14 thereof, or deeds, mortgages, or other evidences of owner-
15 ship of assets or ownership of interests in assets; but such
16 term, when so employed, does not include any welfare or
17 pension insurance policy, contract, or plan issued or entered
18 into by an insurance company organized under the laws of
19 the several States of the United States and does not include
20 any premiums, money, or other thing of value which has
21 been paid thereon, or deposited thereunder.

22 “REQUIREMENTS RESPECTING FUNDS

23 “SEC. 203. (a) All employee welfare benefit funds and
24 all employee pension benefit funds, whenever established,
25 shall be deemed to be trust funds and to be subject to the

1 terms and conditions provided in this section, whether or not
2 established pursuant to trust agreements or other written
3 instruments.

4 “(b) Any employee welfare benefit fund and the income
5 accruing thereto shall be available for expenditure only for
6 the sole and exclusive purpose of (1) paying to the partici-
7 pants in the employee welfare benefit plan pursuant to which
8 such fund was established or their beneficiaries (or both),
9 medical, surgical, hospital, sickness, accident, disability,
10 death, or unemployment benefits provided under such plan
11 and (2) defraying the reasonable costs of administration of
12 such plan.

13 “(c) Any employee pension benefit fund and the in-
14 come accruing thereto shall be available only for the sole and
15 exclusive purpose of paying to the participants in the em-
16 ployee pension benefit plan pursuant to which such fund
17 was established or their beneficiaries (or both), the retire-
18 ment benefits (including disability retirement benefits) and
19 death benefits (if any) provided under such plan and for
20 defraying the reasonable costs of administration of such plan.

21 “(d) No gift of money or other assets shall be made
22 or accepted from an employee welfare or pension benefit
23 fund for any purpose.

24 “(e) The term of a trustee elected or appointed after
25 the effective date of this title for any employee welfare or

1 pension benefit fund shall not be for a period longer than
2 three years, and the term of any person serving as a trustee
3 of any employee welfare or pension benefit fund, on the
4 effective date of this title shall expire not later than three
5 years after such date, except that pursuant to a plan sub-
6 mitted to and approved by the Secretary pursuant to regula-
7 tions promulgated by him the term of a trustee elected or
8 appointed after the effective date of this title for any em-
9 ployee welfare or pension benefit fund may be for a period
10 not longer than six years, and the term of any person serving
11 as a trustee of any employee welfare or pension benefit fund,
12 on the effective date of this title, shall, pursuant to such ex-
13 ception, expire not later than six years after such date.
14 Nothing in this subsection shall be construed to prohibit the
15 reelection or reappointment of any qualified individual upon
16 the expiration of such term.

17 “(f) Any person who willfully violates any provision
18 of this section shall be fined not more than \$2,000, or im-
19 prisoned not more than two years, or both.

20 “SITUS OF EMPLOYEE WELFARE AND PENSION BENEFIT
21 FUNDS

22 “SEC. 204. The situs of every employee welfare benefit
23 fund and every employee pension benefit fund shall at all
24 times be located within the jurisdiction of one or more of the
25 district courts of the United States, or one or more of the

1 United States courts of any territory or other place subject
2 to the jurisdiction of the United States, and no part of any
3 such fund shall be transferred, deposited, invested, loaned, or
4 held outside the United States except pursuant to a plan
5 submitted to and approved by the Secretary pursuant to regu-
6 lations promulgated by him. Nothing contained in this sec-
7 tion shall be construed to require approval by the Secretary
8 of the purchase by an employee welfare or pension benefit
9 fund of securities listed and traded on an exchange subject
10 to regulation by the Securities and Exchange Commission,
11 or securities in an investment company registered under the
12 Investment Company Act of 1940, or securities of a public
13 utility holding company registered under the Public Utility
14 Holding Company Act of 1935.

15 "LOANS

16 "SEC. 205. (a) No loan of moneys or other assets shall
17 be made from any employee welfare or pension benefit
18 fund, unless such loan is secured by assets which are pledged
19 and obligated by the borrower as collateral and which are
20 of a value not less than the amount of such loan. No such
21 loan shall be made except pursuant to a duly executed and
22 signed instrument which specifies the amount and term of the
23 loan, the rate of interest to be paid by the borrower, and the
24 location and complete description of the property which is
25 being pledged by the borrower as collateral for such loan.

1 This provision shall not prevent the use of the fund by the
2 trustees for payment of premiums or benefits for employees
3 of an employer who has defaulted in the payment of one
4 or more of his required contributions to the trust fund and
5 any such use of the fund shall not be considered a loan.

6 “(b) No loan shall be made from an employees wel-
7 fare or pension benefit fund to any borrower if the situs of
8 either his legal domicile, or of the assets, if any, which he
9 proposed to pledge as security for such loan, is located out-
10 side the jurisdiction of the courts referred to in section 204.

11 “(c) Nothing in this section shall be construed to pro-
12 hibit the making of unsecured loans from any employee
13 welfare or pension benefit fund to any individual who is a
14 participant or beneficiary of such fund, but the aggregate
15 amount of the unpaid balance of such loans to any individual
16 outstanding at any one time shall not exceed \$500.

17 “(d) Any person who willfully violates any provision
18 of this section or section 204, shall be fined not more than
19 \$2,000, or imprisoned not more than two years, or both.

20 “FIDUCIARY STATUS OF CERTAIN PERSONS WITH RESPECT
21 TO FUNDS

22 “SEC. 206. (a) Each administrator, officer, director,
23 trustee, and member of any executive board or similar gov-
24 erning body of any employee welfare or pension benefit
25 fund, and any employee of such fund who receives, dis-

1 burses, or otherwise exercises any control or authority with
2 respect to the moneys or other assets of such fund, is a
3 fiduciary and occupies a position of trust in relation to such
4 fund and its participants and beneficiaries individually and
5 as a group. It is, therefore, the responsibility, obligation, and
6 duty of each such fiduciary, taking into account the purposes
7 and functions of such employee welfare or pension benefit
8 fund, to hold its money and other assets solely and exclu-
9 sively for the participants and beneficiaries of such fund,
10 and to handle, manage, invest, and expend the same in a
11 manner consistent with the purposes for which the fund
12 was established and the provisions of this title, and in his
13 conduct of the affairs of such fund, to exercise the same
14 degree of care and skill as would be exercised by a rea-
15 sonably careful, diligent, and prudent man.

16 “(b) No person who is a fiduciary of an employee
17 welfare or employee pension benefit fund shall deal with
18 such fund, represent any other party dealing with such fund,
19 or use his influence in behalf of any other party dealing with
20 such fund, in any matter in which such fiduciary or such
21 party has a financial interest the advancement of which
22 would be contrary to the financial or other interests of such
23 fund, nor shall any such person otherwise act as an adverse
24 party or in behalf of an adverse party in dealing with such
25 fund.

1 “(c) No person who is a fiduciary of an employee
2 welfare or pension benefit fund, a labor organization (includ-
3 ing an official thereof) which represents employees who are
4 participants in or beneficiaries of such fund, or an employer
5 (including an official thereof) of any employee who is a
6 participant in or beneficiary of any such fund, shall borrow,
7 directly or indirectly, any money or other assets from such
8 fund, nor shall any investment be made from such fund, ex-
9 cept that a loan or investment may be made from such a
10 fund to any such employer in any case in which the Secre-
11 tary determines, in accordance with regulations promulgated
12 by him, that such loan or investment would be in the interest
13 of such fund or its participants or beneficiaries.

14 “(d) No person shall directly or indirectly hold or
15 acquire any pecuniary or other interest in an employee wel-
16 fare or pension benefit fund of which he is a fiduciary, which
17 conflicts with his responsibilities, obligations, and duties to-
18 ward such fund and its participants and beneficiaries.

19 “(e) No person shall accept any gratuity, commission,
20 or kickback, or share in any accrued profit, in connection
21 with the management, investment, disbursement, or other
22 handling of any of the moneys or other assets of an employee
23 welfare or pension benefit fund of which he is a fiduciary.

24 “(f) No person shall, directly or indirectly, receive or

1 accept any payment, pledge, hypothecation, assignment, or
2 other transfer out of the moneys or other assets of an em-
3 ployee welfare or pension benefit fund of which he is a
4 fiduciary.

5 “(g) Nothing in this section shall be construed to pro-
6 hibit any person from receiving (1) any benefit to which
7 he may be entitled as a participant in or beneficiary of an
8 employee welfare or pension benefit fund, or (2) any rea-
9 sonable compensation for, or reimbursement of expenses
10 properly and actually incurred in, the performance of his
11 duties as a fiduciary of such fund.

12 “(h) Any fiduciary of an employee welfare or pension
13 benefit fund who willfully breaches any of the responsibilities,
14 obligations, or duties imposed on fiduciaries of such funds by
15 this title, shall be held personally liable to such funds for any
16 losses resulting from such breach and his personal assets
17 shall be subject to attachment in behalf of such fund for
18 purposes of reimbursement.

19 “(i) Any fiduciary of an employee welfare or pension
20 benefit fund who knowingly agrees to or condones the breach
21 by any other fiduciary of such fund, of the responsibilities,
22 obligations, or duties imposed on fiduciaries of such funds by
23 this title, shall be held liable to such fund for any losses
24 resulting from such breach, individually and jointly with the
25 fiduciary whose breach is condoned or agreed to, and the per-

1 sonal assets of each such fiduciary shall be subject to attach-
2 ment in behalf of such fund for purposes of reimbursement.

3 “(j) Any fiduciary of an employee welfare or pension
4 benefit fund who willfully breaches any of the responsibilities,
5 obligations, or duties imposed on fiduciaries of such funds
6 by this title shall be fined not more than \$10,000, or
7 imprisoned for not more than five years, or both.

8 “(k) Any exculpatory provision and any exculpatory
9 general or special resolution which purports to relieve any
10 fiduciary of an employee welfare or pension benefit fund
11 from liability for any breach of the responsibilities, obliga-
12 tions, or duties declared by this title, shall be void as against
13 public policy.

14 “PROHIBITION AGAINST CERTAIN PERSONS HOLDING
15 POSITIONS OF TRUST

16 “SEC. 207. (a) (1) No person shall serve as an admin-
17 istrator, officer, director, trustee, or member of any executive
18 board or similar governing body or an employee welfare or
19 pension benefit fund, or as an employee who receives, dis-
20 burses, or otherwise exercises any control or authority with
21 respect to the moneys or other assets of such a fund for any
22 period which is within the five-year period which commences
23 with whichever of the following dates is the later—

24 “(A) the date he was convicted of (i) robbery,
25 (ii) bribery, (iii) extortion, (iv) embezzlement, (v)

1 grand larceny, (vi) burglary, (vii) arson, (viii) viola-
2 tion of any Federal or State law dealing with narcotics,
3 (ix) rape, (x) murder, (xi) assault with intent to kill,
4 (xii) assault which inflicts or is intended to inflict
5 grievous bodily injury, (xiii) any other crime which in-
6 volves moral turpitude and for which a prison term of
7 one year or more may be imposed, (xiv) conspiracy to
8 commit any of the aforesaid crimes, (xv) violation of
9 any provision of the Labor-Management Relations Act,
10 violation of any provision of the Labor-Management Re-
11 porting and Disclosure Act, or violation of any provision
12 of this Act, if a fine or prison term is imposed as a
13 result of conviction of such violation, or (xvi) con-
14 spiracy to commit any such violation, if a fine or prison
15 term is imposed as a result of such conspiracy, or

16 “(B) the date of the termination of any prison term
17 imposed as a result of the conviction of any crime or vio-
18 lation referred to in paragraph (A),

19 unless prior to the expiration of such five-year period such
20 person shall have been granted a duly executed pardon for
21 the commission of such crime or violation and fully restored
22 to all rights of citizenship which were revoked as a result of
23 the conviction of such crime or violation.

24 “(2) For purposes of paragraph (1), a conviction shall
25 be deemed to have occurred on the date the judgment of con-

1 viction is entered by the trial court, or, if later, the date the
2 judgment of the trial court is sustained on appeal.

3 “(3) The provisions of this subsection shall apply to
4 convictions occurring before as well as on and after the
5 effective date of this title.

6 “(b) No administrator, officer, director, trustee, or
7 member of any executive board or similar governing body
8 of an employee welfare or pension benefit fund, and no em-
9 ployee who receives, disburses, or otherwise exercises any
10 control or authority with respect to the moneys or other
11 assets of such a fund, shall knowingly assent to any person's
12 assumption or holding of any of the positions herein desig-
13 nated, in violation of this section.

14 “(c) Any person who willfully violates this section shall
15 be fined not more than \$10,000, or imprisoned not more
16 than five years, or both.

17 “DISSOLUTION OR MERGER OF EMPLOYEE WELFARE AND
18 PENSION BENEFIT FUNDS

19 “SEC. 208. (a) No employee welfare or pension benefit
20 fund having assets in excess of \$25,000 shall pay out or
21 transfer any of its assets upon dissolution or merger with
22 any other fund except in accordance with a plan (1) com-
23 plying with general regulations issued by the Secretary or
24 (2) the provisions of which have been approved by the

1 Secretary as being fair and equitable to the participants
2 and beneficiaries, and to any other person who has a legal
3 or equitable interest in such fund or the assets thereof by
4 reason of having made financial contribution thereto or
5 otherwise.

6 “(b) The Secretary shall not approve any plan of dis-
7 solution or merger of any employee welfare or pension
8 benefit fund which provides for the distribution directly or
9 indirectly to or for the benefit of any person occupying or
10 who previously occupied a position involving fiduciary re-
11 sponsibilities, obligations, and duties in respect to such fund
12 except to the extent that such person may be entitled
13 thereto as one of the participants or beneficiaries for whose
14 benefit such fund was established, or as a person who,
15 because of financial contributions made to such fund or other-
16 wise, has a legal or equitable interest therein the enforce-
17 ment of which would be fair and equitable, the interests of
18 all parties considered.

19 “(c) Proceedings on application for approval of plans
20 of dissolution or merger shall be conducted in accord with
21 the provisions and requirements of the Administrative Pro-
22 cedure Act.

23 “(d) Any person aggrieved by the final determination
24 of the Secretary may within sixty days thereof file with the
25 United States Court of Appeals for the District of Columbia,

1 or with any other United States circuit court of appeals
2 having jurisdiction of the situs of the employee welfare or
3 pension benefit fund, a petition for review of such final deter-
4 mination. A copy of the petition shall forthwith be trans-
5 mitted by the clerk of such court to the Secretary. The
6 Secretary shall thereupon file in the court the record of the
7 proceedings on which he based such final determination as
8 provided in section 2112 of title 28, United States Code.

9 “(e) The findings of fact by the Secretary, if supported
10 by substantial evidence, shall be conclusive; but the court,
11 for good cause shown, may remand the case to the Secretary
12 to take further evidence, and the Secretary may thereupon
13 make new or modified findings of fact and may modify his
14 previous determination, and shall certify to the court the
15 transcript and record of the further proceedings. Such new
16 or modified findings of fact shall likewise be conclusive if
17 supported by substantial evidence.

18 “(f) The court shall have jurisdiction to affirm the ac-
19 tion of the Secretary or to set it aside, in whole or in part.
20 The judgment of the court shall be subject to review by the
21 Supreme Court of the United States upon certiorari or certifi-
22 cation as provided in section 1254 of title 28, United States
23 Code.

24 “(g) If no petition for review is filed pursuant to and
25 within the time prescribed in subsection (d), the final de-

1 termination of the Secretary shall become final and shall
2 not thereupon be subject to review by any court.

3 “(h) The Secretary shall from time to time issue such
4 regulations as may be necessary to carry out the provisions
5 of this section.

6 “IMPROPER TRANSACTIONS WITH FIDUCIARIES

7 “SEC. 209. (a) It shall be unlawful for any person
8 to accept any money or other thing of value from the assets
9 of any employee welfare or pension benefit fund pursuant
10 to any transaction with any person occupying the position
11 of a fiduciary in relation to such fund, if such transaction
12 is contrary to or involves any violation of the responsibili-
13 ties, obligations, and duties imposed upon such fiduciary
14 under any of the provisions of this title, and any contract
15 or agreement providing for such transaction shall be null
16 and void.

17 “(b) Any person who knowingly violates the provi-
18 sions of subsection (a) of this section shall be fined not
19 more than \$10,000, or imprisoned for not more than five
20 years, or both.

21 “CIVIL SUITS—REMOVAL OF TRUSTEES

22 “SEC. 210. (a) The Secretary or any person who has
23 a legal or equitable interest in any employee welfare or
24 pension benefit fund or the assets thereof may petition the
25 appropriate district or other court of the United States

1 to remove any person occupying a fiduciary position in
2 relation to such fund and, pending the replacement of
3 such person, to appoint an appropriate individual to carry
4 out the duties of the person to be removed.

5 “(b) If the court finds that (1) such person is failing
6 to carry out his fiduciary responsibilities, obligations, or
7 duties with respect to such fund, or (2) such person is, be-
8 cause of past criminal activity, past record in serving in a
9 fiduciary capacity in relation to a similar fund, or because of
10 other provisions of this title, disqualified or unsuitable to act
11 in a fiduciary capacity for such fund, the court shall issue
12 an order prohibiting such person from continuing to serve as
13 a fiduciary of such fund, and, if the court deems the same
14 to be necessary or desirable to protect such fund and its
15 assets or the persons having legal or equitable interests there-
16 in, the court shall appoint a competent and appropriate per-
17 son to serve as a fiduciary of such fund, in the place of the
18 person being removed therefrom, until such time as another
19 person may be appointed or elected.

20 “(c) No person who has been removed (other than a
21 person who has been removed because of physical or mental
22 incapacity) pursuant to this section as a fiduciary of an em-
23 ployee welfare or pension benefit fund shall thereafter be
24 eligible to serve in a fiduciary capacity for or in behalf of

1 such fund or any other employee welfare or pension benefit
2 fund for a period of five years.

3 "RECOVERY OF FUNDS

4 "SEC. 211. (a) In any case in which (1) any person
5 has engaged in acts or practices in relation to any employee
6 welfare or pension benefit fund in violation of any provision
7 of this title and (2) such employee welfare or pension bene-
8 fit fund or the participants or beneficiaries of such fund have
9 suffered financial loss (including losses resulting from any
10 failure to credit to such fund, any of the income accruing
11 from any investment or other use or manipulation of the
12 assets of such fund by such person) by reason of such acts or
13 practices, and (3) the amount of such loss has not been
14 recovered by or on behalf of such fund or its participants and
15 beneficiaries, the Secretary or any such participant or bene-
16 ficiary may bring an action in the proper district court of the
17 United States or in the proper United States court of any
18 territory or other place subject to the jurisdiction of the
19 United States to recover any such unrecovered amount on
20 behalf of such fund.

21 "INJUNCTIONS AND PROSECUTIONS OF OFFENSES

22 "SEC. 212. (a) In any case in which any person is en-
23 gaged or is about to engage in any acts or practices which
24 constitute or will constitute a violation of this title, any per-
25 son who has a legal or equitable interest in any employee

1 welfare or pension benefit fund (or the Secretary, upon re-
2 quest of the person having such interest) may bring an
3 action in the proper district court of the United States or in
4 the proper United States court of any territory or other place
5 subject to the jurisdiction of the United States, to enjoin
6 such acts or practices and for such other relief as may be
7 appropriate. Upon a proper showing a permanent or tem-
8 porary injunction or restraining order shall be granted with-
9 out bond.

10 “(b) The district courts of the United States, and the
11 United States court of any territory or other place subject
12 to the jurisdiction of the United States, shall have jurisdic-
13 tion, for cause shown, to grant injunctive and other appro-
14 priate relief in any action involving any violation of this
15 title.

16 “SECRETARY TO BE REPRESENTED BY SOLICITOR

17 “SEC. 213. Any civil action authorized to be brought
18 under this Act by the Secretary may be brought in his behalf
19 by the Solicitor of the Department of Labor, who shall repre-
20 sent the Secretary in all such actions.

21 “EFFECT OF OTHER LAWS

22 “SEC. 214. Except insofar as any present or future law
23 of the United States or of any territory or State may be in-
24 consistent with this Act, nothing in any provision of this
25 title shall be construed as exempting any person from lia-

1 bility, duty, penalty, or punishment provided by any such
2 law in regard to any criminal offense referred to in this
3 title or in regard to the operation or administration of em-
4 ployee welfare or pension benefit funds, or in any manner
5 to authorize the operation or administration of any such fund
6 contrary to any such law.”

7 TECHNICAL AND MISCELLANEOUS AMENDMENTS

8 SEC. 2. The Welfare and Pension Plans Disclosure Act
9 is further amended as follows:

10 (1) After the first section insert the following center
11 heading “TITLE I—DISCLOSURE AND REPORTING”.

12 (2) In section 2 (b), strike out “Act” and substitute
13 “title”.

14 (3) In section 9 (a), strike out “Act” and substitute
15 “title”.

16 (4) Amend section 5 (a) to read as follows:

17 “(a) The administrator of an employee welfare bene-
18 fit plan or an employee pension benefit plan shall publish in
19 accordance with section 8 to each participant or beneficiary
20 covered thereunder (1) a description of the plan and (2)
21 an annual financial report. Such description and such report
22 shall contain the information required by sections 6 and
23 7 of this Act and such other information as the Secretary
24 shall determine to be necessary and appropriate to carry
25 out the purposes of this Act. The Secretary may by regula-

1 tions provide for the exemption from all or any part of the
2 reporting and disclosure requirements of this Act of any class
3 or type of welfare or benefit plans, if the Secretary finds
4 that the application of such requirements to such plans is
5 not required in order to effectuate the purposes of this Act.”

6 (5) Section 9 (d) is amended to read as follows:

7 “(d) The Secretary shall have power, when he believes
8 it necessary in order to determine whether any person has
9 violated or is about to violate any provision of this Act, to
10 make an investigation and in connection therewith he may
11 enter such places and inspect such records and accounts and
12 question such persons as he may deem necessary to enable
13 him to determine the facts relative thereto. The Secretary
14 may report to interested persons or officials concerning the
15 facts required to be shown in any report required by this
16 Act and concerning the reasons for failure or refusal to file
17 such a report or any other matter which he deems to be
18 appropriate as a result of such an investigation.”

19

EFFECTIVE DATE

20 SEC. 3. The amendments made by this Act shall become
21 effective ninety days after the date of its enactment.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 23, 1968.

HON. LISTER HILL,
*Chairman, Committee on Labor and Public Welfare, U.S. Senate, New Senate
Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget on S. 3421, the "Pension Benefit Security Act."

The purpose of the bill is to establish required standards of vesting and funding, and to provide termination insurance for private pension plans. In general, full vesting of pension rights within ten years of employment would be required. In addition, the bill would require the setting aside of funds in annually increasing amounts based on the value of the pension plan's liabilities, and the purchase of insurance to protect the pension benefits of employees in the event of plan termination.

We have no objection to the enactment of S. 3421.

Sincerely yours,

WILFRED H. ROMMEL,
Assistant Director for Legislative Reference.

DEPARTMENT OF TRANSPORTATION,
Washington, D.C., July 29, 1968.

HON. LISTER HILL,
*Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department on S. 3421, a bill to provide additional protection for the rights of participants in private pension plans, to establish minimum standards for vesting and funding of private pension plans, to provide an insurance program guaranteeing plan termination protection, and for other purposes.

The bill is considered well written and should go a long way toward protecting the retirement security of many employees in private industry, who, through no fault of their own, could suffer the loss of pension benefits without such protection.

The Department of Transportation has no objection to this proposed legislation.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report for the consideration of the Committee.

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., July 5, 1968.

B-164292.

HON. LISTER HILL,
*Chairman, Committee on Labor and Public Welfare,
U.S. Senate.*

DEAR MR. CHAIRMAN: Reference is made to your letter of May 6, 1968, requesting our comments on S. 3421, which if enacted, would be cited as the "Pension Benefit Security Act."

The bill would authorize additional protection for the rights of participants in private pension plans; establish minimum standards for vesting and funding of private pension plans; and establish an insurance program guaranteeing plan termination protection. The latter objective would be accomplished by establishing a Pension Benefit Insurance Corporation as an instrumentality of the United States within the Department of Labor and subject to the general supervision and direction of the Secretary of Labor.

In general, over the years our Office has been concerned that the establishment of corporations tends to dilute congressional control over public expenditures. We have held the view that the public interest is best served when congressional control of Federal activities is exercised through annual reviews

and affirmative action on planned programs and financing requirements. This review is normally accomplished through appropriation hearings, which culminates in affirmative action on an appropriation request. We believe that a departure from this standard should be made only where it is clearly demonstrated the activity to be authorized can be more efficiently and economically operated through the corporate structure, and a net advantage to the Government will result.

If the corporate structure is used, we question whether the structure of the proposed Corporation will provide for the best administration of its corporate powers. Section 401 provides that the Corporation shall be subject to the general supervision and direction of the Secretary of Labor while section 405(a) provides that the management of the Corporation shall be vested in a Board of Directors on which the Secretary of Labor is only an ex-officio member and cannot be designated by the President as Chairman of the Board. Also, section 405(b) provides that the Secretary of Labor shall appoint the members of the Technical Committee on Pension Benefit Insurance and that such Committee shall meet only at the call of the Chairman of the Board of Directors who shall also be the Chairman of such Committee. If the Secretary is to have general supervision and direction over Board of Directors we believe he should have sufficient authority to carry out the policy directives issued by him and therefore suggest that consideration be given to designating him as Chairman of the Board of Directors. Similar authority is given the Secretary of Agriculture over the Commodity Credit Corporation by the Commodity Credit Charter Act, 15 U.S.C. 714.

We note that section 201(a) requires the ultimate funding of a pension plan on a basis of 100 percent of the vested liabilities. The term vested liabilities is defined in section 3(n) as meaning the "present value" of the immediate or deferred benefits. Since the calculation of "present values" involves the use of an interest rate, and the results vary significantly under various interest rates used, we believe the bill should provide authority to the Corporation to establish guidelines for selection of interest rates to be used. Accordingly, we suggest there be added a section 201(a)(3) that might read somewhat as follows:

"The interest rate to be used in determining vested liabilities for each pension plan shall be established under criteria issued by the Corporation."

If it is determined that the purposes of the bill can best be carried out by creation of a corporation we question the need to create a pension benefit insurance fund as provided in section 404 inasmuch as the Corporation would be the fund entity. The Corporation would have a checking account with the Treasurer of the United States, under existing authorities and practices for Government corporations, without the need for any new authority. See section 302 of the Government Corporation Control Act, 31 U.S.C. 867, which makes specific provision for such accounts.

Accordingly we suggest that section 404(a) be deleted; that section 404(b) be revised so that the authorization of appropriations would run to the Corporation rather than to the fund; and that section 404(c) be edited so that reference to the fund would be changed to make reference to the Corporation.

The word "contributions" in line 3, page 24, should be changed to "contribution."

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 23, 1968.

HON. LISTER HILL,
*Chairman, Committee on Labor and Public Welfare, U.S. Senate, New Senate
Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your requests for the views of the Bureau of the Budget on S. 1024, the "Welfare and Pension Plan Protection Act of 1967," and S. 1103, the "Pension and Employee Benefit Act of 1967."

The Welfare and Pension Plan Protection Act of 1967 was recommended by the President in his consumer message to the Congress of February 16, 1967. In it he stated that pension and welfare plans

"are of vital importance to the worker and his family. They are a source of retirement income . . . the very size of these plans makes it essential that they be soundly administered in the public interest. Because employer and worker alike rely upon them so heavily, they must be operated with unquestioned prudence and integrity."

S. 1024 would carry out the President's recommendations to establish a standard of fiduciary responsibility for persons handling welfare and pension plans and to increase the disclosure requirements in order to provide a basis for evaluating fiduciary conduct. Accordingly, we strongly recommend the enactment of S. 1024.

The proposed Pension and Employee Benefit Act of 1967, S. 1103, is designed to regulate several aspects of private pension plans. These include vesting and funding standards; insurance against plan termination; establishment of a special central portability fund; establishment of certain minimum standards of conduct and restrictions on conflicts of interest; the creation of a U.S. Pension and Employee Benefit Plan Commission to administer the requirements of the bill; and the consolidation in the Commission of most existing Federal regulatory standards relating to pension and welfare.

Several of the provisions of S. 1103 overlap those of S. 1024. With respect to these provisions, we believe that the approach taken in S. 1024 is preferable. Accordingly, we recommend that the Committee defer action on S. 1103 in favor of S. 1024.

Sincerely yours,

WILFRED H. ROMMEL,

Assistant Director for Legislative Reference.

Senator YARBOROUGH. We have agreed to recognize next another distinguished member of this committee, a very diligent worker. There is no more diligent worker in either party on this committee than the distinguished Senator from Vermont.

STATEMENT OF HON. WINSTON L. PROUTY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator PROUTY. Thank you, Mr. Chairman.

Mr. Chairman, today the Subcommittee on Labor begins consideration of legislation directly affecting more than 25 million of our citizens who now are covered by or draw benefits from our private retirement system—and the many millions more who, we hope, will be brought into private pension and profit-sharing plans which will be formed or expanded in the future.

It has been more than a decade since a committee of the Senate has attempted a comprehensive exploration of all the complicated and important issues in this field. We know that much has been happening about which we will want to educate ourselves very carefully.

I think few of us generalize the magnitude of the private retirement system in the United States. In 1965, the latest year for which we have reliable figures, there were more than 150,000 separate private plans which were qualified under the Internal Revenue Code.

Contributions to private plans in 1965 were more than \$7.5 billion—which is more than all public assistance expenditures in all of the States in 1966 (\$7,066,796)—and benefit payments exceeded \$3 billion.

Overall, it is estimated that some 30 million workers now are covered by private pension and profit-sharing plans—an astounding number in any case, but especially when you consider that only 4.1 million workers were covered in 1940 and 9.8 million as recently as 1950.

Experts tell us it is reasonable to estimate that more than 43 million workers will be covered by 1981.

I think these figures demonstrate that the private sector of our economy—and I mean employers, workers, and unions together—have

undertaken an enormous social responsibility for the welfare of our citizens in retirement.

The private retirement system, which supplements the steadily improving social security and other public retirement programs, is one of the proudest achievements of the private enterprise system.

I think it is fair to say that this record reflects the growing recognition by employers, in combination with their workers, that there is an important responsibility to provide an honorable and meaningful income in the retirement years to employees who remain with their companies for a reasonable share of their working lives.

Of course, the bare figures, reporting numbers of workers covered by these plans and totaling the assets of plans, barely indicate the quality—and diversity—of these private plans.

One of the basic strengths of the private retirement system stems from its flexibility—from the fact that retirement programs can be tailored to the individual desires and abilities of individual companies and their workers.

There are literally hundreds of different kinds of benefit programs adopted by different firms, usually as a result of collective bargaining agreements.

Plans are being continually altered to improve their benefit structure or their funding techniques, and history demonstrates that as a result of these alterations, earlier weaknesses in pension and profit-sharing plans are being continually rectified on a voluntary basis.

Accordingly, on balance, private pension and profit-sharing plans are doing a remarkably good job.

This is not to say that the system is working perfectly, or that no improvement is required in the present Federal statutes and regulations covering private pension plans.

But I feel strongly, Mr. Chairman, that our committee should be extremely cautious in enacting legislation in this complex and highly important field.

We certainly do not want to hinder the steady progress being made in expanding the coverage of private plans and improving their benefits.

In fact, I think a good argument can be made that Congress should concentrate on encouraging the spread of plans, rather than focusing solely on alleged weaknesses of present plans.

In any event, this entire area is extremely complicated, and I do not think I have to remind the members of this committee that it is terribly late in the session to begin work in this area.

Certainly, this is one field where it would be tragic to rush ahead with hastily drawn legislation in a politically volatile atmosphere.

On the other hand, if the committee intends to progress this year beyond a survey of the characteristics and problems of this system—and I do hope that we shall study these matters fully and deliberately—I believe we should place great emphasis on proposals to establish Federal fiduciary standards for pension trustees and administrators.

This pattern was adopted by the House Labor Committee, which has reported an amended form of the administration's fiduciary standards proposal, but has postponed consideration of the Labor Department's new bill calling for a drastic overhaul of the entire private system.

Given the shortage of time and complexity of the issues, it seems preferable to concentrate on the less controversial legislation which has already been considered in the House committee.

I understand that the House committee made some improvements in the original bill, and perhaps with additional minor modifications by this committee, it might be possible for us to develop a consensus on a noncontroversial bill which we can see enacted this year.

The only alternative, I believe, is to hold preliminary hearings this year with the understanding that no legislation will be enacted in the current Congress and that the broad subject will be fully explored in the next Congress.

Mr. Chairman, I am looking forward to hearing the testimony of our witnesses and to a constructive dialog on the whole range of important issues which are raised by the pending bills.

Thank you, Mr. Chairman.

Senator YARBOROUGH. Thank you, Senator Prouty, for your contribution.

You point out in your closing paragraphs the two prospects open before us. For a while, of course, we are hopeful that this session of Congress would end the end of next week but now we will be back in the Senate for some month or months after Labor Day according to the pronouncements of our respective party leaders. I think there is a real prospect of moving forward as you have indicated, and possibly getting together on a fiduciary bill this session.

I had no hopes of that result when it seemed the session would end the 3d of August. But we now can hope for real progress this year.

Thank you very much for those suggestions.

Senator YARBOROUGH. I yield next to Senator Javits, the ranking minority member of this committee.

Senator JAVITS. Mr. Chairman, I thank the chairman. It is my intention to testify as a witness and thereby be open on questions, if I may do that.

Senator YARBOROUGH. Certainly, Senator Javits. You may proceed in your own way, either by statement as a committee member or testify as a witness, which is your right in this committee since you have played such a large role in formulating major legislation.

STATEMENT OF HON. JACOB JAVITS, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. I thank the Chair. I thank my colleagues. I will not take very long.

Mr. Chairman, the reason I choose to testify as a witness rather than as a member of the subcommittee is that I am actually the author of S. 1103, a bill introduced on February 29, 1967, which has a very comprehensive plan for regulating pension and welfare funds.

Now I would like immediately to exclude the area which I do not feel involves any serious amount of difference and that is the title of my bill and the provisions of the administration's bill introduced by Senator Yarborough which deal with fiduciary standards.

I do not believe that they present any major points of difference and hence can easily be reconciled.

I would just like to lay those aside, I mention it that way, and ask unanimous consent that a comparison between my bill and S. 1024 may be made part of my remarks insofar as it relates to fiduciary responsibility.

Senator YARBOROUGH. That is so ordered.

Senator JAVITS. I ask unanimous consent that the comparison of the remainder of my bill with S. 3421 may also be made part of my remarks.

Senator YARBOROUGH. Without objection, it is so ordered.

Senator JAVITS. Mr. Chairman, I am deeply gratified that, though there may be some differences between these two approaches, I seemingly have come together with the administration and with my chairman upon the basic aspects of this legislation.

I think this is very promising, casting it in this bipartisan light for ultimate legislation on this subject.

I first wish to note that and I welcome this development, which has taken some time to bring about. The principal bill on my side, as the ranking member of the minority, and the principal bill on the administration's side, have so much in common that I really do not think that we will have any great problem in reconciling the differences and coming up with a suitable piece of legislation.

Senator YARBOROUGH. Senator Javits, I am very pleased to hear that. You have been a very aggressive Senator in this field of labor law. You represent a State that is a very strong financial State in which many of these funds are held. This vast amount of money has a tremendous effect on the economy of the country.

With your cooperation I am sure we can promise some meaningful benefits to the country, if not in this session then in the coming session.

Senator JAVITS. I thank the Chair. We agree on the figures. There are about \$100 billion in total reserve assets. My figure also is 25 million employees, though I note that the Secretary of Labor thinks that there are 30 million employees.

Then their estimate is that by 1980 there will be about \$225 billion in assets with 42 million individuals affected. Our estimate has been \$250 billion and 45 million employees affected. So there is not a major difference.

The important point is that three out of every five private nonfarm workers by 1980 will be covered by this type of plan.

So, the legislation which is before us is of critical importance. Now I think we must all recognize that the administration bill as well as my own bill are heavily based upon the Cabinet Committee's report on private pension plans. The President appointed a Cabinet Committee on this subject.

There are four elements upon which these measures must concentrate; our measures do and the ultimate law will have to, in order to provide security and basic fairness to millions of workers who are depending on the private pension plan.

Now the four elements are: First, vesting, and in vesting I would include portability.

I think that is a critically important thing, to untie the American worker from a species of serfdom which comes from being linked in a pension plan so that he really cannot leave his job or move to another place without taking a really unacceptable loss.

So, vesting, including portability, is very important.

Second, funding, that is the security backing which the plan has.

Third, insurance against premature termination of a private pension plan as, for example, the employer going out of business.

And, fourth, the fiduciary standard question which is contained in my bill in titles IV and V and in the administration's bill, S. 1024.

Now, vesting, we all understand, refers to the period of service after which an employee's right to pension benefits cannot be forfeited. More and more private pension plans are lowering vesting requirements, but the sad fact is, and the country must realize this, that as of today only one out of four workers covered by a private pension plan will actually receive any benefit under that plan.

Looked at another way, private pension plans today are operated on the assumption of a forfeiture ratio of approximately 75 percent. That is three-quarters of those on whose behalf money is paid in will get no pay out.

It will hardly come as a surprise that such a high forfeiture rate has stirred a widespread discontent, indeed, indignation. Pension benefits quite properly are no longer regarded as simply largesse dispensed on top of wages.

There is a conscious realization on the part of workers that pension benefits are simply one part of a total economic package offered to them by their employers.

They believe, and I share their views, that it is grossly unfair if after working at a job for many years, and their employment terminates voluntarily or involuntarily, they lose all their accumulated pension benefits.

Yet that is the case under many, many plans. So the provisions of my bill and the administration's bill establish minimum standards for vesting to give fair and equitable treatment to workers. They also open the door to pension portability.

Under my bill a system of portability on a voluntary basis would actually be established. Under the administration's bill a study of portability would be authorized.

I would hope, Mr. Chairman, that we may be able to actually come up with a beginning of a portability system rather than just a study. Whether we can or not, I don't know, but it is worth a try.

I know that given the diversity and complexity of the pension plans in the United States, complete portability of pension benefits is probably not possible, at least in the immediate future. But a start can and should be made in this direction.

We do want portability and I emphasize that as very important because we are having technological progress, we do want mobility in our labor force and the lack of vesting standards inhibits mobility by keeping the worker, as I say, in a specious of serfdom, from changing his job for fear of losing his hard-earned pension benefits.

Early vesting and portability would almost completely eliminate such undesirable inhibitions on the mobility of labor.

As to the funding, which is the other side of the coin from vesting, we have already had bitter experience with unfunded plans.

We know that we can't require all pension plans to be fully funded from their inception because that would inhibit drastically even the establishment of such plans which provide for benefits of past service; that is, service performed before the effective date of the plan.

We have to have a reasonable compromise between full funding and merely current funding. Both bills, I am glad to say, seek to achieve that compromise.

I am confident we can work out that problem.

The third point, insurance against plan termination, would obviously not be necessary if all private plans were fully funded, but obviously they can't be.

So we are faced with the problem of an employer going out of business, the horror case being the Studebaker situation where its plan would have been fully funded after 30 years but it went out of business in a shorter time than that and so many, including those who worked for the company for years before it established the pension plan, lost their pensions.

We feel that Studebaker is not an isolated case. A study recently published in the Monthly Labor Review indicates that thousands of workers per year are adversely affected by pension plan termination. Therefore, the insurance aspects of both my bill and the administration bill are very important.

Now as to fiduciary standards, there I can again refer to a horror case. I am a member of the Government Operations Committee, and its Permanent Subcommittee on Investigations has had occasion to look into a very serious case where a loophole existed which allowed unscrupulous operators of a union pension plan to transfer millions of dollars in these funds out of the country to a phony African foundation and to pad the payroll of the welfare funds with friends of theirs who were alleged bookmakers.

We finally got the money brought back into the country, but it suddenly gave us all a real scare and indicated what can happen.

Mr. Chairman, I think it would be useful, if the Chair would agree, that we make as a part of this record either a narrative, and I will decide what is most informative, or the actual testimony before the Subcommittee on Investigations.

My assistant tells me that the report of the Government Operations Committee summarizes that case. I think it would be very useful to have this as part of my testimony.

Senator YARBOROUGH. How long is that?

Senator JAVITS. It is not very long in the report. But we will work it out.

Senator YARBOROUGH. We will order it printed in the record. I thought if it were long we would file it. But if it is not too long I think it is desirable, as you have requested, to have it printed in full.

(The document subsequently supplied for the record follows:)

DIVERSION OF UNION WELFARE-PENSION
FUNDS OF ALLIED TRADES COUNCIL
AND TEAMSTERS LOCAL 815

REPORT
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES SENATE
MADE BY ITS
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
TOGETHER WITH INDIVIDUAL VIEWS



JUNE 30, 1966.—Ordered to be printed

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DIVERSION OF UNION WELFARE-PENSION FUNDS OF
ALLIED TRADES COUNCIL AND TEAMSTERS
LOCAL 815

June 30, 1966—Ordered to be printed

Mr. McCLELLAN, from the Committee on Government Operations, submitted the following

R E P O R T

TOGETHER WITH INDIVIDUAL VIEWS

INTRODUCTION

The Senate Permanent Subcommittee on Investigations, under Senate Resolution 54 of the 89th Congress, 1st session, has authority to investigate improper practices or activities in the field of labor-management relations. Acting within that authority, the subcommittee undertook, in 1965, preliminary investigations into the administration and control of certain welfare and pension plans. The general purpose of the subcommittee's inquiries was to study the welfare and pension field to determine whether tax laws, labor laws, and appropriate criminal statutes now adequately protect the interests of the working men and women of the country and properly safeguard their rights in the plans in which they participate.

The benefit plans that provide welfare and pension payments to American workers are a major factor in the national economy. There are currently about 167,600 private plans registered with the Department of Labor, which receives a current annual average of almost 10,000 reports of new plans. Accumulated reserves of private pension plans alone are presently estimated at more than \$75 billion. They provide the funds for retirement benefits for approximately 25 million persons. By 1980, such plans probably will hold \$225 billion in total reserves and will cover at least 42 million individuals.

The assets of the plans are presently protected and preserved, and their operations are supervised and regulated, in varying degrees of effectiveness by certain existing Federal laws, including criminal statutes, the Internal Revenue Code, the Labor-Management Relations Act of 1947 (the Taft-Hartley Act), and the Welfare and Pension

Plans Disclosure Act of 1958, as amended in 1962, and the Labor-Management Reporting and Disclosure Act of 1959.

During the early stages of the subcommittee's investigation, information was received that indicated serious mishandling and diversion of the assets of the welfare funds of two local unions in the metropolitan New York area. These unions were the Allied Trades Council, which was affiliated with the International Leather Goods, Plastic & Novelty Workers Union of the AFL-CIO, and Local 815 of the International Brotherhood of Teamsters.

Preliminary inquiries showed that both these unions were completely dominated by George Barasch, who was formerly the principal officer of each of them. Although he was no longer a union officer at the time of the subcommittee's investigation, Barasch continued to control the operations of the unions and to oversee, as lifetime trustee, the administration and disbursement of the various welfare and pension funds connected with both unions.

The subcommittee's inquiry was concerned with allegations that about \$4 million of the welfare funds of both unions had been diverted from their proper purpose of providing benefits for the rank-and-file members of the unions and ultimately had been channeled into the accounts of two so-called research foundations which had been formed in Puerto Rico and in the Republic of Liberia, Africa.

The hearings that resulted from the investigation of the two unions were held on June 29, 1965, and on July 20, 21, and 22, 1965. The hearing of June 29 was an executive session held in New York City; the July hearings were public sessions in Washington, D.C. The testimony of June 29 was made public by the subcommittee on July 20, 1965.

In his opening remarks at the executive session the chairman stated that the subcommittee would seek to ascertain—

1. Whether the creation of the overseas foundations constituted a diversion of the welfare funds of the unions and deprived the members of benefits to which they were entitled;
2. Whether the trustees of the employee benefit funds and of the foundations had properly administered the funds to discharge their responsibilities under the strict rules governing fiduciaries;
3. Whether management had neglected its obligations, duties, and responsibilities relating to the funds; and
4. Whether there were conflicts of interest in the administration of the fund .

The chairman also stated that the subcommittee would seek to determine whether new laws are necessary to regulate the management, supervision, and administration of employee benefit plans, to protect the rights and interests of union members, and to insure that such funds are not diverted or mishandled but are used for the purposes for which they are established.

THE UNIONS UNDER INVESTIGATION

The Allied Trades Council and Local 815 of the International Brotherhood of Teamsters are relatively small unions which have common headquarters in Fair Lawn, N.J., and a branch office in New York City. They have a combined membership of between 9,000 and 10,000 persons who are employed by firms which manufacture and sell a wide variety of products in the wholesale and retail trade. These companies are, in the main, located within the metropolitan area of New York City. The two unions may be described as "catch-all" organizations which have enrolled their members in segments of business where the workers were previously unorganized.

Both unions have in the past maintained affiliations with national labor organizations, although each generally has been operated autonomously. The Allied Trades Council has been affiliated with the International Leather Goods, Plastic & Novelty Workers Union of the AFL-CIO, and Local 815 has been and still is a local of the International Brotherhood of Teamsters.

George Barasch, who has been an active labor leader in the New York area since the mid-1930's, was the founder of both unions, has been until recent years the principal officer in each union, and, at the time of the hearings, was the dominant person in their control and administration.

In 1937, George Barasch started his career as a union leader when he organized a group of drugstore employees into a union, obtaining a charter for Local 1185 of the Retail Clerks International Association. He held that charter until 1947, when it was revoked by the parent labor organization, which accused Barasch of running a "chain union" operation. The Retail Clerks indicated that Barasch used his local to recruit and accumulate other small local unions to operate under his charter without regard to questions of jurisdiction or types of employment.

Barasch also obtained in 1945 from the International Leather Goods Workers Union a charter for local 105 of that union, which was one of the small locals later merged with the Allied Trades Council.

On January 1, 1947, Barasch organized the Allied Trades Council as a "catchall" union which would combine in one organization the workers who belonged to the several small unions with which he was then associated. The nucleus of the new union's membership was furnished by local 1185 of the Retail Clerks and by local 105 of the Leather Workers. The Allied Trades Council also added the memberships of certain small local unions that had previously held "Federal charters" from the American Federation of Labor. The issuance of Federal charters by the AFL was at that time a common practice which allowed groups of workers in a plant to organize and to operate as independent labor organizations until some specific affiliation was determined and designated. Barasch gathered all of these locals, comprised of workers in widely disparate fields, into the Allied Trades Council and thenceforth executed collective bargaining agreements

with almost all of the business firms whose workers had been organized by the unions with Federal charters before those charters were revoked, suspended, or dropped by the American Federation of Labor. These locals which helped form the Allied Trades Council were: Local 22806, Powder Puff & Cosmetics Workers Union (suspended by the AFL); Local 20646, Cosmetics, Soap & Perfumery Workers Union (dropped by the AFL); Local 20734, Vinegar & Mustard Workers Union (dropped by the AFL); Local 18943, Hardware & Grocery Workers Union (suspended by the AFL).

When this "chain unionism" operation had been completed and all of these diversified unions had been consolidated into the Allied Trades Council, Barasch sought alliance with the International Leather Goods, Plastic & Novelty Workers Union. This affiliation, granted by the international union, afforded the Allied Trades Council both recognition and status within the ranks of organized labor and allowed it to designate itself as an AFL union. The only tangible link between the parent organization and Barasch's union, however, was the monthly payment of a nominal per capita tax, which was not realistically based upon the number of members in the local, but rather was arbitrarily fixed upon an annual membership of 1,000. In return for this payment, which in recent years has been approximately \$13,000 annually, the Allied Trades Council in effect purchased the label of the American Federation of Labor. Additionally, a resolution adopted at all successive union conventions of the International Leather Workers provided that the Allied Trades Council was to have complete autonomy and that there were to be no restrictions of any kind imposed upon it by the international union.

This convenient arrangement with the Leather Goods Workers Union was terminated abruptly and the affiliation was summarily severed on May 11, 1965, some months after the subcommittee had started its investigation of the Allied Trades Council. Norman Zukowsky, president of the Leather Goods Workers Union, testified (p. 150)¹ that the affiliation was ended by direction of George Meany, president of the AFL-CIO, who wrote to Mr. Zukowsky on April 29, 1965:

Investigation of the Allied Trades Council has produced further information which is deeply disturbing, and which makes it clear that its operation under an AFL-CIO label is a disgrace to the legitimate labor movement. The evidence strongly indicates that this organization is under corrupt domination and has no place in the family of honest trade unions.

At times during its existence, the Allied Trades Council has had as many as 10,000 members, but much of its membership was transferred to Teamsters Local 815 when that union was formed by George Barasch in 1952. At the time of the hearings, the Allied Trades Council had about 1,500 members.

During 1952, when the Allied Trades Council was organizing workers in certain New York City firms, the union had some difficulties in jurisdictional matters with the International Brotherhood of Teamsters. The reported solution of the problems (p. 129) was the issuance

¹ Page numbers cited in this report refer to pages in the printed transcript of hearings before the Senate Permanent Subcommittee on Investigations entitled "Diversion of Union Welfare-Pension Funds of Allied Trades Council and Teamsters Local 815."

by the Teamsters to Barasch of a charter for local 815, which then received, by arbitrary transfer, a large majority of the members of the Allied Trades Council.

Although the subcommittee attempted to ascertain whether the union members were consulted or were given a voice in their transfer from one union to another, there is no indication that they were consulted or that they were individually notified about the transfer. On the other hand, management officials testified that their firms, which were parties to collective bargaining agreements with the Allied Trades Council, were summarily informed that they were henceforth dealing with a Teamsters local.

THE UNION OFFICIALS AS WITNESSES

Prior to discussing the testimony and documented evidence relating to the welfare funds of both unions, this report must note that the subcommittee received very little cooperation from the union officials and employees. Soon after the nature of the inquiry became clear, these persons refused to be interviewed by the subcommittee's staff. When they were subpoenaed to appear as witnesses during the hearings, all of the union officials without exception invoked the fifth amendment to the Constitution, upon advice of counsel, in refusing to answer the subcommittee's questions about pertinent matters on the grounds that to do so might tend to incriminate them. The officers and executive board members of both unions invoked the fifth amendment, as did the principals in the diversion of the welfare funds: George Barasch; his brother-in-law, Samuel LaMar; union official Frank Lasky; and Barasch's accountant, Morris Shey.

The record of the hearings therefore contains no testimony by any of the union officials or employees in denial or in explanation of the documented evidence which shows that the employee welfare funds were manipulated and diverted from their proper purpose of providing benefits for the rank-and-file members of the unions, in whose names the money had been contributed and to whom it rightfully belonged.

The subcommittee wishes to emphasize that a perusal of the record will show that each of the witnesses who invoked the fifth amendment in refusing to answer pertinent questions was given repeated opportunities to testify concerning the matters under investigation. Each man was questioned repeatedly about his conduct and activities as an officer of the unions or trustee of the funds, and each refused repeatedly to answer. Although it would be fruitless in this report to consider at length the unanimity of their failure to testify, the following exchange between the chairman and George Barasch is presented as an example of many similar queries and identical answers that may be found in the record:

The CHAIRMAN. Do you feel any legal or moral obligation as trustee of these funds? They were paid into your possession or your control as trustee of your union for welfare and pensions, on behalf of the workers who are members of the unions that you have controlled. Do you feel any moral obligation or any legal obligation to disclose what has happened to those funds?

(Witness conferred with his counsel.)

DIVERSION OF UNION WELFARE-PENSION FUNDS

Mr. BARASCH. I respectfully decline to answer the question on the ground it may tend to incriminate me.

Lacking answers from the union officials to the questions asked by the subcommittee, this report discusses the diversion of the welfare funds of the two unions through the testimony that was given and the evidence that was introduced by the subcommittee's staff, by representatives of management, and by Federal officials who appeared as witnesses.

THE WELFARE FUNDS OF THE ALLIED TRADES COUNCIL

THE FIRST WELFARE FUND

The executive board of the Allied Trades Council established on September 27, 1949, by means of a trust indenture (exhibit No. 11, pp. 156-166) a trust fund called the Allied Trades Council Welfare Fund for the purpose of providing health and welfare benefits to the members of the union. The fund was supported by fixed per capita contributions from those firms having collective bargaining agreements with the union.

Although the Labor-Management Relations Act of 1947 was then in effect, requiring joint trustees in such funds to represent both management and labor, no management trustee was provided for the Allied Trades Council Welfare Fund. George Barasch, who was then the president of the union, was appointed by the executive board of the union irrevocably for life as the sole trustee of the fund. In early 1954, about 4½ years after its establishment, the Allied Trades Council Welfare Fund had undisbursed reserves totaling approximately \$1,950,000.

THE SECOND WELFARE FUND

On January 26, 1954, the executive board of the union established another welfare fund by means of a trust indenture (exhibit No. 13, pp. 169-197) for the purpose of providing health and welfare benefits to the members of the Allied Trades Council. This fund was called the Allied Welfare Fund, and it also was supported by contributions from employers having collective bargaining agreements with the union.

Contributing firms were not consulted about the fact that they were expected in the future to contribute to an entirely different fund, nor were they notified that the two funds were separate entities. Instead, the contributors were presented, without explanation, with renewed bargaining agreements stating that welfare payments henceforth would be made to "the Allied Welfare Fund." Investigation disclosed that no comments or explanations were offered to management, nor was the subcommittee's staff able to discover any evidence that the substitution of one welfare fund for another was the subject of comment or correspondence by Barasch and his associates with either the membership of the union or any representatives of management. Testimony in the hearings showed that the change was regarded by management simply as a change in the name of the fund.

There was, however, no transfer of assets to accompany the transfer of participants from the Allied Trades Council Welfare Fund to the newly established Allied Welfare Fund. The money held by the original fund remained, at least temporarily, in its accounts.

The executive board of the Allied Trades Council named George Barasch to be irrevocable lifetime trustee of the second welfare fund on January 26, 1954. Allied Welfare Fund, unlike its predecessor,

had a management trustee, the late Max Rosenberg, a New York pharmacist, who was appointed to serve for a 5-year term. He was succeeded as management trustee by Lewis Bernstein, a former special agent of the Federal Bureau of Investigation who was then a New York attorney associated with Coty & Co., Inc.

As a direct result of the gradual absorption of the original fund's contributors and participants by the second welfare fund, the Allied Trades Council Welfare Fund became inactive. It had neither contributors nor participants, but it did have about \$1,950,000 in moneys which had been paid into the welfare fund to provide for the payment of welfare benefits to the rank-and-file union members. These funds were under the absolute control of the sole trustee, George Barasch.

In January of 1955, Barasch, with apparently perfunctory approval of the executive board of the Allied Trades Council, transferred the money from the dormant welfare fund into a special bank account of the union.

THE ALLIED SECURITY FUND

In October of 1956, Barasch and the executive board of Allied Trades Council made the first of several transactions involving the transferred funds of the dormant Allied Trades Council Welfare Fund. The executive board established a new benefit fund called the Allied Security Fund, which was capitalized by \$150,000 in U.S. Government bonds held by the dormant fund. George Barasch was named sole and irrevocable lifetime trustee of the new fund. The purpose of this fund was to establish a pension plan for Barasch and the officers of the union. More than \$200,000 additional in funds of the treasury of the Allied Trades Council have been funneled into this special retirement fund during the ensuing years since its foundation in 1956, with the result that the fund had amassed \$363,076 on December 31, 1964. The participants in and beneficiaries of this pension fund were the same officers of the union who authorized and approved its establishment. This retirement fund, like most others, bases its pensions upon service and salary, and at the time of the hearings there were only three persons whose salaries were sufficient to insure them substantial benefits from the Allied Security Fund. They were George Barasch, sole trustee of the fund; Samuel LaMar, who is George Barasch's brother-in-law and is the president of Allied Trades Council; and Frank Lasky, who is an executive board member and first vice president of Allied Trades Council.

THE FORMATION OF MOLLET & CO., INC.

The next step in the distribution of the assets of the Allied Trades Council Welfare Fund was taken by George Barasch, who, again with apparently perfunctory approval of the executive board of the union, transferred on November 8, 1956, approximately \$500,000 from the assets of the welfare fund to Mollet & Co., a holding corporation which had been incorporated by Barasch in the State of Delaware in August of 1956. This was a general business corporation, and its charter did not indicate that it had any connection whatever with Allied Trades Council. Mollet & Co. had two officers, according to official records of the State of Delaware. George Barasch was the president and Samuel LaMar, his brother-in-law, was the secretary. The

Delaware corporation held its assets until its dissolution in February of 1959, when those assets were transferred to the Chemical Research Foundation, Inc., which will be discussed in a following section of this report.

THE CHEMICAL RESEARCH FUND

On December 26, 1956, the executive board of the Allied Trades Council approved a trust indenture which established the Chemical Research Fund as an irrevocable trust "for the purpose of undertaking such health, welfare, moral, social, economic, cultural, and educational research projects as it deems appropriate * * *." By resolution, the executive board designated George Barasch as the senior trustee of the new fund, irrevocably and for life. The board at the same time designated Samuel LaMar as the junior trustee, to serve for a 5-year term, at which time his successor could be chosen only by the senior trustee, George Barasch.

The executive board of the union, on the same date, unanimously agreed to and signed a resolution to transfer funds from the Allied Trades Council to the new fund. The sum of money transferred by this resolution (exhibit No. 16, pp. 207-229) was left blank in the document, which was never amended to show how much money was transferred to the Chemical Research Fund. Several months after the establishment of the fund, however, during March and April of 1957, Barasch transferred \$1,329,000 of the former assets of the Allied Trades Council Welfare Fund from the special bank account of the Allied Trades Council to the Chemical Research Fund. This was the remainder of the total amount of money that had originally formed the assets of the welfare fund.

One year later, on March 14, 1958, the same executive board agreed to and signed a resolution amending the trust indenture to authorize the trustees—

* * * to grant or contribute all or any part of the assets of this fund to any domestic or foreign corporation organized for similar or substantially similar purposes.

THE CHEMICAL RESEARCH FOUNDATION, INC.

On March 3, 1958, just 11 days before the union's executive board adopted a resolution that would allow Barasch and LaMar to grant or contribute the assets of the Chemical Research Fund to a foreign corporation, such a corporation was formed under the laws of the Republic of Liberia in Africa. This firm was called Chemical Research Foundation, Inc., and it was organized by three Liberian citizens, who appointed George Barasch, Samuel LaMar, and Frank Lasky as directors at the corporation's first meeting, and who then immediately resigned. Barasch, LaMar, and Lasky elected themselves officers to replace the Liberians.

The certificate of incorporation of the Chemical Research Foundation (exhibit No. 4, pp. 30-38) contained 22 clauses relating to the general and all-encompassing purposes for which the corporation was founded. The laws of the Republic of Liberia provided that the certificate might have been amended by the members at any time,

although the foundation was a not-for-profit corporation. The certificate expressly provided that, upon the dissolution of the corporation, the assets could be distributed by unanimous consent of the members. Assistant Counsel Robert E. Dunne was questioned by the chairman about the possible distribution of the funds:

The CHAIRMAN. It would not be very difficult for them to agree to split it three ways, would it?

Mr. DUNNE. Not at all.

The CHAIRMAN. So they can do that any time, legally, under this document.

Mr. DUNNE. Yes, sir.

The CHAIRMAN. Thus, the union members, the workers for whom the money was paid by their employers in lieu of wages to begin with, have already lost all rights and benefits to it.

Mr. DUNNE. That is right, sir.

The capitalization of the Chemical Research Foundation, Inc., was accomplished by the transfer of the former corpus of the Allied Trades Council Welfare Fund from its temporary repositories, the Chemical Research Fund and the Delaware corporation, Mollet & Co., Inc. The total amount of cash, securities, and other assets of the welfare fund that eventually came to rest in the Liberian corporation was \$1,836,414.35, principally held in banks in the United States.

During the years since its incorporation until December 31, 1964, the foundation, ostensibly formed for educational and research purposes, made contributions and grants totaling \$54,100, of which \$53,600 was contributed to the New York Cardiac Center of Yonkers, New York, the city in which Barasch lived. Mr. Dunne testified (p. 240) that the grant to the cardiac center had been authorized on August 1, 1963, only a few days after Barasch had been served with a subpoena by the U.S. attorney for the southern district of New York, ordering him to produce the books and records of the Chemical Research Foundation, Inc.

On December 31, 1964, the total assets of the Chemical Research Foundation which were in the absolute control of Barasch, LaMar, and Lasky, amounted to \$2,012,445 (p. 304), which included on that date \$136,076.30 in a Swiss bank account, which subsequently was returned to the United States (p. 304).

THE WELFARE FUNDS OF TEAMSTERS' LOCAL NO. 815

THE AFFILIATED FUND

In October of 1952, shortly after the International Brotherhood of Teamsters issued a charter for local 815 to George Barasch, the local formed a welfare fund known as the Affiliated Fund, for the purpose of providing welfare and health benefits to its rank-and-file members through contributions made by employers under the terms of collective bargaining agreements.

George Barasch, then the secretary-treasurer of the local, was designated irrevocably by the executive board as lifetime trustee of the welfare fund. The Affiliated Fund, established pursuant to the provisions of the Taft-Hartley Act, had a management trustee, Jacob Shufro, a labor relations consultant with Ketchum & Co., New York City, one of the major contributors to the fund. Mr. Shufro was elected by contributing firms to a 5-year term as trustee.

THE AFFILIATED FUND—COSMETICS DIVISION

Two years later, in November of 1954, the executive board of Teamsters Local 815 formed a second welfare fund which was called Affiliated Fund—Cosmetics Division. This was an entirely different fund from the original Affiliated Fund, and it had a trust indenture of its own (exhibit No. 24, pp. 361-394), which named George Barasch as the irrevocable lifetime trustee. Lewis Bernstein, an attorney for Coty & Co., Inc., was named management trustee of this second fund of local 815, for a 5-year term.

In the meantime, contributing employers of the Affiliated Fund were being directed by local 815 to make welfare contributions thenceforth to the Affiliated Fund—Cosmetics Division. The same pattern developed for these two welfare funds as had already been used for the welfare funds of the Allied Trades Council. Gradually, during the period 1955 through early 1957, the original fund lost all of its contributors and participants, whereupon it became dormant. A further change occurred on June 20, 1956, when the executive board of local 815 approved the recommendation of the trustees, Barasch and Bernstein, to change the name of Affiliated Fund—Cosmetics Division to New York Affiliated Fund.

Witnesses representing various firms that had collective bargaining contracts with local 815 testified during the hearings that they were unaware that the welfare funds themselves had been changed, that they did not know that there was more than one welfare fund, and that they considered the changes were in nomenclature only. There is no evidence that the union members were informed that the welfare fund into which payments had been made on their behalf had been succeeded by another, and entirely different, welfare fund.

Early in 1957, the transfer operation had been entirely completed, and the Affiliated Fund no longer had any contributors or any par-

ticipants. The trust indenture for Affiliated Fund, however, differed from that of the Allied Trades Council Welfare Fund, because it contained a clause providing that if the time ever came when there were no contributors and no participants, the fund should be continued, nonetheless, for the general benefit of all workers generally. Barasch would continue as an irrevocably appointed trustee, with the power to amend the trust indenture, with the power to name his successor, and with the power to appoint the second trustee when that office might be vacant.

The next step in the manipulation of the Teamsters' Affiliated Fund occurred in October of 1957, when trustees Barasch and Shufro declared that the fund was no longer operative as a Taft-Hartley trust fund and that the alternative provision of continuing the fund for the benefit of employees and workers generally would be put into effect. Although they were not required to do so, they informed the executive board of local 815 of their action. At this time, the dormant trust fund held assets of \$1,882,005.

On August 22, 1958, Trustees Barasch and Shufro granted themselves the power to contribute all or any part of the assets of the Affiliated Fund to a domestic or foreign corporation. They informed the executive board of the union of their action, although they did not have to do so. Shortly thereafter, his usefulness ended, Jacob Shufro resigned as a trustee of the fund.

Acting within his authority to appoint the second trustee, Barasch named the fund's accountant, Morris Shey, to the position in January of 1959. Shey, who is a certified public accountant licensed by the State of New York, invoked the fifth amendment in refusing to answer the subcommittee's questions concerning the assets of the Affiliated Fund. On July 3, 1959, Barasch and Shey, acting as trustees of the Affiliated Fund, transferred \$1,882,005 from the Affiliated Fund to the Cromwell Research Foundation, Inc.

THE CROMWELL RESEARCH FOUNDATION

On the 16th of March 1959, three female employees of Allied Trades Council and Teamsters Local 815, signed the incorporation papers of the Cromwell Research Foundation, Inc., a corporation formed in the Commonwealth of Puerto Rico, under the laws of that territory. The foundation was tax free in Puerto Rico, was not required to file annual reports of any kind with any Government agency in the United States or in the territory, was ostensibly organized as a not-for-profit corporation, and contained within its charter the right of the members, upon dissolution of the corporation, to distribute its assets by unanimous consent. The three office workers resigned as members at the first meeting of the corporation and were succeeded by George Barasch and his brother-in-law, Samuel LaMar, who had absolute control of the assets of the corporation.

The Cromwell Research Foundation was purportedly organized for the same broad general purposes of educational research for which the Liberian corporation was formed. During the years since its incorporation until December 31, 1964, the foundation made only one grant of any considerable size. In July of 1963, the Cromwell Research Foundation gave \$100,000 to the Brooklyn Preparatory School. This grant was made within a few days of the grant of approximately

\$50,000 from Chemical Research Foundation to the New York Cardiac Center, and shortly after the service of a subpoena by the U.S. attorney for the southern district of New York, ordering Barasch to produce the books and records of the Chemical Research Foundation, Inc., and those of the Cromwell Research Foundation, Inc.

There were several very small grants made by Cromwell in the period 1959 through 1964, totaling \$14,600. Additionally, \$26,979 was expended by Cromwell on a 1964 summer seminar during which members of Teamsters Local 815 or children of that local's officers visited the United Kingdom to study wage rates in the British chemical industry.

On December 31, 1964, the total assets of the Cromwell Research Foundation which were in the absolute control of the foundation's directors, Barasch and his brother-in-law, LaMar, amounted to \$2,203,607.

THE CARIBBEAN EDUCATIONAL ASSOCIATION

In addition to the two large overseas foundations, Barasch formed another smaller corporation, capitalizing it with part of the assets of the Chemical Research Fund. This third foundation, the Caribbean Educational Association, was organized on October 28, 1957, for broad general purposes of research and education in the labor and industrial fields in Puerto Rico and elsewhere. It was a tax-exempt foundation under the laws of Puerto Rico, and at the end of 1964, it had \$91,000 in cash assets in Puerto Rico. There is no record of any sizable disbursements of its funds. At the time of the hearings, George Barasch was the senior trustee and his brother-in-law, Samuel LaMar, was the secretary.

The Caribbean Educational Association was a membership corporation like the other foundations, and Barasch and LaMar, as the only members, had the power to dissolve it and distribute its assets in any fashion they determined.

OTHER EMPLOYEE BENEFIT PLANS OF THE BARASCH UNIONS

In addition to the welfare funds (Allied Trades Council Welfare Fund and Affiliated Fund), which were manipulated into inactive status and depleted of their assets to form the overseas foundations, there are several other employee welfare and pension benefit plans now operating in the Allied Trades Council and local 815, supposedly for the benefit of union members, officials, and union employees.

The Allied Welfare Fund, with assets of \$3,281,000 at the end of 1964, now serves both unions in the field of welfare benefits. During our hearings, Barasch was the union trustee of this fund, appointed irrevocably for his lifetime. The management trustee was Lewis G. Bernstein, an attorney in New York City, who represented several of the business firms having bargaining contracts with the unions, and who was elected to his office as trustee for a period of 5 years. The Allied Welfare Fund is actually the second welfare fund of the Allied Trades Council into which the New York Affiliated Fund of local 815 was absorbed.

The Allied Trust Fund is a relatively small welfare fund which provides medical and hospitalization benefits to the employees of both unions. Although less than 20 persons were carried on the rolls of this fund, which was established in 1962, it had reserves of \$155,530 on December 31, 1964. George Barasch was the sole trustee, appointed irrevocably for his lifetime.

The Union Mutual Fund is the largest of all the employee benefit plans maintained by the two unions, holding reserves of \$6,487,404 on December 31, 1964. It is the rank-and-file pension plan for both unions, and, in the summer of 1965, it paid pension benefits to approximately 100 retired members. In the 5-year period 1960 through 1964, this fund paid in pension benefits a total of \$120,030. Its administrative expenses during the same period, however, were \$338,427. At the time of the subcommittee's hearings, the union trustee, appointed irrevocably for life, was George Barasch. The management trustee was Boris Liebmann, a New York City pharmacist.

The Allied Security Fund has been discussed previously in this report on page 8. The funds used to establish it came from the Allied Trades Council Welfare Fund before the corpus of that fund was diverted. It is the pension fund designed for the officers of the union, and it had amassed reserves of \$363,076 on December 31, 1964. George Barasch was the sole trustee, appointed irrevocably for life.

The Affiliated Security Fund, like the Allied Security Fund, is a pension fund designed to provide retirement benefits for the officers and clerical employees of Teamsters Local 815. On December 31, 1964, this fund had assets of \$861,658. George Barasch was the sole trustee, appointed for his lifetime.

It should be noted that all of the trust indentures that established these various funds stated specifically that Barasch, in addition to holding his trusteeship for his lifetime, was given the power to appoint his successor.

As of December 31, 1964, the total accumulated reserves of all welfare and pension benefit plans for which George Barasch was lifetime irrevocable trustee and of the corporations connected with the unions amounted to approximately \$15,500,000, a sum which included the funds in excess of \$4 million held by the Cromwell Research Foundation and the Chemical Research Foundation, and about \$91,000 in the bank accounts of the Caribbean Educational Association.

CHURCHILL ASSOCIATES, INC.

George Barasch spent most of his mature life as an officer of various unions, from the mid-1930's until his resignation at the end of 1963 from his posts as president of the Allied Trades Council and secretary-treasurer of Teamsters' Local 815. He did not at that time, however, relinquish his position as the dominant figure in the affairs of the two unions. Instead, he placed himself in 1964 on the payroll of Churchill Associates, Inc., at a salary which at the time of the hearings totaled about \$35,000 per year, plus an expense account of \$100 per week.

On September 12, 1958, three of the female office employees of the two unions executed and filed a certificate of incorporation for Churchill Associates, Inc., a not-for-profit corporation organized under the laws of the State of New Jersey. Following the pattern already established for the two overseas foundations, these three women immediately resigned from their positions as members of the corporation, and their places were taken by George Barasch and his brother-in-law, Samuel LaMar, who were the only members of the corporation.

Prior to the formation of Churchill Associates, the clerical work relating to the administration of the welfare plans of the Barasch unions was carried out by the business agents and by the clerical staff employed in the headquarters at Fair Lawn, N.J. Once the Churchill firm was established, however, the work connected with the welfare benefits was transferred to Churchill, also located in the same New Jersey union offices. The same employees performed the same duties, the same facilities were used, and the same results ensued. There was a remarkable difference in the cost of these administrative functions, however, once they were assumed by Churchill Associates.

This corporation, acting as a management firm for the two large employee benefit plans, drew as fees 10 percent of the annual income of the Allied Welfare Fund and 9 percent of the income of the Union Mutual Fund. During the period 1960 through 1964, Churchill received a total of \$338,427 from the Union Mutual Fund alone, which paid out in pensions only \$120,030 in the same period of time. These figures show that the participants and beneficiaries of the Union Mutual Fund, in whose names and for whose interests the funds are contributed by employers, were charged \$2.82 in administrative expenses for every \$1 of pension payments made by the fund. It should be noted that the payment of pensions, which cost Union Mutual Fund \$338,000 in administrative expenses in 4 years, was a simple monthly bookkeeping and checkwriting operation, and that the complete records of the fund, subpoenaed by the subcommittee, were contained in two paper cartons, each about the size of a small filing cabinet drawer.

From its inception in 1958 through 1964, Churchill Associates had a phenomenal rate of growth. It had no assets at the time it was organized. During its first year of operations, 1959, it made net profits after taxes of \$24,209 derived entirely from fees paid by Allied Welfare Fund and Union Mutual Fund. In 1960, it made \$24,554 from the same sources. The figure for 1961 was \$29,518; for 1962, \$33,301; for 1963, \$60,617; and for 1964, \$36,172. The total profits, after taxes, from management fees paid by the two employee benefit plans was \$208,371. This net profit from management fees, remarkable as it was, represented less than half of the net profit of Churchill Associates, Inc., since its organization. Investment income added \$286,144 to that figure, giving Churchill a net worth on September 30, 1964, of \$494,515. The firm's present net worth is estimated at over \$600,000.

The investment income developed in 1963 and 1964 when Churchill Associates borrowed \$1,500,000 for use in stock market speculation, which turned out to be very successful. Churchill, which was entirely controlled by Barasch and LaMar, borrowed \$350,000 from Affiliated Security Fund, which Barasch controlled as sole trustee; it borrowed \$650,000 from the Chemical Research Foundation, Inc., controlled by Barasch, LaMar, and Lasky; it borrowed \$500,000 from the Cromwell Research Foundation, Inc., controlled by Barasch and LaMar.

The loans were secured by long-term debentures issued by Churchill Associates to the three funds from which the money was borrowed. There was no security for these debentures excepting the good will of Churchill Associates. Barasch, and LaMar, who issued the debentures, had no personal obligation or liability in connection with the loans. The \$350,000 borrowed from the Affiliated Security Fund was paid back, with 5 percent interest, on August 31, 1963. The \$650,000 loan from Chemical Research Foundation was paid back on May 1, 1964. Information furnished to the subcommittee during the hearings indicated that the loan from Cromwell had also been repaid (p. 461).

As Assistant Counsel Robert E. Dunne testified, the loans were repaid during a significant period of time:

Mr. DUNNE. I might add that at that time, Senator, the affairs of Mr. Barasch were under very extensive investigation by the Federal Bureau of Investigation, and the U.S. attorney for the southern district of New York. That was from early 1963 on (p. 461).

Since Churchill Associates, Inc., was a management firm that had been capitalized by funds contributed by employers under collective bargaining agreements providing welfare and pension benefits for rank-and-file members of the unions, it would be reasonable to assume that the profits and the total assets of such a corporation were scrupulously preserved and utilized by the fiduciaries only for purposes exclusively related to the rights and interests of the workers in whose names and for whose interests the money was originally paid. Testimony in our hearings clearly established, however, that such an assumption in the matter of Churchill Associates would have been completely unwarranted.

Churchill Associates, Inc., under the laws of the State of New Jersey, was a membership corporation which could, like the Chemical Research Foundation and the Cromwell Research Foundation, perform almost any function in the commercial field. Like the Chemical and Cromwell charters, the Churchill charter had a provision that the corporation might be dissolved and that its assets might be distributed by the unanimous consent of its members. The only members were George Barasch and his brother-in-law, Samuel LaMar.

The chairman discussed the profits of Churchill Associates (p. 462):

The CHAIRMAN. * * * I think as a matter of law that profit belonged to the union members and it belongs to the funds from which they borrowed it and those funds belong to the union members. I think someone representing the union members might perform a service to them by pursuing their legal responsibilities here and recovering those funds.

As had been repeatedly done throughout the hearings, Barasch was given an opportunity to explain and to defend his activities (pp. 462-463):

The CHAIRMAN. I would just ask these officers here, Barasch and LaMar, is there anything that has been presented here that is inaccurate, Mr. Barasch, and anything that you want to comment on that you want to correct?

Mr. BARASCH. I respectfully decline to answer the question on the ground it may tend to incriminate me.

The CHAIRMAN. The same thing to you, brother-in-law?

Mr. LAMAR. I respectfully decline to answer on the ground it may tend to incriminate me.

THE FACTORS THAT FACILITATED DIVERSION OF THE FUNDS

The manipulation and diversion of the welfare funds of the unions was an extremely complex procedure that covered more than a decade of planning and operations. In summary, the testimony in the hearings and the documented evidence presented by the subcommittee's staff and other witnesses show that of the \$15,500,000 for which George Barasch and his immediate subordinates were fiduciaries, approximately \$4,700,000 was diverted into the accounts of Chemical, Cromwell, Churchill, and the Caribbean Educational Association, all of which could have been disposed of or distributed at the whim of the principals of these corporations. Had they decided to divide it among themselves, they could have done so freely and with apparent legal impunity.

Testimony clearly demonstrated that the diversion of the welfare funds was accomplished successfully within the unions by reliance upon several important contributing factors, each of them integral to the scheme.

Inherent in the success of Barasch's operations was his domination of the Allied Trades Council and Teamsters Local 815. These were his unions; he organized them, built them, and personally operated both of them. He engaged in nepotism—at one time, he had his sister and two brothers-in-law on the union payrolls. The business agents and officers were principally men who had been associated with him for many years; some of them were his associates in his earliest days of "chain unionism" in the pharmaceutical and cosmetic fields. Without exception, they invoked the fifth amendment to avoid answering the subcommittee's questions about their participation in or knowledge of Barasch's operation of the unions, claiming that their testimony might tend to incriminate them. Barasch managed also to keep his unions independent of the national labor organizations with which they were affiliated. In point of fact, autonomy for the Allied Trades Council was a condition of its affiliation with the Leather Goods Workers International.

LACK OF DEMOCRATIC PROCEDURES

Another factor in Barasch's success in dominating his unions was the notable absence of participation by the overwhelming majority of the membership in the affairs of the unions. General membership meetings have been attended over the years by a minute percentage of the members, who evidently have had a general lack of interest in union matters and therefore probably were largely ignorant of their rights and interests in the union itself and in its employee benefit plans.

This lack of rank and file participation was accompanied by calculated efforts upon the part of the unions' leadership to contain and

restrict all power at the top level of administration. For example, there were about 165 shop stewards in local 815, each representing the workers of a firm with which the local had a bargaining agreement. The records of general membership meetings of the union over a period of years show annual attendances in the neighborhood of that figure—at three meetings in 1960 and 1961, there were 176 persons, 153 persons, and 95 persons in attendance. Attendance at general membership meetings rarely exceeded 2 percent of the total membership. It is significant that a shop steward in local 815 during this period was fined if he did not attend a general membership meeting, and, on the other hand, he was rewarded for faithful attendance by an invitation to an annual dinner dance paid for by the union, at which he received a cash presentation varying from \$20 to \$50.

The combination of punishment and reward for shop stewards was accompanied by strict control of the elective procedure for this office, and all other offices in the union. While George Barasch headed the union, no shop steward could have been elected to his office without the prior approval of his candidacy by Barasch and the executive board of the union. As an effective barrier to rank and file rebellion against the approval requirement, no person in local 815 could have been a candidate for union office without presenting a nominating petition containing the signatures of 200 members of the union. Further, candidates were forbidden to use campaign material without prior approval, and since there were only 7 shops in the union with 200 or more employees, no independent candidate for office could effectively circularize his fellow union members or advertise his candidacy without getting permission from the executive board.

The ballots that were used in elections for local 815 are also worthy of comment. The democratic concept of an election implies the right of choice for the voter. In the January 1961 election of officers for local 815, however, George Barasch was returned to the office of secretary-treasurer on a ballot described as a "Russian ballot." A member could vote "yes" for Barasch, or he could vote "no" against Barasch. There was no other candidate, and no other choice. At this election, largely attended by the disciplined shop stewards, Barasch received 137 "yes" votes, and 1 "no" vote.

Study of the election records shows that in the period 1957 through 1964 there never was an opposition slate of candidates presented in elections of local 815, nor was there ever an opponent listed against any individual on the ballot. All officers were reelected without opposition.

In addition to uninterested and uninformed membership and weak-willed executive boards in both unions, Barasch was also able to rely upon his exercise of power over indifferent and subservient representatives of management, who showed in their testimony before the subcommittee that they carried out their functions of safeguarding the interests of their employees only at the behest of Barasch and that they did not know or were not concerned about the diversion of the welfare funds.

As an example of management's abrogation of its duties and responsibilities in connection with the employee benefit plans of Barasch's unions, the testimony of Jacob Shufro, formerly the management trustee for the Affiliated Fund of Teamsters' Local 815, is noteworthy.

When he was trustee of the fund, Mr. Shufro was labor relations consultant for Ketchum & Co., a New York City pharmaceutical company.

Mr. Shufro told the subcommittee that he had been selected as management trustee by George Barasch, rather than by the contributors to the fund. He stated that he had never consulted with Barasch about documents he was asked to execute prior to signing them, and that he relied upon Barasch and Barasch's attorneys.

The CHAIRMAN. You relied, then, upon what was presented. You just went along with what Barasch told you to do.

Mr. SHUFRO. Correct.

The witness testified that he had signed the amendment to the trust agreement that gave the trustees the power to dispose of the assets of the fund by transferring them to any domestic or foreign corporation. Mr. Shufro stated that he did not realize the implications of the document he had signed, which ultimately resulted in the transfer of the assets of the Affiliated Fund to the Cromwell Research Foundation in Puerto Rico. Mr. Shufro said that, upon reflection, he would not consider that he had carried out his responsibilities by signing whatever Barasch asked him to sign.

The CHAIRMAN. Is the truth about it, Mr. Shufro, that this man Barasch simply dominated the whole thing from one end to the other? Isn't that the truth about it?

Mr. SHUFRO. Well, he called the shots (p. 405).

The testimony of other management representatives similarly shows that one of the prime concerns of management in dealing with the Barasch unions was to allow Barasch to dictate policy and thus avoid labor difficulties of any kind. These business firms and their negotiators, according to testimony, knew little about the unions and cared less, so long as labor affairs were kept on an even keel.

The management trustee of the Allied Welfare Fund, Lewis Bernstein, testified that he asked Barasch why the union trustee was appointed for life and the management trustee was elected for 5 years. He said he was satisfied with Barasch's answer which indicated that Barasch had organized the union, had built it, and was in firm control of it. Although the Congress clearly intended in the Taft-Hartley Act to provide management trustees for employee benefit plans as guardians of the funds entrusted to them, Mr. Bernstein admitted (p. 431) that he never would have undertaken his job as trustee if he had not had "implicit faith in George Barasch," the man who was supposed to be his adversary in fact, according to the law.

Another representative of management in dealing with the Barasch unions was Matthew Salonger, general counsel for the New York Pharmaceutical Association. Mr. Salonger testified that he reviewed bargaining agreements with the union from a legal standpoint, that he was active in arbitration or mediation between management and union, but that he did not engage in collective bargaining. On the other hand, Morris Aarons, an attorney who shared Mr. Salonger's office, stationery, bank account, and telephone service—who was, in effect, Mr. Salonger's partner in a law firm—had close associations with

George Barasch. Mr. Aarons received more than \$8,800 in life insurance commissions over a period of years for services on behalf of Allied Trades Council, and he accompanied George Barasch on a trip to Europe in 1958 that was related to the establishment of the Chemical Research Foundation, Inc. For his services and expenses on that trip, Aarons received \$6,648 from the foundation. When Mr. Aarons was seeking political appointment to a post in the Insurance Department of the New York State government, George Barasch, at Aarons' request, wrote a letter of recommendation for him.

FINANCIAL SECURITY FOR GEORGE BARASCH

The record of the hearings shows that George Barasch, during almost two decades of operating the Allied Trades Council and, for a shorter period of time, Teamsters Local 815, managed to provide for himself and his heirs prospects of financial security that were indeed remarkable in view of the relatively small size of his unions and their comparative lack of opulence in the union field.

In summary, at the time of the hearings, Barasch, as the principal figure of all the corporations, had control of more than \$4 million in the assets of Chemical Research Foundation and Cromwell Research Foundation, plus \$91,000 held by the Caribbean Educational Association. He had an undivided interest in all of these funds, which could have been distributed as Barasch, with the approval of his brother-in-law, might have determined.

Barasch also controlled the \$600,000 in assets of Churchill Associates, Inc., a membership corporation which could have been dissolved at any time by its members, Barasch and LaMar, who could have distributed its assets as they wished.

The chairman indicated by interrogation (p. 237) a procedure which legally could have ultimately disposed of all of these assets which formerly belonged to the rank-and-file participants of the welfare plans. He was speaking of the Chemical Research Foundation specifically, but the possibility applied to all of these corporations:

The CHAIRMAN. * * * these members can dissolve this company at any time they want to by unanimous consent under the terms of their charter?

Mr. DUNNE. Yes, sir.

The CHAIRMAN. And they can make such disposition of the funds as they want to by unanimous consent?

Mr. DUNNE. Yes, sir.

The CHAIRMAN. It would not be very difficult for them to agree to split it three ways, would it?

Mr. DUNNE. Not at all.

In addition to the sizable fortune in employee welfare funds which Barasch managed to divert to his control, he benefited handsomely in other returns from his domination of the two unions.

As head of Churchill Associates, Barasch paid himself a generous salary, augmented by a liberal expense account. During 1964, his annual salary was about \$35,000, a figure which ranked favorably with the salaries of presidents of international labor organizations, and was far in excess of salaries generally paid to the leaders of local unions.

During 1965, Barasch reached the age of 55 years. He had accumulated from his years with the two unions the following retirement benefits applicable at age 55:

1. From the Allied Security Fund, the pension fund for officers and clerical employees of the Allied Trades Council, a pension of \$12,675 per year for life.

2. From the Affiliated Security Fund, the pension fund for officers of local 815 and Churchill Associates, a pension of \$35,828 per year for life.

3. From Teamsters' Joint Council 16, a pension of \$1,140 per year for life.

4. From the International Brotherhood of Teamsters, a pension of \$4,455 per year for life.

Barasch's total annual retirement benefits resulting from his years in the union movement amounted to \$54,098 per year for life.

Actuarial computations show (p. 468) that the value of Barasch's annual total pension, \$54,098, in a lump sum equivalent, was \$796,925 on the current insurance market.

Additionally, until his retirement, Barasch was covered by \$407,000 in life insurance policies paid for by the unions' employee benefit funds.

THE INADEQUACIES OF EXISTING LAWS

The testimony of witnesses throughout the hearings demonstrated that existing laws enacted by the Congress to prevent abuses and improprieties in labor-management relations were not adequate or sufficiently effective to prevent the manipulation and diversion of the funds of the employee benefit plans of the Allied Trades Council and Teamsters Local 815. Members of the subcommittee repeatedly expressed concern during the hearings that there apparently were no provisions of law to prohibit the activities of Barasch and his henchmen and to protect the rights of union members to the funds contributed for their interests.

In order to carry out the primary purpose of the hearings in determining whether new legislation is needed to regulate more strictly the administration and disbursement of the trust funds which exist only to benefit American workers, the subcommittee requested testimony from Federal officials having jurisdiction in the welfare and pension field.

Assistant Attorney General Fred M. Vinson, in charge of the Criminal Division of the Department of Justice, told the subcommittee that he believes that the Barasch inquiry was an excellent springboard for such a study of legislative requirements because it illustrated many of the gaps that now are found in existing laws.

Using as an example the welfare fund of Teamsters Local 815, Mr. Vinson told the subcommittee that section 302 of the Labor-Management Relations Act of 1947 (the Taft-Hartley Act), which prescribes the procedures for operations of trust funds under the act, does not advert to the matters in question in the hearings. Mr. Vinson explained that the main purpose of section 302 was to prevent conflicts of interest by prohibiting payments by employers to representatives of employees. The law, Mr. Vinson pointed out, does not cover the eventual disposition of the money paid into the fund.

Mr. Vinson also noted that the intent of the law in providing management representation on the boards of trust funds was not carried out in the Barasch case because the management trustee himself admitted that he was "just a rubber stamp." Mr. Vinson agreed with the testimony that showed Barasch as the dominant figure in the unions and in the trust funds.

The Assistant Attorney General testified that the Barasch situation indicates a weakness in the Taft-Hartley safeguards for trust funds:

Mr. VINSON. That section actually provides no substantive checks on the investment or disposition of the assets of such trust funds, and there is really only one procedural check, and that is the joint administration by employers and representatives of employees. But in practice, this joint administration is not a safeguard, per se, for apparently once some employers have made their payments to

trust funds, they don't have any strong motivation to scrutinize the administration of the fund.

Since section 302 of the Taft-Hartley Act regulates contributions to union trust funds only at the time of the contribution, Mr. Vinson suggested that the subcommittee might seek to determine whether existing law should be broadened to include the disposition of the funds when and if the trust fund is dissolved. Mr. Vinson also pointed out that there are no Federal regulations on the investments which may be made from such funds.

Mr. Vinson discussed the Department of Justice's continuing interest in the Barasch case, and pointed out that investigation of the manipulation of the welfare funds by the Department of Justice failed to disclose any violations of the Federal criminal law or any appropriate civil remedies that the Government was empowered to take. The chairman asked Mr. Vinson (p. 474), in the event that Barasch and his subordinates dissolved the foundations and distributed the proceeds among themselves, whether there was a criminal statute that would apply and which would allow successful prosecution for that offense. Mr. Vinson replied that he was not aware of any such statute. He added that there was a possibility of prosecution under the Federal embezzlement statute of 1962.

Mr. Vinson also said that study should be made of the feasibility of legislation that would require more comprehensive expression of the sentiment of union members in the disposition of the assets of trust funds. The participation of approximately 2 percent of the membership in the manipulation of the assets of the Affiliated Fund indicated to him the need to consider legislation that would prohibit such perfunctory and meaningless approval. He further pointed out that the beneficiaries of union trust funds "are generally unsophisticated in matters of finance and investment, and don't keep up what investments are made from this fund, in which they have only a very indirect and contingent interest." Therefore, the Assistant Attorney General said, Congress may wish to give consideration to legislation that would require pension and welfare funds to meet certain investment standards similar to those which, in the several States, bind experienced bankers and professional fiduciaries to high standards in the making of investments.

At the conclusion of Mr. Vinson's testimony, the chairman advised him that the subcommittee was sending to the Department of Justice a copy of the record of the hearings for the Department's review and consideration of the evidence of the improper manipulation of welfare funds and the other matters disclosed by the investigation.

The chairman also stated that the subcommittee would appreciate Mr. Vinson's suggestions about legislation that, in his judgment, is needed to close up the loopholes in the law and to protect the rights and interests of the working people who are imposed upon by manipulations and improper activities of the kind disclosed in the hearings. The subcommittee has enjoyed and profited from the cooperation of the Department of Justice in these matters during the months since the close of the hearings.

Senator Harris also discussed corrective legislation with Mr. Vinson. He asked that the Department of Justice exhaust every means to see

that justice is done in this case, and Mr. Vinson stated in reply that the Department would do so. Senator Harris also asked that efforts be made through civil actions to see that the beneficiaries of the benefit plans have their rights fully protected. Mr. Vinson agreed that the Justice Department would take steps in this field. Finally, Senator Harris asked that the Department of Justice extend its study of legislative possibilities by considering and reporting upon more stringent requirements for reporting of details of employee benefit plans to the Federal Government, by reporting upon the feasibility of stricter requirements to prevent the divesting of control of trust funds from union members, and by considering the possibility of giving the Federal Government the power to represent union members in civil actions concerning diversion or improper manipulation of employee benefit trust funds. These matters suggested by Senator Harris have been the subject of discussions and correspondence between the subcommittee and the Department of Justice in the ensuing months.

Charles Donohue, Solicitor for the Department of Labor, testified that the Department's Bureau of Labor-Management Reporting, under the Welfare and Pension Plans Disclosure Act, is restricted in its authority. It requires detailed disclosure of facts about such plans, but has no authority whatever to bring action to recover funds that have been diverted as they were in the Barasch case.

The CHAIRMAN. Would you like to have that authority?

Mr. DONOHUE. I would not make a positive statement on that point. But we certainly believe it is a legitimate area of consideration, both by this committee and by the Department of Labor, as to whether we should or should not.

The chairman then stated his view that such authority is necessary, and that the Government would be derelict in its duty if it did not provide for the protection of the working men and women who are deprived of their just interests when funds are mismanaged and fiduciary responsibilities are ignored.

Mr. Donohue offered for the subcommittee's consideration several areas in which new legislation might be proposed. He suggested that the field of investment of the funds of employee benefit plans should be considered for Federal regulation, that the diversion of funds from their proper purposes to be used for other unrelated purposes is a matter for congressional concern, and that attention should be given to the prevention of conflicts of interests in the operations of employee benefit funds.

The chairman asked Mr. Donohue to study the record and to forward to the subcommittee concrete recommendations for new laws that would remedy the abuses disclosed during the hearings. Mr. Donohue in reply offered the cooperation of the Department of Labor in the legislative study undertaken by the subcommittee. The Department has, in the months since the hearings, contributed its valued counsel in the legislative field.

THE RETURN OF THE DIVERTED FUNDS

In the summer of 1965, immediately following the hearings which disclosed the diversion of the welfare funds of Allied Trades Council and Teamsters Local 815, the general counsel of the subcommittee initiated a series of conferences with the attorneys for George Barasch and his associates and the attorneys for the foundations and the unions, seeking to correct the conditions that had been revealed in the testimony and to effect the return of the diverted moneys to the Allied Welfare Fund, which is the joint welfare fund of the two unions.

The Federal agencies which have jurisdiction in this field, including the Departments of Labor, Justice, and the Treasury, were consulted, as were representatives of the State of New Jersey and the New York State Insurance Department. As an immediate result of these negotiations, the attorneys for George Barasch and his associates and the foundations expressed their clients' willingness to return forthwith all of the funds diverted to the overseas foundations.

The New York State Insurance Department, whose representatives had been invited to join the conferences, at that time asked for a delay in the restoration of the funds in order to review the record to determine whether any New York State statutes had been violated. It was their expressed opinion that an acceptance of a settlement might compromise any possible prosecution.

After approximately 10 months' delay, the New York authorities apparently were satisfied that there were no violations of State statutes. Finally, agreement was reached in June of 1966, relating to those matters over which the New York State Insurance Department exercised jurisdiction.

The principal provisions of the agreement are these:

1. All the funds held by the Chemical Research Foundation, the Cromwell Research Foundation, and the Caribbean Educational Association have been returned to the Allied Welfare Fund, to be used for charitable, educational, and welfare purposes that will benefit the participants and beneficiaries of the Allied Welfare Fund. The total sum of money returned was \$4,200,000.

2. The members of the overseas foundations—Barasch, LaMar, and Lasky—agreed to dissolve the corporations.

3. Barasch has resigned from his positions as lifetime union trustee of the Allied Welfare Fund and the Union Mutual Fund, and other union trustees have been selected.

4. The trust agreements of the Allied Welfare Fund and the Union Mutual Fund have been revised to include provisions that are designed to protect the rights and interests of the participants and to prevent the recurrence of diversion and manipulation of the trust funds.

5. The execution of the agreement and the operations of the Allied Welfare Fund under its terms will be subject to the control and supervision of the New York State Insurance Department.

CONTINUING STUDY OF THE PENSION PLAN FIELD

The subcommittee's extensive study of welfare and pension plans has not been limited to investigations of improprieties and abuses such as those discussed in this report, but has covered a number of basic problems in the field. There are many matters in the pension field that will require careful legislative consideration. Principal among them are the major factors of funding, vesting, and portability.

The related areas of vesting and portability, for example, are considered by experts to be vital to the future of private pensions. Vesting is the guaranteed right of qualified participants to all or part of their accrued pension benefits at retirement age, even though they may have terminated employment. Portability is the process whereby pension credits earned with one employer may be transferred in whole or in part, through some institutional arrangement, to another plan when the worker changes jobs.

In the belief that these basic issues in the field of private pension plans merit the close attention of the Congress, the subcommittee will continue its investigations in the field.

INDIVIDUAL VIEWS OF MR. JAVITS

I believe this document to be a useful and significant step in the direction of pinpointing the loopholes in existing laws regulating employee benefit funds, and, as ranking minority member of the Senate Labor and Public Welfare Committee, I intend to work for corrective legislation along the lines which this report suggests.

The problem of devising effective legislation in this field, however, is not a simple one. At least two proposals have already been introduced. The report mentions one, S. 2627, introduced by the chairman on October 12, 1965.

In addition, I introduced an earlier bill (S. 2352) on August 3, 1965, addressed to the same problems but taking a slightly different approach.

The two bills have a great deal in common. Both spell out the requirements for benefit fund administration; both prohibit diversions of fund assets, and conflicts of interest, etc.; and both provide a battery of remedies to protect the rights of beneficiaries and prohibit violations of the requirements spelled out in the proposed legislation.

The major point of difference is that S. 2627, the bill introduced by the chairman, would achieve its purposes by amending the Welfare and Pension Plans Disclosure Act, while my bill, S. 2352, would amend section 302 of the Taft-Hartley Act.

My choice of section 302 was dictated, not by any belief that amending that section would necessarily be a more effective avenue of legislative effort, but rather because section 302 is now already the subject of several other pending legislative proposals, and since section 302 is likely to be revised in any event, it is the most promising avenue of legislative action.

Two bills to revise section 302 have already passed the House—H.R. 1153 and H.R. 13712. If the Senate Labor Committee is to take up these bills, as it will very likely in the near future, then the whole subject of regulation of employee benefit funds will surely be considered, and that will be a logical and useful time to consider the problems raised by the Investigations Subcommittee's report.

Section 302, moreover, has been characterized by the Justice Department in this very same investigation as "one of the most significant tools for the regulation of union trust funds" (hearings, p. 472). I would prefer to use a significant tool, and try to improve it, rather than to discard it and take another tack, using the Disclosure Act, which, for all its usefulness in the area of collecting and compiling information, has never been a tool for benefit fund regulation.

The two pending bills to amend section 302 present a particularly appropriate context in which to consider the problems of benefit fund regulation, not only because they involve a statute which the Justice Department calls a "significant tool" for regulation in this field, but also because the particular amendments which these bills involve

could, if not accompanied by an appropriate closure of the loopholes which already exist in section 302, open these existing loopholes so wide that the effectiveness of 302 might be completely destroyed.

Let us look at section 302. It is primarily a bribery statute. It says to an employer: "You may not pay any money to a union leader—you may not buy him off." It then makes certain exceptions, legitimate ones, to insure that an employer can pay money to a union for proper purposes, such as turning over money collected pursuant to wage assignments for union dues and certain employee benefit funds. But even as to these exceptions, there are a number of restrictions to insure, or at least purporting to insure, that these benefit funds will not be used as a "cover" for a payoff. Thus, the benefit funds must be jointly administered: there must be an employer trustee as well as a union trustee. The types of benefits must be spelled out in a labor-management agreement, in writing. And only certain types of funds may be established.

One would think that those restrictions would be sufficient to insure that no such fund could ever be used as a cover for an unethical payoff. What we found out in the hearings discussed in this report, however, was that a person clever enough to see the loopholes could get around section 302.

Assistant Attorney General Fred Vinson concluded that the Affiliated Fund, which was established in 1953:

was obliged to follow, and it did follow, all the regulatory requirements of section 302.

Yet Mr. Vinson went on to note how the Affiliated Fund transferred all its beneficiaries over to a new fund, and that—

by 1957 the old Affiliated Fund was receiving contributions and no beneficiaries were drawing down from it.

He went on to recall how the trust indenture was then converted into a general charitable indenture; how the assets were then transferred to a Puerto Rican charitable foundation controlled by the union's officer and his brother-in-law, and yet, Mr. Vinson concluded:

I want to state at this point that the manipulations I have just described in no way lend themselves to successful prosecution under the present state of the law. (Hearings, p. 473.)

Mr. Vinson also pinpointed the loopholes in section 302 for us. He pointed out the meaninglessness of section 302's requirement of "joint administration" when, by giving a proxy, the management trustee can become "just a rubber stamp" (hearings, p. 475), and I have included a provision in my bill, S. 2352, to prohibit this proxy rubber stamp device. He also pointed out that section 302, as it now stands, only covers the status of the fund when money is paid into it; what happens afterward is beyond the reach of the statute. And Mr. Vinson went on to suggest:

I think it might be appropriate for this committee to inquire and determine whether the scope of this standard should be broadened to include the disposition of the money when and if the trust fund is dissolved. (Hearings, p. 476.)

And again, my bill, S. 2352, would broaden the standards of section 302 to cover the eventual disposition of the fund.

But I think perhaps the most important thing which these hearings disclosed was that a trustee, without any direct theft, can milk a fund dry simply by paying himself large sums in fees for the "management" of the fund itself. Thus, the hearings disclosed that one of the trustees had set up an organization called "Churchill Associates," which got "almost \$3 in fees for every dollar that is paid out" by the pension fund—a practice which would be completely prohibited by the amendments to section 302 set forth in my bill.

Turning to the two bills to amend section 302 which have already passed the House, we find that one, H.R. 1153, would permit the establishment of several new types of funds, including a joint fund for the promotion of a particular type of product. The second House-passed bill, H.R. 10774, would permit union officers and trust fund officers to draw benefits despite the fact that they have never been employees of the contributing employer.

Both of these proposals are worthy of our favorable consideration. But it is precisely because there are worthwhile proposals to amend section 302 which are now pending that it becomes imperative that section 302 be thoroughly overhauled, not only to permit what is worthwhile, but also to prohibit the excesses which could grow out of even worthwhile endeavors.

JACOB K. JAVITS.

FINDINGS AND CONCLUSIONS

1. The rapid growth of welfare and pension plans in recent years has made them a major factor in the national economy and increasingly important to the basic financial security of their many millions of participants and beneficiaries. The laws that regulate them must have careful and continuing examination by the Congress to assure the protection and preservation of the plans against the consequences of abuses, improprieties, and criminal activities by those who control them.

The subcommittee finds that existing laws enacted by the Congress to prevent abuses and improprieties in labor-management relations do not adequately safeguard the rights and interests of participants and beneficiaries of welfare and pension plans. Present statutes are not sufficiently strong and restrictive to prevent the scandalous manipulations of employee benefit funds, like those of the Allied Trades Council and Teamsters Local 815, which are examined in this report.

2. The subcommittee finds that George Barasch, while neglecting, ignoring, or subverting the rights and interests of the rank-and-file members of his unions during a decade of self-dealing manipulations, managed to achieve for himself and his heirs, at the time of the hearings, a remarkable status of financial security which was entirely capitalized by the general treasuries and the employee benefit trust funds of the unions he dominated. The record shows that Barasch, prior to the subcommittee's disclosure of the diversion of funds, had made himself a wealthy man while the workers in his unions were deprived by his actions of millions of dollars contributed in their names by their employers.

3. The subcommittee finds that the two unions under investigation, the Allied Trades Council and Teamsters Local 815, were under the dictatorial control of Union Leader George Barasch, whose administration of the unions and of their employee benefit plans was marked by self-interest, by cynical suppression of democratic procedures, and by callous disregard of the rights and privileges of the unions' members.

4. The subcommittee finds that the unanimous refusal of union officials to testify in the hearings and their failure to deny or explain the disclosures related to their unions and to the several trust funds of the unions is indicative of their failure to carry out the duties, obligations, and responsibilities of their offices. The subcommittee concludes that the record of the hearings affords an accurate and factual account of the manipulation and diversion of the assets of the unions' welfare funds.

5. The subcommittee finds that the Allied Trades Council sought and obtained affiliation with the International Leather Goods, Plastic & Novelty Workers Union to obtain status and recognition within the organized labor movement, and that the affiliation was not made to advance the objectives of trade unionism, but rather was in-

tended simply to rent the label of the American Federation of Labor. The testimony also shows that the leadership of the International Leather Goods Union countenanced the rental of its label for many years in return for a nominal annual fee until the arrangement was abruptly terminated in May of 1965, after the subcommittee's investigation was underway, by order of George Meany, president of the AFL-CIO. The subcommittee believes that Mr. Meany's description of the Allied Trades Council's operations as "a disgrace to the legitimate labor movement" is well founded, and that the International Leather Goods Union acted improperly in renting the AFL label.

6. The subcommittee concludes that the establishment of the Allied Welfare Fund to replace the Allied Trades Council Welfare Fund in 1954 represents the first overt step in a carefully designed scheme to divert almost \$2 million of the assets of Allied Trades Council Welfare Fund from the interests of the union's members to the absolute control of George Barasch, Samuel LaMar, and Frank Lasky.

7. The subcommittee finds no excuse whatever for the diversion of the assets of the Allied Trades Council Welfare Fund from their proper ultimate disposition as benefits for the union members who were the participants in and beneficiaries of the trust fund.

8. In following the several steps of the scheme to divert the assets of the Allied Trades Council Welfare Fund, the subcommittee finds: (1) the establishment of the Allied Security Fund resulted primarily in financial benefits for Barasch, LaMar, and Lasky; (2) the formation of the Delaware corporation, Mollet & Co., with funds belonging to union members, served no legitimate purpose of trade unionism, but rather was obviously a device in the scheme to divert the welfare funds; (3) the organization of the Chemical Research Fund was another step in the process of removing the welfare funds to their destination in a Liberian corporation under Barasch's control.

9. The subcommittee finds that the Chemical Research Foundation, Inc., of Monrovia, Liberia, was organized by George Barasch as a repository for almost \$2 million in welfare funds which, under the corporation's charter, passed into his control and which he and his associates, LaMar and Lasky, could have disposed of or disbursed in whatever fashion they chose. This foundation, ostensibly formed for education and research, served no such purposes until Barasch became aware that his activities relating to the welfare funds of his unions were under investigation by the U.S. Department of Justice. The subcommittee considers the formation of the Chemical Research Foundation as the ultimate subterfuge in the scheme to divert the welfare funds from the possession of the rank-and-file members of Barasch's union into his own exclusive control.

10. In considering the matter of the Cromwell Research Foundation, the subcommittee finds that Barasch and his underlings in Teamsters Local 815 again used the device of substituting a new welfare fund for one that already existed in order to allow the original fund to become dormant. The intent was to facilitate the eventual diversion of the assets of the fund to the control of George Barasch and his brother-in-law, Samuel LaMar. The pattern of subterfuge was similar to that developed for the Allied Trades Council Welfare Fund, although it was less complicated. The amount of money diverted was almost the same, slightly less than \$2 million; the destina-

tion was similar, a corporation in Puerto Rico called the Cromwell Research Foundation, Inc., ostensibly formed for education and research; the results were almost identical—the funds were in the absolute control of Barasch and LaMar to be disposed of or disbursed in whatever fashion they chose.

11. The subcommittee finds no legitimate activity or function of the foundation in Puerto Rico related to union affairs, just as it finds none for the Liberian foundation. It does find, however, a clear pattern of subterfuge intended to facilitate the diversion of the welfare funds that belonged to the members of Teamsters Local 815 into the control of George Barasch, just as it found a similar pattern in the diversion of the funds of the Allied Trades Council Welfare Fund.

12. The subcommittee also considers significant in the evidence of diversion the fact that the Cromwell Research Foundation, Inc., made no appreciable effort to carry out its charter's stated purposes of education and research until the Department of Justice made clear its intention to investigate the diversion of the welfare funds. The subcommittee finds that grants made by the foundation immediately following disclosure of the Justice Department's investigation were transparent attempts to establish a record of charitable functions in keeping with the foundation's charter.

13. George Barasch's domination of the two unions and of their employee benefit plans gave him effective control of approximately \$15,500,000 that rightfully belonged to the members of the unions. This sum of money was held in the assets of the several corporations he formed and capitalized with the funds of the employee benefit plans and in the assets of the existing trust funds of the unions. He managed to achieve this position of power because, in every fund established and maintained by the unions since they were organized, he served irrevocably either as lifetime sole trustee or as lifetime union cotrustee. The subcommittee considers that Barasch's assumption of limitless control over this huge sum of money, which belonged to the members of the two unions, clearly illustrates the weaknesses and inadequacies of existing laws which provide few meaningful provisions relating to the selection, service, and duties of trustees.

14. The subcommittee finds that the formation of Churchill Associates, Inc., the management firm that administers the two large employee benefit plans of the two Barasch unions, patently was carried out as a device for taking large profits from the income of the benefit plans and placing those profits under the exclusive control of George Barasch and his brother-in-law, Samuel LaMar. The subcommittee finds that the siphoning of 10 percent of the total annual income of the Allied Welfare Fund and 9 percent of the income of the Union Mutual Fund into the accounts of Churchill Associates was a gross impropriety and an unconscionable abuse of the fiduciary's role to which both of these men were pledged. Since the functions carried out by Churchill Associates were formerly handled by the same staff using the same facilities and achieving the same results, it is obvious that the only reason for the formation of the corporation, wholly controlled by Barasch and LaMar, was to take profits from the funds that rightfully belonged to the union members.

15. The subcommittee finds that the use of the assets of the unions' employee benefit plans to provide funds for stock market speculation by Churchill Associates, Inc., was highly improper and was a flagrant

abuse of the trust undertaken by Barasch and LaMar as fiduciaries of the funds. The stock transactions carried out by Barasch and LaMar were clearly conflicts of interest, since the profits accrued were taken by the corporation which they controlled absolutely.

16. The subcommittee finds that almost \$5 million in funds belonging to rank-and-file union members were diverted under the direction of George Barasch into the accounts of Chemical Research Foundation, Inc., Cromwell Research Foundation, Inc., the Caribbean Educational Association, and Churchill Associates, Inc. This diversion was the result of a carefully planned scheme, executed over a 10-year period, which was intended to place the funds into corporate shells under Barasch's control and eventually to allow the distribution or disbursement of the money at the sole discretion of George Barasch.

17. The subcommittee finds that all of the assets of the several foundations and corporations formed by George Barasch and his cohorts rightfully belonged to the rank-and-file participants in the employee benefit plans of the Allied Trades Council and Teamsters Local 815 and should have been removed from the control of these men long ago and returned forthwith to the trust funds from which they were diverted. Specifically, the subcommittee finds that all of the assets and holdings of the following corporations belonged to the members of the unions: (1) the Chemical Research Foundation, Inc., (2) the Cromwell Research Foundation, Inc., (3) the Caribbean Educational Association, and (4) Churchill Associates, Inc.

The return of the funds, in June of 1966, which had been diverted to Chemical Research Foundation, Cromwell Research Foundation, and the Caribbean Educational Association, has been acknowledged by the subcommittee, and is approved. The restoration of the funds, however, cannot serve as an exculpatory action for the unwarranted manipulation of the welfare funds.

18. The subcommittee finds that the scheme to divert the welfare funds was accomplished within the unions by reliance upon several contributory factors, which are—

(a) Complete domination of the Allied Trades Council and Teamsters Local 815 by George Barasch;

(b) Spineless and indifferent subservience to Barasch's dictatorial control by union officials in both unions;

(c) The autonomy of operation and administration of the two unions that was permitted by the international unions with which they were affiliated, which allowed Barasch to carry out his scheme for diversion without concern for supervision or control by anyone in higher authority;

(d) The failure of the membership to participate in the affairs of their unions—a lack of interest that facilitated Barasch's centralization of power; and

(e) Effective curtailment of democratic procedures within the unions by severe and prohibitory restrictions imposed upon union elections, which allowed Barasch virtually to select all union officials ranging from shop steward to local president according to his own wishes.

19. The subcommittee finds that Barasch's monopoly of power over the unions' trust funds and his ultimate acquisition of full control of almost \$5,000,000 in assets diverted from the trust funds was facilitated by the irresponsibility of management representatives who dealt with him. These men were indifferent to their duties and obligations of safeguarding the rights of their employees; they were subservient to Barasch in matters related to their functions as trustees; they either did not know about or did not care about the diversion of the welfare funds.

20. The subcommittee finds that existing laws must be amended by the Congress to provide restrictions, prohibitions, and corrective actions for the abuses and improprieties disclosed during the investigation and hearings. The legislative recommendations that follow relate to matters that the subcommittee believes should be given study and consideration by the Congress.

RECOMMENDATIONS

1. The attention of the Congress is directed to the serious flaws and dangerous loopholes that have been disclosed in the existing laws relating to employee benefit plans. The subcommittee recommends that the Congress give thorough consideration to the legislative proposals that are given in the following recommendations. These proposals have been included in S. 2627 (89th Cong., 1st sess.), which is a bill to amend the Welfare and Pension Plans Disclosure Act for the purpose of providing additional protection for the interests of participants in and beneficiaries of employee welfare and pension benefit plans. The bill was introduced by the chairman and has as cosponsors seven of the eight other members of the subcommittee.

2. The subcommittee recommends for the consideration of the Congress legislation that would provide needed additional safeguards for the protection of the interests of participants in and beneficiaries of employee benefit plans through the following broad provisions:

(a) by providing minimum standards and requirements for the administration and disbursement of employee benefit trust funds;

(b) by establishing minimum standards of conduct, responsibility, and obligation for all fiduciaries of such funds;

(c) by providing appropriate sanctions and penalties for violations; and

(d) by providing for the recovery of losses suffered by trust funds through such violations.

3. The subcommittee therefore recommends to the Congress consideration of legislation that would provide the additional safeguards listed above by means of specific restrictions, prohibitions, and corrective measures, as follows:

(a) The establishment of fiduciary status in relation to such funds for every person who receives, disburses, or controls them, and the need to impose upon such persons the requirement to exercise the same degree of care and skill as would be exercised by a reasonably careful, diligent, and prudent man.

(b) Provision for true disclosure to the participants in and beneficiaries of employee benefit plans of complete descriptions of the plans and annual financial reports.

(c) Establishment of controls over the ultimate distribution or disbursement of the assets of employee benefit trust funds.

(d) Correction of the failure of existing laws to limit the use and disbursement of the assets of employee benefit funds to the payment of specified benefits and reasonable administrative costs.

(e) The imposition of restrictions upon the transfer of such funds beyond the jurisdiction of Federal courts.

(f) The prohibition of sizable unsecured loans from such funds.

(g) Prohibitions against self-dealing and conflicts of interest upon the part of all fiduciaries.

(h) Restrictions upon the election or appointment as fiduciaries of trust funds persons who have been convicted of certain crimes, including violations of the laws relating to labor-management affairs.

(i) Provision of regulations for the dissolution or merger of employee benefit funds.

(j) Provisions for the removal of fiduciaries who have violated their trusts or are otherwise unqualified to serve.

(k) Provisions for the recovery of diverted or improperly manipulated assets of trust funds.

(l) Provisions for the protection of participants in or beneficiaries of employee benefit plans through the establishment of the right of petition by such persons to seek injunctions or such other relief as may be appropriate against acts or practices which violate the laws.

(m) Provisions for appropriate penalties for violations of the laws relating to employee benefit plans.

Senator Karl E. Mundt, member of the Senate Permanent Subcommittee on Investigations, was unable to attend the hearings and did not participate in the preparation of this report. He has, however, approved the report and authorized its filing with the U.S. Senate.

The following members of the Committee on Government Operations who are not members of the Senate Permanent Subcommittee on Investigations did not sit in on the hearings and executive sessions on which the above report was prepared. Under these circumstances, they have taken no part in the preparation and submission of the report, except to authorize its filing as a report made by the subcommittee.

ERNEST GRUENING.
ROBERT F. KENNEDY.
LEE METCALF.
JOSEPH M. MONTROYA.

MILWARD L. SIMPSON.

Senator JAVITS. In conclusion, Mr. Chairman, I would like to comment on two related matters which represent not just technical differences between the administration's bill, sponsored and introduced by the chairman, and mine. They are these: First, under the administration bill the administration would be in the hands of the Secretary of Labor except that a Federal corporation would be established to administer the insurance provisions to which I have just referred.

Second, the administration bill would operate entirely independently of the provisions of the Internal Revenue Code established with reference to private pension plans.

Under my bill I proposed the U.S. Pension Commission with a responsibility of administering the IRS, that is the Internal Revenue Service, qualification provisions, the existing Welfare and Pension Plan Disclosure Act as well as the standards of my bill which also are the standards of the administration bill.

In other words, essentially the difference is administration by the Secretary of Labor and administration by the U.S. Pension Commission.

In addition, under my bill a condition precedent for eligibility for tax benefits under the Internal Revenue Code would be compliance with the terms of the bill.

I think that the question of whether the Commission should run it or the Secretary of Labor should run it is a substantive difference, perhaps of a major character.

I mention it because I would hope that witnesses would address themselves to this question, especially the witnesses from the business and the Government community.

Now, Mr. Chairman, I would like to close as follows:

When I introduced S. 1103, I said, and I would like to repeat it here as my testimony, the point to be made here is that a great deal of thought will be required to develop a rationale and coordinated system for the regulation of pension and other employee benefit systems without adversely affecting the traditional role of existing agencies now concerned with some aspect of these plans.

But the goal is an important one and worthy of the effort. I think a single agency is required for the purpose and it will be a very difficult task to regulate the operation of the employee benefit plans sufficiently to assure legitimate expectations of employee participation while avoiding undue and unnecessary interference in the operation of these plans.

Overregulation or unnecessary regulation would be worse than none for it would defer the installation and improvement of these much-needed programs.

We have to steer between frustrated expectations for pension plan members growing out of no regulation and frustrations caused by overregulation which will deter the employer from instituting a pension plan.

I thought to solve that dilemma a commission, which I have suggested be called the U.S. Pension Commission, would be the best arrangement. So I submit this for consideration by the witnesses who will testify before us.

Before I close I would like to call attention to the particularly gifted work done on an unbelievably complex bill by former labor counsel

for the minority, Frank Cummings, who is no longer with the committee but who was responsible heavily for the development of this measure in 1967.

I think he is entitled to the recognition that I am now giving him.

I would also like to extend that recognition to Mr. Mittelman, present minority counsel, who will be so helpful, as he already has been, in the problem of whipping together the legislation which will ultimately result.

I express to the Chair my gratification again for the fact that the administration, the chairman, and I, it seems to me, are very much now on the same track on this legislation.

Senator YARBOROUGH. I thank the distinguished Senator from New York. I think I would be remiss if I did not at this point pay tribute to the distinguished counsel for the majority, Robert Harris, who had such a large hand in drafting the original bill, the first one of this whole sequence that I introduced on February 20, 1967, S. 1024, called the administration bill.

We are all familiar with Mr. Harris' long experience as counsel for the NLRB and special assistant to the chairman of the NLRB. He is well versed in labor law and, incidentally, educated in your great State as you know, Senator Javits, Columbia, and at Yale; a distinguished scholar and author of many articles on labor law.

He has been of value in bringing together material from the Labor Department. We called on him to draft this from the different sources because of the magnitude of this question, the magnitude of the funds, and the millions of people who are in need of protection.

When contracts are made calling for certain pension protection the average man thinks he has got it. He suddenly wakes up just before his retirement, whether voluntarily or involuntarily, and finds that he is without protection. This must be changed.

I congratulate you on your contribution but I want to congratulate the staff which introduced the first path-breaking bill of this whole sequence that we introduced on February 20, 1967.

Senator Javits, there are many statements that you have made that I thoroughly concur with. I have reservations about setting up a pension commission and including IRS functions as a part of it.

IRS is a tax collection agency, as I see it, and not an agency for the protection of the rights of workers such as the Department of Labor. Of course, this is something we can work out.

Senator Hartke is the next witness. I call on the distinguished senior Senator from Indiana, Senator Hartke. You may proceed in your own manner.

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

Senator HARTKE. Thank you, Mr. Chairman. I am not a member of this committee but I do appreciate this opportunity to make a statement on private pension protection.

My own active sponsorship of legislation in this field dates from 1964, when the sudden closing of the Studebaker Corp. plant in South Bend, Ind., left behind a retirement fund with assets insufficient to make good on promised pension benefits.

Many workers in their fifties with more than 30 years of pension credits were denied pension benefits, even though they had met the requirements for vesting which had been established in the plan.

I might point out that there were many persons under the age of 40 who, under that plan, received no benefits whatsoever. People with 20 years' seniority but under the age of 40 who met the pension requirements under the plan received nothing—and Studebaker, Mr. Chairman, as I'm sure this committee knows, was one of the real pioneers of automobile manufacturing, an old established institution which had originally begun as a buggy manufacturer.

Employees between the ages of 40 and 59, many of them with over 30, 35, 38, and 39 years seniority, received only 10 percent of the pension benefits to which they otherwise were entitled.

Those over 60 years of age were forced to retire and received pension benefits on the condition they would not go into other employment.

This demonstrates how severe the effects of the closing of this plant were. This tragic experience prompted me to introduce legislation which would safeguard employees from sudden termination of underfunded plans.

I proposed the establishment of a self-financing Government trust fund, from which payments would be disbursed in the event of involuntary termination of an employer's pension plan.

This fund would have been supported by private pension plans, with participation coupled to eligibility for the tax exemptions which those plans now enjoy under Treasury Department regulations.

The pension protection fund would have been managed by a nine-member advisory council operating under authority of the Secretary of Health, Education, and Welfare.

The reinsurance provision of the present legislation is a substantial modification of my original 1964 proposal, but the striking similarities are instructive, because they reflect continuing agreement that a Federal reinsurance fund will provide the best possible protection against termination of underfunded pension plans.

Testimony which I heard before the Finance Committee 2 years ago underscored this consensus. At those hearings, pension reinsurance won the approval of three Cabinet departments: Labor, Health, Education, and Welfare, and Treasury.

Mr. Walter Reuther, the respected president of the United Automobile Workers of America, also offered an endorsement of the measure.

Other testimony was unanimous in its support for the objective of private pension protection, and most misgivings were expressed only with regard to the uncertain scope and impact of the proposed Federal guarantee.

Consideration was suspended while studies were completed which might provide more complete and more accurate data on private pension plan terminations.

Studies which have been released since those 1966 hearings have substantiated the pressing need for private pension protection.

A June 1967 Bureau of Labor Statistics report indicated that some 225,000 workers were affected by termination of pension plans between 1955 and 1965.

In addition, it is now clear that the cost of pension reinsurance will be much less than the maximum premium of 1 percent of unfunded liabilities which I had originally proposed.

The present proposal incorporates this more modest estimate in its maximum premium guidelines.

With this more complete record at hand, Mr. Chairman, there is no longer any excuse to postpone action. As evidence piles up and as proposals grow in sophistication, the opponents of private pension protection will find their case more and more difficult to make.

Those who have objected to Federal pension reinsurance in the past because of the absence of Federal vesting and funding standards will find their objections squarely met in the present legislation.

When I first suggested a reinsurance plan 4 years ago, I knew that a more comprehensive pension proposal was sure to evolve, and I welcome this present approach as the successful maturation of my original proposal.

Mr. Chairman, the history of pension legislation is one of frustration: studies, statistics, appraisals, and reappraisals.

Careful, patient analysis is certainly a prerequisite for enlightened policy in this complex field, but it can also be used to serve the purposes of those who mean only to retard and inhibit policy.

Before judgment is passed on private pension protection an effort should be made to bring the discussion back into its original perspective, that of the American family which is suddenly denied regular pension benefits. It will be a tragedy if this compelling social need continues to be neglected.

I would like to take this opportunity, while I am with this committee, to pay special tribute to the fine record of your chairman, Senator Yarborough. Senator Yarborough's is a record of vision, diligence, hard work and achievement.

Frankly, I would hope that he would ask the candidates who are seeking the office of President of the United States to state their position on this matter before the nominating conventions next month. I would hope that the platforms of both parties would contain a provision endorsing this legislation.

I believe this issue should be met head on by the party conventions and failure to do so would indicate a lack of sympathy to such a program.

I point out that Senator Yarborough has not always been the sponsor of administration proposals, although this is one for which I congratulate him. At one time, in fact, Senator Yarborough was the sponsor of legislation which was vigorously opposed by the administration. I refer to the cold war GI bill.

I want to say I was delighted to work with the Senator and be a cosponsor with him of this important bill. Although without administration sponsorship, and frankly, with administration opposition, this measure passed unanimously in the U.S. Senate and was one of the great tributes to this man's diligence. The cold war GI bill has been one of the real benefits to those who have been called to serve during what we call a nonwar, giving of their time and efforts, having their education disrupted in the process. As a result of this bill, and Senator Yarborough's diligent efforts on its behalf, these young people have been able to begin, continue, and further their education.

Senator YARBOROUGH. Thank you, Senator Hartke. I appreciate those generous words. I wish they could be heard down South.

I want to say you did not have to say those to have me agree with what you have said.

Senator Hartke is appearing as a witness. Any questions of Senator Hartke?

Senator JAVITS. I would just say that I doubt Senator Yarborough, even with my affection for him, is likely to get an answer from the presidential candidates at present. I will do my best to get that. I am a member of the Platform Committee.

With Senator Prouty's help and other members of my party, I will do my utmost to get a declaration for the substantive aspects of these bills.

The chronology does lend itself to bipartisanship. I am very anxious to see that it is effected.

What happened here is that Senator Yarborough put in a bill for fiduciary standards and then we put in, a week thereafter, a comprehensive bill to cover funding, vesting, portability, and so forth, as well as the fiduciary standards.

Then, about roughly a year later, or more, the administration came along with its plan which parallels, we both noticed, Senator Yarborough and I, my own.

So I think that whatever the priorities of time and interest they are now absorbed by events and I do believe that as the bills are so parallel now that it is entirely practical to get bipartisan support.

I can assure the Senator from Indiana that I will try on our side and I know that with his influence and that of Senator Yarborough on their side it may very well be that we can get it in both platforms which will assure us of legislation come next year.

Senator HARTKE. Thank you.

Senator YARBOROUGH. I want to say, Senator Hartke, I am not any more optimistic about influencing what the Democratic candidates for the Presidency put in their speeches than I would be of influencing what the Republican candidates for the Presidency put in their speeches.

I think the presidential candidates pretty well decide for themselves what to put in their speeches. But the platforms of the parties are another matter.

I am very hopeful that there will be provisions in the platform of my party. Senator Javits hopes there will be provisions in the platform of his party that promise relief in this field.

This relief is long overdue, in my opinion. Security for the workers is dependent on the security of these pension funds. Some attention must be given to what is done with them.

There are many broad complex economic questions on this concentration of economic power. It has been pointed out some 75 percent of these funds paid in are forfeited because of the change of jobs or other reasons and do not serve the purpose for which they were originally set up.

This poses a problem that has vast ramifications in our society.

Senator HARTKE. Mr. Chairman, I would like to point out something that people sometimes forget, and that is that the real rise in the pension systems occurred in World War II when we had wage and price controls.

What happened was that in order to provide some incentive for holding people, employers provided the pensions in lieu of wages. This is one of the great fallacies of wage and price controls. There is always a method to get around the end of the barn. That is what happened.

Now the difficulty that occurs here is that when a pension is offered to a man and it was given to him, he acquired it as a matter of right. He worked for it. To see his hard work and effort, for which he had a right to insist he be paid, he suddenly lost is probably one of the most unfair things that has happened in our recent history.

I just hope that we can keep this in mind. We are really concerned with a man's rightful claim to that for which he has worked.

Senator YARBOROUGH. It would be disturbing if 5 percent were forfeited but when you have 75 percent forfeited and \$100 billion in assets, this is enough to shock the conscience of the Congress and of the Nation, until something is done.

I want to thank you, Senator Hartke, for starting early, at the time of the closing of the Studebaker plant and the loss of pensions by those employees.

Yes, I recall the buggies and wagons with "Studebaker" on them. In the rural areas it was a very honorable product. It was considered if you had a Studebaker product on the road, a buggy, you had the best on the highways. It came as a shock to the people all over the country when the Studebaker Corp. closed that great plant in Indiana.

I want to congratulate you for getting started in 1964 on the pension plans.

Senator HARTKE. Thank you.

Senator YARBOROUGH. The next witness is Mr. Thomas Donahue, the Assistant Secretary of Labor for Labor-Management Services, Department of Labor.

Mr. Donahue, will you come around and do you have other persons from your Department with you? You may introduce them, also.

Senator JAVITS. Mr. Chairman, I have just one observation.

I have run through your testimony as I must leave in 10 minutes to do something else. I notice you have made no comment on my own bill, S. 1103, nor have you made any comment on Senator McClellan's bill, S. 1255, nor as far as I know, has the Department reported on either bill.

I think in all fairness to the mountainous labor which my staff has put into it and probably Senator McClellan's staff, now that you have your own bill as the administration does which naturally you are defending, you ought to give us your views on these other bills promptly so that the subcommittee in its deliberation may at least have the views of the Department which will help us if we should seriously consider extracting certain provisions of my bill or Senator McClellan's bill, it would be very helpful to us, obviously, to have the views of the Department.

Do you think that is fair, Mr. Donahue?

Mr. DONAHUE. Yes, Senator; we will be prepared to submit any type of analysis or comparison of our bill with yours.

Senator JAVITS. That would be a great idea. I would like you to submit a comparison because you fellows have so much more help than we do and; secondly, if you could actually give a report on my bill

and Senator McClellan's bill, then the Senate body would have the whole body of evidence before it.

I am right that you have not commented on either my bill or Senator McClellan's?

Mr. DONAHUE. That is right. The statement is devoted to an explanation of our bill.

Senator JAVITS. If you will be kind enough to do it, I would appreciate it. I ask unanimous consent that whatever is submitted by the Department may be made a part of this record.

Senator YARBOROUGH. That request, of course, is granted and so ordered. But, we, of course, plan further hearings. If it is the Senator's desire to have Mr. Donahue come back, we will recall him.

Proceed, Mr. Donahue.

STATEMENT OF HON. THOMAS R. DONAHUE, ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT SERVICES, DEPARTMENT OF LABOR

Mr. DONAHUE. Mr. Chairman and members of the subcommittee:

I appreciate this opportunity to testify in support of the Pension Benefit Security Act and the Welfare and Pension Plan Protection Act, S. 1024 and S. 3421 respectively, both introduced in the Senate by your distinguished chairman, Senator Yarborough.

I am accompanied this morning by two of my colleagues. On my right, Mr. Michael Gordon, Counsel for Interpretations of the Office of the Solicitor, and on my left, Mr. Donald Landay, chief of the employee benefits project, Division of General Compensation Structures.

Mr. Chairman, the scope of these bills is large and the subject matter complex and technical.

I have a detailed written statement of nearly 40 pages with four separate appendixes which I would like to submit for the record so that the committee and everyone interested in this subject may have the most complete and thorough exposition of the proposals made in the bills and of the manner in which we would propose to implement them.

But to save the time of the committee this morning I have a somewhat shorter statement which I would like to read by way of giving you the highlights of the proposals.

Senator YARBOROUGH. Your full statement may be printed in the record.

Mr. DONAHUE. Thank you.

S. 1024 and S. 3421 constitute a major concrete attempt to deal with a variety of serious shortcomings currently affecting the private pension and private welfare benefits system of this country.

It is not an exaggeration to say that the ultimate fate of these proposals is of great concern to millions of American working men and women.

The reason for this concern is not difficult to discern. Private pension and welfare plans constitute a major institution in our society. The statistics alone give some indication of their importance.

There are currently about 158,000 private plans registered with the Department of Labor, which receives almost 10,000 reports of new plans each year. Accumulated reserves of private pension plans alone are presently estimated at more than \$100 billion. They provide funds for retirement benefits for about 30 million persons.

There are 30 million people affected by pension plans in the United States. Our best estimates are that 27 million of those 30 million are current employees covered by pension plans and the other 3 million are current pensioners receiving benefits under the plan.

By 1980, such plans probably will hold \$225 billion in total reserves and will cover at least 42 million individuals.

However, despite the enormous total size of these funds, it is a simple and deplorable fact that for many American workers—perhaps millions—the vaunted private pension promise in which they place their trust turns out to be a cruel delusion.

There is no guarantee that pensions will be paid as promised. The ability to fulfill the eligibility requirements is highly contingent on a host of situations largely beyond the individual's control.

In all too many cases the pension promise shrinks to this: "If you remain in good health and stay with the same company until you are 65 years old, and if the company is still in business, and if your department has not been abolished, and if you haven't been laid off for too long a period, and if there is enough money in the fund, and if that money has been prudently managed, you will get a pension."

It is utterly indefensible in a society as affluent as ours that an individual's economic security in his later years should rest on such a flimsy foundation and be so endangered by such an incredible list of "ifs" and "maybes."

The bills which we are discussing today are intended to eliminate some of the "ifs" and "maybes." The proposed vesting standard, for example, is designed to benefit 10 million current participants in private plans.

S. 1024 and S. 3421 reflect years of study, extensive discussions with interested groups, and careful consideration by the Department of Labor in cooperation with a number of other Government agencies.

Additionally, the bills draw upon the studies carried out by the President's Committee on Corporate Pension Funds and Other Private Retirement and Welfare Programs, originally established in 1962.

Public policy has encouraged the growth of these plans by decisions under the labor relations statutes and by special tax treatment which permits employer contributions made to plans and their earnings to go untaxed to either the employer or the participant until benefits are distributed, when they are taxed to the participant normally at a time when his income is substantially lower.

Private pension and welfare plans have a significant impact on the national economy. Participation or nonparticipation in such plans can affect an individual's decision regarding the amount of personal savings needed for retirement, possible changes in employment during his working life, and the appropriate point in time for retirement.

In summary, the private pension and welfare systems have become national institutions affecting the national welfare.

Before discussing at greater length the individual aspects of the proposals, I would like to emphasize three broad principles which have governed their development.

Broad application: The proposals have been developed to be applied as broadly as practicable to all plans—large and small, insured and noninsured, single-employer and multiemployer, fixed

benefit, and fixed contribution. However, where appropriate, the specifics of the proposal are adapted to meet particular situations.

Ease of compliance: The needs of individual plans have been kept in mind. Transition arrangements are included to avoid any unreasonable increases in cost and procedures are made available for appropriate variances in applying the new standards.

Ease of administration: Every effort has been made to develop a program which will be relatively easy to administer. Complex tasks are not required of private plan administrators nor of public supervision.

S. 1024 and S. 3421 are specific proposals aimed at insuring a sound system of private pension and welfare plans without drastically reducing the opportunity for experimentation and flexibility in the establishment of programs since that is one of the great strengths of the private system.

The recommendations in these bills cover the following items: (1) minimum fiduciary standards for welfare and pension plans, (2) minimum vesting requirements, (3) minimum funding requirements and, (4) a system of plan termination protection.

MINIMUM FIDUCIARY STANDARDS

S. 1024 would establish fiduciary standards for welfare and pension plans. Its enactment was recommended by President Johnson in his Consumer Message last year.

In summarizing the need for the legislation, the President said:

The very size of these plans make it essential that they be soundly administered in the public interest. Because employer and worker alike rely upon them so heavily they must be operated with unquestioned prudence and integrity * * *.

Clearly, welfare and pension funds should be managed for the exclusive benefit of the plan participants, and any manipulation by a fund manager to enhance his own self-interest is reprehensible.

Most plans in this country are managed wisely by persons who follow the strictest code of fair dealing; however, the characteristics of many plans and their extremely rapid growth have opened a path for the unscrupulous.

In some welfare and retirement plans employers and union officials have abused their fiduciary positions for personal profit; in others, corporate officers have risked tax-exempt employee benefit funds to benefit the corporation, jeopardizing the interests of participants in the funds; and in some cases there have been capital losses to trust funds due to lack of prudence in their investments and transactions and as a result of self-dealing.

Specific examples of these abuses appear in exhibit D which is attached to my detailed statement.

Further Federal legislation is needed because in most cases the remedies otherwise available through the courts are inadequate to protect the interests of welfare and pension plan participants.

Although the fund of a welfare or pension plan may be established as a trust to qualify for tax exemption, conventional State trust law is not completely adequate.

Primarily, this is the case because as yet courts have not erected a system of clearly defined rights that a participant can enforce with

regard to the management of a welfare or pension trust; at the most the participants are regarded as possessing contractual rights but not property rights.

In addition, courts permit applicable trust doctrine to be circumvented by the use of exculpatory clauses in the plan or trust document.

Finally, even in those situations where trust law remedies are clearly available, protection of plan funds may still be ineffective when participants lack the means to discover breaches of trust, or do not discover them until it is too late.

Some have pointed to the Internal Revenue Code as providing sufficient regulation of fiduciary responsibility. Under the Code, it is true that a plan can lose its tax exemption if the trust is used for purposes other than for the exclusive benefit of employees or their beneficiaries.

However, in this regard, it should be noted that sanctions are not available against those who have diverted funds unless there is a failure to report income derived in that connection, that there is no authority in the Internal Revenue Service to seek recovery of trust funds which have been misappropriated, and that loss of the tax exempt status may affect the interest of the participants in the plan more adversely than those charged with the plan's administration.

In addition, it should be observed that despite the fact that section 302 of the Taft-Hartley Act establishes certain conditions for the operation of joint labor-management welfare or pension funds, it has been held that section 302 cannot be used as a vehicle to redress mismanagement or breaches of trust.

Thus, enactment of a Federal statute prescribing fiduciary standards for pension and welfare plans and providing for adequate enforcement is of paramount importance.

S. 1024 will achieve this purpose. The bill will provide time-tested standards of responsibility and fair dealing in the administration of plans, more complete disclosure of the plan's financial activities, annual audits by independent certified or licensed public accountants, and legal remedies for participants and beneficiaries to recover losses resulting from breaches of trust.

In my judgment, there is a clear consensus as to the desirability of Federal legislation establishing fiduciary standards. Accordingly, I urge that S. 1024 be enacted now.

Up to now I have been discussing the protection of private welfare and retirement plans by improved fiduciary standards. Now I turn to S. 3421 which covers only plans within the private retirement system.

At the heart of this system is the private pension promise. Employees participate in private pension plans with the expectation that this participation will result in greater economic security during their retirement years, and with the belief—unfortunately not true in many cases—that this promise is backed by adequate and prudently managed funds to guarantee its fulfillment.

Because of its very nature, the private pension plan can retain the confidence of its participants only if its promise can be fulfilled.

Under the present arrangements, however, far too often the private pension promise has become a mere illusion.

Participants lose pension benefits if they leave the scope of the plan before they are vested in their retirement benefits. In fact, if 100 typical workers join private pension plans at age 25 and remain in continuous service, only 24 of them will be vested at the end of 10 years.

Pension funds do not always provide sufficient accumulation of funds to meet adequately their growing liabilities.

Plan terminations as a result of financial difficulties or bankruptcy leave pension participants without the benefits which they have been led to expect.

MINIMUM VESTING REQUIREMENTS

Vesting is the right of a plan participant to receive his accrued benefits even though his employment is terminated under the plan before he is eligible for retirement.

Normally, this right is provided only under certain conditions—after a specified period of service, upon attainment of a specified age, or upon specified types of termination.

Actually, a pension plan represents money earned by a group of employees and used for the benefit of that group as a whole.

No portion of those earnings belongs to any individual employee, but if an employee has participated in the group for a reasonable period of time he should be entitled to retain some equity in that plan even if his employment terminates before he can retire under that plan.

In its 1965 report, the President's Committee concluded:

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.

Without vesting, a worker displaced after long years of service is denied all of his accrued pension protection. A worker in a similar position who voluntarily changes his employment has to forfeit his right to a future pension. Both circumstances are charged with inequity.

The merits of vesting are almost universally recognized; yet, it is completely absent in almost one-third of all pension plans covering nearly one-third of all pension plan participants.

In many other plans, vesting is dependent upon the individual meeting overly restrictive age, service, or other requirements.

In the decade of the 1950's, substantial progress was made by many plans toward more liberal vesting provisions. This fact has been cited by many who believe that legislation is not necessary and that vesting will become virtually universal through private action.

However, the situation today shows only a slight change over the prevalence of vesting in 1962-63. As a general rule the prevalence and coverage of vesting provisions has increased only slightly and the age and service requirements have been relaxed only a little during the past 5 years.

While even a slow rate of progress represents improvement, we have to realize that at this rate we will have to wait until about the year 2000 before substantially all plans have even a modest vesting provision.

S. 3421 incorporates the following vesting standard: Full vesting of regular retirement benefits after an employee has acquired 10 years of continuous service (allowing exclusion of service prior to age 25) with benefit payments beginning no later than age 65. Such a standard would become fully operative over a 10-year period after the effective date of the act.

This standard reflects a judgment based on four principal points:

1. Ten years is a sufficiently extended period of time for the value of an employee's service to be explicitly recognized. It repre-

sents about one-fourth of the typical working lifetime. Loss of benefits for this period of service would represent a substantial reduction in an employee's retirement security.

On the other hand, 10 years of service will not necessitate vesting during the first few years of employment when turnover is characteristically highest.

2. Allowing exclusion of service prior to age 25 in determining eligibility for vesting permits plans to avoid vesting employees with the highest turnover. Many employees below age 25 are only temporary members of the labor force.

3. A plan's regular retirement benefit means the retirement benefit computed under the plan's normal formula. It does not include ancillary benefits, such as death or disability retirement. Limiting the vesting standard to regular retirement benefits assures receipt of retirement income to employees concerned while allowing plans greater freedom to develop ancillary benefits tailored to their specific needs.

4. Setting age 65 as the latest date at which vested benefits will be payable reflects the current general acceptance of this age of retirement. This is the age at which an individual can begin drawing his full Social Security benefit. S. 3421, of course, does permit voluntary arrangements for drawing benefits at an earlier age.

If this standard were in effect today, rough estimates indicate that it would begin to benefit around 10 million participants. About half of these are participants with 10 or more years of service under their plan who are not now vested.

The other half are participants currently with less than 10 years' service who are expected to remain on the job until they attain 10 years' service but who, in the absence of the new standard, would not become vested at that time.

The cost of complying with the standard will naturally vary among plans because of differences in their current vesting provisions, in their benefit provisions, and in the characteristics of their members.

Judging by the pension plans reporting under the Welfare and Pension Plans Disclosure Act, over 30 percent of the plans would either have no increases or increases of less than 3 percent in the plan's normal cost.

About 25 percent of the plans would probably experience a 3- to 6-percent increase in cost. Higher cost increases would probably be incurred by the remaining plans, most of which have no vesting provision.

Differences in the cost of complying with the vesting requirement are recognized in two ways in the proposed legislation:

1. Several transition methods are included that can be used by any plan to make the cost increase as small and as gradual as possible.

2. A relief provision is included to aid plans that incur a substantial cost increase.

MINIMUM FUNDING REQUIREMENTS

Funding is the orderly accumulation of pension reserves during an employee's working career to provide sufficient money by the time of his retirement to pay his pension benefit thereafter.

Practically all plans fund at least their current obligations to pay benefits in the future and most have set full funding—asset accumulations equal to accrued benefit rights—as their ultimate goal.

This procedure not only levels the plan's cost impact over time and provides reserve funds against possible future periods of adverse business conditions, but also provides greater protection to plan participants.

Often, however, plan termination occurs before sufficient assets have been accumulated to assure such benefit payments. The present Internal Revenue Service funding standard, which is incorporated in S. 3421, requires fund accumulations to be sufficient to meet the benefits earned each year since inception of the plan and to pay the interest on any unfunded past service costs.

However, this test cannot be relied upon any longer as the sole measure of funding adequacy because it does not provide for funding of past service costs and thus may not lead to sufficient funding in the event of plan termination.

For this reason, S. 3421 proposes an additional funding standard to measure more accurately and uniformly a plan's ability to meet its vested commitments at any point in time, and specifically in the event of termination.

Such a standard would have the additional advantage of setting a firm foundation upon which a system of plan termination protection can be based.

The proposed new standard is built around a comparison at a point in time of a plan's assets with its vested liabilities—those for benefits to current retirees plus those for participants already vested.

Under the new funding standard, a plan will be required to increase its ratio of assets to vested liabilities by 4 percentage points a year.

In other words, at the end of 25 years, assuming no change in benefit structure, each plan would be expected to reach the 100-percent mark, meaning that the plan had accumulated sufficient assets so that if forced to terminate, it could meet all benefit obligations vested at that time.

Although available data indicate that most plans are currently funding as rapidly as the new standard would require, some plans might encounter more difficulty in complying with the new schedule.

To avoid unreasonable hardships and to provide transition procedures similar to those for the vesting standard, existing plans may elect to enter the schedule at their current funding ratio if this is lower than the ratio specified by the new schedule based on the plan's age.

The new funding standard will involve relatively simple calculations which the average plan should make periodically for its own assessment of its funding status.

The question being asked is essentially this: If the plan were terminated today, would the assets be sufficient to pay all vested benefits? This test would not require imposing a complete set of mandatory actuarial assumptions and methods for all private pension plans.

Instead, it would apply a uniform way to measure the present value of vested benefits, taking into account simply current mortality and interest tables.

PLAN TERMINATION PROTECTION

Under present regulations an employer has no legal obligation to pay expected pension benefits upon termination of the plan beyond those which can be provided by his previous contributions.

The new funding standards will prove extremely helpful in assuring that in the future adequate assets will be on hand to meet a plan's vested obligations.

However, no funding standard can be expected to provide complete protection from the day of adoption of this legislation in the event of termination since this would require full and immediate funding of all vested benefits.

To meet the problem of insufficient assets upon termination, a system of plan termination protection is proposed. The aim of such a program would be to provide protection during the early years in the life of a plan before it has been able to build sufficient resources to meet the 100-percent funding goal.

Plan termination protection would also serve the same purpose following amendments which liberalize plan benefits and which also typically require a period of time to become fully funded.

Information on plan terminations, while not complete, does indicate that significant numbers of plan participants are left without their full benefit rights.

During the years 1955-65, about 4,300 pension plans terminated involving 225,000 employees.

Forty-four percent of these terminations occurred under circumstances—financial difficulties or dissolutions of the business—where losses were likely.

Currently, about 500 pension plans involving 25,000 employees terminate each year. The well-known experience of the Studebaker employees when that firm closed down in South Bend, Ind., assembly plant in 1964 is only the most graphic example of what can happen when a terminating plan does not have sufficient assets to meet all vested benefits.

The proposed system of plan termination protection would build directly upon the termination funding standard. It has been developed with the aim of providing full protection for vested plan participants in the event of plan termination caused by shutdown of operations or adverse economic circumstances.

Essentially, this system is comprised of the following interrelated aspects:

1. Plans would purchase insurance to guarantee payment of vested benefits in the event of plan termination caused by shutdown of operations or adverse economic circumstances.
2. The insurance fund would fully protect vested benefits of all plans satisfying the funding standard.
3. Plans that do not meet the termination funding standard would not be permitted insurance coverage for the amount by which their assets fall short of the amounts required by the standard, but rather in these instances the employer would be liable for this amount.
4. Conditions under which claims against the insurance fund are honored would be carefully limited in order to maintain the integrity of the insurance fund.

5. Responsibility for the new plan termination insurance program would be placed in a special Government corporation, the Pension Benefit Insurance Corporation, which would be managed by a five-man Board of Directors, including both the Secretaries of Labor and Commerce.

Premiums would be calculated at a uniform rate on a plan's unfunded vested liabilities. Preliminary calculations indicate that an insurance plan can be financed through contributions averaging not more than 0.2 percent a year of unfunded vested liabilities. S. 3421 sets a maximum rate of 0.6 percent for the initial 3-year premium.

Claims against the fund would be honored only in the event of essentially involuntary plans terminations caused by financial difficulty or bankruptcy.

Finally, in order to protect the insurance fund from possible abuse, a number of specific restrictions have been included in the proposed legislation.

In closing my presentation, I would like to emphasize that none of the legislation proposed here would inhibit the development of soundly structured and imaginative pension or welfare plans.

On the contrary, by providing better assurance to all participants that they will be fairly treated, that their benefit expectations will be met, and that their funds will be properly managed, the Federal Government will be substantially improving the ability of all plans to fulfill their purpose.

I should also like to emphasize the paramount importance of enacting a Federal statute prescribing fiduciary standards for welfare and pension plans and providing for adequate enforcement. S. 1024 would accomplish this purpose.

Whenever vast funds accumulate without adequate protection, an irresponsible minority may misuse the funds with which they have been entrusted.

In no other segment of our economy have such vast funds accumulated without the enactment of protective legislation. Congress has acted in the past to protect the interests of other segments of our population.

It should not do less for the workers who depend upon their welfare and pension funds to help meet the bills when illness or disability strikes and to provide a source of retirement income.

I understand that the House Committee on Education and Labor yesterday ordered the fiduciary standards bill, H.R. 6498, reported as amended.

While we have not had an opportunity to fully analyze the amendments it appears that these amendments have seriously weakened the disclosure aspects of the bill.

I would hope, Mr. Chairman, that your committee will give most serious consideration to the argument we have advanced for the enactment of S. 1024 without weakening amendments. The detailed statement of which I spoke at the outset is attached hereto, Mr. Chairman, together with the appendices. They are Exhibit A, a compilation of a few of the thousands of letters which we have received from persons for whom the pension promise proved an illusion.

Exhibit B is an analysis of job mobility as it relates to the age and service requirement of vesting provisions in private pension plans.

That study provides some of the data on which our cost projections and our analyses of the impact of minimum vesting standards are based.

Exhibit C sets forth technical considerations involved in the proposed Benefit Security Act and provides data on the various aspects of the bill.

Exhibit D contains a number of examples of employees' benefit trust fund mismanagements in which the interests of the participants were subordinated to the interest of persons handling the funds.

Mr. Chairman, I would not want to conclude this testimony without crediting the immense contribution to the Pension Benefits Security Act made by Mr. Peter Henle, the Chief Economist of the Bureau of Labor Statistics. Mr. Henle has chaired for the past several years an interagency committee which has been active in this area and he is the principal sculptor of the ideas contained in this legislation.

He is not here today because he is attending an economic conference abroad but I would not want his absence to diminish the recognition of his contribution to the legislation.

Mr. Chairman, that concludes my presentation. I shall be happy to try to answer any questions you may have or discuss any aspect of the testimony in greater detail.

Senator YARBOROUGH. First, it was previously ordered that your extended testimony be ordered printed in the record. You have given us the digest of it and we will order these several exhibits that you have identified here also printed in full in the record.

(The documents referred to follow:)

PREPARED STATEMENT OF THOMAS R. DONAHUE, ASSISTANT SECRETARY, U.S.
DEPARTMENT OF LABOR

S. 3421 and S. 1024 constitute a major concrete attempt to deal with a variety of serious shortcomings currently affecting the private pension and welfare system of this country. It is no exaggeration to say that the ultimate fate of these proposals is of great concern to millions of American working men and women.

The reason for this concern is not difficult to discern. Private pension and welfare plans constitute a major institution in our society. The statistics alone give some indication of their importance. There are currently about 158,000 private plans registered with the Department of Labor, which receive a current annual average of almost 10,000 reports of new plans. Accumulated reserves of private pension plans alone are presently estimated at more than \$100 billion. They provide funds for retirement benefits for about 30 million persons. By 1980, such plans probably will hold \$225 billion in total reserves and will cover at least 42 million individuals.

However, despite the enormous total size of these funds, it is a simple and deplorable fact that for many American workers—perhaps millions—the vaunted private pension promise in which they place their trust turns out to be a cruel delusion.

There is no absolute guarantee that pensions will be paid as promised. The ability to fulfill the eligibility requirements is highly contingent on a host of situations completely beyond the individual's control.

In all too many cases the pension promise shrinks to this: "if you remain in good health and stay with the same company until you are 65 years old, and if the company is still in business, and if your department has not been abolished, and if you haven't been laid off for too long a period, and if there's enough money in the fund, and that money has been prudently managed, you will get a pension."

It is utterly indefensible in a society as affluent as ours that an individual's economic security in his later years should rest on such a flimsy foundation and be so endangered by such an incredible list of "ifs" and "maybes."

The bills which we are discussing today are intended to eliminate some of the "ifs" and "maybes." The proposed vesting standard for example, is designed to benefit 10 million current participants in private plans. S. 3421 and S. 1024 reflect

years of study, extensive discussions with interested groups, and careful consideration by the Department of Labor in cooperation with a number of other government agencies. Additionally, the bills draw upon the studies carried out by the President's Committee on Corporate Pension Funds and Other Private Retirement and Welfare Programs, originally established in 1962.¹

Private pension plans are well recognized as a major instrument for increasing economic security during retirement for a major portion of the Nation's work force. As the President's Committee said in its 1965 report: "Private pension plans should continue as a major element in the Nation's total retirement security program. These strength rests on the supplementation they can provide to the basic public system. Even with significant future improvement in the public program, there will still be ample room for supplementation."

The rapid growth of private pension plans has demonstrated their increasing importance and vitality. As recently as 1950, these plans covered fewer than 10 million employees with a minimum level of benefits. Today, about 30 million participants are covered by these plans, whose benefits have been expanded in many cases to include survivors' benefits, early retirement, and pensions for disability. About half of these participants are in plans negotiated by unions through the collective bargaining process, frequently with groups of employers in a specific industry.

Public policy has encouraged the growth of these plans by decisions under the labor relations statutes and by special tax treatment which permits employer contributions made to plans and their earnings to go untaxed to either the employer or the participant until benefits are distributed, when they are taxed to the participant normally at a time when his income is substantially lower.

Private pension and welfare plans have a significant impact on the national economy. Participation or nonparticipation in such plans can affect an individual's decision regarding the amount of personal savings needed for retirement, possible changes in employment during his working life, and the appropriate point in time for retirement. In summary, the private pension and welfare systems have become national institutions affecting the national welfare.

Before discussing at greater length the individual aspects of the proposals, I would like to emphasize three broad principles which have governed their development.

Broad application.—The proposals have been developed to be applied as broadly as practicable to all plans—large and small, insured and non-insured, single-employer and multiemployer, fixed benefit and fixed contribution. However, where appropriate, the specifics of the proposal are adapted to meet particular situations.

East of compliance.—The needs of individual plans have been kept in mind. Transition arrangements are included to avoid any unreasonable increases in cost and procedures are made available for appropriate variances in applying the new standards.

East of administration.—Every effort has been made to develop a program which will be relatively easy to administer. Complex tasks are not required of private plan administrators nor of public supervision.

Let me turn now to the specifics of S. 3421 and S. 1024.

Minimum fiduciary standards

S. 1024 would establish fiduciary standards for welfare and pension plans. Its enactment was recommended by President Johnson in his Consumer Message last year.

In summarizing the need for the legislation, the President said:

"The very size of these plans make it essential that they be soundly administered in the public interest. Because employer and worker alike rely upon them so heavily, they must be operated with unquestioned prudence and integrity. . . ."

Clearly, welfare and pension funds should be managed for the exclusive benefit of the plan participants, and any manipulation by a fund manager to enhance his own self-interest is reprehensible. Most plans in this country are managed wisely by persons who follow the strictest code of fair dealing; however, the characteristics of many plans and their extremely rapid growth have thrown temptation into the path of the unscrupulous.

¹ The committee is composed of the following: The Secretary of Labor (Chairman); the Secretary of Commerce; the Secretary of Health, Education, and Welfare; the Secretary of the Treasury; the Attorney General; the Director of the Bureau of the Budget; the Chairman of the Council of Economic Advisers; the Chairman of the Board of Governors of the Federal Reserve System; and the Chairman of the Securities and Exchange Commission.

In some welfare and retirement plans :

Employers and union officials have abused their fiduciary positions for personal profit ;

Corporate officers have risked tax-exempt employee benefit funds to benefit the corporation, jeopardizing the interests of participants in the funds ;

There have been capital losses to trust funds due to lack of prudence in their investments and transactions and as a result of self-dealing.

In one case an employer borrowed 90 percent of a fund's assets and subsequently went bankrupt.

In another case the pension fund trustees, who were also officers of the corporation which maintained the plan, purchased shares of the corporation's stock for the fund while they themselves were selling their personal holdings of corporation stock. When the fund ceased buying, the stock price dropped to one-third of its previously quoted price. The depreciation of fund assets as a consequence of this and other securities transactions was estimated at more than \$4,500,000.

There are instances in which fiduciaries sold their own shares of corporation stock to the fund at prices above the market value, trustees paid themselves substantial fees from the employee benefit funds in addition to their salaries as corporation or union officials, and borrowed from the trust funds which they administered to finance commercial enterprises in which they had personal interests. In a jointly-administered welfare fund the employer and union members of the board of trustees paid themselves monthly salaries while the costs of administration soared to a ratio of 50 per cent for each dollar of benefits paid.

I submit for the record Exhibit D summarizing situations which have come to the attention of the Department of Labor in recent years. There are additional examples in two reports by the Permanent Subcommittee on Investigations of the Senate Committee on Government Operations. One of the reports describes the diversion of the welfare and pension funds of Allied Trades Council and Teamsters Local 815. The other deals with the activities of Jack McCarthy and National Consultants Associated, Ltd. These reports show how trustees carried out carefully planned schemes to assure high profits and enrichment for themselves, their relatives and business associates in disregard of their responsibilities as fiduciaries.

Further Federal legislation is needed because in most cases the remedies otherwise available through the courts are inadequate to protect the interests of welfare and pension plan participants. Although the fund of a welfare or pension plan may be set up as a trust to qualify for tax exemption, many of the concepts applicable to conventional trusts are meaningless in this field. The effectiveness of trust law may be lessened by the use of exculpatory clauses in trust agreements which relieve trustees from liability for imprudent fund management. Conventionally, the trustee of a trust fund is answerable to the settlor who creates the trust ; he is also answerable to the beneficiary who is entitled to an accounting and may bring suit for breaches of fiduciary responsibility. In the usual corporate pension or profit-sharing plan, however, we find a confusing situation. The company establishes the plan and administers it through company officers, who are thereby placed in a fiduciary position without actually becoming parties to a formal trust agreement. These fiduciaries may enter into trust agreements with individual or corporate trustees, who are then accountable to the company through its designated fiduciaries. Or the company-appointed fiduciaries may themselves manage and invest the fund's assets. Whatever the arrangement, it is the company that has the ultimate authority over the terms of the plan and the assets of the fund and is accountable only to itself ; i.e., the fiduciary and the settlor are the same person.

The extent to which existing remedies theoretically are available to plan participants and beneficiaries is highly uncertain. The main legal difficulties may be summarized as follows :

The plan may not be formally set up as a trust ;

The "trust" may only exist as a funding medium, predicated on a trust indenture executed by the employer and a bank ; courts tend to view the employee-beneficiary as having contractual rights against the employer but not rights as beneficiaries of a "trust" ;

Some aspects of conventional trust law may be meaningless where the real administrator of the plan does not technically constitute the "trustee", as is the case in most employer plans ;

The same trust law may be circumvented by the insertion of exculpatory clauses in the plan or trust document ;

Even in those situations where trust law remedies are clearly available, protection of plan funds may still be ineffective when participants lack the means to discover breaches of trust, or do not discover them until it is too late.

Theoretically, the Internal Revenue Code should assure fiduciary responsibility in the handling of employee benefit funds. Under the Code, the tax exempt status of a trust may be lost if the investments made by the trustees constitute "prohibited transactions." One of the important regulations under the Code requires that no part of the trust can be used for purposes other than for the exclusive benefit of employees or their beneficiaries. The effectiveness of these regulations is questionable:

Sanctions are not available against those who engage in the prohibited transaction or those who have diverted the funds unless there is a failure to report income derived through these actions.

The Internal Revenue Service has no authority to seek recovery of trust funds which have been misappropriated.

The loss of the tax exempt status may affect the interest of the participants and beneficiaries in the plan more adversely than the interests of those charged with its administration.

As a practical matter, therefore, the provisions of the Internal Revenue Code have not been adequate to maintain fiduciary responsibility on the part of persons handling welfare and pension funds.

Enactment of a Federal statute prescribing fiduciary standards for pension and welfare plans and providing for adequate enforcement thus is of paramount importance.

S. 1024 will help assure the sound administration of welfare and pension plans.

The bill will provide:

Time-tested standards of responsibility and fair dealing in administration of the plans;

More complete disclosures of the plan's financial activities;

Annual audits by independent certified or licensed accountants;

Legal remedies for the beneficiaries to recover losses resulting from breaches of trust.

Specifically, Section 14, of this bill, would impose a fiduciary standard on any person having responsibilities with respect to an employee benefit fund and would charge him with the same degree of care and skill as would be exercised by a man of ordinary prudence dealing with his own property. In addition, a fiduciary would be prohibited, among other things, from dealing with the fund for his own account; from selling or leasing property of the fund to any employer whose employees participate in the fund or to any employee organization for whose members the fund was established or to any official of such an employer or employee organization; and from receiving any consideration from any party dealing with the fund in connection with the foregoing transactions, whether or not the fiduciary participates in the transactions. Also, the fund would be prohibited from making a loan to a fiduciary of the fund, or to a relative of a fiduciary of the fund, or to certain other persons or organizations which have a close relationship to the fiduciary.

Section 14 would further limit investment on behalf of the plan in the employer's stock or stock of a company controlled by the employer to 10% of the fair market value of the fund's assets, regardless of the ability of such investments to meet a fiduciary test. There are exceptions to this restriction for certain plans such as profit-sharing plans.

Moreover, Section 14 would make the fiduciary personally liable to the fund for any losses resulting from a breach of his duty, and would require the fiduciary to restore to the fund any profits made by the fiduciary through his use of fund assets. This section would also void any exculpatory provisions which would purport to relieve any fiduciary from liability for breach of his duties.

To make Section 14 effective, the Department of Labor advocates the degree of detail in annual financial reporting by plan administrators provided in Section 7 of the bill. The duty to render an accounting is a necessary complement to the imposition of fiduciary responsibility. At present there is no requirement that the participants and beneficiaries be informed and they do not know what has been done with the property entrusted to the fiduciary. It is essential, therefore, that the beneficiaries receive a periodic accounting in order that they may have an adequate basis for evaluating the fiduciary's performance of his obligations. It is also essential that the information be furnished to the participants and

beneficiaries in such manner and detail that it can be scrutinized for breaches of trust.

Present disclosure provisions under the Welfare and Pension Plans Disclosure Act limit the amount and type of financial information and are, therefore, inadequate for such purpose. For example:

Assets are merely listed by category; i.e., cash, bonds and debentures, common stock, preferred stock, real estate, etc., without identification of the specific securities or other property held.

Loans and notes receivable are reported by single line entries indicating the aggregate dollar amounts held which are "secured" and "unsecured."

Real estate is reported by single line entries indicating the aggregate dollar amounts invested in "operated" and "other real estate."

Funds invested in common trusts are reported by a single line entry indicating the aggregate dollar amount invested in the common trust and identification of such trust, with no information in such report as to the portfolio of such trust.

Information regarding the purchase or sale of assets is limited to single line entries indicating the aggregate dollar amounts received and expended with respect to such sales and purchases, and the gains or losses resulting from the sales are shown in the aggregate by category of the assets sold; i.e., common stock, bonds or debentures, real estate, etc.

No additional identification or information is furnished except for certain party-in-interest investments which are reported in some detail on a separate schedule.

The lack of sufficiently detailed information under present disclosure provisions does not permit a plan participant or beneficiary to determine whether stock held by the fund is issued by reputable companies, whether such companies are in a strong financial position, whether they are paying dividends, the amount of the dividend payments, and whether the amount invested in each issue is not an unduly large proportion of the trust fund. It sheds no light in respect to the purchase and sale of assets occurring within the reporting year or transactions which might not be solely for the benefit of the plan participants, or which might have caused substantial losses of fund assets through imprudence.

The lending of fund monies is an area requiring close scrutiny. The value of the investment depends partly on the business ability of the borrower, his financial ability to make the interest payments and repay the principal, and the adequacy of security for the loan. Loans should be made with assurance of a steady income and ultimate return of the principal.

The foregoing are legitimate areas of inquiry and concern in evaluating a fiduciary's performance of his obligations to the participants and their beneficiaries. Section 9(h) of the bill authorizes participants or beneficiaries to bring civil action to remedy a breach of fiduciary duty and responsibility. Yet, the information available to them under the present disclosure provisions affords them no basis upon which to make such an evaluation. Indeed, under the present law participants and beneficiaries of plans having fewer than 100 participants would have no information, whatsoever, to form a basis for evaluating the fiduciary's performance, since such plans are exempt from having to file annual reports.

It is apparent, therefore, that the present disclosure provisions are inadequate and that further disclosure must be obtained. In this regard, it is noted that the President's Committee on Corporate Pension Funds and Other Private Retirement and Welfare Programs in its January 1965 report said: "Disclosure of investment holdings and activities in much more detail than is now required, perhaps in the same manner as is required of investment companies under SEC regulation, would seem useful and entirely feasible without impairment of retirement plan operations."

The financial information elicited under the bill is reasonable for the purpose it is intended to serve. It is similar, although in some respects less detailed than the information required of investment companies under SEC regulation, banks regulated by the Comptroller of the Currency, insurance companies regulated by the various States, and other financial institutions.

Further to assure the accuracy of welfare and pension plan reports, the bill would require annual independent audits of plan funds by certified or licensed public accountants and would eliminate certain existing impediments to Department of Labor investigations under the WPPDA.

Under existing law, the annual financial report filed by the plan administrator may be sworn to by the administrator or certified by an independent certified or licensed public accountant. In the case of reports sworn to, but not certified, the Secretary of Labor, when he determines to investigate a plan in accordance with Section 9(d) of the existing law, must, prior to investigation, require certification of the report by an independent certified or licensed public accountant. Section 9(d) of the present Act provides that the Secretary may, after first requiring certification of the annual report, conduct an investigation if he has "reasonable cause to believe investigation may disclose violations of this Act."

Accountability is one of the elementary requirements of fiduciaries. Jointly-administered trusts under Section 302 of the Labor Management Relations Act are already required to be audited annually, with a statement of results to be available for inspection by interested persons. There appears to be no valid reason for not extending the same requirement to employee benefit trusts administered unilaterally by an employer or by employee organizations. The bill, therefore, appropriately requires in Section 7(h) that an audit be made annually and that the auditor's opinion and comments be furnished in the annual report filed by the plan administrator with the Department of Labor. The bill also amends Section 9(d) of the WPPDA to authorize the Secretary of Labor to conduct investigations of welfare and pension benefit plans to the same extent as he is now authorized to conduct investigations of labor organizations under the Labor-Management Reporting and Disclosure Act.

The bill would add a new section to bar persons convicted of certain crimes from serving as fiduciaries or as consultants to welfare or pension funds for a five-year period following conviction or imprisonment. This provision is patterned after Section 504 of the LMRDA, which imposes a similar bar with respect to serving as a union officer, union employee or labor relations consultant. We should not permit persons barred from union office by Section 504 of the LMRDA to obtain employment in the welfare and pension field where they would have access to assets many times in excess of those in the labor movement. However, recognizing certain shortcomings in the list of crimes specified in the LMRDA, Section 15 of the bill would expand somewhat the list of crime, conviction of which would act as a bar to functioning as a fiduciary in employee benefit plans.

Along with the major provisions on which I have commented, S. 1024 contains certain minor and technical amendments to the provisions of the existing WPPDA. Some of them were suggested by the Advisory Council on Employee Welfare and Pension Benefit Plans, and others were suggested by the Department of Labor staff as a by-product of its experience in recent years. They are desirable to make the law more workable.

Turning now to S. 3421—which applies to retirement plans but not to welfare plans—it should be kept in mind that the pension promise is at the heart of the private system.

Employees participate in private pension plans with the expectation that this participation will result in greater economic security during their retirement years, and with the belief—unfortunately not true in many cases—that this promise is backed by adequate and prudently managed funds to guarantee its fulfillment. Because of its very nature, the private pension plan can retain the confidence of its participants only if its promise can be fulfilled.

Under the present arrangements, however, far too often the private pension promise has become a mere illusion.

Participants lose pension benefits if they leave the scope of the plan before they are vested in their retirement benefits. In fact, if 100 typical workers join private pension plans at age 25 and remain in continuous service, only 24 of them will be vested at the end of ten years.

Pension funds do not always provide sufficient accumulation of funds to meet adequately their growing liabilities.

Plan terminations as a result of financial difficulties or bankruptcy leave pension participants without the benefits which they have been led to expect.

Vesting

Vesting is the right of a plan participant to receive his allowed benefits even though his employment is terminated under the plan before he is eligible for retirement. Normally, this right is provided only under certain conditions—after a specified period of service, upon attainment of a specified age, or both, or upon specified types of termination.

In its 1965 report, the President's Committee concluded as follows: "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. Without vesting a worker displaced after long years of service is denied all of his accrued pension protection. A worker in a similar position who voluntarily changes his employment has to forfeit his right to a future pension. Both circumstances are charged with inequity."

Many individual cases can be cited to illustrate the inequities of the present situation. From the many complaints that have come to the Labor Department's attention, we have selected a number of examples (Exhibit A). Let me mention just three of these examples:

A man was discharged without pension rights at age 59 after holding a number of responsible positions with the same company for 26 years.

A salesman with 28 years of service was discharged at age 56 because his division was closed down. To be eligible for a pension he would have had to remain employed with the company until age 65.

A man with 36 years of service had his employment terminated with no pension rights when the factory was shut down. Because his wife was ill, he was unable to follow the company to its new location.

There are other reasons for a vesting requirement for private pension plans. By making private pension benefits more widely available, vesting strengthens the Nation's entire program for retirement protection. A greater degree of vesting will also improve the utilization of the Nation's manpower resources by removing an impediment to voluntary labor mobility. While there are many factors that may affect an individual's decision to switch jobs, in a significant number of cases one factor is the presence or absence of vested benefits in his current job. Without vesting, a job change means that service in his current job will not count toward his private retirement income.

In today's fast-moving economy, technological change or shifts in consumer or business demand naturally will mean corresponding shifts of jobs among industries, occupations, and geographical areas. Available information indicates, for example, that in industries predominantly covered by pension plans such as manufacturing or public utilities, one-half the workers currently with ten or more years of service will not be working for the same employer by the time they reach retirement age. (Additional information on job mobility and tenure is summarized in Exhibit B.) The prospect of even greater job shifting in the future as the pace of technological change advances lends added emphasis to the need for vesting.

The merits of vesting are almost universally recognized; yet, it is completely absent in almost one-third of all pension plans covering nearly one-third of the participants. In many other plans, vesting is dependent upon the individual's meeting overly restrictive age service or other requirements.

In the decade of the 1950's substantial progress was made by many plans toward more liberal vesting provisions. This fact has been cited by many who believe that legislation is not necessary and that vesting will become virtually universal through private action. However, the situation today shows only a slight change over the prevalence of vesting in 1962-63. The chief improvement has been the removal of the age requirement from a number of plans, particularly in automobile manufacturing. More recently, after negotiations with the Communication Workers of America, a vesting provision was incorporated for the first time in the retirement plans of the Bell telephone system. As a general rule, however, the prevalence and coverage of vesting provisions has increased only slightly and the age and service requirements have been relaxed only a little during the past five years. While even a slow rate of progress represents improvement, we have to realize that at this rate we will have to wait until about the year 2000 before substantially all plans have even a modest vesting provision.

Let me illustrate this point by considering 100 workers aged 25 who join a typical group of pension plans. Under plan provisions prevailing in mid-1967, if these workers remain within their plan for ten years, only 24 of them will be vested; if they remain 15 years, only 46 of them will be vested. Only after 20 years would a majority of them have vested rights.

S. 3421 incorporates the following vesting standard: Full vesting of regular retirement benefits after an employee has acquired ten years of continuous service (allowing exclusion of service prior to age 25) with benefit payments beginning no later than age 65. Such a standard would become fully operative over a ten year period after the effective date of the Act.

This standard reflects the following:

1. Ten years is a sufficiently extended period of time for the value of an employee's service to be explicitly recognized. It represents about one-fourth of the typical working lifetime. Loss of benefits for this period of service would represent a substantial reduction in an employee's retirement security. On the other hand, a 10-year service requirement will not necessitate vesting during the first few years of employment when turnover is characteristically highest.

2. Allowing exclusion of service prior to age 25 in determining eligibility for vesting permits plans to avoid vesting employees with the highest turnover. Many employees below age 25 are only temporary members of the labor force.

3. A plan's regular retirement benefit means the retirement benefit computed under the plan's normal formula. It does not include ancillary benefits, such as death or disability retirement. Limiting the vesting standard to regular retirement benefits assures receipt of retirement income to employees concerned while allowing plans greater freedom to develop ancillary benefits tailored to their specific needs.

4. Setting age 65 as the latest date at which vested benefits will be payable reflects the current general acceptance of this age of retirement. This is the age at which an individual can begin drawing his full Social Security benefit. S. 3421, of course, permits voluntary arrangements for drawing benefits at an earlier age.

If this standard were in effect today, rough estimates indicate that it would begin to benefit around 10 million participants. About half of these are participants with ten or more years of service under their plan who are not now vested. The other half are participants currently with less than ten years' service who are expected to remain on the job until they attain ten years' service but who, in the absence of the new standard, would not become vested at that time.

All of these employees would gain the assurance of knowing that if they should leave the scope of their plan, their benefits would be vested. Even though these individuals are not actually terminated they would be protected in much the same way that any of us receive protection from our insurance policies even though our house does not burn down or our automobile is not involved in an accident.

However, an estimated 3 million of these 10 million participants will receive more tangible benefits. This is the estimated number of those who, without the proposed standard, would be terminated from their current employment without receiving any pension benefits.

The value of the new standard, in distributing retirement benefits more widely, and in assuring fair treatment to participants, will be well worth the additional cost necessary for its adoption. Yet in many cases, adjusting to this standard will be neither difficult nor costly. In single employer pension plans almost half the workers either have the protection of this standard or very close to it—usually only an age requirement—40, 45, or 50—has to be removed. While only one-fourth of the workers under multi-employer plans currently have any type of vesting, the cost of adopting vesting in such plans is usually less than in single employer plans since much of the job-changing takes place among employers within the plan. Profit-sharing plans providing retirement benefits almost always have a graded vesting provision under which accrued benefits are usually fully vested after ten years of service or soon thereafter.

The cost of complying with the standard will naturally vary among plans because of differences in their current vesting provisions, in their benefit provisions, and in the characteristics of their members. Judging by the pension plans reporting under the Welfare and Pension Plans Disclosure Act, over 30 percent of the plans would either have no increases or increases of less than 3 percent in the plan's normal cost. About 25 percent of the plans would probably experience a 3 to 6 percent increase in cost. Higher cost increases would probably be incurred by the remaining plans, most of which have no vesting provision.

Differences in the cost of complying with the vesting requirement are recognized in two ways:

1. Several transition methods are included that can be used by any plan to make the cost increase as small and as gradual as possible.

2. A relief provision is included to aid plans that incur a substantial cost increase.

Existing plans, for example, are permitted to vest only benefits based on service after the effective date of the standard for employees with ten or more years

of service. Or they may use a system of graded vesting after the effective date so that only 10 percent of benefits for past and future service are vested for employees leaving the plan in the first year, 20 percent the second year, and so on. Another method would allow a plan initially to limit vesting to participants with 20 years of service and to gradually reduce that requirement to ten years. New plans are not required to have any vesting requirement for the first five years, after which transition methods are also available.

Plans may also apply for relief from the vesting standard if the standard would impose unreasonable costs or unreasonable administrative burdens. This variance provision is necessary to protect plans which do not conform to the usual patterns and for which the ordinary provisions are not adequate. In general, this relief would be provided only for temporary periods at the discretion of the Secretary. However, broadly based multiemployer plans could apply for a permanent variation based on their experience in granting transfer rights to employees changing employers within the plan. Such plans have several advantages for employees—financial support of several employers and protection against loss of credited service when changing jobs within the scope of the plan—and these raise the funding costs. In return for such extra protection, it seems fair to grant appropriate adjustments in meeting the vesting standard. A Variation Appeals Board is established to review decisions denying such relief.

A special feature of this proposal is a requirement that all plan administrators furnish to the Secretary of Health, Education and Welfare pertinent information about all vested participants whose employment terminates before retirement. Then when such an employee applies for his Social Security benefit, he will be informed of any private plans in which he has vested benefits.

The proposed standard of full vesting after ten years of continuous service prescribes when a person would be vested. Considerable attention has also been devoted to the issue of what benefit should be vested. In general, the proposal suggests that a plan participant should be vested in that portion of the pension he expected to receive at age 65 that is represented by the ratio of his years of completed service to years of potential service at age 65. A more detailed discussion of the methods of applying the proposed vesting standard to the many different types of private pension formulas is included in Exhibit C.

Funding

The private pension system, as a whole, is to be commended for its sound funding practices. Funding means the orderly accumulation of pension reserves during an employee's working career to provide sufficient money by the time of his retirement to pay his pension benefit thereafter. Practically all plans fund at least their current obligations to pay benefits in the future and most have set full funding—asset accumulations equal to accrued benefit rights—as their ultimate goal. This procedure not only levels the plan's cost impact over time and provides reserve funds against possible future periods of adverse business conditions, but also provides greater protection to plan participants.

S. 3421 is designed to bring a minority of plans up to the funding standards already adopted by the majority. It requires each plan to assume full responsibility for the costs of continuing operation and to share in a combined effort to protect benefit rights in the event of a plan termination. The funding standards would apply to all plans that promise a stated level of benefits. They would not apply to fixed contribution plans (such as money-purchase pension and profit-sharing) since under such plans there is no promised level of benefit. Since the promise is directly dependent on the funds accumulated at retirement, the question of funding adequacy does not apply.

The present Internal Revenue Service funding standard requires fund accumulations to be sufficient to meet the benefits earned each year since inception of the plan and to pay the interest on any unfunded past service liabilities. The is maintained as a basic standard under this bill.

However, this test cannot be relied upon any longer as the sole measure of funding adequacy because it does not provide for funding of past service costs and thus may not lead to sufficient funding in the event of plan termination. For this reason S. 3421 incorporates an additional funding standard to measure more accurately and uniformly a plan's ability to meet its vested commitments at any point in time, and specifically in the event of termination. Such a standard would have the additional advantage of setting a firm foundation upon which a system of plan termination protection can be based. The proposed new standard is built around a comparison at a point in time of a plan's assets with its vested liabilities based on benefits for retirees and for those with vested rights but not yet receiving benefits.

Under the proposed funding standard, a plan would be required to increase its ratio of assets to vested liabilities by four percentage points a year. In other words, at the end of 25 years, assuming no change in benefit structure, each plan would be expected to reach the 100 percent mark, meaning that the plan had accumulated sufficient assets so that if forced to terminate, it could meet all benefit obligations vested at that time.

Although available data indicate that most plans are currently funding as rapidly as the proposed standard would require, some plans might encounter difficulty in complying with the new schedule. To avoid unreasonable hardships and to provide transition procedures as in the case of the vesting standard, existing plans may elect to enter the schedule at their current funding ratio if this is lower than the ratio specified by the new schedule based on the plan's age. In addition, beginning at that point, the plan's funding target would rise only 3 percentage points per year for the first five years, with the full 4 percentage points not required until the sixth year. New plans are not required to meet the new standard during their first five years.

Special arrangements are provided in the event of plan amendments raising benefit levels and thus increasing vested liabilities. In such cases, the plan's required funding ratio would be adjusted to take into account the magnitude of the increased vested liabilities. In addition, if the amendment increases vested liabilities by more than 25 percent, the liabilities created by the amendment can be treated as a separate plan for purposes of the new funding standard. As in the case of the vesting standard, plans may apply for a variance from the funding standard, if this would impose unreasonable costs or unworkable administrative arrangements.

The two funding standards would be administered jointly by reviewing a funding status report which each plan would submit every three years. Failure to meet the traditional Internal Revenue Service standard would, as at present, make nonforfeitable whatever benefit has accrued to each participant. Failure to meet the new funding standard would invoke a series of administrative sanctions designed to persuade the plan to bring its assets into line with its benefit commitments. For example, the plan would be required to furnish annual rather than triennial reports of its funding status and it would not be permitted to liberalize its benefit structure until it had met its required funding ratio. If the funding deficit continued for five years, further accumulation of vested benefits would be prohibited and the Secretary would have the authority to terminate the plan to protect the accrued benefit rights of the participants.

The proposed funding standard would involve relatively simple calculations which the average plan should make periodically for its own assessment of its funding status. The question being asked is essentially this: If the plan were terminated today, would the assets be sufficient to pay all vested benefits? This test would not require imposing a complete set of mandatory actuarial assumptions and methods for all private pension plans. Instead, it would apply a uniform way to measure the present value of vested benefits, taking into account simply current, mortality and interest tables. A more detailed description of the manner in which the proposed standard would operate is given in Exhibit C.

Plan termination protection

Under present regulations an employer has no legal obligation to pay expected pension benefits upon termination of the plan beyond those which can be provided by his previous contributions. The proposed funding standards would prove extremely helpful in assuring that in the future adequate assets will be on hand to meet a plan's vested obligations. However, no funding standard can be expected to provide complete protection from the day of the adoption of this legislation in the event of termination since this would require full and immediate funding of all vested benefits.

To meet the problem of insufficient assets upon termination, a system of plan termination protection is proposed. The aim of such a program would be to provide protection during the early years in the life of a plan before it has been able to build sufficient resources to meet the 100 percent goal. Plan termination protection would also serve the same purpose following amendments which liberalize plan benefits and which also typically require a period of time to become fully funded.

Information on plan terminations, while not complete, does indicate that significant numbers of plan participants are left without their full benefit rights. During the years 1955-65, about 4,300 pension plans terminated involving 225,000 employees. Forty-four percent of these terminations occurred under circum-

stances—financial difficulties or dissolutions of the business—where losses were likely. Currently, about 500 pension plans involving 25,000 employees terminate each year. The well-known experience of the Studebaker employees when that firm closed down its South Bend, Indiana assembly plant in 1964 is only the most graphic example of what can happen when a terminating plan does not have sufficient assets to meet all vested benefits.

The proposed system of plan termination protection would build directly upon the termination funding standard. It has been developed with the aim of providing full protection for the vested rights of plan participants in the event of plan termination caused by shutdown of operations or adverse economic circumstances.

Essentially, this system is comprised of the following interrelated aspects:

1. Plans would purchase insurance to guarantee payment of vested benefits in the event of plan termination caused by shutdown of operations or adverse economic circumstances.

2. The insurance fund would fully protect vested benefits of all plans satisfying the funding standard.

3. Plans that do not meet the termination funding standard would not be permitted insurance coverage for the amount by which their assets fell short of the amounts required by the standard, but rather in these instances the employer would be liable for this amount.

4. Conditions under which claims against the insurance fund are honored would be carefully limited in order to maintain the integrity of the insurance fund.

Administrative arrangements for handling the insurance fund will be based on the funding status reports to be submitted every three years. These reports will provide the information necessary to calculate the amount of insurance required and the premiums to be paid. The amount of insurance required is essentially the difference between the plan's vested liabilities (its obligations in the event of termination) and the greater of (1) the assets on hand, or (2) the assets required to be on hand by the funding schedule. Finally, the assets will be valued at 90 percent, rather than 100 percent, of market value in order to provide a uniform limited hedge against possible future loss due to market depreciation of assets. However, I want to make clear that the insurance proposal does not involve any government regulation or supervision of pension fund assets beyond that contemplated in the proposed legislation regarding fiduciary standards for private pension plans (S. 1024).

Premiums would be calculated at a uniform rate on a plan's unfunded vested liabilities. Preliminary calculations indicate that an insurance plan can be financed through contributions averaging not more than 0.2 percent a year of unfunded vested liabilities. S. 3421 sets a maximum rate of 0.6 percent for the initial three-year premium.

Claims against the fund would be honored only in the event of essentially involuntary plan terminations caused by financial difficulty or bankruptcy. More detailed discussion of procedure involved in plan terminations is given in Exhibit C.

In order to protect the insurance fund from possible abuse, a number of specific restrictions have been included in the proposed legislation. Among them are the following:

1. Claims would be honored only upon terminations arising from plant closings that affect 20 percent or more of the vested liabilities of a firm's total pension plans. If less significant terminations were to be covered, some employers might fragment their pension plan arrangements to take advantage of the insurance when only a minor rearrangement of their business structure was involved.

2. Claims for vested liabilities arising out of plan amendments would not be honored if the amendment took effect within three years preceding the plan's termination. Unless such a limitation is included, it would be possible to amend a plan shortly before its termination in order to collect additional benefits through the insurance fund.

3. No benefits would be payable to stockholders owning over 10 percent of the value or voting power of the company's stock. Such stockholders typically are in a position to exert major control over the company and its pension plan.

An integral part of the proposed funding-insurance system would be a system of disclosing to plan participants the degree of protection provided them, as indi-

cated by the plan's funding status report required every three years. If the plan's funding was at or above its funding target, the funding status report would simply be made available to each person with vested benefits. If, on the other hand, the plan's funding is below its funding target, each participant with a vested benefit would be informed individually as to that portion of his benefit protected by assets, that portion protected by insurance, and that portion protected by neither but for which the employer is liable in the event of termination.

Administration

In administering the functions established by this legislation, the basic necessity is to assure laboring men and women that the benefit plans established for their benefit are being developed for the social purposes they were intended to serve. In view of the responsibilities of the Labor Department for related legislation, such as the Welfare and Pension Plans Disclosure Act, and the familiarity of Department officials with the negotiation and operation of these benefit plans, the administrative responsibility for the new functions in these bills has been placed in the Department.

Several steps have been taken in developing these legislative proposals to ensure impartiality with respect to administration. These steps will, we believe, result in a fair and balanced regulatory program.

To begin with, responsibility for the new plan termination insurance program would be placed in the hands of a special government corporation, the Pension Benefit Insurance Corporation, with all the special status that is inherent in a corporation within the Federal Government. This arrangement will provide a number of advantages, including the segregation of insurance premiums from other Government revenues, the handling of insurance monies in a separate revolving fund and assignment of responsibilities to a Board of Directors. The Corporation will be responsible for all aspects of the insurance system, including the setting of premium rates, management of the insurance fund, and payment of claims. The Board of Directors of five will include both the Secretary of Labor and the Secretary of Commerce, *ex officio*.

Secondly, the important function of ruling upon appeals for variations from the vesting and funding standards will be in the hands of a newly created Variations Appeals Board. Membership on this Board will include the Secretary of Labor or his designee, the Secretary of Commerce or his designee, and a person, jointly selected by the two Secretaries from outside the Federal Government, who is competent to deal with problems involving employees' pension plans.

Finally, a special Technical Advisory Committee on Pension Benefit Insurance is established consisting of five members appointed by the Secretary of Labor after consultation with the Secretary of Commerce. This Committee will advise the newly created Pension Benefit Insurance Corporation which would be required to consult with the Committee before setting premium rates under the insurance program.

Enforcement

S. 3421 and S. 1024 are primarily remedial and not criminal legislation. In general, these bills are intended to prevent and remedy violations rather than to punish persons.

With regard to S. 3421, the emphasis is first, on the employment of administrative procedures requiring affirmative action and second, the authorization of enforcement through civil injunctions.

The vesting standard will be enforced through the requirement of obtaining a certificate of approval with respect to the plan's vesting provisions whenever the Secretary deems it necessary. It would be unlawful to operate a plan without such a certificate when one is required. Injunctions would be sought to restrain a plan from operating without such a certificate if a plan should attempt to do so.

Similarly, the funding standards would be enforced principally through administrative action, *e.g.*, suspending a plan accumulating further vested liabilities when it falls below the requisite level of funding for five years. Injunctions to compel compliance with the Secretary's administrative orders in this regard would be sought when necessary.

Finally, the Pension Benefit Insurance Corporation is authorized to enforce the insurance provisions, *i.e.*, to restrain a plan from operating without the required certificate of insurance or to compel compliance with insurance procedures.

With respect to enforcement of fiduciary standards, Section 9 of the S. 1024 would permit the Secretary of Labor as well as a plan participant or beneficiary

to bring a civil action in any district court of the United States to recover losses to the fund resulting from any breach of fiduciary responsibility or duty, to enjoin a breach of trust, to remove a trustee guilty of a breach of trust and have him replaced with an appropriate individual, or to secure any other appropriate relief for such breach; and to provide for the payment of reasonable counsel fees and compensation for expenses paid or incurred by participant or beneficiary in connection with the litigation.

As an aid in carrying out these provisions it is recommended that the administering agencies be given power to make investigation deemed to be necessary to determine whether there has been any violation of the Act of pertinent regulations or administrative orders. It is generally conceded that the authority to investigate for compliance is necessary to effective administration and enforcement of a statute imposing continuing affirmative duties. Subpena power is customarily authorized as an adjunct to investigative power and is therefore included in the present proposals.

For certain situations, criminal penalties are appropriate. In S. 3421 criminal penalties are imposed for willful violations of the Act, for false statements, for willful destruction of required records, for forgery or counterfeiting for the purpose of influencing the Secretary or the Corporation, or for fraud or deceit or the use of manipulative or deceptive devices for the purpose of influencing the Secretary or the Corporation. While the principal emphasis of the bill is on administrative and civil enforcement procedures, the foregoing penalties represent, in our judgment, a necessary protection to participants and beneficiaries and a deterrent to corrupt practices.

In addition, S. 1024 retains the present criminal sanctions against embezzlement, theft, bribery, kickbacks and false statements in connection with reports filed under the Welfare and Pension Plans Disclosure Act.

In conclusion, I wish to repeat that this proposed legislation is designed to strengthen the private pension system. Adequate retirement security for the Nation's citizens is a major goal of public policy. The private pension programs have already assumed a major role in achieving this objective. The proposal before you would enable the private system more effectively to perform this function by assuring its increasing number of participants that the private pension promise will be fulfilled.

EXHIBIT A-1

MARCH 30, 1968.

DEAR MR. DONAHUE: The attached article was sent to me by a friend as an item of interest a month or so ago, in the knowledge of a very shocking experience that I had along these very same lines. My purpose in writing to you is not to be construed as a complaint per se against my former employer but only as data that may be helpful to you in correcting such situations that may save others from the agonies that are an integral part of it.

I entered the employ of _____ Company of Chicago, Ill., in December 1940. For the next twenty-six years, I served in the following positions: analytical chemist, research chemist, field sales and service man, and district manager. After eleven years in the latter capacity and at the age of fifty-eight, I was demoted back down to a sales position again with the understanding that I was to suffer no loss in income. I did in fact not only lose income at a substantial level but the last quarter of the year of the demotion, I was denied the incentive bonus for my district although we had worked hard to achieve the base requirement by June 30th of that year. I will not dwell on the details of my demotion except to say that at the time we were the leading sales district of their ten districts operating at a rate of 149.3% of the quota assigned to us and well within our established budget. The final word was that they did not have to have a reason and in the final analysis, this is true because in September, 1966, I was dismissed from the company (now _____ & Co.) and any pension that I had earned was erased from my credit. This amounted to \$180.00 per month at age sixty-five, assuming that I kept up my current level of income. The statements made in this paragraph are a matter of documented record and in my possession.

The facts as I have stated them in my particular case are not based on circumstantial evidence. I know them to be true and I have absolute proof. I do know enough of other circumstances to be sure that a close scrutiny of their records of demotion and dismissal would provide an excellent case history for such a study as the article indicates that you are pursuing. I do think that some regulation is long overdue in the pension field. I feel that an employer has every right to dismiss anyone that he chooses but where the possibility exists

that he can make capital gain by a calculated program along these lines to avoid meeting his obligations, there should be some protection. While the pension amount in my case was not a great deal, the removal of it has left me at now almost sixty with my savings quite depleted, and nothing but Social Security in the future. I have found out how unemployable a man is when he reaches this age even if he is a trained man in his field.

I hope that my experience will be of some value to you in your investigation of pension plans and pension plan abuses. It would seem to me that it is of paramount importance that company management be controlled particularly where their plan requires that they go out in the insurance market and buy the pension for the going rate of the required insurance policy. This is indeed a sore temptation for the unscrupulous to save money by a systematic demotion and dismissal program.

In order that you may have a clear picture of my case, I am enclosing one of my prepared resumes that I have used in my search for employment. May I wish you every success in your study.

Sincerely yours,

EXHIBIT A-2

SEPTEMBER 25, 1965.

DEAR MR. PRESIDENT: As one democrat to another I do hope you can take the time out from all your many duties to read these few lines. There are many labor unions to represent the people that work by the hour, but how about the man that works by the month. They are called salaried men, although usually they are working many more hours than the men who work for them and getting much less pay. These men have no representation and the company who employs them can relieve them of their duties without notice or cause. For the past three or four years a large processing plant in our city has been dismissing their foremen when they get in their late fifties or around sixty years of age; in other words they are taking thirty to forty years of these men and then depriving them of their retirement. As you well know these men can't buy another job as their age is against them. Can't these men organize? Isn't there some way they can protect themselves? I don't doubt that these same procedures are going on all over the country. A so-called "company man" is a truly dedicated person and has usually learned his work from the ground up. The man who replaces him is usually a new employee, a college graduate that has never been in a factory before and is like a lost child when an emergency arises.

Thank you very sincerely for your time. If you have an answer I'd like to know.

EXHIBIT A-3

FEBRUARY 13, 1965.

Ref. Private pension plans guidelines proposed

PRESIDENT'S ADVISORY COMMITTEE ON LABOR-MANAGEMENT POLICY.

DEAR SIRs: Enclosed is a clipping of interest to me of your Federal Study Report in regards to Private Pension Plans Guidelines Proposed.

Although unemployed now for the past four-and-a-half years, I am still interested in the efforts and endeavors of those who try to solve and correct our programs of progress.

I have worked nearly a lifetime in the oil industry; my last employer of six years was the _____ Oil Company of New York City and of _____, Saudi Arabia. This in itself is an interesting story, both in employment and pension plans for retirement from this company and also the pension plans of a preceding oil company.

If my experiences and pertinent information can contribute to assisting the President's Advisory Committee to form those guidelines, I will be very glad to oblige here in my home.

"Of course without exposure and fanfare of any kind!"

I am offering this only to help stop what I call "False & Misrepresented" retirement pension planning that is not intended for its mature conclusion for the employee within the law and its entirety.

In my opinion, Company Management and Insurance Companies tend to exploit employees in the use of their deducted moneys of payrolls. The employee turn

over is so well arranged to not arouse suspicion of the proposed programs of employees' security in old age.

Of course these employees never reach retirement maturity and its conclusion; thus their proposed retirement ends in delusion for them.

Often times because of some suggested program of elimination either for the individual employee, who for some appalling reason must be disposed of, or through a company's reorganization program for one reason or another, always so well arranged to not pin-point the blame to any one person in authority of the companies involved.

All these activities of elimination of hourly personnel in the end relieves the insurance companies and Company Management of their contracted retirement pension plan obligation to the suspended or discharged employee.

How do I know all this? Because it happened to me three years before I reached my retirement age of sixty years which was a company policy to retire at that age.

And many other employees like myself preceding me and I am sure there are many others in the last four years.

If this offer is acceptable to the President's Advisory Committee on Labor-Management, I should be very glad to hear from you.

EXHIBIT A-4

DECEMBER 6, 1965.

PRESIDENT L. B. JOHNSON.

DEAR SIR: I have been employed by the company since 1940, 25 years. About four months ago the company informed us by mail that they would move two departments to different localities, one to Ohio, and one to Lebanon, Pa. This move, accordingly to the company, would involve about 500 employees. They haven't moved anything yet, but already there are about 200 of us laid-off. We don't know what is in store for our future. Since they won't transfer any of us to these new locations, we are in deep trouble. We are all between 45 and 50 years of age and you know as well as I do, no one is going to hire someone 50 years of age when there are thousands of younger men available. What will we do when in four months our unemployment checks are finished? We'll be retired without pension. I really think when a workman gives 25 years, the best years of his life, to a company, he should deserve better treatment. We all have children finishing high school. Their plans are to go college. Can they still go when the fathers have been given such a raw deal?

I hope you will look into this situation and can help us. We want to work, but when they move the plant out from under us it is impossible. Any help will be appreciated.

EXHIBIT A-5

MAY 10, 1966.

HON. W. WILLARD WIRTZ.

DEAR SIR: I have been very much interested in your comments to the Senate-House economic subcommittees relating to private pensions.

I am a victim of such a pension. I worked for 28 years as a salesman for the company, now known as the ——— Company of Wilmington, Delaware, their general offices.

In November, 1948, I was notified by wire in Boston while traveling for them that they were closing this Division and that my services were no longer wanted. I have been promised a pension by all the executives, most of whom have passed on now, but when discharged did not receive it because I was not 65 years of age, no longer an employee of this company and not eligible because I was 56 years of age.

I took this matter to the Supreme Court and lost, although the presiding judge gave no opinion on my case. The company hired the most outstanding and high-priced attorneys to fight this case, while an ordinary lay-man could not afford such attorneys. Since the court case I have introduced several changes in their pension plan by submitting resolutions to the stockholders to vote union. Management objected strenuously to these resolutions but subsequently all have been approved. These approvals were not retroactive and let me and other former

employees who were discharged and now over 65 years of age, not provided for in these amendments to the pension plan.

It is my opinion that all the monies the company took out for me and the others who were let out should either be given their pension, those who are living, or the money taken out to provide for our pensions, not taxable, be given to the Federal Government.

I would be pleased to appear before this subcommittee to explain the treatment I experienced trying to obtain pensions for me and the other let-out employees who gave the best years of their lives and were treated so unjustly.

I am now nearing 74 years of age. Would appreciate if you could arrange an appointment for me for a hearing before this committee to force the company to either pay us our pension with monies set aside for this purpose or return the money to the Federal Government.

Thanking you for giving this matter your personal attention, I remain,

EXHIBIT A-6

MAY 8, 1965.

SENATOR ROBERT F. KENNEDY.

DEAR SENATOR: I am writing this letter in regards to the company, of North Tonawanda, New York. I worked for this company over forty-six (46) years; they closed the plant in March, 1963.

We had no union; they promised all the employees when they became sixty-five (65) years old they would receive \$50.00 per month for five years. I was sixty-two years old when the plant closed. They paid me severance pay of \$35.00 per week for 52 weeks. I don't believe they treated me fairly; I also think their pension plan should be investigated, because I know of some cases that received their pension that are questionable.

If there is any way that I can help in this matter kindly let me know.

EXHIBIT A-7

MAY 12, 1965.

SECRETARY OF LABOR.

Sir: I have been reading about private pension plans that does employees no good after years of service. I happened to be one of them. I have enclosed a card so that you will see that our union was one of the AFL-CIO.

I worked for said company 41 years, from job to job when they decided to move to Newark. I received nothing but a fine reference, too young for pension and too old for other employment. Age at that time was 63½ years.

It is high time that something is done for employees that has given such long years of service. My letter is to encourage you to try and stop such tactics that has done plenty of harm to such employees.

EXHIBIT A-8

FEBRUARY 19, 1968.

Mr. THOMAS R. DONAHUE.

Mr. Donahue, in regard to your proposal of a pension after 10 years service, I am going to tell you of my service with _____ Company.

I worked for them from 1926 until they shut the factory down here at Charleston, West Virginia on September 30, 1962.

At the time it shut down, I had 36 years with them, including 3 years I had in the arm service, from 1942 until 1945.

I was 53 years old at the time having a sick wife I could not leave her and go to any other factory.

After a brief period of time I was terminated.

I am now 58 years old I got nothing from them what so ever, except 6 months Severance pay, too young to get a Pension and to old to get a Job.

Now, if I should live to retirement age, according to their Retirement plan I can never receive anything from _____ Company.

Mr. Donahue, Just how would you like to be put in my shoes, when you become of Retirement age. I am hoping that you can get some legislation passed in Congress where by these Companys over the Country will have to pay their former employees.

Yours very truly,

EXHIBIT A-9

MAY 1966.

Mr. W. WILLARD WIRTZ,
Secretary of Labor,
Washington, D.C.

DEAR SIR: This is a clipping from our local newspaper which was very interesting to know and hope something can be done for others benefit. Although it is too late we realize to benefit ourselves, as we find ourselves in such a predicament. My husband worked for the _____ Company for 25 years. Missing only 9 days of work because of illness and late once because *all* roads were drifted in and no traffic could get through. This is a record in itself as to dependability. At age 65 the man would be pensioned off and according to Seniority should have received a sizeable pension. Some men who had only been with the Company 4 or 5 years were pensioned off. My husband who was now 58 years old, had been with Company 25 years received "Thank you". The _____ Company shut down and tore down buildings using only the concentrating plant across the Highway to refining their ores. Many of their faithful old employees were terminated. Too old to get jobs elsewhere because of their age my husband being one of them (if you are over 45 years of age no one will hire you.) After months of hunting he finally got a job with school board but there again is no retirement or pension plan at best all we can look forward to is his social security which will hardly cover taxes, Insurances and food and utilities. We have always been saving and trying to pay as we go but another 3 months will certainly have to change our way of life as he turns 65 years old and again will be *forced* to retire. He is driving a 1950 plymouth to work and I drive a 1951 Buick. Both cars have seen their best days but no chance of ever getting other ones. There are quite a few other of our friends who are exactly in the same position as we are. Instead of saying one is in the Golden years they should call it the penniless years.

Thank you for your time and consideration,

EXHIBIT A-10

JUNE 30, 1965.

President LYNDON B. JOHNSON.

DEAR MR. PRESIDENT: I am writing for I've often heard you speak out against the injustices that pervade our society. I would call your attention to what I consider a most humiliating and significant injustice in the lives of men. On three occasions recently I've learned of men who have given forty or more years to a company and have felt secure in the good work they have rendered during that time, and confident that insurance programs, pension programs, etc. which were in force would be their natural reward at time of retirement. They have enjoyed the security that comes from doing a good job, enjoying the respect of their supervisors, and of their fellow men. In each instance after such a long and devoted period of service, they have suddenly lost all that gave dignity to their lives. The company was sold and the new owners and their managers have new plans in which the former employees did not fit. The insurance and pension plans were not guaranteed by insurance companies, etc., and suddenly one loses his guarantee for the future, the respect that he justly deserves and his dignity amongst men.

I do believe this is an injustice. I don't believe that America in 1965 would like to see itself in these terms. I would be delighted if you would consider this problem and possibly give comfort to those to whom it is happening throughout our country.

EXHIBIT A-11

NOVEMBER 10, 1966.

LABOR MANAGEMENT WELFARE PENSION REPORTS,
U.S. DEPARTMENT OF LABOR.

DEAR SIR: I have been requested to write to you on behalf of myself and twenty other fellow employees who were formerly employed by the _____ Company of Robinson, Illinois. It is our belief that we have been discriminated against by our former employer and feel that you and your office are in a position to correct this malpractice and prevent its future repetition by (the company), and others who may be guilty of the same. I would like to outline briefly the circumstances in this case which involves company paid pensions in lieu of increases in hourly wage rates.

On or about December 13, 1963 the company sold or transferred their dairy interests to the _____ Co. of Evansville, Indiana. As a result of this sale or merger our group were left at the mercy of the _____ Co. without any previous earned pension rights attained while in the employ of the (former) company. On termination of our employment our group went to work with the (new) company and with the exception of a few are still employed with the company without our previous earned pension rights.

It is our feeling that we are entitled to continued coverage or at least a monetary settlement by our former employer. We base our convictions in this matter on the fact that this pension plan was initiated in lieu of increases in our hourly rates of pay and other benefits. I must further mention that the longevity of this group runs from 12 to 27 years of tenure. Our ages are 35 to 52 years. Most of us are too old to start over again.

I will close for now and make myself available to you at your request. Thanking you in advance for your action on this matter, I remain,

EXHIBIT A-12

MAY 10, 1966.

HON. WILLARD WIRTZ,
Secretary of Labor, Washington, D.C.

HONORABLE SIR: I have heard several times recently your avowed desire to secure legislation pertaining to pension trust funds.

My experience with the above company would certainly indicate it is much needed and federal regulation is as much needed as social security. Inasmuch as the pension fund I subscribed to through pay roll deduction for many years was supposed to augment my social security, it is much needed now when I have been arbitrarily retired.

I lost it when the above company merged with the _____ Corporation, of Detroit. The monies I had paid in were returned to me with interest but nothing was said about the amount of monies the _____ Corporation was supposed to have been matching.

I was in no position to protest, at least I thought so, as I was being cashiered out of my job as Divisional manager at Cleveland, Ohio to that of a salesman with a distributor whom I had no hand in appointing and who went out of business in six months time. So, I lost 20 years selling _____ products.

In my humble opinion, the amount of accrual should have been held in trust to be paid to me in what ever amount it had reached to augment my social security as it was originally for.

Most respectfully,

EXHIBIT A-13

JUNE 21, 1965.

HON. HUBERT H. HUMPHREY.

DEAR SIR: I would like to bring to your attention a matter which is of immediate and pressing concern to me, in the hope that you might advise, and possibly assist me in reaching a solution.

I am what might be called a victim of an unjust, yet seemingly legal technicality which has put me in a frustrating and completely humiliating position.

Briefly, my situation is as follows:

Upon reaching retirement age 65 in 1960, I applied for and began to receive Federal Social Security benefits, a monthly sum which, though minimal, is certainly welcome.

In that same month of November, I applied for another bit of financial assistance to which I thought I was fully entitled—monthly retirement benefits from the ——— Retirement Fund, union pension fund for ——— workers. . . .

My application claim was rejected and because of that I have been forced to continue working to supplement my government assistance. I have been fighting the union pension fund for four years.

My claim (No. ———) was rejected, I was told, because of a Fund ruling that stipulates benefits will be paid to members who have been in continuous employment in the industry for 20 consecutive years.

I have been a member of the (union) and a worker in the ——— industry since 1911, and a member of the ——— local since 1934. However, in 1946, I suffered a sudden paralysis of arm and fingers which made me unable to work as a ———. The paralysis was officially judged an industrial accident and a state compensation award of \$500 was granted.

From 1946 to 1951 I was forced to seek employment outside my trade and outside the ——— industry, at substantially reduced income.

By 1951, however, I regained enough strength in my hands . . . and I returned to the ——— industry. I was reinstated as a union member in good standing, and I was never told that I had forfeited my status in any way.

I was shocked to learn, nine years later, that I was denied pension benefits by the industry and the union which I had served in, at that time, for 49 years.

I have been told that I would very possibly win a court case against the Pension Fund. Despite the legalisms, the morality of the case is on my side. But I can barely support myself, much less pay expensive lawyers' fees to handle the case.

I believe the treatment accorded me by the ——— Pension Fund is unfair, unjust and arbitrary. I had always hoped I would retain some dignity in my old age, and not be forced to seek handouts from my children or the community welfare department.

However, I do not know what to do or where to turn for help. The ——— Pension Fund has filed me under "claim rejected." I want them to unlock the file and re-examine the virtues and merits of my case. I worked long and hard for those benefits. I helped in the fight to win them. I do not think I have to beg. I demand what is mine.

Can you offer me any positive suggestions? I will be most grateful for any assistance you can give.

WOMAN.

EXHIBIT A-14

DECEMBER, 23, 1967.

Mr. THOMAS R. DONAHUE,
Assistant Secretary of Labor.

DEAR SIR: After reading the enclosed article in the Los Angeles Times, I am writing to you to tell you of my predicament.

I joined the ——— Union in 1918 and was a member until 1950 when I left Chicago and came to live in California for health reasons.

Unable to obtain a position in the men's garment industry, I had to get one in lady's cloaks. I relinquished my membership in the ——— Union and joined the ——— Union where I have been a member for the past 16 years.

I am now 71 years of age and cannot get any benefits from either Union. I will have to wait another four years until I have been with the International for twenty years in order to get a pension.

I feel that under the circumstances, I should not have to wait but should be able to get some benefit from at least one of them so that I can retire.

I bring this matter to your attention, not only for myself but for the benefit of other people who are in a similar predicament to mine.

EXHIBIT A-15

SEPTEMBER 4, 1966.

Senator ROBERT F. KENNEDY.

DEAR SENATOR KENNEDY: I worked for twenty years for a factory and was a member of the _____ Union. The factory closed down. Then I worked for the _____ Factory for two years and was a member of the _____ Union. This factory also closed down. I am now working for the _____ Company and am a member of the _____ Union.

I am 61 years old and have been a member of the last union for 11 years. I would like to retire at 65 years old but according to the rules of the union, a person has to have 20 years membership in order to be eligible for pension. This means I would have to work until I was 70 years old in order to qualify for pension under one union. I have worked all these years paying union dues faithfully and I don't consider it fair that I have to retire at 65 with no union pension. There are many others in this same situation.

We would appreciate it if you would lend us a helping hand by discussing this matter with (union president), about lowering the 20 years' membership to 15 years in order that we can be eligible.

I can furnish you with a list of the people in this same situation, if necessary.
WOMAN.

EXHIBIT A-16

MARCH 17, 1966.

Hon. EVERETT DIRKSEN.

DEAR MR. DIRKSEN: Am writing in regard to eligibility for pension from the _____ District Carpenters Council . . . I lived in _____ about 30 years and contributed to the _____ District Council pension fund for carpenters for 12 years. I have 40 units of eligibility to my credit but 60 units are required for eligibility for pension. According to the rules of the District Council after a person has left the jurisdiction of the _____ District for two years he forfeits his right to these monies.

At the advice of doctors at _____ Hospital I left for California. Since arriving here I have worked as a carpenter contributing to a pension fund here which amounts to about 30 cents an hour contribution, but because it is necessary for me to work and contribute for a 15 year period, which is the same as (previous plan), because of my age, which is age 60, I will not be eligible in either place. I have been in the Los Angeles area since 1961 and worked and contributed to the Los Angeles fund.

Since my aggregate years would make me eligible and I have contributed to both funds, I feel these accumulations should be mine. I have heard through our union that the government is contemplating forcing the unions in occasion like this, to bridge eligibility. This I feel would be the fair way.

I would certainly appreciate your efforts to rectify this injustice.
Thank you.

EXHIBIT A-17

SEPTEMBER 21, 1966.

Hon. ROBERT F. KENNEDY.

HONORABLE SIR: . . . I am taking the liberty of calling an injustice to your attention which, while it applies to me, also applies to many other union members. Briefly this is the situation.

I have been a member of the _____ International Union for 31 years, 17 years with Local (A), two of which I spent in the Armed Forces, and 14 years with Local (B). When leaving Local (A) (in order to keep working) no mention was made of the possibility of losing pension benefits, nor was I informed when joining Local (B) that I was endangering my pension and was getting no credit for the 17 years with Local (B). Yet, for 31 years I and my employers have paid union dues, etc. I am now 61 years old, disabled, and both locals refuse me a pension. Local (A) because I ceased to be a participant 14 years ago, and Local (B) because I have not been a participant long enough.

There are apparently many unions which have no reciprocal agreements between their locals, so that if a member has to change jobs . . . he loses his rights and benefits and is not made aware of it until it is too late. . . .

EXHIBIT A-18

JANUARY 25, 1966.

Hon. CLIFFORD P. CASE.

DEAR SIR: Officially, we are writing on behalf of one local union of bricklayers from _____, New Jersey, but probably for the majority of bricklayers in the our great State of New Jersey.

Most unions have so-called "Welfare and Pension" plans. You probably are familiar with the operation of most of these plans, but we must assume that ours is unique and explain how it functions. A bricklayer, plasterer, or mason must work a minimum number of hours in a given period of time to qualify for coverage in a welfare plan, or receive credit toward pension benefits. The contractor contributes a sum of money to this plan for each hour a man works for him.

There are approximately forty locals in New Jersey's twenty one counties. Our county of Union has five. Some locals have merged into plans of county-wide size, more or less. Our problem is that it is becoming steadily more difficult to acquire the necessary hours, in any one welfare and pension plan territory, for a great number of bricklayers. A large sum of money is spent by the contractors to protect a relative few.

Please let us know if you or some government department or agency can help unite our pension and welfare plans or at least bring about the vesting of funds of these many plans.

Countless letters to persons in public office have gone unanswered and even unnoticed, but this concerns the welfare and future of all our families Thank you for your attention.

EXHIBIT A-19

MAY 12, 1966.

SECRETARY OF LABOR.

DEAR SIR: Am a member of International _____ Union for over a period of 25 years and was very interested in the New York News press article of May 10, 1966 wherein you stated "millions of United States workers now covered by private pension plans will never draw benefits from them."

The International _____ Union with a membership in round figures of 100,000 members comes under this category.

I became an apprentice boy March 1926. I had almost 13 years in the union the depression came and the bottom dropped out of the printing business. At that time I had to enter other endeavors to support my family, receiving from the union an honorary withdrawal card. In 1954 I again became an active working member of the International _____ Union and have been employed since and at the present time in the _____ Press.

Am 60 years old as of March 8, 1966 and would like to retire when I reach 62. But the present qualifications to receive any pensions from the union is 25 consecutive years in the union. In other words my early years as a full card man from 1926 to 1938 are wasted and any monies paid in toward the pension are down the drain. . . .

In the printing business there are very few members who obtained 25 consecutive years and because of this we have men in their 70's and 80's still working trying to qualify for their pensions, I have known members who have left the printing trade after many years of working who received no pension because they did not have 25 consecutive years.

Sincerely yours,

EXHIBIT A-20

JANUARY 12, 1967.

SECRETARY OF LABOR.

DEAR MR. WIRTZ: I know that you are vitally interested in the welfare of the working man, and their pension plans. This is my problem and several others employed at the same place. The company has two pension plans. One for hourly employees and pays \$3.50 for each year of service, upon retiring at age 65. Plan is paid wholly by company.

The other for salaried employees, who pay 3 percent of earnings and the company contributes an equal amount, which yields a better pension.

In my case I worked for 19 years as an hourly employee, then was transferred to a salaried job. At the time of my transfer, I was unaware and was not notified that I would lose my 19 years of pension rights. I am still with the same company and in the same plant. When I spoke to management about the unfairness of this, I was told that it "was just an unfortunate situation."

I am interested to know if the government has any ruling or any contemplated on matters such as this.

You and the Johnson administration are doing a wonderful job for the working man. Keep up the good work.

EXHIBIT A-21

FEBRUARY 18, 1965.

THE PRESIDENT'S COMMITTEE ON PRIVATE PENSION PLANS.

GENTLEMEN: Under your present pension investigation, you may wish to consider an injustice through loss of pension credits within the United States Merchant Marine.

As you are aware, pension plans for Merchant Seamen are administered by the individual union to which the man is affiliated.

The anomaly comes about in that a seaman who is urged to upgrade himself from unlicensed to licensed rating must forfeit accrued, earned pension credits to do so. Once having gone to school, sat for and passed the examination for his license, he *must then resign* from the unlicensed union before joining the officers' union through which he must obtain his jobs. And of course upon resignation from the union he forfeits all pension credits in the union-administered fund.

It may be that this situation can be remedied only through an agreement between the unions involved, but it is quite clear that the unlicensed unions will not easily relinquish the not inconsiderable money involved and which accrues to their funds through the upward movement of a good percentage of the thousands of seamen in the Merchant Marine.

It would seem much more equitable and just were the "money to follow the men" to the new union pension, i.e., that they take with them the credit for years of service and previous contributions, and that this time and money then be credited to their pension account in the licensed union.

A fairly analagous situation exists in the longshore industry wherein a union administered pension fund for each local have working agreements to transfer the longshoreman's pension credits when he moves from one port city to another, but remains in the industry and becomes affiliated with a local in the new port.

Thank you for any consideration you may give to this problem.

Sincerely,

Mrs. _____

EXHIBIT A-22

JULY 30, 1966.

President LYNDON B. JOHNSON.

DEAR PRESIDENT JOHNSON: I write concerning a problem that has disturbed myself and many fellow employees at _____ and Company, Indianapolis, Indiana, for a number of years. From talking with friends who work at other large companies across the U.S., I have also learned that many other people share our feelings.

The problem arises from the nearly universal tendency of large firms to pay their employees in two ways: salary and "fringe" benefits. Benefit programs, of course, have, in recent years, ceased to be mere "fringes" and now represent a very significant portion of the employee's total compensation. This is especially true of the pension plan which, at _____, represents the largest single benefit offered by the company.

Years of service is the most important factor in most pension formulas. Thus, at _____ and Company, an employee who retires at age 65 after 40 years service will receive a pension roughly equal to 40 percent of his average salary during the last 10 years. The same individual with 20 years service would receive only a 20 percent pension at age 65.

However—and this is the crux of the problem—a person who joined _____ at age 18, served satisfactorily for 23 years, and then left the company would

lose all his pension rights. I have a friend in (the company's) Public Relations component who will leave the company after 17 years service. This man will terminate his employment because of intolerable conditions in his work environment. He will forfeit all rights in a pension plan which for 17 years has constituted a major element in his overall compensation from the company. _____, of course, is a non-unionized company and thus there is no really effective power base to back up the individual employee in his encounters with company management.

With the present design of the _____ Retirement Plan, very few dissatisfied people leave after 17 years with the company. They remain, passing up better opportunities, becoming more unhappy, and often growing old before their time. There's a familiar saying at _____, "After seven years, they've got you." The same thing is true at most other large corporations.

Since Congress is now considering legislation on pension funds, we would like to suggest that a provision be included which will entitle an employee leaving a company to a retirement income proportional to his years of service. Thus . . . an individual who served 10 years before terminating his employment would receive a 10 percent pension beginning at 65. The ruling, of course, would apply only to companies that have retirement plans. Perhaps there should be some minimum service requirement, such as five years, before the pension entitlement rule would apply. Employees who qualify for pensions under this rule should benefit from any retroactive improvement in the company's retirement plan.

We feel that the pension plan ruling described above would add greatly to the individual freedom of employees in large corporations. This would especially be true in the case of large, non-unionized companies. Since many firms tend to "hoard" talent, which, because of the resulting oversupply, often cannot be fully utilized, the pension ruling—by increasing mobility—would be also contribute to a more efficient utilization of overall manpower resources. All companies—indeed all sectors of the economy—would thus benefit in the long run from such a ruling.

Our proposal is not radical. When one considers that total negative effect of a dissatisfied, "trapped", employee on morale and efficiency the ruling would add little or remember that the company would, in most cases, be required to pay a larger pension—for a less effective employee—when the dissatisfied individual retires after 30 or 40 years.

The goal of our suggestion, greater individual freedom, seems to coincide perfectly with the central values of both your Administration and the Democratic Party. We can think of no sounder orienting principle for a society than the primacy of the individual. . . .

EXHIBIT A-23

NOVEMBER 26, 1967.

Mr. THOMAS R. D*NAHUE.

DEAR SIR: Have just finished reading your article on the government's study of workers earned pension credits.

If there ever was a law that was needed by labor that is it. The present pension systems make a semislave out of the workers.

I for one (and I know many others) should change my job for health reasons. But I am not completely disabled. I am 54 years of age if I leave my job I could lose my so-called fringe benefits of 20 years of labor. But if I could leave for another more healthful job and be sure of some return on my pension rights, I could possibly prolong my life for 10 years of the present expectancy. It is very unjust to hold a man to a life time of work or until he or she is completely disabled before one could collect from this so-called fringe benefits. At age 65 and 30 years of service there are very few that are enjoying living off the _____ industry system of pensions.

If there is any information on this study that would benefit my union, I would greatly appreciate receiving such.

Respectfully yours,

EXHIBIT A-24

OCTOBER 5, 1967.

THE PRESIDENT'S COMMITTEE ON CORPORATE PENSION FUNDS.

GENTLEMEN: I am very interested in the work of your Committee, especially in your recommendation that the employee's interest in the corporate pension plan vest after a certain period of employment.

The Company by which I am employed— _____ Company—has a pension plan furnished by the Company alone . . .

During my early years with this Company, I was not concerned with pensions or vacation plans or any other fringe benefits. Now—after 27 years of service—I am taking a closer look. And, frankly, I am not impressed too much by what I see.

For the past few years, I have been more or less in a "bottleneck" with this Company and I would like to get out. I have had three job offers within the past year, all three of which would exceed my present salary by a minimum of \$6,000 per year. Yet—because of my length of service—I hesitate to leave without taking any part of the pension plan or fringe benefits with me.

I am realizing, for the first time, that I have made a contribution to the pension plan—not a monetary contribution, it is true, but I have contributed my loyalty, my ability, and the best years of my life.

I will be 50 years old in December. I can leave the _____ Company and make more money. If I stay, I have no reason to believe my lot will improve. By this Company's pension plan, I am entitled to retire at my own request at 60. . . .

I am very interested in the work of your Committee . . . especially in your attempts to have pension rights vest after a reasonable number of service years. . . .

EXHIBIT A-25

JANUARY 16, 1968.

Mr. ROBERT McEWEN,
House of Representatives,
Washington, D.C.

DEAR SIR: As my husband, _____ has been a constant worker and Taxpayer most of his life; I'm writing to you for advice.

In 1941, he left the _____ when Mr. _____ bought a _____ in Solvay. Quite a few men went with him.

In 1948, however, he left there and got employment at _____ in Syracuse, but in 1949 he returned to _____. He has been an _____.

All was well until June 1954 when work slackened and he was laid off with a lot of men. He found work again at _____. In April of 1955 work picked up at _____ and they came for him to return to their _____ in Solvay. He did, and has been there since.

Now, they started a Retirement Pension quite a few years ago and it was to benefit men who were 15 year men.

He retired in November 1967 and he was told that he wasn't a 15 year man. Was the layoff in 1954 held against him in that respect? It was not his fault, and in March 1949 to 1967 is more than 15 years.

Don't the workers have any backers even if the shop is a Non Union? He's paid S.S. ever since it started; has worked ever since 1919.

It doesn't seem fair because if something isn't done soon, I'll write to the Editorial page of the paper.

Please advise as to what we can do.

Sincerely,

EXHIBIT A-26

MARCH 9, 1966.

Mr. LYNDON B. JOHNSON,
President of the United States

DEAR MR. PRESIDENT: Among the various types of pension funds is the "Profit Sharing Pension Trust Fund."

This is sponsored entirely by a percent of company profits, contributed to the fund. It is an incentive plan to induce additional efforts from employees in return for retirement benefits.

This fund is set up on a policy of a specific amount being applied to the account of each employee.

After five years of participation in this fund, should employment be terminated, an employee can acquire 25% of the amount credited to his account. This he will receive over a 10-year period. The schedule provides 50% after 10 years of participation, 75% at 15 years and the full amount after 20 years participation, all in event of employment termination.

Any employee who terminates employment prior to the full 20-year period of participation *forfeits* his balance to the other participants in the fund.

Mr. President, this is very unfair and unjust and needs correction. These employees give the most productive years of their lives to these firms, and any amount credited to their account should be theirs and not revert to any other parties due to forfeitures.

As you know, many owners and top management officials are big partners in these funds. They can and they have been responsible for employees being terminated; many times they are suspected of doing this to increase their pension accounts due to forfeitures.

With due respect to these firms, they are benevolent in establishing these pension funds. They are also fully aware that these contributions are a tax advantage, which they also could personally share in.

Many wage earners will be very grateful if you can correct this situation . . .

EXHIBIT B

JOB MOBILITY AS IT RELATES TO AGE AND SERVICE REQUIREMENTS OF VESTING PROVISIONS IN PRIVATE PENSION PLANS

In a dynamic economy in which changes in technology and in the demand for various kinds of goods and services create a changing demand for labor in each industry, occupation, or locality, a substantial degree of job mobility is needed to achieve full utilization of the labor force and to enable the economy to operate at full capacity. On the other hand, the individual employee and employer are usually more interested in job stability. To the employee, job stability often means security from job losses or layoffs and protection of his unvested equity in fringe compensation such as pension plan benefits. Employers prefer stability because it means hiring and training costs are kept down. For this reason, they have frequently installed retirement plans and other fringe benefit programs.

Two Bureau of Labor Statistics surveys provide detailed information on both the incidence of job mobility and the extent to which workers have continuously remained on their current jobs.

Job mobility

The most recent Bureau of Labor Statistics survey on job mobility (taken February 1962 and covering the year 1961), provides information on the extent of job changing and the reasons for making a job change for workers in various age, sex, and industry groups.

During 1961, some 8 million workers—10 percent of the number who worked—shifted from one employer to another, some within the same community, some to distant States. Job mobility rates were higher for working men than for women. Eleven percent of the men changed jobs in 1961 compared to about eight and a half percent of the women (table 1).

About one-fourth of the 18 to 24 year old youths who did any work during 1961 changed jobs during the year. This reflects a period of adjustment to the job market while these young men look for a job which will provide adequate pay and opportunity for advancement.

The rate of job changing decreases from this peak among young men. About 15 percent of the 25 to 34 year old men, 10 percent of the 35 to 44 year old men and 7 percent of the 45 and 54 year old men changed jobs during 1961.

About two-fifths of the 25 to 44 year old male job changers obtained a new job to improve status; another 40 percent changed jobs due to job loss. Changing jobs to improve one's status declined sharply at middle age so that only one-fourth the job changers 45 to 54 and about one-sixth of those 55 to 64 shifted jobs for that reason. Job loss accounted for most of the difference (table 2).

By the time men reach their late fifties, mobility declines to a small fraction of the level of the early twenties. Among men 55 to 64, only 1 out of 25 changed jobs

in 1961. The accumulation of pensions, other fringe benefits and seniority provisions probably hold men of 55 or over on the job. Moreover, there are difficulties, in making advantageous job changes at this age. Job changing among men 65 and older is less frequent than in any other age group.

There are significant variations in job mobility rates among workers employed in the various industries (table 3). As might be expected, men employed in the construction industry had the highest rate of job changing of all the industry groups. About 1 out of 4 male construction workers changed jobs during 1961 owing, in most cases, to job loss. Most of these job changers (60 percent) found new jobs in the construction industry. Since most members of pension plans in that industry belong to multiemployer plans, these shifts frequently do not result in a loss of pension rights. The pattern of frequent job changing with strong attachment to the industry is unique to construction where jobs are often of short duration, but where relatively high wage rates prevail.

About 10 percent of the men working in manufacturing, an industry employing more workers than any other single industry group, changed jobs during the year. Loss of a job was also the most important reason for job shifting in this industry; 42 percent of the job changes were made for this reason, as compared with 37.5 percent for all industries. Only about 49 percent of the workers found new jobs in manufacturing.

At 14 percent, the rate of job changing among men in wholesale and retail trade is exceeded only among construction workers and agricultural wage and salary workers. Improvement in status was the most important reason for changing; over two-fifths of all changes were made for that reason. About 27 percent gave job loss as the reason for leaving.

Women employed in trade had the highest rate of job changing among the major industry groups. The most important reason for changing jobs was for improvement in status—about 1 out of 3 fell into that category. About 1 out of 5 left because they lost their job.

A majority of the job shifts made by men and women involved a change to a different industry. Members of pension plans making such shifts, would, of course, lose their accrued benefits unless their benefits were vested or the worker shifted back very quickly before his credited service was broken. As noted previously, the exception to this pattern is the construction industry, where jobs are frequently of short duration and where the normal situation is frequent job shifts from one construction job to another. Only about 4 out of 10 of the men who had worked in construction shifted to a job in a different industry.

On the other hand, high proportions of men working in transportation, service, trade, and public administration were likely to shift to a different industry when they changed jobs.

Among women, only those working in wholesale and retail trade and in service industries were more likely to stay in the same industry rather than shift.

One-third of all the job shifts were made to improve status, about one-third because a job was lost, and the remaining third covered a variety of reasons such as the ending of a temporary job, illness, or other personal reasons. Job loss was the predominant reason for job shifts by construction and factory workers while workers in trade, service, and public administration were more likely to change jobs voluntarily in order to obtain a better job.

The study also shows that job shifts made to improve status are more likely to involve a change in occupation and industry than are those made because jobs have been lost.

Job Tenure

A survey of job tenure of workers in January 1966 provides another way of measuring worker mobility—the length of time that workers had been continuously employed on the job they held at the time of the survey.¹ In other

¹ *Continuous Period of Employment.* The estimates on duration of employment refer to a continuous period of work at a particular job in which there have been no interruptions except for vacation, temporary illness, strikes, short-term layoffs (less than 30 days), and similar temporary factors which would rarely interrupt a worker's period of continuous service under a pension plan. Entry into the Armed Forces, transfer to another job, a layoff of 30 days or more, or withdrawal from the labor force for a period of 30 days or more were considered as the ending of a particular job, even though the person retained his right to that job at a later date. Except for entry into the Armed Forces, the duration of these interruptions would usually be so long as to cause a break in the employees continuous service under most pensions plans.

words, results of this survey show what proportion of workers in various age, sex, and industry groups have attained specified lengths of job attachment with their current employer.

The 71 million persons employed in January 1966 averaged slightly over 4 years of consecutive employment. Job tenure was significantly greater for men than women in each age group except for those under 25 years old. Overall, 40 percent of the employed men, but only 26 percent of the employed women 25 years and older had 10 years or more of continuous employment (table 4). Women often leave the labor force soon after they get married and may not return on a permanent basis until their middle or late thirties. Also, a larger percentage of women than men have part-year jobs, or work in part-time jobs which are often of shorter duration than full-time jobs.

The proportion of men who had spent over 10 consecutive years with the same employer, as one would expect, varies directly with age—ranging from about 4 percent for those 25 to 29 years old to about 63 percent for those 60 to 64 years old. Just as job mobility rates decline with advancing age, job tenure, a measure of stability, increases with advancing age. For example, among men 35 to 39 years old, 34 percent had more than 10 years on their current job and 2 percent had more than 20 consecutive years. These proportions rose to 50 and 16 percent respectively for men 45 to 49 years old and 59 and 36 percent for men 55 to 59 years old.

Although the proportion of employed women who have remained continuously on the same job for more than 1 or 2 decades is only about half that of employed men due to their more intermittent attachment to the labor force, job tenure also varies directly with age for women workers. The proportion of women with more than 10 years of continuous employment rose from 9 percent for those 30 to 34 years old to 33 percent for those 50 to 54 years old, while the proportion with more than 20 consecutive years rose from 7 percent in ages 40 to 44 to 12 percent for women in the 50 to 54 age group.

Job tenure for wage and salary workers varied considerably by major industry group (table 5). The proportion of men 25 years old and over with more than 10 years on their current job ranged from a high of 53 percent for men employed in transportation and public utilities to a low of 23 percent for construction workers. As previously indicated, the comparatively short average job duration of construction workers reflects not only the inherent seasonality and limited duration of construction jobs, but also the industry's sensitivity to changes in business conditions.

Men working in the manufacturing industry were employed considerably more steadily than the average wage and salary worker. About 45 percent of them had completed more than 10 years on their current job while 17 percent had more than 20 years of consecutive employment. High proportions of men working in public administration also had completed more than 10 or 20 years on their job while those working in the service and trade industries had a less than average degree of job-stability.

Among men 45 years old and over, 70 percent of those employed in transportation and public utilities and 65 percent of the factory workers had more than 10 years on their current job. The proportions with more than 20 years on their current jobs were 39 and 34 percent, respectively.

Among women workers 25 years old and over, those employed in transportation and public utilities had the longest job duration—43 percent had more than 10 years on their current job while 19 percent had more than 20 years of consecutive employment. Women with factory jobs also had longer than average job duration as did those working in public administration, while women employed in the service and trade industries had relatively short job tenure.

Assuming no change in job attachment patterns, one may roughly estimate from these data what proportion of workers who already have worked at their current job a specified number of years can either be expected to remain with the same employer, or, conversely, to be either working for a different employer or out of the labor force at retirement age (60 to 64 years old).

These rates of job retention rise with advancing age. For example, about one-fifth of the 30 to 34 year old men with more than 10 years experience on their current job can be expected to remain on that job until the age of retirement, but about one-half of the men 50 to 54 years old who already have more than 10 consecutive years service are expected to remain with that employer to age 60 to 64.

Starting from a different level of job tenure—more than 15 years on the same job—one finds that 29 percent of the men 35 to 39 years old can be expected to remain with that employer until the age of retirement, while the proportion rises to 47 percent for men 50 to 54 years old with the same length of service (table 6).

Since the rate of job retention rises with advancing age, then it follows that the proportion of workers who could be expected to be working for a different employer at the age of retirement would be lower at more advanced ages. While about 37 percent of the 30 to 34 year old men who already have more than 10 years on their current job can be expected to be with a different employer at the assumed age of retirement, the proportion drops to about 19 percent for 50 to 54 year old men with more than 10 years on their current job.

The proportion of men 35 to 39 years old who have been with the same employer for more than 15 years who would be expected to change jobs by retirement age is 29 percent, considerably greater than the percentage for men 50 to 54 years old with the same level of job tenure—20 percent.

Estimates of job retention or job changes by retirement age can also be made for women workers. Depending on age, estimates of the proportion of women with more than 10 years of consecutive employment who can be expected to remain until retirement age range from about 22 to 58 percent.

TABLE 1.—EMPLOYMENT OF JOB CHANGERS, BY AGE AND SEX, 1961

[Numbers in thousands]

Age and sex	Worked in 1961	Job changers in 1961	
		Number	Percent of persons who worked
MEN			
Total, 14 years and over.....	49,854	5,509	11.0
14 to 17 years.....	2,926	261	8.9
18 and 19 years.....	1,946	457	23.5
20 to 24 years.....	4,507	1,101	24.4
25 to 34 years.....	10,050	1,502	14.9
35 to 44 years.....	11,012	1,128	10.2
45 to 54 years.....	9,744	689	7.1
55 to 64 years.....	6,768	271	4.0
65 years and over.....	2,901	100	3.4
WOMEN			
Total, 14 years and over.....	30,433	2,612	8.6
14 to 17 years.....	2,044	118	5.8
18 and 19 years.....	1,789	397	22.2
20 to 24 years.....	3,476	568	16.3
25 to 34 years.....	5,282	559	10.6
35 to 44 years.....	6,517	469	7.2
45 to 54 years.....	6,196	320	5.2
55 to 64 years.....	3,782	156	4.1
65 years and over.....	1,347	25	1.9

TABLE 2.—REASON FOR LEAVING JOB BY AGE AND SEX, 1961

Reason for leaving job and sex	[Numbers in thousands]					
	Total, 25 years and over	25 to 34 years	35 to 44 years	45 to 54 years	55 to 64 years	65 years and over
JOBS LEFT BY MEN						
Number.....	5,783	2,401	1,717	1,019	451	195
Percent distribution.....	100.0	100.0	100.0	100.0	100.0	100.0
Improvement in status.....	35.2	41.2	39.6	25.3	18.1	13.3
Job loss.....	42.3	37.1	41.3	50.0	56.2	41.0
Termination of temporary job.....	8.6	6.7	8.5	8.4	14.6	21.0
Illness or disability.....	2.6	1.5	2.6	5.0	3.8	2.1
Household responsibilities.....	.6	.8	.4	.6	.4	.....
School responsibilities.....	.7	1.3	.2	.2	.....	.....
Other reasons.....	8.6	9.9	6.4	8.5	6.9	15.9
Not reported.....	1.5	1.5	1.0	2.0	.....	6.7
JOBS LEFT BY WOMEN						
Number.....	2,335	866	702	471	244	52
Percent distribution.....	100.0	100.0	100.0	100.0	100.0	(¹)
Improvement in status.....	31.2	31.9	31.7	36.8	22.0	.....
Job loss.....	23.1	18.0	24.3	27.7	30.2	.....
Termination of temporary job.....	15.6	12.0	15.1	14.6	23.7	.....
Illness or disability.....	6.4	7.8	5.5	6.1	4.9	.....
Household responsibilities.....	6.0	9.2	4.1	3.0	7.3	.....
School responsibilities.....	.8	.6	1.4	.4	.....	.....
Other reasons.....	15.7	19.6	16.9	10.8	9.8	.....
Not reported.....	1.1	1.0	1.0	.6	2.0	.....

¹ Percent not shown where base is less than 100,000.

TABLE 3.—EMPLOYMENT OF NONFARM WAGE AND SALARY WORKERS, JOB CHANGERS, BY INDUSTRY GROUP OF LONGEST JOB AND SEX, 1961

Industry and sex	Worked in 1961	Job changers in 1961	
		Number	Percent of persons who worked
MEN			
Total, nonfarm wage and salary workers.....	38,821	4,778	12.3
Forestry, fisheries, and mining.....	724	115	15.9
Construction.....	3,893	972	25.0
Manufacturing.....	13,209	1,280	9.7
Transportation and public utilities.....	3,578	293	8.2
Wholesale and retail trade.....	7,267	1,035	14.2
Service industries.....	7,528	910	12.1
Public administration.....	2,622	173	6.6
WOMEN			
Total, nonfarm wage and salary workers ¹	25,713	2,407	9.4
Manufacturing.....	5,046	431	8.5
Transportation and public utilities.....	940	85	9.0
Wholesale and retail trade.....	5,766	688	11.9
Service industries.....	12,598	1,092	8.7
Public administration.....	1,104	75	6.8

¹ Includes workers in forestry, fisheries and mining, and construction, not shown separately.

TABLE 4.—LENGTH OF EMPLOYMENT ON CURRENT JOB BY AGE AND SEX, JANUARY 1966

Age and sex	Percent of employed persons	
	More than 10 years on current job	More than 20 years on current job
MEN		
Total, 25 years and over.....	40.4	15.2
25 to 29 years.....	3.5	.1
30 to 34 years.....	18.9	2.4
35 to 39 years.....	33.8	8.1
40 to 44 years.....	46.7	16.4
45 to 49 years.....	49.9	27.0
50 to 54 years.....	55.1	35.7
55 to 59 years.....	62.5	39.3
60 to 64 years.....	56.3	39.6
65 years and over.....		
WOMEN		
Total, 25 years and over.....	25.6	8.5
25 to 29 years.....	2.4	
30 to 34 years.....	9.2	
35 to 39 years.....	14.7	1.4
40 to 44 years.....	23.5	4.6
45 to 49 years.....	29.4	8.8
50 to 54 years.....	32.7	11.6
55 to 59 years.....	39.7	16.1
60 to 64 years.....	50.8	24.3
65 years and over.....	49.3	26.3

TABLE 5.—LENGTH OF EMPLOYMENT ON CURRENT JOB FOR WAGE AND SALARY WORKERS BY MAJOR INDUSTRY GROUP AND SEX FOR SELECTED AGE GROUPS, JANUARY 1966

[Percent distribution]

Major industry group	Percent of employed persons	
	More than 10 years on current job	More than 20 years on current job
MEN		
Total, 25 years and over.....	37.8	12.9
Mining.....	45.3	15.5
Construction.....	23.4	5.1
Manufacturing.....	45.1	16.8
Transportation and public utilities.....	53.4	20.8
Wholesale and retail trade.....	29.3	9.4
Service and finance.....	24.8	7.1
Public administration.....	43.4	12.9
Total, 25 to 44 years.....	25.7	2.6
Mining.....	30.0	.9
Construction.....	17.2	1.0
Manufacturing.....	30.4	3.7
Transportation and public utilities.....	38.7	3.8
Wholesale and retail trade.....	18.9	2.1
Service and finance.....	16.1	1.3
Public administration.....	31.2	2.2
Total, 45 years and over.....	53.0	25.9
Mining.....	59.3	29.0
Construction.....	31.2	10.3
Manufacturing.....	64.9	34.2
Transportation and public utilities.....	69.3	38.9
Wholesale and retail trade.....	42.3	18.6
Service and finance.....	36.0	14.7
Public administration.....	57.8	25.6
WOMEN		
Total, 25 years and over.....	24.1	7.4
Mining.....	(¹)	-----
Construction.....	22.8	10.7
Manufacturing.....	32.4	10.8
Transportation and public utilities.....	43.3	18.6
Wholesale and retail trade.....	17.5	5.0
Service and finance.....	21.1	6.0
Public administration.....	28.1	7.9
Total, 25 to 44 years.....	12.8	1.8
Mining.....	(¹)	-----
Construction.....	(¹)	-----
Manufacturing.....	19.3	2.9
Transportation and public utilities.....	27.9	5.6
Wholesale and retail trade.....	6.8	1.3
Service and finance.....	10.7	1.1
Public administration.....	14.2	1.6
Total, 45 years and over.....	35.4	13.2
Mining.....	(¹)	-----
Construction.....	(¹)	(¹)
Manufacturing.....	48.1	20.2
Transportation and public utilities.....	66.1	37.8
Wholesale and retail trade.....	27.7	8.6
Service and finance.....	30.9	10.6
Public administration.....	41.0	13.7

¹Percent not shown where base is less than 100,000.

TABLE 6.—PERCENT OF WORKERS CURRENTLY 30 TO 54 YEARS OLD WHO CAN BE EXPECTED TO REMAIN WITH THEIR CURRENT EMPLOYER TO ASSUMED NORMAL AGE OF RETIREMENT, BY AGE, SEX, AND LENGTH OF SERVICE WITH CURRENT EMPLOYER IN JANUARY 1966

[Percent distribution]

Sex, age, and length of service with current employer, January 1966	Total	Status at assumed age of retirement (60 to 64 years old)			
		Remaining in labor force		Not remaining in labor force because of—	
		With same employer	With different employer	Death	Other reasons
MEN					
30 to 34 years: 10 or more years.....	100.0	20.1	37.4	26.6	15.9
35 to 39 years:					
10 or more years.....	100.0	26.7	31.7	25.8	15.8
15 or more years.....	100.0	29.2	29.2	25.8	15.8
40 to 44 years:					
10 or more years.....	100.0	28.7	31.3	24.4	15.6
15 or more years.....	100.0	33.0	27.0	24.4	15.6
20 or more years.....	100.0	49.1	10.9	24.4	15.6
45 to 49 years:					
10 or more years.....	100.0	36.4	25.9	22.2	15.5
15 or more years.....	100.0	40.5	21.8	22.2	15.5
20 or more years.....	100.0	57.9	4.4	22.2	15.5
50 to 54 years:					
10 or more years.....	100.0	48.4	19.0	18.3	14.3
15 or more years.....	100.0	47.3	20.1	18.3	14.3
20 or more years.....	100.0	55.3	12.1	18.3	14.3
WOMEN					
30 to 34 years: 10 or more years.....	100.0	21.6	51.6	10.9	15.9
35 to 39 years:					
10 or more years.....	100.0	29.2	44.3	10.7	15.8
15 or more years.....	100.0	28.2	45.3	10.7	15.8
40 to 44 years:					
10 or more years.....	100.0	33.9	40.3	10.2	15.6
15 or more years.....	100.0	34.8	39.4	10.2	15.6
20 or more years.....	100.0	44.2	30.0	10.2	15.6
45 to 49 years:					
10 or more years.....	100.0	40.2	34.8	9.5	15.5
15 or more years.....	100.0	52.0	23.0	9.5	15.5
20 or more years.....	100.0	49.4	25.6	9.5	15.5
50 to 54 years:					
19 or more years.....	100.0	58.4	19.0	8.3	14.3
15 or more years.....	100.0	59.5	17.9	8.3	14.3
20 or more years.....	100.0	71.6	5.8	8.3	14.3

EXHIBIT C

TECHNICAL CONSIDERATIONS INVOLVED IN PROPOSED "PENSION BENEFIT SECURITY ACT"

The bill is based on relatively simple basic concepts. Vesting should be required after ten years of employment. A test should be developed to assure that assets are accumulated to pay for vested benefits. Plan termination protection should be available to assure vested participants that their accrued pensions are protected if the plan is forced to terminate.

Applying these concepts to the many different types of private pension plans obviously has involved consideration of many technical and practical problems. The following discussion is designed to indicate how the legislative proposal would deal with these problems.

I. VESTING

The proposed standard requires full vesting of regular retirement benefits after an employee has acquired ten years of continuous service (allowing exclusion of service prior to page 25) payable beginning no later than age 65. A plan's regular retirement benefit means the retirement benefit computed under the plan's formula and payable in the normal annuity form specified by the plan. It does not include ancillary benefits such as death or disability retirements.

Plans to which standard applies

The proposed vesting standard applies to all types of private employee retirement plans (e.g., profit sharing, money purchase pension and unfunded pension plans, as well as fixed benefit pension plans). Plans covering a sole proprietor,

or a partner owning more than 10 percent of a business, are not included since under the International Revenue Code, these plans must provide immediate vesting.

Effective date of the standard

To the extent that the 10-year standard provides more liberal vesting than now is contained in a plan, its introduction will require amendment and possibly an increase in contributions. Consequently, the effective date of the vesting standard is delayed until two years after enactment of the legislation. As an accommodation to negotiated plans not open for bargaining during the two-year period, the effective date for such plans is delayed until the expiration of the bargaining agreement but not later than one additional year.

Methods of transition—existing plans

An existing pension plan would be permitted to select either one of the following methods for putting the 10-year standard into effect.

1. The 10-year standard would be applied only as to benefits which are earned after the effective date of the legislation establishing the standard. However, service both before and after the effective date of the standard would be counted in determining whether the 10-year requirement has been met. Thus, for persons who have met the 10-year qualification requirement on the effective date of the legislation, benefits thereafter earned would be immediately vested. For persons who subsequently accumulate ten years of service, vesting would be required for benefits earned since the effective date of the legislation. In any case, the vesting of benefits for service prior to the effective date would be governed by the applicable provisions of the plan. The value of offering this alternative is that the new standard would not disturb previously earned pension benefits and their costs.

2. There may well be pension plans which would prefer not to differentiate as to benefits earned before and after the effective date of the standard. These plans would have in mind the fact that vesting applied prospectively would yield few benefits to longer service employees. However, to apply the 10-year standard immediately to all benefits—both before and after the effective date—might produce a significant cost impact. Therefore, an alternative transition arrangement is offered: If benefits for all service creditable under the plan are considered, a plan may comply with the standards by (1) vesting an increasing percentage annually of the accrued benefits, or (2) by increasing annually the number of employees eligible for full vesting through decreasing the length of service required to vest.

Under the first approach, for the first year vesting would be required for 10 percent of accrued benefits for all terminating employees with ten or more years of service, to be increased annually by an additional 10 percent until 100 percent of all such benefits are vested for employees terminating in the tenth year. The second approach would call for initially vesting the benefits of employees who terminate with 20 or more years of service and then annually reducing that service requirement by one year until benefits for all workers with ten or more years of service are fully vested after the tenth year.

3. In addition, the Secretary is authorized to approve alternative transition methods which are "substantially consistent with the purposes" of these transition rules.

Methods of transition—new plans

When a new plan is established after the effective date of the vesting standard, it will be required to conform to the vesting standard except that it would also have available certain transition methods:

1. A plan would not be required to provide any vesting to employees terminating during the first five years of its existence.

2. After the first five years, the following alternative transition schedules would be permitted:

a. First five years, no vesting; sixth year, 50 percent of accrued benefits for terminating employees with ten or more years of service; seventh year, 60 percent, etc., until 100 percent is reached.

b. First five years, no vesting; sixth year, vesting all accrued benefits for employees terminating with 15 or more years of service; seventh year, 14 years of service, etc., until full vesting for employees with ten years of service is reached.

Period of credited service

The considerations which led to the adoption of the 10-year standard would indicate that ten years of employment (whether or not continuous) should entitle an employee to vesting. However, most pension plans base eligibility for benefits on some definition of continuous or credited service. Plans vary with respect to treatment for periods of leave of absence, layoff, etc. Differences exist both with respect to whether the continuity of service is broken and in regard to whether the elapsed time period during absence is counted as eligible service.

The bill requires vesting after ten years of continuous employment after age 25. In determining the period of continuous employment, service preceding a suspension of employment may be disregarded, unless the Secretary determines that the rules governing such breaks are unreasonable or arbitrary. Similarly, employment with a predecessor employer need not be counted, provided the predecessor's plan is not being continued. Plans requiring employee contributions may also exclude service during which the employee declined to contribute.

Age and service requirements for participation

A maximum limit on pension plan membership requirements is needed so eligibility conditions cannot be used to evade the vesting of pension rights after 10 years of continuous employment. At the present time, the IRS will generally permit a pension plan to set eligibility requirements up to attainment of age 35 and/or five years of service. For example, if a plan required attainment of age 35 for a worker to join, the worker hired at age 25 who terminates his employment at age 36 would be entitled to a vested right to only one year's benefit accrual. If he stayed until age 45, he would have 20 years of continuous employment, but benefits would be based on only ten years of continuous plan membership. To meet this problem, it is proposed that the age and employment requirements for plan participation not exceed age 25, and/or three years of employment. Recognizing the impact this change in eligibility requirements could have on some plans today, existing plans would not have to conform to the new eligibility requirement until their benefits were liberalized or until ten years have passed after the effective date of the standard, whichever occurs first.

Computation of vested benefits

Plans differ significantly from one another in many features which can affect the amount of accrued benefit at any point in time, such as the eligibility requirements to join the plan, maximum limits on credited service, the definition of earnings, integration with Social Security, and requirements for employee contributions. Any vesting standard must be one that can be readily adapted to the different types of plans in operation today.

As a general rule, under a fixed benefit plan, the benefit to be vested would be that portion of the regular retirement benefit which would have been earned by age 65 that is represented by the ratio of credited service under the plan to date of termination to potential credited service under the plan to age 65. For the purpose of this ratio, credited service would be determined without regard to any maximum.

The following examples may prove helpful.

1. For a plan with no eligibility requirement, no maximum on years of credited service, a specified earned benefit for each year of service, no Social Security offset, and no employee contribution, the vested credit would be the amount of benefit earned to date of termination. For example, under a plan with a benefit of \$5 per month per year of credited service, a man hired at age 30 who quits at age 45 would have a vested benefit of \$75 per month.

2. For a plan with a limit on the number of years of credited service, the vested credit would be related to the ratio of: (1) an employee's completed years of continuous service from plan eligibility date to date of termination to (2) his potential years from date of plan eligibility to attainment of age 65. For example, under a \$5 per month plan which credits all service up to 30 years, a man hired at age 30 who quits at age 45 would have a vested benefit of 15/35 of \$150 (his expected benefit at age 65 after 30 years of credited service), or \$64.29.

3. For a plan related to average earnings in the last years before retirement, the vested credit would be based on the employee's earnings over a comparable number of years prior to his termination.

4. For a plan with an offset for Social Security benefits, the vested credit would be based on a percentage of the potential plan benefit which would have been earned at age 65 reduced by the appropriate amount of Social Security

benefit computed by assuming constant earnings until age 65 and the benefit schedule in effect at the time of termination.

5. For a plan requiring employee contributions, the vested credit would be based on the same proportionate formula, ignoring in both numerator and denominator, any period in which the employee was eligible to participate but declined to do so. For example, under a \$5 per month contributory plan with a three-year eligibility requirement, an employee hired at age 30 who defers joining from age 33 until age 36 and who quits at age 45 would be vested in the ratio of 9/29 of \$145 (the amount he would have earned with maximum participation), or \$45.

Nonforfeitable benefits in contributory plans

At present, if employee contributions are withdrawn from a contributory pension plan, workers usually also forfeit their right to any employer-purchased benefits. This frequently leaves the employee in a contributory plan without adequate retirement protection. In order to treat contributory and non-contributory plans in a comparable manner, the bill requires each plan to vest benefits attributable to employer contributions, whether or not the employee is permitted to withdraw his contributions.

Form of vesting credit

Most commonly a pension plan provides payments only for the duration of the retiree's lifetime. Some plans, however, guarantee payments for a minimum period such as five or ten years.

The bill contemplates that whatever the form of normal retirement benefit—life annuity, modified cash refund annuity, ten year certain annuity, etc.—this would be the basis on which the vested benefit is calculated.

Deferral of vesting credit

Usually, a vested benefit under a pension plan is expressed as a credit payable as a life annuity starting at normal retirement age. Often under a profit-sharing plan, vesting credits are paid in cash at time of termination, although other options are sometimes available.

The bill provides that the vesting credit can be paid in any reasonable form decided upon by the plan designers, providing that the form for vested benefits cannot differ from the form for regular retirement benefits and cannot be deferred past the attainment of age 65.

Cost of applying vesting standard

For most pension plans, the increase in contributions needed to pay the normal cost of vesting requirements in the bill would not exceed 10 percent of current contributions. Estimates for plans with a wide variety of vesting provisions prepared for the Labor Department show that the additional contributions to two out of three plans would probably be less than 10 percent of current contributions (see table on following page). That is chiefly because two out of three plans now have vesting provisions which go at least part way toward meeting the requirements of the bill. While the estimates in the table would apply to most plans, those with especially low or high turnover among employees with over 10 years of service would require smaller or greater increases in contributions.

Since these estimates do not include the cost of vesting benefits based on service before enactment of the bill, existing plans not using the first transition rule permitting the exclusion of such benefits will have additional costs not shown in the table. What these additional costs would be for any plan would depend upon the age, sex, and length of service of the work force, the expected future turnover, and the interval between the 10-year vesting standard and the plan's current vesting requirement.

In any event, their impact on employer contributions would not be substantial because, like other past service costs, they are amortized over an extended period of time—usually 20 to 30 years. In addition, the impact for past service as well as for current service can be reduced by adoption of one of the alternative transition methods.

No additional contributions to deferred profit-sharing plans would be necessary because any additional vesting required by the bill would only reduce the amount of the forfeitures allocated to the participants remaining in the plan. These reductions, moreover, would rarely be significant because nearly all profit-sharing plans have a graded vesting provision under which members are fully vested after completing 10 years of service or shortly thereafter.

NORMAL COST OF ADDING 10-YEAR VESTING TO PRIVATE PENSION PLAN, MIDSUMMER 1967

Age and service requirements for full vesting	Number		Percent distribution		Percentage in increase in contributions for current service ¹
	Plans (thousands)	Workers (millions)	Plans	Workers	
All plans.....	16.8	17.3	100	100	
Full vesting.....	8.4	9.0	50	52	
10 years or less.....	3.9	4.3	23	25	
No age requirement.....	2.2	3.1	13	18	None
Age 40 plus required.....	1.7	1.2	10	7	1-3
11 to 15 years.....	3.0	3.6	18	21	3-6
16 to 20 years.....	1.1	.7	6	4	5-12
21 to 30 years ².....	.4	.4	2	2	12-15
Graded vesting (service needed for full vesting).....	3.4	1.9	20	11	
10 years or less.....	.2	.1	1	(³)	0-2
11 to 15 years.....	1.2	1.0	7	6	1-3
16 to 20 years.....	.9	.4	5	2	2-6
21 to 25 years.....	.6	.2	4	1	6-7
Over 25 years.....	.4	.1	3	1	7-10
No vesting.....	5.1	6.5	30	37	
Single employer.....	4.4	2.9	26	17	10-20
Multiemployer.....	.7	3.6	4	20	5-15

¹ Estimated by Hewitt Associates.

² Nearly all required 25 years.

³ Less than 0.5 percent.

Source: Based on plan descriptions on file under WPPDA in summer 1967. Excludes plans with less than 26 participants. For sampling method, see JEC Compendium on Private Pension System, IV, 118-119 or Monthly Labor Review, May 1968, pp. 34-35.

Note: Because of rounding, sums of individual items may not equal totals.

Variations in vesting standard

Although a number of transition measures have been included to ease the cost impact of the vesting standard, there may be a certain number of plans which because of their special characteristics would encounter special difficulties in complying with the vesting standard. The bill provides that the Secretary may grant an appropriate temporary variation whenever the standard would "(1) increase the costs of the parties to the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of pension benefit levels or the levels of employees' compensation, or (2) impose unreasonable administrative burdens with respect to the operation of the plan, having due regard to the particular characteristics of the plan or the type of plan involved."

Multiemployer plans

A multiemployer pension plan inherently provides a certain measure of protection against loss of accrued benefit credits through its portability provisions. A person who moves from one employer to another within the scope covered by the plan retains pension credits. If the plan is sufficiently broad in scope, substantial protection is provided without any period of service having to be rendered with any single employer before qualifying for vesting. In addition, if one multiemployer plan has arrangements for reciprocal credits with other funds, the degree of protection is even wider. It seems consistent with the purposes of a vesting standard to give some recognition to the presence of portability.

The Secretary is authorized by the bill to approve applications by multiemployer plans for a permanent alternative vesting standard of longer than ten years up to a maximum of fifteen years. Such variations can be authorized to any plan involving five or more employers within a single industry if (1) the plan covers a substantial proportion of employees in the industry, nationally or in the labor market area, (2) there is complete transferability of credits within the group of participating employers, and (3) a substantial proportion of job changes take place within the scope of the plan.

A record of vested benefits

At retirement, workers may have forgotten about their vested rights or have difficulty locating the plan administrator to whom they should make application for such benefits. To mitigate these problems, the bill requires administrators to report to the Secretary of Health, Education and Welfare, appropriate information concerning separated employees with vested rights. This information can then be used to notify employees applying for OASDI retirement benefits of their entitlement to vested benefits under private plans.

II. FUNDING

Under the new termination funding standard, a plan will be required to increase its ratio of assets to vested liabilities by four percentage points a year. In other words, at the end of 25 years, each plan would be expected to reach the 100 percent mark, meaning that the plan had accumulated sufficient assets so that if forced to terminate, it could meet all benefit obligations vested at that time.

Plans to which standard applies

Under a fixed benefit plan, the level of benefit is determined by formula, and the cost will depend upon experience; actuarial estimates are made on which contributions are based. Under a fixed contribution plan (such as money-purchase pension and profit sharing), the contribution is determined by formula and the benefit varies with experience. Under the latter type of plan, the question of funding adequacy is academic, since it is the assets that determine the benefit rather than the benefit that determines the amount of assets which are needed.

The new financial standard would apply to all types of fixed benefit plans, except those in which benefits are paid solely from the general assets of the employer. A special problem is posed by plans which have a fixed contribution rate and which also state as a fixed benefit the amount expected to be paid (such as the typical multiemployer program). It is contemplated that in these cases the financial standard be applied as if they were fixed benefit plans.

Effective date of the standard

The effective date of the standard would be two years after enactment of the legislation.

Selection of new funding standard

The new termination funding standard has been proposed rather than simply revising and strengthening the current Internal Revenue Service minimum funding requirement for the following reasons:

1. There is a major difficulty with a funding standard of the IRS type, in view of the wide variety of funding methods and assumptions in current use. While it is desirable to permit plan designers as wide a latitude as possible in determining how pension costs are to be allocated over time, any funding standard involving an allocation of costs of benefits over past and future periods and depending on estimates of turnover, salary increases, retirement age, etc., becomes a quite inexact test of a plan's ability to meet its commitments at any point in time.

2. The proposed termination funding standard would measure more accurately and more uniformly a plan's ability to meet its commitments at any point in time, and specifically in the event of termination. The relation between assets on hand and liabilities for vested benefits is a meaningful test of the ability of the plan to honor its benefit commitments. The employee has a right to know if the vested benefits he has earned to date can be provided by the funds set aside.

3. This test would not require for its enforcement that a complete set of actuarial methods and assumptions be prescribed. The test would provide a uniform method of measuring assets and vested liabilities which will not involve setting assumptions for matters other than interest rates and mortality.

A useful comparison of the funding schedule under the proposed new standard with the degree of funding in current practice is given by the following table. It indicates that even for plans with a heavy burden of initial unfunded liabilities, the 4 percentage points a year funding schedule is not likely to require greater contributions than amounts needed to meet normal cost plus amortization of the unfunded liability over 30 years.

COMPARISON OF PROPOSED FUNDING STANDARD WITH CONVENTIONAL FUNDING RATIOS

After years (1)	Proposed funding standard (2)	Conventional ratio of vested liabilities to assets when intial past service liability is—		
		10 times current service cost (3)	15 times current service cost (4)	20 times current service cost (5)
5.....	20	57	41	31
10.....	40	87	67	54
15.....	60	107	86	71
20.....	80	121	101	85
25.....	100	133	114	99
30.....	100	143	125	111

Note: Assumptions, all columns: 30-year funding and past service liabilities, no plan amendments liberalizing benefits, 10-year full deferred vesting. Col. 3: Vested liabilities equal 70 percent of all accrued liabilities. Col. 4: Vested liabilities equal 80 percent of all accrued liabilities. Col. 5: Vested liabilities equal 90 percent of all accrued liabilities.

Source (before application of percents noted just above): Frank L. Griffin, Jr., "Pension Security and Funding Regulations," Conference of Actuaries in Public Practice, the Proceedings, 1964-65, vol. XIV, p. 135.

Retention of current IRS funding standard

The proposed termination funding standard is not suitable by itself as a funding standard for a continuing plan since it looks at a plan as of a particular time and gives no recognition to liabilities which are not yet vested. For example, a liability is first recognized when it becomes vested although at that time it will represent a number of years of benefit already earned. In order to avoid sharp steps in funding requirements, it is necessary to fund liabilities as they accrue with a discount, if desired, for those who will leave before the benefits become vested. This is the basic requirement of the current Internal Revenue Service standard which would be retained under the bill.

The two funding standards would require that at the end of each year, a plan's assets must be sufficient to meet:

1. All liabilities which have accrued since the inception of the plan, plus the interest on past service liabilities (the "ongoing" plan requirement),
2. A specified percentage of the plan's vested liabilities as of that time (the "termination" requirement).

These two requirements reflect the fact that each plan must, in setting its funding program, look to its commitments both on a continuing basis, and in the event of termination.

Transition arrangements for existing plans

It would not be realistic to apply the funding schedule to existing plans whose funding procedures up to this point, while adequate under existing rules, have not been subject to the new governmental standard. For this reason, at the time an existing plan first reports funding adequacy, it would have the option of accepting as its funding target either (1) the target specified in the schedule, or (2) the plan's specific funding ratio in effect at that time. Beginning at that point in time, the plan's funding target would be raised by 3 percentage points per year for the first five years of the funding requirement, after which the rate would be 4 percentage points a year.

Treatment of plan amendments

The funding standard must be sufficiently flexible to take into account the changes in vested liabilities brought about by periodic amendments to a plan without jeopardizing the basic principles of encouraging funding, and providing meaningful protection of employee benefits. The following procedure is included for handling plan amendments.

1. No special consideration is given to plan amendments made during the first five years of the plan. When the first required funding test is made after the fifth year, plan assets should equal or exceed 20 percent of vested liabilities that arise from the original specification and all amendments.

2. If a plan is amended after the fifth year, the funding target would be lowered in the same proportion that the new added vested liabilities bear to the total vested liabilities after the amendment. For example, assume that a pension plan was 15 years old (with a funding target of 60 percent), had vested liabilities of \$1,000,000 and assets of \$600,000. If the plan is amended to increase vested

liabilities by \$200,000, the funding target would be lowered by one-sixth (\$200,000 divided by \$1,200,000) from 60 percent to 50 percent.

3. Whenever a plan is amended to increase vested liabilities, the funding test would have to be applied by the close of the plan year for which the amendment is to be first effective.

4. It is recognized that in certain circumstances this treatment of amendments could produce sharply accelerated funding requirements. For example, assume that a plan more than 25 years old has assets of \$1,000,000 and vested liabilities of an equal amount. If the amendment doubles the vested liabilities, the funding target would be lowered from 100 percent to 50 percent. Since the target rises by 4 percent per year, the plan would have only 13 years to fund the added \$1,000,000 in liabilities, compared to the 25 years allowed for the original \$1,000,000.

To meet this type of situation, a plan is given an option whenever an amendment raises vested liabilities by 25 percent or more; namely, to keep separate records of vested liabilities before and after the amendment and treat the funding as if there were two separate plans in existence.

Determination of funding status

Each plan administrator would be required to file information on the plan's funding status every three years and whenever vested liabilities are increased by amendments. The plan's funding status report would include the following:

1. The amount of normal cost since inception of the plan plus interest on any unfunded past service costs.
2. The total amount of vested liabilities.
3. The assets held by the plan.
4. The age of the plan.
5. A statement of the amount, if any, by which assets exceed or fall below the amount required to meet the plan's funding target.
6. Other information that might be required, such as data regarding plan amendments.

To achieve reasonable uniformity in these reports, assets are to be measured at a value no greater than current market value. The only assets which can be included are those which will be available to meet vested liabilities in event of plan termination.

The determination of total vested liabilities will involve the following steps:

1. Evaluating, as set forth below, for retired persons or those who have terminated with vested liabilities, the full liabilities for benefits being paid (or promised).
2. Evaluating for active vested employees the benefits which would be payable if the individuals terminated at the time of the funding test. Since the purpose of the program is to enable a plan to meet promised benefits, vested benefits would include not only those required to be vested under the proposed vesting standard but also any additional benefits which the plan voluntarily vests. However, it would not include those benefits which, under the Internal Revenue Code, are vested solely because of the termination of the plan.

3. With respect to various ancillary benefits, a distinction can be drawn between two types of liabilities for these benefits

a. Those benefits for which all eligibility conditions have been fulfilled. For example, disability benefits currently being paid, lump-sum death benefits for persons now on retirement, and the liability for contingent beneficiaries under joint and survivor options in effect for current retirees. Since these types of liabilities would be considered in applying the funding test, they must also be evaluated.

b. Those benefits which are contingent on future death or disability which would no longer be potential liabilities if all vested employees were terminated. For example, a widow's benefit in event of death in active service which does not apply to terminated employees with deferred vested rights. These types of liabilities would not be considered in applying the funding test.

Liabilities for retirement and vested benefits are to be valued on the basis of either:

1. Purchase rates for single premium annuities issued by a qualified life insurance company, or
2. A table (or range of tables) provided by the administering agency, showing for each year of attained age, separately by sex, the number of dollars of assets required for each dollar of monthly earned vested benefit payable commencing at age 65. These tables would be based on certain assumptions regarding interest

rates and mortality which would be revised from time to time, as necessary, in accordance with changing conditions or differing circumstances

Variations in funding standard

The bill permits applications to be made for variations in the funding standard. For example, a plan which has experienced abnormal changes in the ratio of its assets to vested liabilities could apply for adjustment in its funding target as if a plan amendment had occurred. Such a change might result from a sharp increase in vested liabilities owing to the acquisition of another company, or from an unexpected drain on fund resources caused by a sharp increase in early retirements. The adjustment, for example, could take the form of permitting the plan to lower its funding target as far as the point of its actual ratio of assets to vested liabilities after the event in question.

Sanctions

Plans with more than five years' experience are required to comply with the new termination funding standard. Furthermore, all plans must comply with the present Internal Revenue Service minimum standard of funding. Once the new funding test is applicable, compliance with both standards will be tested at the same intervals.

In considering possible sanctions the disqualification of a plan's tax approval status does not appear to be a useful penalty to impose upon a plan, except as a last resort, since it could injure the employees' security. What is needed is a remedy, or set of remedies, which can be applied simply, yet effectively, to bring the plan's assets into balance with the benefit commitments. In designing the following sanctions, every effort was made to avoid requiring delinquent plans to pay out additional sums of money (tax penalties, higher insurance premiums, etc.) on the assumption that all available monies should be placed in the pension fund.

1. If a plan falls below the Internal Revenue Service minimum funding standard, the plan would be required to make the accrued benefit rights of all terminating participants (vested and nonvested) nonforfeitable. This generally continues the present penalty for failure to meet the Internal Revenue Service minimum funding standard.

2. If a plan falls below the new funding standard, the following penalties would apply:

a. The plan would be required to report its funding status annually rather than every three years.

b. The plan would not be permitted to introduce amendments that would add to its liabilities. It is felt that this is a meaningful incentive for adequate funding since there are continuing pressures for liberalizing amendments.

c. Each participant entitled to a vested benefit would have to be informed of the deficit.

3. If after five years a plan's funding status is not brought up to its funding target (or earlier if necessary to protect the interests of participants), the plan would be treated as a suspended plan so that no additional liabilities could be accrued. In this event, benefits for participants would be computed as if the plan were terminated (including any amounts that would be available under insurance and employer liability) and distributions to participants while the plan remained suspended would be made in accordance with the benefits so computed. A plan's suspended status would be lifted if the funding deficit were erased.

4. During any time that a plan is in suspended status, it may be required to terminate if, after notice and opportunity for a hearing, this step is found necessary to protect the interests of participants.

III. PLAN TERMINATION PROTECTION

A system of plan termination protection will supplement a plan's funding to assure that in the event of involuntary plan termination prior to full funding of vested liabilities, protection will be available to cover the gaps between the plan's actual assets (or funding target, if greater) and the full funding goal.

In developing such a system, the following specific issues have been considered.

Protection to be provided

The bill proposes the establishment of a Federal system of plan termination insurance to be financed by premiums to be paid by plans with unfunded vested liabilities.

In developing an insurance system, an important issue considered was whether the plan termination insurance fund should make up any deficit of a terminating plan without regard to the employer's financial capability to meet some or all of the plan's unfunded obligations. If the employer was required to make up any deficit, insurance funds would then cover only those situations where the employer was unable to do so. While this approach may have some appeal from a theoretical standpoint and would provide substantial protection against abuse of the fund, its adoption could have a serious impact on the formation or continuation of private retirement plans. It is doubtful that many employers would be willing to assume a legal liability for the pension cost that might occur if they were required to terminate their plan before being able to fund a large past service liability. For this reason, the insurance fund was made available regardless of a firm's financial situation.

At the same time, the insurance system should not operate in a manner that might undermine a plan's incentive to fund. Thus, the interlocking relation of the insurance system with the termination funding standard is of special importance.

For this reason, under the proposed insurance system, a plan would not be able to obtain insurance for any amount by which its funding status fell below the termination funding standard. In the absence of additional protection, if the plan was forced to terminate, the plan participants would be left without full protection of their vested benefits. Since this loss of benefits is directly attributable to the employer's failure to meet the funding standard, it is reasonable in such circumstances to require the employer to assume the liability for this deficiency.

Amount of insurance coverage

The results obtained by the periodic funding test will be utilized as the basis for setting the amount of plan termination insurance that each plan will be required to purchase. The amounts of required insurance would be set as follows:

1. If 90 percent of the fund's assets exceeded total vested liabilities, no insurance would be required. The 90 percent figure has been selected rather than 100 percent in order to provide some protection against normal fluctuations in the difference between the market value of assets and the value of vested liabilities during the three-year period between funding tests.
2. If 90 percent of the fund's assets are below total vested liabilities but at or above its funding target, the plan would be required to apply for plan termination insurance equal to the difference between 90 percent of its assets and total vested liabilities.
3. If 90 percent of the fund's assets are below its funding target, it would be required to apply for plan termination insurance equal to the difference between its funding target and total vested liabilities. No insurance would be available to cover a plan's unfunded vested liabilities below its funding target. This would however, become a direct liability of the employer.

Method of assessing premium

It might be argued that insurance premiums should vary with the type and degree of risks involved; the plans with the greatest exposure should pay the highest premiums. However, in this instance, the practical difficulties of implementing this principle are most formidable. There is no equitable method of identifying among a group of manufacturing firms or public utilities which ones would carry a lower (or higher) risk of termination.

One approach to plan termination insurance would be to vary premiums according to the ratio of unfunded to total vested liabilities so that the higher the proportion of vested liabilities to be insured, the higher the premium rate. However, this system is not proposed because the ratio of unfunded to vested liabilities does not appear to be a reliable indicator of the risk of termination.

The bill requires that plans taking out insurance should pay premiums to an insurance fund equal to a uniform percentage of the amount of unfunded liabilities to be covered.

Insurance premium rate

Reliable estimates of the appropriate premium rate for pension benefit insurance are difficult to calculate both because of the paucity of data on past experience and the difficulty of developing projections for the future. Estimates of future claims—benefit losses due to involuntary plan termination—are particularly tenuous because the volume of claims would depend on economic trends

and fluctuations in a wide variety of industries where pension plans are prevalent. Similarly, available data are not sufficiently precise to provide reliable estimates of unfunded vested liabilities, the base on which premiums are to be assessed.

Some very preliminary calculations are included in the table on the following page. They show estimated average annual claims of \$28 million and unfunded vested liabilities to be insured of \$24 billion. Under these circumstances, an annual premium of less than 0.12 percent would provide sufficient revenue for meeting specified claims.

However, to build up reserves as quickly as practicable, to reduce the likelihood of premiums being inadequate to meet claims in the early years, and to cover administrative expenses, the bill specifies that the premium for the first three years will be not more than 0.6 percent of the amount insured, or an annual rate of 0.2 percent.

Conditions under which insurance is payable

In developing the proposed insurance system, the aim has been to provide protection to participants from terminations which are forced through adverse economic circumstances. The bill provides that the insurance system can be invoked only if a plan is terminated for "reasons of financial difficulty or bankruptcy, plant closing, by order of the Secretary, or such other reasons as the Corporation (Pension, Benefit Insurance Corporation) by regulation shall specify as reflecting an essentially involuntary plan termination."

With reference to the closing down of a specific plant, the bill further provides that if the terminated plan(s) do not cover at least 20 percent of the total vested liabilities of all company pension plans, the insurance fund would have the right to recover from the employer any claims paid. This requirement is necessary to avoid the temptation by multi-plant employers to create individual plans for each section of their operations so that they may collect insurance for even minor changes in their business structure. In these situations, the employer is treated as though he has only a single pension plan.

Procedure for payment of claims

Upon termination, the individual plan would be required to file a claim with the Pension Benefit Insurance Corporation, including information necessary for determining the extent of any liability to be assumed by the insurance fund or the employer. This would include a requirement that the terminated plan take the funding test. This test would reflect the funding position of the plan after any variance to which the plan might be entitled at the time of termination.

ESTIMATE OF ANNUAL PREMIUM RATE REQUIRED TO MEET EXPECTED CLAIMS UNDER PENSION BENEFIT INSURANCE

EXPECTED CLAIMS EXPERIENCE

A. Average annual number of participants in terminated pension plans, 1955-65.....	20, 500
B. Less participants in plans in operation for less than 5 years....	-6, 000
C. Participants in plans in operation for 5 or more years.....	14, 500
D. Average annual number of participants losing vested benefits in terminated plans.....	7, 000
Reflected adjustment of line C for three factors:	
Participants who suffered no loss or small losses because they were given substantially similar rights in the plan of a merging or purchasing company, employees without vested rights because they have less than 10 years of service, and participants who received their benefits from the plan's assets.	
E. Average discounted present value per claim.....	\$4, 000
It was assumed that at termination the average claimant was a male aged 50 who has accrued a benefit of \$50 a month commencing at age 65. This is roughly an insurer's single premium charge for assuming such a claim.	
F. Total annual expected claims (D×E).....	\$28, 000, 000

PREMIUM BASE (UNFUNDED VESTED LIABILITIES)

Assets:

1. Total assets (end of 1967)-----	\$80,000,000,000
The preliminary SEC estimate of \$103.4 billion for all private retirement plans at the end of 1967 was adjusted to exclude profit-sharing plans and money purchase plans.	
2. Less assets in excess of vested liabilities-----	-\$12,000,000,000
For plans with assets greater than vested liabilities, estimated amount of the excess.	
3. Net assets-----	\$68,000,000,000
4. Net assets adjusted for computation of premiums (90 percent \times line 3)-----	\$61,000,000,000

Liabilities:

5. Total liabilities-----	\$107,000,000,000
Estimated from (1) on the assumption that, on the average, about three-fourths of the total liabilities are funded.	
6. Vested liabilities-----	\$85,000,000,000
Estimated from (5) on the assumption that, on the average, about four-fifths of the total liability would vest under a 10-year vesting requirement.	
7. Unfunded liabilities to be insured (\$85-\$61 billion)-----	\$25,000,000,000
Annual premium required to pay expected claims (F \div 7) percent-----	0.12

After reviewing the claim and making any independent investigation that it deemed necessary, the Corporation would determine the validity of the claim and notify the administrator of its decision. If the claim is honored, the Corporation would direct the purchase of annuities or authorize other arrangements for distributing vested benefits.

The amount payable from the insurance fund as previously indicated, would be limited to the difference at the time of termination between vested liabilities and the greater of the plan's assets or the funding target. The employer would be liable for any contributions necessary to meet the termination funding standard. However, the amount of claim payable by the insurance fund would be increased if these contributions could not be recovered (e.g., in event of bankruptcy).

Protection for the integrity of insurance fund

In order to protect the insurance fund from possible abuse, a number of specific restrictions have been included in the proposed legislation. Among them are the following:

1. Claims would be honored only upon essentially involuntary terminations. Regulations by the Corporation would implement this requirement.
2. In the case of terminations resulting from plant closings, the insurance fund, as previously indicated, would have the right to recover from the employer any claims paid in situations where the terminating plan did not affect 20 percent or more of the vested liabilities of all the firm's pension plans.
3. Claims for vested liabilities arising out of plan amendments would not be honored if the amendment took effect within three years preceding the plan's termination. Unless such a limitation is included, it would be possible to amend a plan shortly before its termination in order to collect additional benefits through the insurance fund.
4. No benefits would be payable to stockholders owning over 10 percent of the value or voting power of the country's stock. Such stockholders typically are in a position to exert major control over the company and its pension plan.

Disclosure of funding and insurance status

It seems desirable that any effort to set financial standards should also include procedures for providing plan participants with greater knowledge regarding the financial support behind the stated benefits in their pension plan.

The bill provides that following each occasion on which a plan computes its funding status, the following procedure would apply:

If the plan's funding is at or above its funding target, the plan's funding status report would be made available to each person with a vested benefit.

If the plan's funding is below its funding target, each vested employee would be informed individually with respect to:

1. The amount of his vested benefit under the plan's provisions.
2. The portion of his vested benefit protected by the combination of assets and plan termination insurance which would be provided if the termination provisions of the plan were applied.
3. The proportion of his vested benefit protected by the employer's liability in the event of termination.

EXHIBIT D

STATEMENT OF THOMAS R. DONAHUE, ASSISTANT SECRETARY OF LABOR

This Exhibit contains examples of employee benefit trust fund management in which the interests of participants were subordinated to the interests of the persons responsible for managing the funds or of the companies which had established the benefit plans involved. The examples include welfare, pension, and deferred profit sharing funds administered by employers or by joint labor-management boards of trustees. About 92 percent of retirement plans (pension and deferred profit sharing) are administered by employers, about 7 percent by joint labor-management boards of trustees, about 1 percent by unions alone. About 94 percent of welfare plans are employer-administered, 4 percent jointly administered, 2 percent union administered.

The following examples concern employer-administered pension plans:

1. One company, one of the largest in the apparel manufacturing and merchandising industry, has used its pension fund at least twice in recent years to aid corporate acquisitions in real estate transactions. The fund was used initially as a repository for company stock so that the company had available to it a necessary 150,000 shares, valued at \$5¼ million, which it exchanged for the stock of another corporation to obtain control. In the second instance the pension fund was used to establish a real estate holding company which was the key to an intricate corporate financing program, involving a \$61½ million transaction by which the parent company obtained control of a variety store chain. This acquisition brought with it control of the chain's \$14 million pension fund. The corporation was then in possession of pension trust funds totalling about \$30 million. The assets of these funds have been converted into shares in a pooled investment trust managed by three officers of the corporation under a trust indenture that empowers them to appoint their successors.

2. Pension fund trustees, who were also officers of the corporations which maintained the plan, purchased shares of company stock for the fund while they themselves were selling their own holdings. When the fund ceased buying, the stock price dropped to one-third of its previously quoted price. The depreciation of fund assets as a consequence of this and other securities transactions was estimated at more than \$4,500,000.

3. Four of the five employer-appointed trustees borrowed substantially more from the fund than did other participants. At the end of 1966, balances owed the fund by these four trustees were: \$14,899, \$43,124, \$62,074, and \$38,978. The trustee who owed the \$62,074 made no principal payments during 1966 and had not paid the interest due on the loan.

4. The five officers of the corporation who were trustees of this plan formed small corporations to retail shoes. The money to finance these small corporations was obtained by loans from the pension plan. The loans ranged in amounts from \$35,000 to \$60,000. When the total assets of the pension plan were \$686,000, the loans to the small retail shoe corporations formed by the officers plus the loans made directly to the trustees amounted to \$460,000, or two-thirds of the fund's assets.

The following examples concern employer-administered deferred profit-sharing plans:

5. A small producer of components for machine tools maintained a profit-sharing fund to which it had made no contributions for several years, but to which its 384 employees continued to contribute. The trust fund was managed by an eight-man board, including the company's chief executive officer and its executive vice-president. Both of these officers retired after the board had voted to purchase for the fund 206,000 shares of company stock held by the two officers. The fund paid \$3 per share to the retiring officers, although the market price then was \$1.87 a share. The overpayment yielded them \$207,000 more than they would have received at the open market price.

6. In a profit-sharing plan administered by a large retail food store chain, a corporate trustee holds the assets but investments are directed by the plan's

administrative committee consisting of employees of the corporation appointed by the board of directors. Assets are held in a private investment trust and are reported as trust shares. In 1964 the shares were valued at 34 million dollars. The investment trust has more than 20 percent of its holdings in real estate loans and mortgages. These are held either directly or through a realty corporation controlled jointly by the trust and the store corporation. Officers and directors of the store corporation have borrowed substantial amounts from the investment fund to finance real estate acquisitions which in turn are leased by the officers and directors to the parent corporation for retail store premises or for other purposes related to the chain's operations.

7. A profit-sharing trust administered by trustees appointed by the company purchased 15 acres of land and a manufacturing plant for \$424,000 and leased the land and plant to the company for 8 percent of the cost. The plan then entered into an agreement with the company which granted the company an option to purchase the land and manufacturing plant at 110% of *depreciated* cost (no consideration of market value) on December 31, 1973.

8. At the end of 1960 a pension plan administered by an employer-appointed board had assets of \$564,000, of which \$472,000 had been loaned to the company. During 1961 the company apparently had an increased need for cash. The plan therefore sold some of its common stock for \$81,000 and loaned that amount to the company. The following year the plan loaned the company an additional \$13,000. During this entire period, the company made no payments to the plan for reduction of this debt.

9. In 1962 a plan which was administered by five trustees appointed by the corporation granted a loan of \$25,000 to a plan trustee who was also president of the corporation. The loan was increased to \$65,000 in 1963, and no payments were made on that loan during 1963 and 1964. No loans were granted to any other employees of the corporation during this period.

10. A hotel had a profit-sharing plan to which employees made contributions. The plan was administered by an employer-appointed board. During the five years from 1960 to 1964, employee contributions exceeded actual employer contributions. The employer made no contributions during 1965, although employee contributions continued. In 1965, more than a third of the fund's assets consisted of a third mortgage note to the hotel at an insignificant rate of interest, and a loan to the hotel operator which he used for investment in a nearby real estate venture. The hotel went bankrupt in late 1967 and the third mortgage loan held by the plan appears to be worthless.

11. A small profit sharing trust reported assets of \$116,000 of which 90% were represented by loans to the employer corporation. These loans were secured by a lien on the inventory of the employer. When the employer corporation went bankrupt the plan participants suffered a large financial loss because the loans to the employer became worthless.

12. A small profit-sharing trust had an investment in party-in-interest securities valued at \$345,000 in 1962, representing about 18% of the fund assets. The annual financial report filed with the Department of Labor for 1963 shows the party-in-interest investment had depreciated from a cost of \$318,300 to a value of \$3,183. The 1964 report indicates the fund was being liquidated with distributions to participants after depreciating asset values by \$187,240 in 1962; \$236,465 in 1963; and \$62,821 in 1964; presumably a major part of this loss being incurred by write-off of the party-in-interest investment.

13. For the four years (1961-64) for which plan financial reports are available from 77% to 90% of the assets of a profit-sharing trust have been loaned to the employer corporation at 5% interest. Collateral pledged as security for the loan consists of stock shares in companies with which the parent corporation appears to be affiliated through common ownership.

The following examples concern both pension and deferred profit-sharing plans administered by employers:

14. Five trustees administered 16 pension and profit-sharing plans of a corporation. Of these five, three were past or present officers of the corporation. In one year, the five trustees received an aggregate of more than \$300,000 in trustees' fees from the corporation's 16 funds, which, in addition, paid over \$130,000 to a separate corporation, controlled by the trustees, which was established to administer and invest funds of the corporation's benefit plans. Trust fund management services by a bank trust department probably would be about \$50,000 for a fund of comparable assets.

15. Employer-appointed trustees administered a corporation's pension and profit-sharing plans. The trustees selected a bank to act as corporate trustee to

make investments for the trust fund as directed by the plan trustees. The corporate trustees, using plan funds, subsequently made a \$10,000 loan to the president of the corporation, granted a loan of \$250,000 to a foundation set up by the president, granted its own trust officer a loan of \$74,850, gave a mortgage of \$1,218,000 to the corporation, and granted the corporation an additional \$526,000 which was carried as an account receivable by the trust funds.

The following example concerns a jointly administered pension plan:

16. A pension fund purchased 586 acres of land from a fund trustee who was also the president of the local union participating in the management of the jointly administered fund. The land was to be used for recreational and convalescent purposes by fund participants.

The following examples concern jointly administered welfare plans:

17. A welfare fund which is jointly administered by representatives of a local union and the participating employers used money accumulated in the trust fund to construct a medical center at a cost of \$82,000. The welfare fund then spent \$58,000 for medical equipment to outfit the medical center. Title to the medical center and its equipment (which cost the welfare fund \$140,000) was given to a corporation which is wholly owned by the local union. The welfare fund now pays \$7,000 yearly to the corporation for the use of the medical facilities.

18. A welfare fund was jointly administered by representatives of a local union and the participating employers, but administration of the fund was dominated by a union trustee who was also the president of the local union. For several years this trustee's paramour was on the fund's payroll as an insurance adjuster. During 1962, when the fund had assets of more than \$400,000 but had only 52 participants, she drew a salary of \$9,450 from the fund. Administrative costs of this fund went from \$12.70 per participant in 1961 to \$431.50 per participant in 1962. The cost of administration exceeded employer contributions.

19. A welfare fund administered by representatives of a number of local unions and the participating employers provided death benefits, accident and sickness benefits, and hospitalization, surgical, and medical benefits for participants and their dependents.

Over a 6-year period, the fund, which covers more than 3,000 employees, paid \$1,302,072 in benefits and \$647,418 in administration expenses. This is a ratio of almost 50 cents of expenses to each \$1.00 of benefits. The high administrative costs are due in part to excessive fees paid to the fund trustees amounting to \$126,700 over the same period.

During the 6-year period the board of trustees terminated a contract with a professional fund manager and appointed one of the trustees as manager. He was, at the same time, a trustee of the plan, financial secretary and business agent for one of the participating locals, and business manager of a trades council. The fund also had on its payroll as a collector the president of one of the participating locals. Each employer trustee and each union trustee received \$200 a month as a fee for his services. An additional \$75 a month was paid to the chairman and an additional \$50 to the vice chairman.

Senator YARBOROUGH. For clarification I would like to ask a few questions. I believe you state that the premiums for this insured plan to protect those businesses closed before plans are fully funded would cost two-tenths of 1 percent a year of unfunded vested liabilities.

You did not mean 2 percent?

Mr. DONAHUE. No, sir; two-tenths of 1 percent.

Senator YARBOROUGH. If you will read that top line, I think there is a little confusion there, whether you meant 2 percent or two-tenths of 1 percent.

Mr. DONAHUE. It is two-tenths of 1 percent, Mr. Chairman.

Senator YARBOROUGH. Then a little later, that 0.6, you mean six-tenths of 1 percent there?

Mr. DONAHUE. That is right.

Senator YARBOROUGH. The maximum rate set by S. 3421.

Am I correct in interpreting your testimony there that it would cost for the most part less than 6 percent in complying with this standard of minimum vesting to give the protection to these participants having

10 years of service or more and who have no protection today under most pension plans?

We are talking now about vesting requirements. To have a vested right for 10 years it would cost in 30 percent of the plans not over 3 percent and in not more than 25 percent of the plans a 3- to 6-percent increase to give that protection?

Mr. DONAHUE. That is right.

Senator YARBOROUGH. I think that is a minor cost when we consider the hundreds of billions of dollars accumulated and the millions of workers protected.

Have you any data that show what percentage of the workers would have been protected in the past, that 75 percent whose rights were forfeited, had we had a 10-year vesting plan?

Mr. DONAHUE. I am sure, Mr. Chairman, that we can submit a statement on that for the record.

(Mr. Donahue subsequently furnished the following information in response to this question:)

There are, unfortunately, no completely reliable figures with which to answer this question. The available data suggest, however, that between two-thirds and three-fourths of the employees belonging to private retirement plans would acquire vested rights to a pension if S. 3421 is enacted.

Thus, assuming Senator Javits' estimate is correct, that under present plan provisions, the "forfeiture ratio" is approximately 75 percent, then between one-half and two-thirds of the participants not receiving pensions will benefit from the enactment of S. 3421.

Mr. DONAHUE. On your earlier point, Mr. Chairman, I would note that exhibit C, in one section goes into greater detail on the cost of applying the vesting standard and sets forth a basis upon which we have concluded that it would represent those 3- to 6-percent cost increases.

Senator YARBOROUGH. That is exhibit C?

Mr. DONAHUE. Exhibit C, sir.

Senator YARBOROUGH. You have already noted back in table 2 of exhibit B that the primary cause of job change was job loss.

Mr. DONAHUE. That is right, sir.

Senator YARBOROUGH. It varied with the years of age but 45- to 54-years of age, 50 percent of all reasons for leaving the job was job loss and that your improvement status as a cause for leaving jobs began to decline in percentage after age 35.

Mr. DONAHUE. That would mean, Senator, that 50 percent of Senator Javits' 75-percent figure suffered the loss of their pension benefits involuntarily.

Senator YARBOROUGH. That is right, because of the loss of job. Termination of the job was 8 percent from 45 to 54 years. Illness or disability, 5 percent.

I will not take time to compare them but the 75 percent applied to the different age brackets for the different reasons for leaving jobs is a very important table in analyzing some of the other reasons for losses of these benefits.

We had very interesting hearings last year on the age discrimination employment bill which I introduced in January of last year. It was an administration bill. We finally saw this signed into law last December. Of course, I do not claim credit for that. That was an accumulation of 25 years of effort. For 25 years the Government, different Presi-

dents, labor unions, Fraternal Order of Eagles and others, had urged laws against discrimination in employment on account of age. Finally we saw it brought to fruition last year within 1 year's time.

I was the beneficiary in introducing that bill of a quarter of a century of effort of many, many people. Counsel has called my attention to a chart I will order printed in the record. During those hearings Secretary Wirtz testified we learned the number of years that people stay on the job, the average job life expectancy. For ages 20 to 24 it was a little over 5 years. For ages 25 to 34 it was about 7 years. For 35 to 44 it reached upward 10 years.

We know from those tables that through failure to have proper portability laws and regulations that a vast amount of these potential rights of workers to pensions are forfeited.

I think that table from these hearings taken from the 1966 manpower report of the U.S. Department of Labor will be valuable here too.

Mr. DONAHUE. We have, Mr. Chairman, exhibit B, table 6, a chart which gives similar information, percent of workers currently 30 to 34 years old who are expected to remain with their employer.

Senator YARBOROUGH. Thank you. In the interest of time I will not ask further questions.

Senator Prouty.

Senator PROUTY. Thank you, Mr. Chairman.

Mr. Secretary, you referred a moment ago to a bill which I think you said was reported in the House yesterday.

Mr. DONAHUE. It is my understanding it was ordered reported yesterday.

Senator PROUTY. Did you or representatives of the Department appear as witnesses before that committee?

Mr. DONAHUE. Yes, sir, I testified before the Dent subcommittee.

Senator PROUTY. In other words, apparently the full committee reached a consensus of what seemed to be desirable or possible legislation at this time, is that correct?

That would be the assumption?

Mr. DONAHUE. I would think so.

Senator PROUTY. When the 1962 amendments to the Welfare and Pension Plans Disclosure Act were passed, Congress created an advisory council to advise the Secretary of Labor on how he should carry out his functions under the Disclosure Act.

That council, by law, included representatives of the general public, labor, management, the insurance field, the corporate trust field and other interested groups. Is that correct?

Mr. DONAHUE. Yes, sir.

Senator PROUTY. In amending the law, didn't Congress also require the Secretary of Labor to transmit to the Congress each recommendation made by this advisory counsel on employee welfare and benefit pension plans?

Mr. DONAHUE. Yes, sir.

Senator PROUTY. I think in Secretary Wirtz's report on the Disclosure Act to the Congress for calendar year 1966, the advisory council recommendations are included, is that correct?

Mr. DONAHUE. That is right, sir. They were transmitted as part of that report.

Senator PROUTY. The council unanimously agreed as follows, and I now quote from the report made by the Secretary concerning the council's recommendation:

The council believes that Congress acted wisely in placing primary reliance on the original 1959 act and in the 1962 amendments on insuring integrity of plan performance through making public disclosure of plan operation.

Council further believes that the will and intent of Congress as expressed specifically in the 1962 amendments to the act with respect to prohibitions against giving the Secretary of Labor any added powers to regulate or interfere in the management of any employee welfare or pension benefit plans should be preserved.

Are you familiar with that?

Mr. DONAHUE. Yes, sir.

Senator PROUTY. S. 1024 does not follow that recommendation.

Mr. DONAHUE. No; it does not.

Senator PROUTY. I wanted that to appear in the record.

Mr. DONAHUE. There should be no indication that we are trying to hide anything on that subject. I think the record is quite clear, the advisory committee has made its recommendations.

They are contained in the report of the Secretary for the calendar year 1966.

The Department of Labor and the other departments of the Government developed a proposal which is S. 1024. It is the administration bill. It represents simply a disagreement of the Department of Labor and of the administration with the advisory committee. That is very clear.

Senator PROUTY. Mr. Secretary, there is another report which gives me some concern, and I mention this because of the doubts in the mind of some people, I think including Senator Javits, as to whether the Department of Labor should be given the responsibility for administering these new provisions.

This report is one made by the Comptroller General of the United States to Congress and it is dated March 1967. The report is very critical, and contains recommendations for improvement in your department's administration in five areas; namely:

One, develop and maintain up-to-date entities required to submit reports under the two disclosure laws.

Two, update mailing lists so that reporting entities will receive the forms necessary for reporting the information required.

Three, follow up on reports known to be delinquent.

Four, promptly incorporate in the disclosure files changes in plan descriptions.

Five, make a more effective verification of reported data.

In other words, Mr. Secretary, while the Labor Department is making many recommendations for further amendments to this act, it seems to me that there is a question of how good a job the Department has actually been doing over this 7- or 8-year period with the present law.

I am basing that statement entirely on the recommendations made by the Comptroller General. Could you please discuss these five questions?

Mr. DONAHUE. Yes, sir. The report fails to note that at the point of time in which the GAO examination of our operations was made there was already in operation an examination of these same problems.

The Department of Labor had contracted with Ernst & Ernst, a management consulting firm, to come in and analyze procedures and to find solutions to at least the second, third, and fourth criticisms of the GAO report.

The report simply neglected to mention the fact that the Ernst & Ernst people were on the property examining these same problems.

The Department recognized the problems, we had already begun to move to meet them. Since the time of the report, the GAO report, the Ernst & Ernst report has been received. We have now begun to implement the recommendations of that report.

Essentially that report suggests that we move to an almost complete electronic system, more complete use of electronic data processing equipment, in the management of these reports—158,000 pension and welfare reports and some 57,000 labor-management reports are received each year.

We have begun to install the new system which resulted from the Ernst & Ernst recommendations, recommendations which resulted from the Ernst & Ernst study which was going on when the GAO investigation was made.

Secondly, the GAO report talked about developing a list of entities required to report and that turns out to be a much simpler suggestion than something capable of fulfillment.

There is not in existence in the United States a list of entities required to report.

You have heard this morning questions of whether there are nearly 200,000 pension plans or 158,000 welfare plans, 35,000 pension plans which report to us. Pension plans which involve fewer than 25 participants are not required to report.

To develop a list of entities required to report would require first that we assemble a complete list of every pension plan extant in the United States. We would then have to take that list and segregate out of it those plans which cover less than 25 employees.

We would need then to maintain that list on a current basis because one at 24 might acquire two new employees the following year.

It requires an administrative chore that in our judgment is unwarranted. It would require the expenditure of many millions of dollars to develop that kind of list and to maintain the system as GAO, I might say, blandly suggested be done.

We are moving in a number of ways to compensate for the inadequacies of the system which we recognized. We have now begun a system of cooperation within the Department of Labor by which all of the wage and hour investigations, some 75,000 to 80,000 investigations each year, which are done will include in that process a question as to whether or not this company has a going welfare or pension plan.

If you do, are you filing your report, how many people does it cover, and we will develop the information in that way.

We have moved in a number of ways to solve the problem. We don't think that the developing of lists of entities can be accomplished as easily as GAO seems to think it could be accomplished.

Thirdly, the GAO report implies that it is possible to achieve 100 percent compliance with the reporting disclosure requirements of the act.

It is not possible to achieve 100 percent compliance with any statute. The percentage of noncompliance will depend on the amount of assets which you are willing to assign to enforcing the law.

With the assets available we are enforcing the law to the extent of our ability. We are doing, I think, a rather credible job. Of course, that is a subjective opinion.

Senator PROUTY. Thank you, Mr. Secretary. I wanted you to have an opportunity to reply to the criticism made by the Comptroller General.

Frankly, I have great respect for the GAO and I hope their recommendations will be put into effect as much as possible.

Mr. DONAHUE. I think I can fairly say that we have begun to move and we are continuing to move to meet all of the criticisms of the GAO report and to meet it very effectively.

Senator PROUTY. Thank you, Mr. Chairman.

Senator YARBOROUGH. Thank you, Senator.

Mr. Donahue, in view of the time, in fact it is 12, I will forgo any further questions at this time. I might clarify one or two points if you should be recalled later at our future hearings on this question.

It is a very important question. I hope we can move forward to make some progress.

The next witness will be the Honorable Stanley Surrey, Assistant Secretary of the Treasury.

Mr. Surrey, will you come around.

**STATEMENT OF HON. STANLEY S. SURREY, ASSISTANT SECRETARY,
U.S. DEPARTMENT OF THE TREASURY**

Mr. SURREY. Mr. Chairman, I have a brief statement.

On my right is Mr. William Gibb from the Office of Tax Legislative Counsel.

On my left, Mr. Daniel Halperin from the Office of the Tax Legislative Counsel of the Treasury Department.

Senator YARBOROUGH. Fine. Proceed in your own way.

Mr. SURREY. Mr. Chairman and members of the subcommittee, I appreciate having this opportunity to comment on the legislative proposals embodied in the Pension Benefit Security Act (S. 3421).

While these proposals relate to matters to be administered by the Labor Department, they are in an area which has also been of interest and concern to the Treasury Department for a number of years.

Public policy has been clearly directed toward encouraging the growth of the private pension system. An important aspect of this policy has been the granting of favored tax treatment to those pension plans which provide coverage for a broad range of employees within the particular company involved.

To this end, the Internal Revenue Code contains a series of special tax provisions for "qualified" pension plans coupled with a set of non-discrimination standards which must be met as a prerequisite to obtaining that "qualification."

The objective of the "qualification" requirements is to insure that the tax benefits flow to employees in general and not merely to a handful of highly paid employees.

The Treasury Department and the Internal Revenue Service are charged with the interpretation and implementation of these statutory

provisions, and, through these functions, have had close contact with—and a continuing interest in—the private pension system.

At the outset, let me state first that the Treasury Department wholeheartedly supports the objectives of the Pension Benefit Security Act.

This proposed legislation arose from recommendations contained in the 1965 report of the President's Cabinet Committee on Corporate Pension Funds.

The Treasury Department was a member of that Committee and consistent with its interest in this important area actively participated in the preparation of the report.

We have similarly participated with various other Government agencies in the work of an interagency staff task force which considered the comments and criticisms received on the 1965 report, and which, based on that critique, developed a series of specific legislative proposals with regard to three of the areas covered by the report.

The legislation embodied in the Pension Benefit Security Act is based on the work of this task force.

Senator YARBOROUGH. In other words, this legislation was not just something dreamed up by the Labor Department. We often say every time a bill is introduced in Washington it is another grab for power.

Mr. SURREY. No, sir.

Senator YARBOROUGH. This was not worked up by the Labor Department but worked up by this panel because of the growing complexity of this problem, the vast pension funds and absence of protection for the majority of the workers who are affected by it due to the lack of portability and many other causes?

Mr. SURREY. Yes, sir.

The subject has been under study for a number of years by a number of agencies.

Senator YARBOROUGH. Proceed.

Mr. SURREY. Secondly, the fact that this legislation has been proposed should not in any way be interpreted to indicate that the Federal Government is engaged in a campaign to bring the private pension system under its wing.

To the contrary, I think the very fact that this program has been submitted is a recognition of the important role being played—and which should continue to be played—by the private pension system.

By recommending specific improvements in the system, a continuation of its active role is explicitly recognized.

The proposed legislation represents a three-part program assuring a worker that years of labor in a company having a pension plan will bring him a benefit when he reaches retirement age even though events may cause him to leave that company before retirement age, and that there will be funds on hand for the payment of that benefit.

First, it is proposed that an employee's accrued pension benefits become nonforfeitable once he has accumulated 10 years of service (after age 25) with his employer.

After this length of service, the fact that he moves to another job could not eliminate his pension expectations built up through his prior service.

As a matter of simple equity, it seems clearly undesirable to allow situations where an employee must forfeit 10 or more years of accrued pension benefits merely by changing jobs.

The mobility of our people and the constant changes in our industrial and commercial activities require a vesting standard along these lines if the private pension plan system is to be a real and vital part of an ever-changing America.

As Secretary Donahue indicated, persuasive testimony to the hardship that can result from a lack of vesting is contained in the letters we and other Government agencies receive from individuals who, after working many years for an employer, find that they have lost their pension accruals because they accepted a new job or because they were laid off.

These individuals are now facing retirement without the pension they expected. There is no way for them to retrace their steps and make other financial arrangements to fill the void.

For them, the private pension system is a failure.

The remaining two proposals in the bill would institute a joint program aimed at insuring that private pension plans are in fact able to meet the financial commitments represented by vested benefits.

This financial security would be obtained through an improved minimum funding requirement, coupled with a termination protection fund that would be available before full funding is achieved, to help meet a plan's vested liability commitments in the event of a termination of the plan.

In essence, this financial protection program holds a pension plan basically responsible for funding its pension promises, and to that end establishes basic funding requirements looking toward full funding over a period of time.

However, this individual responsibility would be backstopped by a combined effort, under the termination protection fund, on the part of all private plans to make good on a particular plan's promises if it is terminated prior to attaining a full funding status.

In this way, the basic individuality—and thus flexibility—of private pension plans can be retained without jeopardizing the pension expectations of the employees involved.

It would seem clear that if the private pension system is to fulfill its role as a partner with the public social security program, it must make good on its promise that a pension will be available on retirement as the reward for years of service to an employer and that funds will be available to pay that pension.

The fact that an employee may be forewarned of the possibility that under some contingencies—such as a shutdown of the company or plant before the plan is funded—he may never receive a promised pension benefit is not an adequate substitute for the protection of that benefit.

To really be an effective substitute, the warning should lead the employee to ignore altogether his possible private pension benefit in any financial planning for his future retirement—or at best to realize that he is engaged in a gamble that long years of service may or may not produce a retirement benefit.

Surely this is not what the designers of private pension plans want or intend for their employees.

In sum, it would seem hard to quarrel with the goals of this bill. Each of the proposals are important improvements in the present operation of the private pension system and ought to be made.

There is, however, a definite need for allowing flexibility in the transition to these new requirements in order to avoid placing difficult

burdens on individual plans. The bill aims to provide this flexibility through various alternative transitional devices which will have the effect of phasing in the new rules over a period of time.

If one transitional procedure does not fit the particular needs of a plan, it is likely that another will. If none of the transitional procedures now in the bill is suitable to cover a particular situation, consideration can be given to one that will.

But in any analysis of the comments received with respect to this bill, it is important to recognize the distinction between a disagreement with the policies of its basic recommendations and any problems that may arise in moving to the new standards.

In the area of those basic recommendations—vesting, funding, and termination protection for private pension plans—I would suspect and certainly hope that there are not large differences over policy issues.

What problems may exist are more likely to be related to the aspect of transition, and these problems can be worked out. The proposals in the bill represent, in our opinion, an appropriate and useful framework within which to work them out.

The Secretary of Labor would be responsible for the administration and enforcement of the new standards. There have been some who have questioned this proposed administrative machinery as being at odds with past practice, which has largely depended upon the revenue system for administering minimum standards for private pension plans.

To the contrary, we believe that the procedures proposed for administering the new standards are in accord with the nature of the legislation and not inconsistent with prior practice.

The present standards for qualifying for the tax benefits provided for private pension plans are mainly concerned with preventing discrimination in favor of highly paid employees.

The objective of those standards is to insure that the tax benefits flow to employees generally rather than to a narrow band of highly paid employees.

On the other hand, the requirements for vesting, funding, and termination protection contained in this bill, in combination, seek to fulfill and secure an employee's pension expectations from his employer.

These proposals thus involve important aspects of employee welfare and employer-employee relations—matters within the general responsibility and expertise of the Labor Department.

Thus, it seems completely appropriate that this Department have responsibility for their administration.

It may be noted that the Labor Department at present has jurisdiction over another significant aspect of pension legislation; namely, the Welfare and Pension Plan Disclosure Act which requires disclosure of the financial operations of pension plans.

Here again, the objective of that legislation is to provide protection for employees covered under private pension plans by providing them access to the information necessary for them to discover any activities that are against their interests.

Mr. Chairman, at this point I might briefly comment on the matter that Senator Javits requested some comment on, and that is the difference between the administrative provisions of his bill and the administrative provisions of the bill I am discussing.

Senator Javits' bill places the responsibility for administration of the tax provisions for all pension plans in a commission along with other matters to be handled by that commission.

In our opinion, this sharing of administration of tax provisions with another agency would be difficult and undesirable.

Sharing of administration would, in effect, split the examination and audit of tax returns between two agencies which could well disrupt the orderly disposition of a particular examination. Moreover the qualification of pension plans under the tax laws can raise questions and issues which merge in perceptibly in one way or another with issues and questions arising under other tax rules and to have two agencies passing on these matters can only cause confusion and difficulty.

We see nothing to be gained and much to be lost by having part of the tax code administered by another agency. This problem does not arise under S. 3421 since there is no sharing of responsibility.

Under that bill, each department has its exclusive area of responsibility. There is no change in the tax laws at all or any amendments of the Internal Revenue Code required directly or by implication under S. 3421, whereas the contrary is true under Senator Javits' bill.

Senator YARBOROUGH. I want to congratulate you on this very wise analysis of the situation that would result if the Treasury Department had to divide its tax responsibility with someone else.

I think the contribution you have made will be very important and very helpful to us in working out the form of the legislation.

Mr. SURREY. Thank you. I would like to add another point. There is a second problem that arises under Senator Javits' bill—the bill uses the tax laws as an enforcement device.

In other words, noncompliance with the standards of the Javits bill means loss of tax benefits under that bill.

We think that method of insuring compliance is undesirable. In the first instance it may not always be effective because there are some corporations, some employers, that will not be concerned about the loss of tax benefits. This group would include, for example, a corporation operating with a tax loss or a corporation which is exempt from tax for one reason or another.

Secondly, it seems undesirable to us to use as a general sanction the payment of a penalty to the Internal Revenue Service which would be the effect where the sanction is a loss of tax benefits.

In other words, if a plan is underfunded, for example, the solution should not be to take some money out of that plan and turn it over to the Commissioner of Internal Revenue.

Whatever money there is in that plan, certainly if it is inadequate, should be left for the employees and not given to us. We don't want any money from that plan.

S. 3421 avoids this result by having separate enforcement procedures which do not cause a plan to be disqualified under the Internal Revenue Code and therefore lose tax benefits. On the other hand, this is not to say that the tax disqualification penalty applicable if a plan fails to meet the nondiscrimination tax rules is inappropriate. In this situation, the law properly withholds the base benefits if they should flow to only a handful of high-paid employees.

Consequently, we feel that the enforcement and administrative machinery in S. 3421 is most appropriate to the matters it deals with and that retention of the enforcement of the existing tax provisions

in the IRS is more consistent with sound tax administration than is transferring this responsibility to another agency as would be done under Senator Javits' bill.

I just wanted to make those comments. We do not think the situation as far as we see it from our standpoint calls for the Commission suggested in Senator Javits' bill.

Senator YARBOROUGH. I think these suggestions are most helpful to us.

Mr. SURREY. I would like in summary to state that the Treasury Department fully supports the objectives of the proposals contained in the Pension Benefit Security Act.

While we completely agree with the assigning the responsibility for the administration and enforcement of the new standards to the Labor Department, we, of course, stand ready to cooperate with that Department in any way we can, especially to remove any unnecessary overlap of reporting and examination.

Likewise, the Treasury Department favors the enactment of the recommendations in S. 1024 for prescribing and enforcing a Federal standard of fiduciary responsibility for individuals who administer welfare and pension funds.

This legislation will also serve to add a meaningful measure of protection to an employee's pension expectation.

That concludes my statement, Mr. Chairman.

Senator YARBOROUGH. Mr. Secretary, this is a very helpful statement. I think your statement is a very strong statement of great aid to us in the legislation. You point out that the fact that an employee may be forewarned of the possibility that under some contingencies, such as a company shutdown before the pension is funded does not mean much.

It is a warning such as contained in the small print of an insurance policy. You point out if it is going to be an effective substitute the warning should let the employee know that he should not consider this as part of his pension plan because we have seen in most cases it does not work out. In most cases it is illusory, he doesn't get it. I really think that is a good recommendation there. Employees should consider this.

As of now I think most employees think they are covered. If you talk to a man working somewhere, he has negotiated a contract, or his union has, they have a pension fund. I think we ought to substitute for the glowing promise of a pension plan, as you point out, the reality that he probably is not going to have any pension and he had better make his future plans based on the fact that, under existing law, he probably won't participate in any pension.

Thank you very much. You have given a very helpful statement and very helpful information and recommendations.

As a lawyer I want to congratulate you on your cogency of language and your brevity of exposition. Thank you very much.

Mr. SURREY. Thank you, Mr. Chairman.

Senator YARBOROUGH. Gentlemen, we had planned to resume this hearing tomorrow but unexpected events have crowded us out. We have an executive committee meeting tomorrow to consider legislation and those executive committee meetings on the markup of bills will take priority over any open hearings like this.

So, of necessity the hearings for tomorrow must be called off. We recess this hearing subject to further call but there will be further hearings this year. We hope to complete these hearings at the earliest possible date so that the committee can begin deliberations concerning the legislation.

I say at the earliest possible date. I don't mean to cut people off. We want the full record here. We want to print it. We want to put all the staff to work on it and we will work on it because of the vastness of the issues involved, the tens of millions of people, the vast amount of economic power and the necessity of the overriding thing that has caused these things, the necessity of protection of these workers.

Thank you very much.

(The following material was ordered printed in the record:)

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, September 5, 1968.

HON. RALPH YARBOROUGH,
*Chairman, Subcommittee on Labor, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Enclosed is a requested comparison of the salient features of two pension bills supported by the Department of Labor, S. 1024 (Senator Yarborough) and S. 3421 (Senator Yarborough), with S. 1103 (Senator Javits). Both the bills supported by the Department of Labor and S. 1103 are comprehensive legislative proposals designed to deal with the major problems and defects in the private pension plan system. Both proposals are similar in major respects and appear to be in substantial agreement regarding the objectives to be accomplished in this field. I appreciate the originality and understanding that S. 1103 shows of the problems of pension and welfare plans.

The differences between S. 1024 and S. 3421 and S. 1103, set forth in the enclosed comparison, are primarily concerned with the specific approaches and methods selected to attain the desired objectives. After careful consideration I believe that the Department of Labor's bills provide a more practical approach to the problem with which the bills deal and at the same time provide meaningful safeguards for welfare and pension funds.

If you wish any additional information, I shall be pleased to furnish it.

Sincerely yours,

THOMAS R. DONAHUE,
Assistant Secretary of Labor.

Enclosure.

PENSION AND WELFARE BILLS

Comparison of S. 1024, S. 3421 (Senator Yarborough) with
S. 1103 (Senator Javits)

FIDUCIARY RESPONSIBILITY

S. 1103 requires every fund to be established pursuant to a trust agreement. S. 1024 provides that every fund, regardless of how established, is to be regarded as a trust.

Both S. 1103 and S. 1024 require that welfare and pension funds be used exclusively for the benefit of participants and beneficiaries and to defray reasonable costs.

S. 1024 contains specific provisions (i) imposing the "prudent man" rule on persons who handle plan funds, (ii) establishing the personal liability of fiduciaries for breaches of trust, (iii) establishing standards for co-trustees. There are no similar provisions in S. 1103.

S. 1103 requires indicia of ownership of plan assets to be within the jurisdiction of U.S. courts. There is no similar provision in S. 1024.

Both S. 1103 and S. 1024 require plans to undergo an annual audit. S. 1103 requires the results of such audit to be made available at the principal office of the plan and such other places as may be designated. S. 1024 requires the audit

to be furnished in the annual financial report which, by virtue of S. 1024's publication requirements, must be made available at the principal office of the plan, furnished to a participant upon request and filed with the Department of Labor.

With respect to disposition of funds upon plan termination both S. 1103 and S. 1024 permit recapture by the contributing employer of *pension* fund surpluses after all claims have been satisfied. However, S. 1103, unlike S. 1024, permits return of contributions to the employer in the case of a welfare fund termination.

S. 1103 permits employer or union officials who are also fiduciaries to receive only expenses for business meetings of the fund. S. 1024 permits such persons to receive reasonable compensation for performing their fiduciary responsibilities in connection with a benefit plan. S. 1103 prohibits employer or union officials from receiving any payments from plan funds (other than "meeting" expenses and their own benefit payments). S. 1024 prohibits a fiduciary from receiving any consideration from any party dealing with the fund (other than benefits and reasonable compensation) and forbids a fiduciary from acting in his own interest or account with respect to the fund. S. 1024 is broader than S. 1103 with respect to conflict-of-interest loans in that it prohibits loans from the fund to fiduciaries, their relatives, employers with a relationship to the fund and unions with a relationship to the fund. S. 1103 only prohibits loans to employer or union officials.

S. 1103 exempts banks, trust companies and insurance companies subject to federal or state regulation from application of the fiduciary standards. There is no similar exemption in S. 1024 and S. 1024 subjects these institutions to fiduciary standards insofar as they participate in the management of covered funds.

S. 1024 restricts plan fund investments in the employer to 10 percent of fund value. Profit-sharing plans are expressly excluded from this restriction. There is no comparable provision in S. 1103.

S. 1024 declares exculpatory clauses void. There is no comparable provision in S. 1103.

S. 1103 requires that state law control with respect to any action arising from a breach of the trust agreement if the trust document so provides. There is no comparable provision in S. 1024.

S. 1024 prohibits sales or leases of property between the fund and the employer or union or official thereof. There is no directly comparable provision in S. 1103.

S. 1024 bars persons convicted of certain enumerated crimes from serving as fiduciaries for a period of five years after conviction or release from imprisonment. There is no comparable provision in S. 1103.

Both S. 1103 and S. 1024 authorize the administering agency to obtain the return of assets taken through breach of trust and to obtain injunctions. In addition, S. 1024 authorizes the recovery of damages, the removal of a fiduciary for breach of trust and the obtaining of "other appropriate relief". Both S. 1103 and S. 1024 authorize plan participants to recover illegally transferred fund assets. In addition, S. 1024 would authorize participants to obtain the recovery of damages, removal of the fiduciary, injunctive relief and other appropriate relief. S. 1103 authorizes a district court to appoint a receiver of fund assets. There is no comparable provision in S. 1024. S. 1024 provides that once an action is brought by the Secretary of Labor the jurisdiction of the district court is exclusive and the judgment *res judicata*. There is no comparable provision in S. 1103.

In addition, S. 1024 expands the financial reporting requirements of the Welfare and Pension Plans Disclosure Act in order to assist enforcement of the fiduciary provisions. There is no comparable addition to the reporting requirements in S. 1103.

VESTING

The vesting provisions of both S. 1103 and S. 3421 do not apply retroactively to service performed prior to the effective date of the vesting provision; they apply only in respect of service on and after the effective date of the vesting provision. S. 1103 does not apply if the pension or profit-sharing retirement plan covers twenty-five participants or less. S. 3421, however, has no such cutoffs and applies regardless of the number of participants. The other features of the bills are:

S. 1103—For employees separated after age 45, requires either (a) full vesting after 15 years of continuous service, or (b) graded vesting starting at 50 percent after 10 years and increasing to 100 percent after 20 years. It is permissible to have vesting at an earlier age than 45 years or upon service or membership in

the plan for a lesser period than 15 years, or both. It is also permissible to have early or deferred retirement and an optional death settlement if provided in the plan. Enforcement would be accomplished by a system of compulsory registration with a certificate being issued to qualified plans.

S. 3421 in Title I—Vesting—provides as follows:

Basic Standard—Full vesting after ten years of service after age 25.

Transition rules—Existing plans are permitted to:

1. Vest only benefits based on service after the effective date of the standard for any employee with 10 years service, or
2. Vest an increasing proportion of benefits for past and future service for any employee with 10 years service (first year—10 percent; tenth year—100 percent), or
3. Vest benefits for past and future service, beginning in the first year for employees with 20 or more years of service reducing gradually to employees with ten or more years of service after the tenth year.

Transition rules—New Plans are permitted to:

1. Vest benefits for past and future service beginning in the sixth year of the plan's operation for employees with 15 or more years of service, reducing gradually to employees with ten or more years of service after the tenth year of the plan's operation, or
2. Vest an increasing proportion of benefits for past and future service, with 50% of the benefits for 10 years of service (in the sixth year of the plan's operation) and reaching 100% of benefits after the tenth year of the plan's operation.

Limitation on vested benefits

Only regular retirement benefits are vested, not ancillary benefits such as death or "special" early retirement benefits.

Service conditions

Continuous service may be required in order for benefits to vest but safeguards are adopted to prevent artificial breaking of service.

Calculation of vested benefits

Proportionate credit rule will apply under which the vested employee is entitled to his prorated share of the benefit he would have attained had he remained under the plan until retirement.

Distribution of vested benefits

Not later than age 65—To facilitate notification of vested benefits, information on employees terminating with vested benefits will be furnished to the Secretary, HEW, for use at time individual applies for Social Security benefit.

Age and service requirements for plan eligibility

Maximum requirement permitted will be age 25 and three years of service; existing plans may retain current eligibility requirements until plan is amended but not beyond ten years after enactment of this Act.

Contributory plans

Employer-purchased benefits are vested even though the employee is permitted to withdraw his contributions.

Enforcement

The Secretary of Labor may require a certificate of approval for a plan's vesting provisions. Once such a certificate is required, it is unlawful to operate a plan without such a certificate.

FUNDING

The funding provisions of both S. 1103 and S. 3421 apply only to pension plans. S. 1103 does not apply if the plan covers twenty-five participants or less. S. 3421, however, has no such cutoff and applies regardless of the number of participants. Profit-sharing plans are excluded from the funding requirements of both bills. Certain insured plans funded by level annual premiums are excluded from funding requirements of S. 1103 but not from S. 3421.

Both bills require an initial funding and historical report of the plan and a subsequent report in the normal case at three-year intervals. As respects the report, a section of S. 1103 provides that the Commission may, by regulations promulgated pursuant to the Administrative Procedure Act, provide for the filing of single reports satisfying the reporting requirements of the Act and the Welfare and Pension Plans Disclosure Act. The other features of the bill are:

S. 1103 requires annual payment of at least (a) current service costs, (b) 1/30th of initial unfunded liability (including that stemming from amendments), and (c) one-fifth of any "experience deficiency." These are to be determined by the Commission-approved actuaries.

Exceptions

Existing plans may pay only 1/40th of unfunded liability on effective date of the Act. *Broad-based multiemployer plans* may, instead of (b) and (c), pay interest only on total unfunded liabilities or meet alternate requirements specified by the Commission.

S. 3421 provides as follows:

Funding Standards

Basic approach—To continue the present Internal Revenue Service minimum funding standard as a basis for prescribing a plan's minimum annual contribution but to introduce an additional funding standard as a more meaningful basis for plan termination protection.

Termination funding standard—Built around a plan's funding ratio of plan assets to vested liabilities—a schedule is established under which a plan's funding ratio is expected to increase at a rate of 4 percentage points annually, reaching 100 percent (full funding of vested liabilities) after 25 years.

Transition rule for existing plans—Existing plans are accepted into the funding schedule at their current ratio, if this is lower than the funding target specified in the schedule; in addition, for the first five years after the standard is effective, the scheduled increase in the funding target is at the rate of 3 percentage points annually.

Implementing the Funding Standards

Periodic testing—Each plan will submit basic information on funding status every three years and whenever plan is amended to increase vested liabilities.

Amendments—Funding target can be adjusted after amendments which add to vested liabilities; amendments which increase liabilities by more than 25% may be treated as new plans with new funding targets.

Enforcement

Plans failing to meet IRS minimum funding standard would be required to make accrued benefit rights nonforfeitable (essentially the same as current rule).

Plans failing to meet termination funding standard (1) could not liberalize benefits, (2) would have to inform each employee of effect of funding deficit on his vested benefit, and (3) make such additional reports to the Secretary as are necessary. If a plan fails to meet funding standard for five years, the Secretary can order the plan to suspend further accumulation of vested liabilities. He may do this earlier at his discretion. The Secretary may further require by order the termination of a suspended plan to protect the interests of participants.

REINSURANCE (INSURANCE)

S. 1103 provides that after a plan or amendment has been in effect for 5 years, benefit losses up to 50 percent of wages or \$500 per month would be reinsured by the Commission if they resulted from substantial cessation of employer's operations before unfunded liabilities are fully funded. Uniform *annual* premiums up to 1 percent per year of unfunded liability would be set by the Commission. Sets up priorities if reinsurance funds is inadequate to pay all claims.

No insurance is given unless the plan has been registered for 5 years: Provided, That the Commission may, in its discretion, credit against the 5-year requirement one or more years prior to the effective date of the Act for any pension plan which, during such prior years, would have satisfied the registration requirements, had the Act been in effect.

S. 3421 provides as follows:

Basic concept

Full protection for employees' vested benefits against involuntary plan termination through a system providing insurance and enforceability of employer contributions to meet termination funding standard.

Method of providing protection

For plans meeting termination funding standard, vested benefits would be insured—plans not meeting termination funding standard would not be permitted insurance coverage for the amount by which their funding fell short of funding

target but in event of plan termination employing unit, if solvent, would be liable for this amount; otherwise, such amount would be covered by insurance.

Insurance procedures

Insurance will be obtained *on a three-year basis* predicated on the report of the plan's funding status.

Amount of insurance

Total vested liabilities less the greater of 90 percent of the actual assets or the assets needed to meet the funding ratio under title II. The 90 percent of assets requirement is intended to provide a uniform limited hedge against loss due to market depreciation of assets.

Premium

Plans would pay premium based on uniform percentage of unfunded vested liabilities—maximum premium rate for *initial three-year period* is 0.6 percent.

Payment of claims

Claims against insurance fund to be honored only upon essentially involuntary plan termination caused by financial difficulty or bankruptcy, plant closing affecting 20% or more of the vested liabilities of the firm's pension plans, or order of the Secretary—claims to be paid by the purchase of annuities or other approved arrangement.

Additional restrictions on insurance coverage

Benefits created by amendments will not be insured for three years—benefits accruing to participants owning 10 percent or more of the firm will not be insured.

Note: There is no limitation on individual payments such as the 50 percent of wages or \$500 per month specified in S. 1103.

Enforcement

Unlawful to operate a plan without required insurance.

INSURER

S. 1103 provides that the Commission shall establish a revolving fund into which all amounts paid into the program as premiums shall be deposited and from which all liabilities incurred under the program shall be paid. The Commission is authorized to borrow from the Treasury such amounts as may be necessary, for deposit into the revolving fund, to meet the liabilities of the program. Such moneys shall be repaid by the Commission from premiums paid into the revolving fund. Moneys in the revolving fund not required for current operations shall be invested in obligations of, or guaranteed as to principal and interest by, the United States.

S. 3421 provides that a wholly-owned Government corporation under the supervision of the Secretary of Labor is established to administer the termination insurance provisions of title III. The management of the Corporation is vested in a five-man board of directors, two of whom shall be the Secretaries of Labor and Commerce, serving *ex officio*. The other three directors, including the Chairman, are to be appointed by the President with the advice and consent of the Senate, and shall serve for a term of six years. No more than three members of the Board of Directors can be of the same political party.

A five-member Technical Advisory Committee on Pension Benefit Insurance is created to advise the Corporation, the members to be appointed by the Secretary after consultation with the Secretary of Commerce.

Powers of Corporation

The Corporation, in addition to possessing general corporate powers, is specifically authorized to: (1) establish adequate premium rates, (2) establish procedures for the application, renewal and cancellation of insurance, (3) collect premiums and manage and invest its funds, (4) adjust and pay claims, (5) conduct research relating to pension plan insurance, and (6) bring actions to enjoin insurance violations.

Financing and administration

To finance the Corporation a revolving fund is established to which premium payments shall be made and from which claims, payments, and expenses shall be paid. The Corporation may also receive appropriations for capital which shall be repayable with interest.

Personnel of the Corporation are to be appointed in accordance with the civil service laws. The Corporation must file annual reports. The Government Corporation Control Act is made applicable to the Corporation.

ADMINISTRATION

S. 1103 sets up an independent Commission to centralize pension plan administration. It would be responsible for vesting, funding, reinsurance, fiducial responsibility, tax qualification (now in IRS), disclosure (now in Labor), and other functions. Leaves some as they are (e.g., inspection of banks by the Federal Reserve and other agencies and enforcement of securities laws by the SEC).

S. 3421 provides as follows:

Administration

The Secretary is authorized to promulgate rules and regulations; the Administrative Procedure Act is made applicable to the Act. The Secretary is directed to assess and collect such user charges for assisting in defraying part or all of the costs of administering this Act, as are consistent with the provisions of section 483a of Title 31 of the United States Code, providing for self-sustaining charges to the extent possible and which are fair and equitable.

The Secretary is authorized to conduct studies into all phases of pension plans, including such important areas as portability of vested credits and plan financial practices. In addition, the Secretary is authorized to cooperate with all other agencies and to utilize their facilities (on a reimbursable basis) to assist him.

Variations

Relief from the vesting and funding standards may be provided if such standards would impose unreasonable costs or unreasonable administrative burdens. In general, this relief would be provided only for temporary periods. However, with respect to the vesting standards, broadly based multiemployer plans could apply for permanent variation relief based on their experience in granting transfer rights to employees changing employers within the plan. A Variation Appeals Board is established to review decisions denying such relief.

PORTABILITY

S. 1103 authorizes Commission to accept deposits in individual employee accounts of lump-sums paid by pension and profit-sharing plans to settle accounts of separated employees. The Commission may either pay the deposit to a plan to which the employee transfers or pay the employee directly when he attains age 65.

It will be noted that this feature is optional.

S. 3421 provides for no similar facility. Under Title I, however, administrators of plans are required to furnish to the Secretary of HEW information on employees terminating with vested benefits prior to the normal retirement age.

ENFORCEMENT

S. 1103 provides that the Commission may petition the U.S. Courts to require funded private pension and profit-sharing-retirement plans with over 25 employees to register (i.e., comply with the reporting, vesting, funding, reinsurance and Sec. 401 IRS requirements) and to enforce the fiduciary requirement of the Act.

The bill also denies tax qualification to unregistered plans.

S. 3421 provides that the Secretary is authorized to conduct investigations into violations of the vesting and funding requirements, or to assist him in prescribing rules or regulations or making studies. He may bring action for injunctive or other appropriate relief in federal district courts with respect to violations of the vesting and funding provisions. Judicial review in the federal district courts is provided for all orders and administrative decisions made by the Secretary or the Corporation.

Criminal penalties are provided for willful violation of any provision of the Act, for making false statements or records, for forging or counterfeiting documents for purposes of influencing the Secretary or the Pension Benefit Insurance Corporation for the purpose of influencing any of their actions. The penalties provided are a fine of \$10,000, or imprisonment for not more than five years, or both, except that in the case of a corporation, the fine can be as high as \$200,000.

ADMINISTRATIVE ASSESSMENTS (USERS' FEES)

S. 1103 authorizes the Commission by regulation to prescribe reasonable fees for the registration of pension and profit-sharing-retirement plans and other services to be performed by it in connection with such plans under the Act. All fees collected by the Commission shall be paid into the general fund of the Treasury.

S. 3421 provides that the Secretary shall, pursuant to regulation, assess each plan which is subject to the Act such fees or charges as the Secretary deems appropriate to cover administrative costs incurred by the Secretary, and are consistent with the policy of Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a, 65 Stat. 290). Such policy requires the fees to be collected and paid into the Treasury as miscellaneous receipts.

ANNUAL REPORT

S. 1103. The Commission is required to transmit to the Congress annually a report of its activities under the Act during the preceding fiscal year.

S. 3421. The Secretary is required to submit annually a report to the Congress covering his administration of the Act for the preceding year and including such information, data, research findings, and recommendations for further legislation in connection with the matters covered by the Act as he may find advisable.

LICENSING OF ACTUARIES

S. 1103 authorizes the Commission to license persons performing actuarial services and certifications under the Act.

S. 3421 has no comparable provision.

 PREPARED STATEMENT OF DONALD L. CALVIN, VICE PRESIDENT, NEW YORK STOCK EXCHANGE

The New York Stock Exchange has reviewed the purposes and text of S. 1024. We have no comment on the general objectives of the bill, but we would like to suggest that consideration be given to amending two sections: (1) Sec. 14(f) which prohibits loans from employee benefit plans to the sponsoring employer, and (2) Sec. 14(g)(4) which permits employee benefit plans to invest up to 10% of their assets in the employer's "securities" as defined by the Securities Act of 1933.

A. Section 14(f)—Prohibition of Loans to Employers by Employee Benefit Plans

Unlike most other enterprises, member organizations of the New York Stock Exchange are not free to raise capital from anyone willing to provide it. Because of the public interest in the securities industry, Exchange rules restrict capital sources available to member organizations. Loans from their employee pension and profit sharing plans are one source of capital available to member organizations of the New York Stock Exchange. To prohibit loans from employee plans to Exchange member organizations would needlessly eliminate a supply of capital at a time when additional funds are unquestionably needed by the Exchange community to accommodate the dramatic increases in public and institutional participation in our securities markets. As drafted, S. 1024 would impliedly repeal Sec. 503(i) of the Internal Revenue Code, which recognizes the special circumstances applicable to the securities industry by exempting loans of up to 25% of an employee funds assets from Sec. 503(c).

Section 14(f) of the bill prohibits all loans from any employee benefit fund to the parent employer organization, regardless of the nature of the business or industry. The importance of borrowings from employee plans to New York Stock Exchange member organizations can be understood in light of the fact that the securities industry expects to be faced with a need to double its capital investment in the next decade. Indications are that over \$1 billion in new capital will be needed within the next few years (1) to finance new and growing businesses through underwritings; (2) to improve our service to the public by establishing and furnishing new offices; and, (3) to establish and maintain markets in securities of new and seasoned companies.

The Exchange requires its member organizations to meet strict capital requirements. As noted, the Exchange imposes specific limitations on the sources of capital available to member organizations doing business with the public.

For example, member organizations may not obtain subordinated capital from banks, insurance companies, other securities firms, or officers and employees thereof. However, subordinated borrowings from employee benefit plans are considered "good" capital when properly documented.

An important feature of such borrowings from employee benefit plans is the close degree of supervision afforded by Exchange examination. These borrowings are not merely the result of negotiation between the employer and the administrator of the employee plan. A member organization desiring to borrow from its employees' fund must file an approved form with the Exchange giving details of the proposal. The Exchange checks to insure that the employee plan is permitted by its controlling documents to make such loans. The Exchange also checks to see that the employer is providing adequate security, if required by law. In addition the Exchange exercises careful supervision over the general financial condition of member organizations by the previously described minimum net capital requirements, analysis of financial questionnaires, "surprise" audits by independent public accountants and visits by Exchange examiners. These safeguards would appear to meet the goal of protecting the interests of employee plans stated in S. 1024.

The unique financial requirements of the securities industry were recognized in the 1958 amendments to the Internal Revenue Code. Section 503(i) of the Code has the effect of permitting securities industry employers to borrow up to 25% of the assets of an employee benefit plan without giving the security ordinarily required by Section 503(c). There have been no defaults on such loans, and borrowings in excess of 25% of an employee plan's assets have been fully covered by a surety bond. We note that Section 13(a) of S. 1024 uses the surety bond device to protect employee plans from fraud or dishonest acts by plan administrators.

Not only are loans by employee benefit plans of Exchange members thoroughly protected, but these loans also amount to an attractive investment. Exchange rules permit employers to pay up to 8% interest—and in some cases up to 10%—on such loans and to include the employee plan in a share of the employer's profits.

The Exchange suggests that Section 14(f) of S. 1024 be amended to permit employers in the securities industry to borrow from their employee benefit plans by permitting such loans if the requirements of Section 503(i) of the Internal Revenue Code are met.

B. Section 14(g)—Acquisition of an Employer's Securities by an Employee Benefit Plan

Section 14(g) (4) generally prohibits an employee fund from investing more than 10% of its assets in the sponsoring employer's securities. The term "security" is as defined in the Securities Act of 1933, which in addition to equity securities includes a wide range of debt instruments. In view of the suggested amendment to Section 14(f), we suggest that the definition of "security" in Section 14(g) (4) be changed from that of the Securities Act of 1933 to the definition of an "equity security" contained in Section 3(a) (11) of the Securities Exchange Act of 1934. Accordingly, the limitation on permissible loans to employers would be controlled by Section 14(f), not Section 14(g) (4).

C. Section 14(g)—Determining Price in a Purchase or Sale of an Employer's Securities by an Employee Benefit Plan

Subdivision (D) of Section 14(g) (4) permits an employee benefit plan to buy or sell the sponsoring employer's securities only if the price is quoted on a national securities exchange or by an independent person in the over-the-counter market. This provision would prevent such transactions in the securities of many companies which do not have securities listed on an exchange or regularly quoted in the over-the-counter market. For example, this classification would now exclude transactions in the securities of member corporations of the New York Stock Exchange. Perhaps it would be desirable to broaden this subdivision by adding a third provision which would permit purchases or sales at a price determined by an independent third party mutually agreeable to the employer and the administrator of the employee plan.

Summary

The Exchange appreciates the general objectives of S. 1024. We think the bill can be improved by permitting New York Stock Exchange member organizations to continue the practice of borrowing from employee benefit plans and by making the suggested technical amendments.

PREPARED STATEMENT OF H. C. LUMB, DIRECTOR, AND CHAIRMAN OF EMPLOYEE BENEFITS COMMITTEE, NATIONAL ASSOCIATION OF MANUFACTURERS

My name is H. C. Lumb and I am Vice President, Corporate Relations and Public Affairs, Republic Steel Corporation with general offices in Cleveland, Ohio.

I welcome and appreciate the opportunity to submit this statement to the Subcommittee on behalf of the National Association of Manufacturers, which organization I serve as a Director and as Chairman of its Employee Benefits Committee. This Committee's activities cover the major issues and proposals relating to both private and public employee benefit and retirement security programs.

NAM member companies—large, medium and small in size—account for a substantial portion of the nation's production of manufactured goods, as well as for the employment of millions of people in manufacturing industries.

INTRODUCTION

The National Association of Manufacturers seeks to encourage the expansion and improvement of private plans which now have tremendous flexibility to adapt to the infinitely varied requirements of employers and employees. Private pension plans are making a significant contribution to the retirement security of millions of Americans, and they will continue to make an increasingly greater contribution unless hampered by unduly restrictive legislation. In addition, pension funds are an important source of the capital needed to sustain the continued growth of our national economy.

Before commenting on S. 1024 and S. 3421, I invite your attention to the fact that the business and industrial community has voluntarily provided coverage for almost 30 million employees under private pension plans. Estimates are that by 1980, private pension plans will cover over 42 million employees. Benefits are already being paid out at an annual rate in excess of \$3.5 billion and increasing each year.

Voluntary private pension plans, both those unilaterally established by companies and those established as a result of the collective bargaining process, have made a contribution to the security of millions and to the economy of the United States to a far greater degree than many people may realize. While some of the provisions and objectives of S. 1024 are worthy, there are others that NAM seriously questions.

I will now direct my comments to the specific areas covered in S. 1024.

FIDUCIARY RESPONSIBILITY

NAM strongly believes that administrators of pension funds should observe the highest standards of fiduciary responsibility. NAM therefore supports the basic purpose of the proposed Section 14 of the bill believing it could, in general, make a significant contribution.

With respect to the proposed language of Section 14, we do have some questions which lead us to offer these specific recommendations.

1. The proposed Section 14(e) lists certain prohibited transactions: One prohibition covers the purchase or lease on behalf of the fund of any property of such employer, employee organization, or official thereof. Another prohibition forbids selling or leasing property of the fund to any employer of employees for whose benefit the fund is established, or to any employee organization for whose members the fund is established.

It would seem that if all terms of the transactions are fair and reasonable, and in the best interest of the fund and its beneficiaries and include a desirable rate of return and adequate security, transactions involving sales, purchases or leasing of property should be permitted, even if they are between the fund, the employer or employee organization.

2. Section 14(g)(4)(A) provides that the fiduciary can purchase defined securities of party-in-interest employers for no more than adequate consideration, but that such securities must be purchased "on the market."

We feel that such purchases should also be allowed directly from the underwriter or the issuer where the securities are public offerings and the price can be determined as no more than adequate consideration. In addition, private purchases should be allowed at a fair price. The test should be whether the purchase is at a fair and reasonable price.

3. Section 14(g)(4)(A) stipulates that a pension plan (level of benefit or cost type), other than profit sharing plans, must not hold more than 10% of the fair market value of its assets in stock or securities of the employer corporation or a corporation owned or controlled by it, regardless of the quality of the investment. Since the proposed legislation spells out the prudent man rule which applies with respect to all securities, this specific limitation is not needed at all.

4. Section 14(d) provides that every person who receives, disburses, or exercises any control or authority with respect to any employee benefit fund is a fiduciary. In addition, it requires that "each" fiduciary shall handle, manage, invest and expend "the fund in accordance with the prudent man rule . . ."

This Section is too broad and could be interpreted to include company officers or employees who have only minor authority or responsibility insofar as pension administration matters are concerned. In addition, not *all* fiduciaries exercise every fiduciary power covered by this bill. It should be revised to state that *each* fiduciary "discharge his assigned fiduciary duties with respect to the fund" with ordinary prudence.

5. Section 14(h) imposes a personal liability on any fiduciary who "breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this Section . . ."

As previously indicated, NAM believes that administrators of pension funds should observe the highest standards of fiduciary responsibility and does not condone a breach of a fiduciary's obligation. However, because of the vast span of duties imposed by the bill, some of these responsibilities could be unintentionally and innocently violated. Since a fiduciary could face personal financial ruin through inadvertence of others, even while acting himself in good faith and with prudence, and since it is not the purpose of the act to discourage reasonable and honest persons from acting as trustees, we believe that fiduciaries should only be held personally responsible for willful misconduct or gross negligence.

We therefore recommend that Section 14(h) be modified to read: "(h) Any fiduciary, as defined in Section 14(d) who through willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his office breaches any of the responsibilities, obligations, or duties imposed upon such fiduciaries by this Section shall be personally liable to make good to such fund any losses to the fund resulting from such breach, and to restore to such fund any profits of such fiduciary which have been made through use of assets of the fund by the fiduciary."

This modification would have the advantage of incorporating existing statutory language from a measure having a similar purpose (Section 17(h), Investment Company Act of 1940). It also limits the type of breach to those specifically enumerated and does not upset the prudent man rule as set forth in Section 14(d).

DISCLOSURE

We recognize, of course, that adequate disclosure of pension plan operations is desirable. Unfortunately, a number of the bill's proposals for expanded disclosure would unnecessarily burden plan administrators and the government agencies involved without serving any useful purpose.

The existing statute and current reporting forms now call for a considerable amount of detailed disclosure. The new Annual Report Form D-2, which became effective for the annual reports filed last year, represents a great expansion in the amount of detail to be reported. Since many legislators may not be aware of the extent of the present detailed reporting requirements, we would like to insert for the record a copy of the 16 page D-2 form in current use.

As you may know, the Welfare and Pension Plans Disclosure Act created an Advisory Council to the Secretary of Labor. Its members, who represent insurance, banking, management, labor, and other interested groups, have unanimously recommended that: "The new D-2 Report Form be given an opportunity to prove itself before further burdening plan administrators, beneficiaries, and government agencies with a mass of additional regular filing of detailed data of a more marginal, generally less meaningful or of a less useful nature." We concur wholeheartedly with this recommendation.

We further believe that it is desirable to retain, rather than delete as proposed, the language of Section 5 of the present law which specifies the type of detailed information that is to be included in the annual report. This provides a desirable element of certainty as to the general nature of the data to be disclosed.

We also believe that it would be constructive and useful to retain, rather than delete, the present requirement (see Section 8) that calls for an "adequate

summary" of the annual report to be furnished to the plan participant at his request. Of course, the detailed annual report can be inspected at the plan's place of business or at the Department of Labor where complete copies of the plan filings can be obtained.

NAM sees the merit of the recommendation of the Advisory Council that all employee benefit funds which are not subject to periodic examination by insurance or banking regulatory agencies should be audited annually. We suggest, however, that the accountant's responsibility should be limited to that of an auditor and that he should not be required to deal with actuarial considerations.

OTHER RECOMMENDATIONS ON S. 1024

1. The proposed bill would eliminate Section 9(h) of the present law which expressly prohibits the Secretary of Labor from regulating or interfering in the management of any plan. It is NAM's view that this provision is desirable and should be retained.

2. Section 7(f) would unnecessarily expand disclosure requirements to include a detailed list of all sales, purchases or exchanges of assets other than securities including information as to identity of the asset, the purchase or selling price, expenses incurred, gains and losses, identity of sellers and purchasers, and relationship, if any, to plan of sellers and purchasers.

NAM believes that this type of data is of no real value unless it applies to party-in-interest transactions which must now be reported in complete detail, and which we believe is desirable.

3. Present Section 5 of the Act gives the Secretary of Labor the right to prescribe the form and detail of the information required by Sections 6 and 7. The proposed bill goes far beyond this and permits him to require "such other information as the Secretary shall determine to be necessary . . ." We think this authority is much too broad and that the present relatively fixed guide lines are sufficient.

4. Section 9(d) of the proposed bill read literally, as it must be, would give the Secretary of Labor unlimited power to conduct so-called "fishing expeditions."

We strongly believe that this authority is far too broad and should require, as a minimum, that the Secretary must have "reasonable cause" before instituting any investigation.

Private pension plans have demonstrated a remarkable vigor and growth over the last 25 years and must continue this vitality in the future. To that end, NAM strongly believes that fiduciary responsibility is a necessary and desirable objective. NAM therefore endorses Section 14 of the bill with such modifications as are recommended in this statement.

In addition, and as previously stated, NAM believes that adequate and meaningful disclosure is desirable and that such disclosure is, in fact, required by the present law.

I will now address my comments to specific areas covered by S. 3421.

VESTING

NAM endorses the concept of vesting in private pension plans and calls your attention to the fact that over 70 percent of all plans now contain vesting provisions. Single employer plans provide the preponderant number accounting for this percentage whereas multi-employer plans contain vesting in only 30 percent of the cases.

It must be recognized, however, that when vesting is adopted, that decision is the result of very thoughtful and deliberate consideration of the cost and merits of vesting as compared with the cost and advantages of some other benefit or improvement. The alternatives may be either larger normal retirement benefits for those nearing retirement age, perhaps an early retirement feature, or a widow's benefit—to name only a few other desirable possibilities.

The imposition of federal compulsory vesting requirements is strongly opposed by NAM for the following reasons:

1. There is a trend in established pension plans for the voluntary inclusion of vesting provisions.

2. When a plan is first established, its primary function is to provide benefits for those employees who are about to retire or who are relatively close to retirement. Consequently, the emphasis in these plans is to allocate available funds to provide normal retirement benefits. This is true in plans unilaterally established by employers as well as those which result from the collective

bargaining process. Vesting provisions, as well as such provisions as disability benefits and early retirement provisions, are generally found in the more mature plans.

3. A significant percentage of plans, embracing 72 percent of all covered employees, are a part of the collective bargaining process and represent freely arrived-at agreements between management and labor as to which provisions, consistent with the costs involved, are most pressing.

4. Some proponents of mandatory vesting provisions insist that the inclusion of vesting in pension plans will greatly enhance labor mobility. While this argument may have some minor significance, it is vastly overstated. The Labor Department itself has found that vesting considerations play only a minor part in an employee's decision to leave his job when compared with such other factors as seniority, relocation and wages.

5. Imposition of the vesting provisions here proposed would increase the cost of many pension plans. The increased cost would depend, of course, on turnover and actuarial factors including mortality, sex mix and age distribution. Such increased cost would also vary depending upon existing early retirement and vesting provisions.

6. Company contributions for pensions are generally not allocated to specific individuals, and current levels of pension benefits could not be provided if that were the case, any more than group life insurance premiums could be allocated and paid to each employee upon termination. The primary purpose of a private pension plan is to provide adequate pension benefits for long-service elderly employees. If there is a desire to set aside funds as savings for each employee, that purpose can be accomplished through the establishment of a savings plan, either in conjunction with a pension plan or separately at the choice of the parties involved.

7. To the extent that mandatory vesting discourages the establishment of new pension plans and the improvement of existing plans, as we believe it would, the long range result would be to make private retirement benefits less widely available and more restricted in scope and amounts, thus denying benefits to employees who might otherwise have enjoyed them.

8. A further problem resulting from mandatory vesting provisions would be the definition of "service." A federal definition of service applicable to all employers would run counter to a long-standing definition of service stated in existing plans, including those resulting from collective bargaining agreements. One survey for example, conducted by the Commerce Clearing House in its "Pension Plan Guide" lists 80 different definitions of service found in private pension plans. Intrusion of the government in this area of defining "service" would have a direct impact on an important phase of labor-management relationships previously left to collective bargaining.

FUNDING

NAM also endorses the concept of adequate funding of private pension plans and is gratified that the Secretary of Labor recognizes that "there is a good deal more funding going on than we first realized". The Secretary went on to say "we don't mean to overstate a problem which may be in the course now of rapid improvement . . ." ¹ The Cabinet Committee also recognized that "a great majority of pension plans already are operating with funding procedures that meet its recommendation . . ." ²

The bill proposes minimum standards by setting up a schedule indicating the minimum ratio of assets to vested liabilities in terms of a percentage for the number of years that the plan has been in effect. Defining the ratio in terms of what is meant by assets and what is meant by vested liabilities is in itself a considerable technical problem.

A detailed review of pension funding practices is beyond the scope of this statement, but certain essential elements are common to any actuarial method. For example, an actuary obviously must make mortality assumptions. How many of the covered employees will live to retirement age? How long will retirees live after retirement? The actuary must also estimate the investment earnings of the pension fund. Standardizing this assumption would be very difficult because total accrued liabilities can be reduced (in present value) by 5 to 7 percent for each one quarter of 1 percent increase in the assumed rate of interest the pension funds will earn based on experience of the individual funds.

¹ Hearings on Private Pension Plans, op. cit., p. 362.

² Cabinet Committee Report, op. cit., p. 52.

If the proposed minimum funding requirements were to apply to many private pension plans, the reserves for accrued benefits would need to be increased or there would be a need to reduce benefit levels correspondingly. In many such cases, neither the public interest nor the best interests of the beneficiaries would be served.

Different methods and different assumptions yield different liabilities. Just what is meant by the terms "vested liabilities" and "accrued portion of the regular retirement benefit," although defined, is still not clear.

Consequently, we seriously question the feasibility of permitting any federal agency to prescribe the use of a single set of actuarial methods and assumptions or even a choice among several alternatives to measure compliance by all pension plans with proposed funding standards.

Flexibility is the key. The present Internal Revenue Service rule for qualified plans requires, as a minimum, funding equal to current service costs plus interest on the unfunded past service cost. Setting compulsory federal standards for funding beyond this involves the very real danger of slowing down pension plan improvements, discouraging new plans from being established or possibly driving established plans out of existence. While the objective of the proposed legislation is to insure that a larger proportion of all employees would have the benefits of private pension plans, the imposition of costly mandatory criteria is likely to have the opposite effect. We submit that such standards should certainly not receive serious consideration in the absence of proven need.

PLAN TERMINATION INSURANCE

Plan termination insurance is proposed to insure against the possible loss of vested rights by eligible individual employees. The number of pension plan terminations is miniscule occurring to only one-tenth of one percent of all persons covered by private pension plans. Plan termination insurance would not avoid the necessity of having adequate cash to meet pension obligations. It would merely transfer this responsibility from individual employers to the insuring agency. The proposed minimum funding standards would require centralized control. Otherwise, some employers would have an incentive to minimize funding and pass the risk to other employers. Plan amendments would have to be regulated and controlled in order to prevent unwarranted increases in benefit obligations inconsistent with an employer's fiscal responsibility.

It is not inconceivable that under a program of plan termination insurance, some plan administrators might be encouraged to make more speculative investments since the risk would be borne by other pension plans. Similarly, in the case of negotiated pension agreements, there would be a tendency for the parties to negotiate unduly liberal benefits since again the risk would be borne by other pension plans.

It is obvious that under our free competitive system, there is no way to insure that all businesses will survive. While the feasibility of either government or private insurance against the risk of bankruptcy and business failure continues to be the subject of the most careful scrutiny, there is no tangible evidence that this is an insurable risk.

NAM believes that the plan termination insurance proposal is inequitable, unnecessary and undesirable for the following reasons:

1. A business operation may terminate as a result of bankruptcy, seriously declining operations, or a decision to discontinue operations for any other reason. It would not be feasible to vary premiums appropriately with the assumed risk of different businesses.

2. An essential element in any insurance is that the risk insured against be beyond the control of the insured. The insurance of pension expectations would be within the control of the insured in three important areas. First, the pension expectations are determined by the employer, either unilaterally or by agreement with a union, and especially at the outset are based on nothing more than a statement of intent. Even such an important matter as the crediting of service rendered prior to the establishment of the plan would be within the discretion of the insured. Second, the insured would determine in many instances whether a certain business operation will go out of existence. Thus, the insured could control both the establishment and the amount of insured liability, as well as the event which results in the payment of the liability. Third, the insured determines investment policy which would have an important bearing on the creation of the insurance liability.

3. If pension plan insurance were to discourage the extent of funding which might otherwise be undertaken, this might lead to a greater number of plan

terminations, and in that case, the resulting higher cost of subsidizing the terminated plans would adversely affect the soundness of the remaining plans.

4. The proposed plan termination insurance program would lead to pressure for fixed standards to measure the liability insured. It would also encourage highly speculative investment practices and possibly unwarranted liberalization of benefits.

5. Any comparison with federal bank deposit insurance (which proponents frequently make) is not valid because that insures assets in being, while pension benefits are to be paid in the future out of contributions which may not have yet been made.

CONCLUSIONS

NAM will continue to support the development and improvement of private pension plans to provide adequate benefits for retired workers, and will continue to encourage the establishment of new plans and the expansion and liberalization of existing ones. Therefore with respect to S. 1024, NAM endorses the concept of fiduciary responsibility and adequate disclosure as previously indicated.

However, we believe that in order to encourage and sustain the continued growth of private pension plans which have contributed so much to our national economy and to the retirement security of millions of people, independent of action and flexibility are absolutely essential. Rigid formulas imposed by law, and particularly those being considered by this Subcommittee, would discourage the establishment of new plans and increase the cost of existing ones. In our opinion, this bill (S. 3421) contains many provisions which unfairly discriminate against existing plans. In addition, it sets forth vague and ambiguous definitions and criteria which, in practice, would permit the Secretary of Labor discretionary powers which are far too broad. This is particularly true since there has not been demonstrated any proven need for the complex legislation proposed in this bill. Consistent with concepts of a free economy, and in order to provide the maximum possible benefits to the greatest number of people, we urge that the widest possible latitude must be permitted in the establishment and operation of private pension plans.

PREPARED STATEMENT OF ANDREW J. BEIMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. Chairman, we appreciate this opportunity to discuss S. 1024 and S. 3421, which you, Mr. Chairman, have introduced, and related bills introduced by Senators Jacob K. Javits of New York (S. 1103) and John L. McClellan of Arkansas (S. 1255). These bills are designed to provide added safeguards to insure that present and future beneficiaries of pension and welfare plans actually receive the benefits to which they are entitled, and to set federal standards for vesting and funding and authorize a government-financed reinsurance program to assure beneficiaries of private pension plans their earned pensions.

Our interest in such reporting and fiduciary responsibility legislation is obvious. It has been expressed time after time, most recently by the AFL-CIO Convention in December 1967. I ask leave to append to my testimony a resolution adopted by that convention, entitled "Proposals for Federal Legislation to Regulate Health, Welfare, Pension and Profit-Sharing Plans." It sets forth the overall policy of the labor movement on the principal issues before this committee.

We in the labor movement are, of course, keenly aware that welfare and pension plans are a part of the collective bargaining package. They have acquired, probably for all time, the label "fringe benefits." The label is unfortunate to the extent that it implies that these benefits are something extra—something that comes free of charge. They are no more "free" than the "free gifts" that are offered for the purchase of some commodities. The cost is included in the purchase price—or in the instant case, the cost of the contract settlement.

Funds set aside for fringe benefits, such as welfare and pension plans, are in fact a part of the employees' remuneration, accepted in lieu of wages. The funds set aside for these plans belong to the workers who are covered by them.

It follows, therefore, that the persons who have the responsibility for investing or safeguarding such funds are custodians of money that belongs to others.

They are, in fact, fiduciaries and should be held accountable as such, whether they are bankers, trust officers, insurance companies, administrators of joint labor-management trusts or employers who unilaterally assume responsibility for health, welfare and pension plans established for their employees.

Section 302 of the Taft-Hartley Act purports to provide certain safeguards in the interest of beneficiaries of jointly-administered health, welfare and pension plans. Lawyers disagree as to whether these safeguards are adequate, but they generally do agree that, adequate or not, these safeguards do not apply to plans under unilateral administration.

It might appear on the surface that the common law of trusts as it is recognized in most states—requiring a trustee to carry out the purposes of the trust, act in good faith and exercise as much care and diligence as a prudent man would exercise in dealing with his own money—offers further protection. In practice this is not at all certain.

The lawyers tell us there are three legalistic loopholes :

1. The plan may not be established as a trust.
2. The trust may be established only as a funding medium. In such cases the courts have leaned toward the view that an employee-beneficiary has contractual rights enforceable against the employer, but not as a beneficiary of the trust.
3. Conventional trust law is generally not applicable to employer administrators who are not technically "trustees"

Another, non-legalistic difficulty is that few of those covered by these plans have the legal or financial knowledge required to discover breaches of trust.

For these reasons the AFL-CIO favors a federal fiduciary statute, enforceable through the federal courts, which would give participants, beneficiaries or their representatives the right to sue for appropriate civil remedies if the statute is violated. We would support a concept such as is set forth in S. 1024, S. 1103 and S. 1755.

We have certain specific comments, however, we would like to make about S. 1024. For example, we vigorously oppose exemptions prescribed in Section 14(b) (2), (3) and (4) of S. 1024. There is absolutely no evidence that there are more crooks—or fewer—among one type of trustee than another. Fiduciary responsibility should be uniformly applied, by federal law, whether the trust is administered by an employer, a labor-management board, a bank or an insurance company.

In this same spirit we urge that the legislation be amended so that the federal law will preempt state trust laws with respect to health, welfare, pension and profit-sharing plans.

A great many such plans cover workers in more than one state. Some, like those of the International Ladies' Garment Workers' Union the Machinists and the Operating Engineers, are national in scope. The administrative cost and confusion involved in dealing with differing state laws, plus the federal law, would impose an undue burden on the plans. Moreover, as noted earlier, the applicability of the common law of trusts in this field in most states is by no means clear or effective.

Senate Report No. 1734 of the Second Session of the 84th Congress, 1956 made the point in these words :

"The application of well-established doctrines of trust law to the field of employee benefit trust funds is a most difficult task;" and it continued; these funds are "posing an entirely new concept for dealing with property that has no parallel elsewhere in the law."

The AFL-CIO therefore believes the most feasible and most equitable way in which to develop doctrines of law specifically applicable to employee benefit plans would be to develop federal law through the federal courts. This simply emphasizes the point that we have already made, that a federal financial responsibility statute, such as is proposed in the Administration bill, should apply across the board, should preempt state law and be enforceable through the federal courts.

There are some respects in which we feel the bill goes too far. Specifically, we urge that the provisions pertaining to the enforcement powers of the Secretary of Labor, to the right of beneficiaries to bring suit and to the ban against certain persons holding office as trustees be modified.

Let me emphasize that our objective is not to weaken the law. We are even more interested than the Secretary of Labor in safeguarding these plans, since most of the beneficiaries are union members.

However, Section 9(d) of S. 1024 would give the Secretary the same sort of broad investigative authority that is granted to him by the Landrum-Griffin Act. This power has been used—or abused—in the past to conduct "fishing expedi-

tions" with no substantive basis, during which honest union officials were harassed to no purpose. We strongly believe the authority of the Department of Labor to investigate possible violations should be limited to cases where there is reasonable cause to believe that violations are in fact taking place.

Our objections to Section 9(h) have a similar basis. The great bulk of complaints we receive from participants in these plans turn out, on investigation, to stem from simple misunderstanding of the terms of the plan. While we are all in favor of giving beneficiaries the rise to sue in their own interest, we feel this right should be delineated as to avoid nuisance suits and actions that are essentially frivolous. And under Section 9(h)(2), only the Secretary of Labor should be empowered to bring action to remove a person occupying a fiduciary position, and then only on the basis of a specific complaint supported by reasonable cause.

We are opposed in principle to Section 15, prohibiting certain persons from holding office in pension and welfare plans. In its present form it is also far too sweeping. It could be interpreted to bar persons who had been convicted while engaged in certain normal union activities usually regarded as lawful. We urge that this whole section be omitted, or at least redrafted in order to apply the prohibition only to violations of law relevant to a person's capacity to serve in a fiduciary relationship, such as robbery, bribery, extortion, embezzlement, grand larceny.

I repeat, these proposals are not offered to weaken the law but to make it more equitable and more workable. Since it is generally acknowledged that the vast majority of employee benefit plans are administered honestly, the present terms of Sections 9(d), 9(h) and 15 represent, at best, excessive zeal.

These are our principal proposals for amendments to the Administration bill as drafted, but we have some further suggestions for improving it.

Section 14(e)(1) through (5) lists certain types of transactions that would be prohibited by law. Paragraphs (1)(3) and (5) would, in our opinion, outlaw legitimate transactions as well as illegitimate ones. Moreover, such illegitimate transactions would be covered in any event by the "prudent man" rule. Because of the great diversity of employee benefit plans as well as the fact that application of trust law and trust concepts to employee benefit plans is a relatively untried area, we suggest that specific prohibitions be reduced to an absolute minimum and that the concept of fiduciary responsibility be refined through actual case law. Our position is closer to that contained in S. 1103; however, we oppose the "choice of law concept of the Javits bill which would allow an employee benefit plan to choose between State or Federal trust law as the governing legal framework."

Section 14(e)(2) also needs qualification in the sense that the purchase or lease of such property should be permitted but only if there is adequate compensation.

Section 14(e)(4) should be changed to incorporate the concept that it is not necessarily wrong for a trustee to represent another party who deals with the fund. The object, as we see it, is to forbid a fiduciary to "represent any other party *in its* (word added) dealing with the fund . . ." Alternatively, Section 14(e) and (f) could be deleted and the language of the Landrum-Griffin Act, appropriately modified to the purpose, substituted. We would be glad to work with the Subcommittee staff in developing such amended language.

The language should make clear that parties serving in a fiduciary capacity in relation to a health, welfare or pension plan may participate in collective bargaining and enforce collective bargaining agreements with respect to employer payments to the fund. It should also be made clear in regard to Section 14(f) that a pension fund can make an adequately secured mortgage involved loan for a union headquarters, housing project, health center or other socially desirable projects. The principle is that no such loan should be made that might be adverse to the interest of the fund.

Section 14(g)(6) should eliminate the words "of which he is an officer." Anything now permitted under Section 302 of the Labor-Management Relations Act should be permitted under this section.

Section 14(i) requires a trustee to "use reasonable care to prevent a co-trustee from committing a breach of trust, or to compel a co-trustee to redress a breach of trust." This is an unreasonable requirement and should be deleted. Provision should be made in this section to allow a board of trustees to delegate authority to an executive committee of the board.

Regarding the sections dealing with disclosure, the AFL-CIO would also prefer to have the federal law preempt state laws. There are now five states with "little

disclosure statutes." Additional states may enact such legislation. This double disclosure accomplishes nothing that the federal law alone does not do, and only places an additional burden and additional cost on employees benefit plans with no advantages to the beneficiaries. On the other hand, we think that Section 5, which grants the Secretary authority to exempt any class or type of plan from reporting, is entirely too broad. The AFL-CIO agrees that certain classes of plans, such as "flower funds", should be exempted from the reporting requirements, but exceptions should be limited and the Secretary should be required to establish clear and specific criteria for such exemptions.

Section 9(a) of the bill should not impose criminal penalties for the new sections of the law regarding fiduciary responsibility. Should a breach of trust take place, the importance of making the trust whole should be the primary objective.

Vesting, Funding and Reinsurance

Federal standards of vesting and funding, and the matter of a national guarantee fund to assure beneficiaries of pension plans their rights to a benefit are included in the Administration bill, S. 3421, which you, Mr. Chairman, have also introduced. The comments we have to make on this legislation would also appear to be generally applicable in considering the comparable provisions contained in Senator Javits bill, S. 1103. We would like to outline very briefly the AFL-CIO position on these subjects.

Very few employees work for just one employer all their lives. In fact, very few work for one employer as long as 30 years, or even 20. The Monthly Labor Review of January 1967 reported that only 65.1 percent of the men aged 60 to 64—that is, those approaching retirement age—had been with the same employer over 10 years and only 40.9 percent for more than 20 years. Only slightly over half (53.2 percent) of the women in the same age group had been with the same employer over 10 years, and only about one-quarter (25.5 percent) for over 20 years. Clearly, if private pension plans are to fulfill the function of supplementing Social Security retirement benefits, a vesting requirement is necessary for all single-employer plans. We therefore support the vesting standards as proposed in S. 3421 for single-employer plans.

However, where employees continue to receive coverage under a pension plan regardless of which employer they may be working for, we do not believe a vesting standard is necessary. In multi-employer plans, such as those in the garment and building trades, an employee carries his pension credits with him throughout the industry. Therefore a vesting standard which would be appropriate for a single-employer pension plan would not be appropriate for a multi-employer plan. Multi-employer plans should therefore be exempted from the vesting standard.

We recognize, of course, that—for example—two employers out of 100 should not qualify for exemption as a multi-employer plan. This would open the door to widespread evasion of vesting standards.

We doubt whether it would be feasible to attempt to define a multi-employer plan in legislation. The problem might better be left to administrative discretion.

The AFL-CIO believes that pension plans would be soundly financed and actuarially sound. An employee working in a company which has a pension plan has every right to expect that the retirement promises of the company will be fulfilled. Pension benefits are deferred benefits, which means that funds must be set aside to pay them when they become due. Thus we favor adequate funding of all pension plans. However, standards of funding for multi-employer plans need not and should not be the same as for single-employer plans. All plans should pay current costs; that is, set aside sufficient funds to pay for pension credits as they are earned. Single-employer plans should, in addition, be required to fund their liabilities for past service, or unfunded liabilities, over a reasonable period of time.

The basic reason for funding the unfunded liabilities of a pension plan is, of course, to have sufficient assets in the fund to liquidate all claims against it in the event the employer goes out of business. Again, there is a legitimate difference between single and multi-employer plans. Contributions to the pension plan cease when a single employer goes bankrupt. This is not true with multi-employer plans. A multi-employer plan continues as an independent entity, even where one or more contributing employers cease operations. In the highly competitive garment industry, a substantial number of manufacturers liquidate each year. Such contingencies are anticipated in these plans, and employer contributions are calculated accordingly. In short, the multi-employer plans spread the risk of termination, an undertaking which single-employer plans are unable to assume. The standards of funding which should and need to be applied to single-

employer plans should not be applied to multi-employer plans. Multi-employer plans should therefore be exempted from the funding standard provisions of S. 3421. What is and is not a multi-employer plan should be an administrative decision following the same line of reasoning outlined in regard to vesting. The provisions of S. 3421 or of S. 1103 in regard to a minimum funding standard would be reasonable for single employer plans.

Funding alone will not, however, protect an employee from loss or partial loss of his pension benefits. There are several reasons for this.

The funding schedule as agreed to by the parties to a collective bargaining contract may not be met for a variety of causes; foremost among these may be the sheer inability of the employer to meet the schedule because of business conditions. Second, even if the funding schedule is met, the firm may be in receivership before there are sufficient assets in the fund to meet the total pension liabilities. Third, the typical schedule for funding the past service liability is 25 or 30 years; and long before this period has passed, improvements in the pension plan are instituted which create new unfunded liabilities. It is a rare plan indeed that is fully funded in the actuarial sense—that has sufficient assets in the pension fund to liquidate all benefit claims on the spot.

Consequently, the AFL-CIO strongly supports the concept of a pension guarantee program that will assure the beneficiaries of private pension plans that they will actually receive the pension they have earned such as proposed in S. 3421 and S. 1103. Funding alone cannot give this assurance.

The June 1967, issue of the Monthly Labor Review summarized the 11-year experience of pension plans with regard to terminations. Referring to 4,300 terminations, the article, entitled "Terminations of Pension Plans: 11 Years' Experience," stated:

"These 4,300 plans covered approximately 225,000 employees at the time of termination. Thus, on the average, about 20,000 workers a year were affected—about one-tenth on one percent of total pension plan coverage. All accrued pension rights were not lost, however. Some rights were undoubtedly preserved by fund accumulations or, in many instances, by the transfer of accrued pension credits to other plans."

While the number of persons involved was not large, those affected suffered a most severe hardship. They not only lost their jobs, but also the pensions they had anticipated. This "double jeopardy" is particularly disastrous for workers over 50 years of age.

In view of the relatively small numbers involved, we believe the premium for the insurance should be less than one-tenth of one percent of the unfunded liability of each plan. The premium rate proposed in S. 3421 is, we believe, unnecessarily high.

As an additional protection, we propose that where an employer goes bankrupt, the health, welfare or pension plan should have a priority claim against the assets of the employer, for any deficiencies in the fund. We submit such a provision would also provide a healthy restraint on employers who might be tempted to divert employee benefit funds for corporate or speculative purposes.

We favor including in any federal statute regulating employee benefit plans a provision for appropriate penalties on employers who fail to comply with their obligations to make financial contributions to the trust.

In connection with S. 3421, we believe the legislation could be improved by changing Sec. 102(d) (4) to allow all service performed for a single employer to be creditable toward eligibility for a pension. Sec. 102(e) (1), allowing plans to make benefits forfeitable for misconduct, should be deleted. In our opinion, pension benefits are earned as a condition of employment and should be nonforfeitable, just as wages are nonforfeitable.

We are opposed to penalizing employees as a means of enforcing funding standards. Sec. 203 (c) would "suspend further accumulation of vested liabilities until such time as the funding deficiency has been removed." This is equivalent to saying the employees should cease to acquire vested rights if the employer fails to meet the funding standard. The penalty is placed on the wrong party. We suggest the alternative of raising the insurance premium of single employers who fail to meet the funding standard. Failure to meet the funding standard carries with it an implication of greater risk of termination and the premium increase to meet the greater risk would appear appropriate.

Finally, we suggest that Sec. 405 (a), which establishes the Board of Directors of the Pension Benefit Insurance Fund, should provide for employer and employee representation. Employers and employees are the principal interested parties.

S. 1255 is quite similar to the fiduciary provisions contained in S. 1024 except that the prohibitions against certain persons holding positions of trust are less sweeping. In general, the comments we have made on this aspect of S. 1024 would appear to be applicable to S. 1255.

With regard to S. 1103, we have indicated our opposition to the choice of law concept contained in the bill. In addition, we would like to make the following comments with regard to it:

1) Unlike S. 1024 and S. 1255, the bill introduced by Senator Javits does not contain any specific prohibitions with respect to persons who may be ineligible to serve as administrators, officers, trustees or employees of a health, welfare, or pension plan. This, we believe, is sound.

2) The vesting standard of 15 years of service at age 45 or the alternative graded vesting standard is, in our opinion, inadequate for single employer plans, but too stringent for multi-employer plans, the latter type of plans, as we have indicated, should be exempt from any vesting standard.

3) We oppose the establishment of a special Commission to administer the law. The administering agency should be the Labor Department as provided by S. 1024 and S. 1255.

This Department has acquired experience and expertise in administering the present law and we see no reason for establishing another agency to the Executive branch for this purpose.

4) The voluntary portability feature of S. 1103 is a challenging concept. We would like to propose further study of the feasibility of incorporating some portability provision into pension legislation. Up to now, however, the value and feasibility of portable pensions has not been given sufficient in-depth study by either the administration or the Congress to warrant legislative action.

Mr. Chairman, we would like, in conclusion, to underline the great importance of early action to develop added safeguards designed to make sure that pension and welfare plan beneficiaries receive the benefits to which they are entitled. Experience clearly indicates the need for such legislation. The AFL-CIO will, of course, be glad to cooperate with you in this endeavor.

We appreciate, Mr. Chairman, this opportunity to express the views of the AFL-CIO on the Administration's welfare and pension bills and other pending proposals for pension and welfare plan legislation.

POLICY RESOLUTION ON PROPOSALS FOR FEDERAL LEGISLATION TO REGULATE HEALTH, WELFARE, PENSION, AND PROFIT-SHARING PLANS, ADOPTED DECEMBER 1967

Because of the stimulus of collective bargaining, collectively bargained and non-bargained employee benefit plans have had a spectacular growth. From modest beginnings dating from World War II, about 50 million employees now have life insurance coverage, about 130 million employees and dependents have some health insurance coverage and nearly 30 million wage and salary employees are covered by private pension and profit sharing plans.

Employer-employee contributions to health, welfare and pension and profit sharing plans now exceed \$20 billion annually and benefit payments approximate \$13 billion. In contrast to health and welfare plans, private pension plans accumulate vast funds in order to finance retirement annuities at a future date. The assets of private pension and profit sharing plans approximate \$100 billion and are increasing by about \$8 billion a year. These assets will exceed \$200 billion by 1980.

While the issue of fiduciary responsibility relates to health and welfare plans as well as to private pension and profit sharing plans, the vast aggregates of money in pension and profit sharing plan reserves present special problems. At a minimum, serious conflicts of interest may arise where employers directly or indirectly control both the assets of a pension or profit sharing plan and a business enterprise in which they can be invested without regard to the interests of plan participants. Seventy-seven percent of all pensions and profit sharing plans are unilaterally administered by employers, 20 percent are jointly administered through a joint labor-management board of trustees and only 1 percent are administered by unions.

Where retirement benefits under private pension and profit sharing plans originally represented a relatively modest supplement to social security, some plans now provide a retirement annuity greater than a worker can expect to receive from the OASDI program. Private pension and profit sharing plans provide, therefore, a significant and growing part of the retirement income expectations of workers.

Unfortunately, these expectations too often do not materialize. Some employers have failed to administer pension and profit sharing trusts for the exclusive benefit of the beneficiaries and have used plan reserves for corporate expansion and for other corporate purposes. There is some question whether state trust laws, which greatly vary in their provisions, are sufficiently applicable to pension plans which are unilaterally administered by the employer. Many workers fail to qualify for a pension because of their inability to meet length of service or vesting requirements established under private pension and profit sharing plans. Workers have also lost their rights to a pension because of business failures, mergers, and acquisitions.

Because of business failures, as well as plant shut-downs in firms continuing to operate, a small but significant proportion of employes covered by private pension plans have lost not only their jobs but also their earned rights to pensions. Others have been similarly victimized when their employers have been delinquent in making previously stipulated contributions to pension funds thereby seriously jeopardizing the soundness and stability of the trust. Still others have lost their pension rights when runaway employers, often encouraged by plant piracy through tax-free industrial bonds, have moved their operations to other communities.

In contrast to Social Security, pensions financed under the private system involve inherent risks which are not applicable to the nearly universal public Old Age and Survivors Insurance Program. Under Social Security, OASDI credits continue to accrue to the employe regardless of the frequency of his job changes. Social Security taxes are held in one pooled trust fund for the exclusive benefit of the beneficiaries. It is a soundly financed system backed by the credit of the United States. The goal of an adequate retirement income for most working people would best be met by substantial improvements in Social Security that would truly meet the retirement needs of American workers. Private pension plans can significantly supplement, but they are not a substitute for, an adequate Social Security System. Private pension plans will therefore continue to play an important role in the aspirations of American workers for an adequate retirement income.

A number of proposals to regulate health, welfare, pension and profit sharing plans are under consideration by both the Congress and the Administration. The AFL-CIO is prepared to consider each on its merits and to lend its support to legislation which would enhance the security of employes in their rights to benefits. However, any legislation which might be enacted by the Congress must take into consideration the great diversity of employe benefit programs, the wide variation of conditions under which these plans have been established and the substantial and varying impact on costs which such regulations might entail. Any Federal standards should not be so restrictive as to discourage the spread of new plans or inhibit the growth or impose substantially higher operating costs on existing plans.

The pension credits of workers covered by a multi-employer plan are portable as between different participating employers. Whether financed by employer contributions, joint contributions or solely out of union dues, such plans provide continuing coverage for workers remaining in the plan's jurisdiction regardless of where they work. Moreover, the bankruptcy of one employer in a multi-employer plan does not affect the solvency of the pension trust. Thus, a multi-employer plan continues to protect the rights to benefits of workers who may lose their jobs because of the shut-down or failure of their participating employer but who continue to be covered by the plan through employment with another participating employer. Because of these built-in safeguards in multi-employer plans, standards of vesting and funding required for single-employer plans are not appropriate for multi-employer plans, therefore, be it

Resolved: That the AFL-CIO favors a Federal fiduciary statute, enforceable through the Federal courts, which would pre-empt State law and which under appropriate safeguards would give plan participants, beneficiaries or their representatives the right to bring suit with appropriate civil remedies for violation of the law. Such a statute should apply uniformly to all health, welfare, pension and profit sharing plans whether self-administered or insured. It should specify that every organization, corporation or person who exercises any substantial control or authority over such a plan is a fiduciary and should be held accountable for his actions and duties with respect to the plan which he should fulfill with the same degree of care and skill as a man of ordinary prudence. Such fiduciary standards should not be so stringent as to restrict or inhibit the investment, either at home or abroad, in socially useful projects. If investigatory powers

are granted to the U.S. Department of Labor to enforce standards of fiduciary responsibility, such powers should not be so broad as to allow fishing expeditions or unwarranted investigations. Undefined and unrestricted investigatory powers can lead to abuse of Federal authority and unnecessary harassment of health, welfare and pension plan administrators. There should also be appropriate safeguards against nuisance suits or civil actions of a frivolous character.

Persons convicted of crimes involving corrupt or fraudulent financial activity, such as theft, embezzlement, grand larceny, extortion or bribery, should not be allowed to hold positions of trust or administration in a health, welfare, pension or profit-sharing plan. However, prohibitions against persons holding office should not be so broad as to include a wide variety of offenses not involving the element of fraudulent financial practice. And be it further

Resolved: The AFL-CIO favors the inclusion in any Federal statute regulating health, welfare, pension and profit-sharing plans of a provision for imposing appropriate civil and criminal remedies upon employers who fail to comply with their financial obligations to an employe benefit trust. Where employers go bankrupt leaving unfulfilled obligations to the trust, the employe benefit plan should have a prior claim, after wages, against any assets of the employer. And be it further

Resolved: The AFL-CIO favors the inclusion in private pension plans of adequate and appropriate vesting and funding provisions. To provide adequate safeguards to workers covered by single-employer plans we favor Federal legislation establishing minimum requirements of vesting and funding. Because multi-employer plans, whether financed by employer contributions, joint contributions or solely out of union dues, contain built-in safeguards for the pension rights of workers covered by them, any such legislation should exempt multi-employer plans. And be it further

Resolved: That the AFL-CIO re-affirms its policy position in favor of pension reinsurance adopted in the 1963 and 1965 Conventions and calls upon Congress to pass legislation providing at reasonable cost protection to workers against the loss of pension rights.

RALSTON PURINA Co.,
St. Louis, Mo., July 26, 1968.

Hon. RALPH W. YARBOROUGH,
U.S. Senate,
Washington, D.C.

DEAR SIR: We want you to know of our deep concern over any action that might be taken this year by the Senate on either the "Pension Benefit Security Act" or the "Pension and Employee Benefit Act."

The Labor Department's proposal has recently been introduced and there has been insufficient time for our company to fully review the bill which we understand makes substantial and drastic changes in our private pension system.

We would also like you to know that there remain many uncertainties and problems with S. 1024, the "Welfare and Pension Plan Protection Act of 1967." We certainly hope that this legislation is not rushed through Congress during the last weeks of this session without an adequate opportunity for all to comment on the proposal. We might add that we look upon our private pension program with pride as to its benefits and the voluntary disclosures that we now make to our employees as well as those that are already required by federal and various state laws.

We ask that you include our communication in the hearing record of the Senate Subcommittee on Labor. Thank you for your attention and interest in this matter.

Sincerely,

JOHN P. BAIRD,
Office of the Vice President, Secretary, and General Counsel.

MOTION PICTURE ASSOCIATION OF AMERICA, INC.,
Washington, D.C., August 1, 1968.

MR. ROBERT HARRIS,
Counsel, Senate Labor Committee,
New Senate Office Building,
Washington, D.C.

DEAR MR. HARRIS: I would appreciate your including in the record of the hearings on S. 3421 the text of the attached letter. This request is being made in be-

half of the Association of Motion Picture & Television Producers, Inc., 8480 Beverly Boulevard, Hollywood, California. It represents views on S. 3421, prepared by the Actuary for Motion Picture Industry Pension Plan. If you desire, you may also include, by way of explanation the accompanying letter to me from the Secretary of the Association requesting that the views of their Actuary be made a part of the hearing record.

With thanks for your courtesy and cooperation, I am,
Sincerely,

EDWARD COOPER,
Vice President.

Enclosures.

ASSOCIATION OF MOTION PICTURE & TELEVISION PRODUCERS INC.,
Hollywood, Calif., July 30, 1968.

Re Senate Bill S. 3421.

EDWARD COOPER, Esq.,
*Motion Picture Association of America, Inc.,
Washington, D.C.*

DEAR ED: Enclosed is a self-explanatory letter from Charles Larson to Mark Bushner regarding the above matter.

Charles Larson is the Actuary for the Motion Picture Industry Pension Plan and is a vice-president and an actuary in the firm of Johnson & Higgins.

We would appreciate your filing this letter with the Committee for their consideration.

With kindest personal regards,
Sincerely,

ALFRED P. CHAMIE.

Enclosure.

JOHNSON & HIGGINS,
Los Angeles, Calif., July 25, 1968.

MARK A. BUSHNER,
*Administrator, Motion Picture Industry Pension Plan,
Los Angeles, Calif.*

DEAR MR. BUSHNER: This letter presents comments with respect to the "Pension Benefit Security Act" which Senator Yarborough introduced as Senate Bill S. 3421. You are free to incorporate any part of it in the written statement that you intend to send to Senator Yarborough in regard to this Bill.

We have the following comments relative to Senate Bill S. 3421 (as noted, certain of the comments are particularly applicable to pension plans of the type of the Motion Picture Industry Pension Plan):

(1) The "vested liability insurance" proposal in the Act cannot conceivably be administered equitably with respect to all retirement plans without controls dictating the method to be used in determining the amount of vested unfunded liabilities. Such controls will be necessary because there are an almost unlimited number of ways of selecting and applying actuarial factors and methods to calculate vested unfunded liabilities.

(2) In the case of the Motion Picture Industry Pension Plan, because of the nature of the available participation data, any requirement to determine the vested unfunded liability will impose a serious administrative burden on the Plan.

(3) The proposed premium structure for the vested liability insurance is inherently inequitable in that the same rate would be used per dollar of liability without any assessment of the degree of risk involved in a given situation.

(4) In the case of a fixed contribution negotiated plan, any premium payment required for vested liability insurance will automatically reduce the ability of the plan to fund its unfunded vested liabilities, at least until such time as contribution rates can be renegotiated.

(5) In the case of a negotiated multiple employer—multiple union plan, the appropriate method of handling any unfunded liability position is through collective bargaining where management and labor, with the assistance of their actuary, should determine jointly the rate which they wish to fund unfunded liabilities.

In summary, we believe that the vested liability insurance provision as proposed in Senate Bill S. 3421 is inequitable, creates administrative problems of significance, will, in general, result in a deferral of the time when the funding of

vested liabilities will be completed, and introduced a strong probability of Federal controls in an area where there has been no demonstration of need.

Sincerely,

CHARLES M. LARSON,
Vice President and Actuary.

PORTLAND, OREG., *September 27, 1968.*

Senator WAYNE MORSE,
*Senate Office Building,
Washington, D.C.*

DEAR SENATOR MORSE: The purpose of my letter is to express my deep concern over the current legislation before the Senate in regard to private pension and profit sharing plans. While I understand there are several bills being considered, the one which seems to probably have the best chance of being passed and the one which gives me greatest concern at this time, is S. 3421 which was introduced by Senator Ralph Yarborough.

While I do not propose to say that there are not some real shortcomings in private pension plans, the good points so greatly outweigh the bad ones that I feel it would be a great mistake to shackle these plans to the extent which this bill, if passed, would do.

One of the most undesirable results of this bill, if passed, would be the necessity of reducing benefit levels in many plans where the company would not be able to make an additional contribution large enough to offset the additional cost of earlier vesting and the cost to individual plans to cover the insurance aspect proposed.

Another very important point is the fact that no two pension plans are exactly alike because the people covered and their needs are not exactly alike. This is one of the accomplishments that private pension plans can do is tailor individual plans to the needs of the covered participants. This bill, of course, would be a big blow to a great number of plans that for good reasons do not use the proposed vesting schedule, etc.

In regard to the portion of the bill which provides for all plans contributing to an insurance fund to cover the plans that for various reasons should cease to exist or can't pay out accrued benefits, I cannot find where any reliable indications of cost and risk factors have been determined. Having such a program, and charging the same premium rate to well-established and well-funded plans at the same rate as charged to the plans that have not made these provisions, seems grossly unfair. Most of the multi-employer funds are doing much self-insuring and should be encouraged, not hampered, in their efforts as this bill would do.

To sum it up, I feel that private pension and profit sharing plans are in so much better shape actuarially and they are handled so much more economically than public plans that it seems inconceivable to me that we should take such a big step forward as this bill would do in making all pension plans in our country eventually completely controlled by the government.

Sincerely,

KEITH HASSLER.

CHILDREN'S HOSPITAL OF PITTSBURGH,
Pittsburgh, Pa., October 1, 1968.

HON. RALPH YARBOROUGH,
*Old Senate Office Building,
Washington, D.C.*

DEAR SENATOR YARBOROUGH: I have read of your interest through Bill S. 3421 in strengthening laws to protect employees under Pension Programs. I wish to reflect the concurrence of our institution in the kinds of things that are included in this bill. As nearly as I can tell, everything that is in the bill conforms to the kind of foresighted community representation we have on our Board of Trustees in providing these benefits in the plan we have.

There is one exception which I would like to raise, and which I think has merit, in the plan that we have over the provisions that are included in what I have seen about Bill S. 3421. We have found that employees between the ages of 25 and 30, and even sometimes a little older, are not very interested in pension plans. They have other needs and concerns and retirement is something that will

never happen to them, and therefore, why be concerned. Furthermore, young ladies and gentlemen between these ages frequently move around. We have found that the book work involved in getting back credits, etc., for this age bracket from 25 to 30 exceeds the value of setting the lower age at 25. Our age has been set at 30 years. To compensate for this later starting time the employer's contribution starts relatively low as a percentage of the total contribution, but goes extremely high as employees approach the age of 65. We feel in this way we are recognizing the needs of people as they get closer to age 65, and we also eliminate the trivial paper work that is involved during the earlier five years.

I would recommend to your committee, based on our experience, that the section having to do with starting age be changed to age 30, and that other ways to compensate for the later starting date be included in the plan.

Very truly yours,

HAROLD W. LUEBS,
Administrator.

JOHNSON & HIGGINS,
New York, N.Y., August 16, 1968.

Re Pension Benefit Security Bill S. 3421.

HON. RALPH W. YARBOROUGH,
*Old Senate Office Building,
Washington, D.C.*

DEAR SENATOR YARBOROUGH: The attached copy of a letter to Mr. Stanley S. Surrey may be of interest to you in connection with your further consideration of S. 3421, the Pension Benefit Security Bill.

Very truly yours,

LLOYD S. KAYE,
Vice President.

Enclosure.

JOHNSON & HIGGINS,
New York, N.Y., October 11, 1968.

Re Pension Benefit Security Bill, S. 3421.

HON. STANLEY S. SURREY,
*Assistant Secretary,
U.S. Treasury Department, Washington, D.C.*

DEAR MR. SURREY: Shortly after your speech to the American Pension Conference in May of 1967, we wrote you indicating our general support of your proposals for legislation concerning vesting, funding and reinsurance in qualified pension plans. Although we have not changed our views we do have objections to certain features of S. 3421, the Pension Benefit Security Bill.

Administration of the Bill

Our basic objection to the Bill is that its provisions will be implemented by the Department of Labor. I cannot agree with your reported testimony of July 25 before the Senate Committee on Labor and Public Welfare that it is appropriate for the Department of Labor to administer the Bill, rather than the Internal Revenue Service, because the tax qualification requirements are mainly concerned with preventing the forbidden types of discrimination outlined in the Internal Revenue code. This is surely not a complete answer. It completely ignores the control of the Internal Revenue Service over tax deductions to qualified plans, as well as their asserted jurisdiction to impose a pension plan termination if minimum funding standards have not been met. This authority requires extensive familiarity with actuarial principles which the IRS has demonstrated and which will be required of the Department of Labor for administering the Bill.

While there is provision in the Bill for cooperation with other agencies and departments in order to accomplish an effective administration of the entire Bill, it is probably too much to expect that the Labor Department would delegate jurisdiction to the Internal Revenue Service over all funding and plan issues which are now reviewed by the Internal Revenue Service.

We believe that the public would be best served by granting jurisdiction over the entire Bill to the Treasury Department, with a necessary increase in staff to perform all the duties imposed by the Bill. It seems most probable that such an increase in staff would be considerably smaller than the size of the new staff

which would be required by the Labor Department. The Internal Revenue Service could design a streamlined reporting form which would, in effect, make the annual report required under the Bill an adjunct of the material already required to be filed with each employer's form 2950.

As a practitioner wholly engaged in the employee benefit field, I can fully appreciate the criticism levelled by the General Accounting Office against the Department of Labor in their administration of the Welfare and Pension Plans Disclosure Act. Their administration of that Act has produced tons of paper containing volumes of useless and inaccurate information which is both unwanted and incomprehensible to the employees it is supposed to help, and compiled on elaborate forms under constant scrutiny. If there ever was a purpose in the Disclosure Act, it has long since disappeared. A similar prospect is in store for the Pension Benefit Security Bill unless it is administered by the agency which knows what it is doing.

The provisions for "Vested Liability Insurance" in the Bill are complicated the cumbersome, will be expensive and difficult to administer and can only prove equitable if the Department of Labor (or, hopefully, the Internal Revenue Service) dictates the actuarial assumptions and methods to be used by every employer in determining the unfunded vested liability. When the very limited instances of defeated pension expectations are taken into consideration, the administrative force and the amount of time necessary to properly administer the reinsurance provisions of the Bill constitute a classic example of using a cannon to shoot a mouse. Moreover, after all the necessary effort to determine the proper amount of premium to be paid by each employer, we are really dealing with a risk that cannot be calculated by anyone.

Incidentally, the most recent funding study indicates that the degree of less than 100% of funding is much less a problem than anyone had really anticipated.

In view of this we believe that the reinsurance provisions of this Bill should be deleted. If, however, they are retained, our principal concern is that the Bill leaves it entirely to the Labor Department to produce solutions through regulation. We recommend that to the maximum feasible extent the actuarial guidelines be specified in the Bill rather than left entirely to regulation. Our position is that the Congress cannot know from this Bill exactly what it is demanding that employers reinsure, and some precision seems to be called for.

We believe that the bill should contain at least the following provisions:

1. The amount of vested benefits for each employee may be determined on the basis of a reasonable estimate by the employer's actuary. They should be the benefits actually available to an employee if he were to terminate employment on the date of the calculation, as such benefits are specified in the plan, regardless of the manner in which benefits are estimated for purposes of actuarial valuations.
2. The liability for vested benefits should be computed by the use of rates intended to produce the actual sum needed to secure these benefits as of the date of the calculation regardless of the actuarial methods and assumptions used for actuarial valuations.
3. Such rates are to be specified by the Department of Labor (or the Internal Revenue Service) each year.
4. Such rates are to be approximately equal to the lowest rates currently offered by leading insurance companies for the purchase of single sum group annuity purchases. Thus, they may vary substantially from year to year as current investment yields dictate variations in insurance companies' offerings.
5. The rates and methods so prescribed are intended for use in complying with the reinsurance provisions of this Bill and for no other purpose.

Other problems raised by the bill

(1) Rules governing breaks in services (Section 102(d)(4)) must be satisfactory to the Department of Labor. The Internal Revenue Service already has jurisdiction over this and interference by the Labor Department seems unnecessary.

(2) Another example of overlapping is in Section 102(e) which allows for forfeiture in the event of misconduct such as theft, dishonesty or divulging of trade secrets. The Internal Revenue Service has always permitted a forfeiture for competitive employment, particularly where the employer can show detriment through such activity.

(3) Section 304(c) says in substance that where a plan terminates because of a plant closing and the vested liabilities of the terminated plan are less than

20% of the vested liabilities of all of the pension plans maintained by that employer, then the employer must reimburse the Reinsurance Corporation for claims paid.

Although we agree with the concept, there is far too much at stake for an employer in a given situation to show that the liabilities are 20% rather than 19.9% of the total. The substitution of a sliding scale would certainly be preferable to an all-or-nothing approach. For example:

[All figures in percent]

If the ratio of the terminated plan's vested liabilities to total liabilities is—	<i>The reimbursement to the Reinsurance Corporation shall be—</i>
Less than 5.....	100
Between 5 and 10.....	90
10 and 15.....	80
15 and 20.....	70
20 and 25.....	60
25 and 30.....	50
30 and 35.....	40
35 and 40.....	30
40 and 45.....	20
45 and 50.....	10
More than 50.....	0

(4) The Bill would reinsure the full pension of any executive, no matter how great the amount, so long as the liability was not created within the preceding three years and the executive was not a 10%-or-more owner. We see no justification for this; and strongly recommend the imposition of a maximum annual pension such as \$6,000.

Sincerely yours,

LLOYD S. KAYE,
Vice President.

U.S. SENATE,
Washington, D.C., October 3, 1968.

Mr. ED LYMAN,
*President, The United States National Bank of Omaha,
Omaha, Nebr.*

DEAR MR. LYMAN: Senator Hruska has referred to me your letter and that of Mr. Arthur W. Knapp concerning S. 3421, the Pension Benefit Security Act, as I am the ranking minority member of the Committee on Labor and Public Welfare, to which the bill has been referred. I have arranged to have Mr. Knapp's letter printed in the hearing record on this legislation.

With best wishes,
Sincerely,

JACOB K. JAVITS.

Enclosures.

THE UNITED STATES
NATIONAL BANK OF OMAHA,
Omaha, Nebr., September 17, 1968.

Hon. ROMAN L. HRUSKA,
*U.S. Senate,
Washington, D.C.*

DEAR ROMAN: I am sure I share with other bankers, some concern over certain features contained in the Labor Department's Omnibus Pension Bill and related Bills.

I asked Art Knapp, Senior Vice President in charge of our Trust Department, who is more familiar with this than I, to jot down some of the problems as we see them with this legislation. Art has done this in a letter which is enclosed and addressed to you.

It is my hope that you will do everything you can to help defeat this legislation. Best personal regards,
Sincerely,

ED LYMAN.

Enclosure.

THE UNITED STATES
NATIONAL BANK OF OMAHA,
Omaha, Nebr., September 16, 1968.

Hon. ROMAN L. HRUSKA,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HRUSKA: You are no doubt aware that hearings have been and are being conducted concerning the Labor Department's omnibus pension bill, the "Pension Benefit Security Act". We in the field of pension and profit-sharing plan administration are greatly alarmed at the degree of Government intervention and control that would prevail with the passage of this legislation, and would like to call upon you to take a strong stand against any additional tampering with our private retirement system.

Under this Bill the Government wants to impose additional controls and restrictions which are not, in our opinion, necessary for the efficient and prudent management of private pension funds. This Bill not only would place the enforcement and control over private pension plans in the Department of Labor, but also would give the Secretary of Labor a free hand in making future studies of pension plans.

We believe that this Bill would adversely affect a great many existing plans and would discourage the establishment of new plans. We are faced with increasingly stringent and expensive Government controls which, when coupled with the increasingly liberal Social Security programs, put the future of private pensions, as we know them, in serious doubt.

No matter what set of figures you examine, or what criteria you use, or what comparison you make, one fact is undeniable: The private retirement system in the United States, both pension and profit-sharing, has been an overwhelming success in helping to provide for the retirement security of millions of Americans. And this success has been achieved with a minimum amount of Federal control.

Despite this impressive record, the Labor Department proposals call for more Government controls over private pension and profit-sharing plans. Nothing that we have seen in the way of official arguments for these controls can justify the dangerous tampering proposed with a successful system.

Our greatest fear is that the real and inevitable implications of the proposed reforms will be a gradual erosion of the private pension system and the supplanting of it by a greatly expanded Social Security System. Moreover, in the process, most of the funds held in private pension funds will come under the direct control of the Federal Government, and they may well be used to help finance a greatly expanded Social Security System.

The current Bills in Washington, S. 3421, S. 1024 and H.R. 17046, represent the first major assault against the private retirement system. It is apparent to us that the Ninety-first Congress will have the opportunity of deciding whether the structure of our private pension plan system will remain an arrangement which encourages the establishment and growth of the private system or whether it will be forced into a virtual strait-jacket, restraining and stifling its development and expansion.

It is hoped that you will give active consideration to the defeat of this legislation. Your action, cooperation and assistance at this time can be most helpful and will be greatly appreciated.

Sincerely,

A. W. KNAPP.

MORTGAGE GUARANTY INSURANCE CORP.,
Milwaukee, Wis., August 16, 1968.

Mr. ROBERT O. HARRIS,
Counsel, Subcommittee on Labor, Committee on Labor and Public Welfare, U.S.
Senate, Washington, D.C.

DEAR MR. HARRIS: The enclosed memorandum suggests that your Committee's further consideration of a pension fund benefit guaranty include the participation of private insurance companies. This presentation is submitted in response to your letter of August 7, 1968, and pursuant to our subsequent telephone conversation regarding this matter.

Perhaps the SBA's lease guaranty insurance program is the most significant precedent for a financial guaranty offered jointly by the Federal Government and private enterprise. MGIC's wholly-owned subsidiary, Commercial Loan Insurance

Corporation (CLIC) is presently the most active private carrier participating in this unique risk. Our experience indicates that financial guaranties may be more economically and effectively provided on a joint venture basis than if underwritten exclusively by the Federal Government. I sincerely hope that your Committee will share my feeling that these principles are applicable to the insurance of pension fund benefits.

Sincerely yours,

STUART M. BRAFMAN, *Vice President.*

Senator YARBOROUGH. The memorandum included with the letter above will be printed in the appendix.

Thank you for your cooperation. The hearing is now adjourned.

(Whereupon, at 12:20 p.m. the subcommittee recessed, subject to call of the Chair.)

APPENDIX

MEMORANDUM

TO: United States Senate
Committee on Labor and Public Welfare
Subcommittee on Labor

FROM: Mortgage Guaranty Insurance Corporation

SUBJECT: Joint Government and Private Enterprise
Guaranty of Pension Fund Benefits

(309)

It appears that the Committee is considering a guaranty for private pension fund benefits to be offered exclusively by the Federal Government similar to the FDIC's insurance of bank deposits. It is herein proposed that a guaranty of pension fund benefits may be more effective if it is provided by the Federal Government in cooperation with private enterprise.

Ample precedent for such a joint financial guaranty indicates that the Government may considerably reduce its expenses and significantly increase its insurance reserves by sharing the risk with private insurance companies. Moreover, the participation of private enterprise presents important advantages to employers and other parties involved in private pension funds.

PRECEDENT

The FDIC, like many other Government financial guaranty programs, was born of the Depression in response to an existing economic crisis. Obviously, such gargantuan tasks could only be undertaken by the Federal Government. Presently, economic losses arising from normal economic reversals can be absorbed by private financial guaranty companies. However, the unlimited resources offered by the Federal Government provide the ultimate protection against deep and prolonged recessions. The Federal Government and

private enterprise laid the foundation for a successful means of jointly providing a sound financial guarantee in the export credit insurance field.

The most recent expansion of this joint venture concept was incorporated in the recent legislative authorization for the Small Business Administration to guaranty rental payments due under written leases for all types of commercial and industrial purpose real estate. The objective is to enable small businesses to obtain better locations and more favorable lease terms than might otherwise be available. The enabling legislation specifically limits the SBA's authority to guarantying leases in cooperation with private insurance companies. The procedures and methods of operation applicable to this program are worthy of discussion because they suggest an ideal format for guarantying pension fund benefits.

An actuarial evaluation of the lease guaranty risk was conducted to define the losses anticipated under normal economic conditions which are assumed by the private insurance companies. Under their reinsurance agreement with the SBA, the Federal Government is responsible for losses which exceed the normal level. A portion of the total insurance premium collected is ceded by the private carriers to the SBA for its portion of the risk.

Landlords and real estate developers rely on the policy to assure an uninterrupted flow of rental income. Mortgage lending institutions also rely on the coverage to provide a guaranteed source of income for

the property owner to repay the loan. These parties rely upon the private carrier to cover losses resulting from normal fluctuations in the real estate rental market with the confidence that the Federal Government's resources are pledged to absorb the catastrophic effects of a depression, should it occur.

The risks are underwritten by private carriers in accordance with standards and qualifications developed in cooperation with the SBA. In this manner, the Government controls the risk which it reinsures while employing the private carriers' field force and underwriting personnel to originate the coverage. Marginal risks which are unacceptable to insurance companies may be insured solely by the Government. Conversely, leases which do not comply with the SBA's "small business requirements" may be guaranteed exclusively by the private insurers.

The increasing number of insurance programs involving the Federal Government and private enterprise indicates that this trend is destined to continue. The Federal Employees Group Life Insurance and the coverage provided by the Federal Employees Health Benefit Act place the risk of loss solely upon private carriers, while the Federal Government plays a strictly administrative role. In other programs, such as Medicare and health benefits for servicemen's dependents, private insurance companies provide fiscal and claim service, and the Government assumes all losses.

SHARING THE RISK OF GUARANTYING
PRIVATE PENSION FUND BENEFITS

This presentation assumes that a pension fund benefit guaranty is an essential element of the legislature's comprehensive plan for improving the basic soundness and equitable character of the nation's welfare system. It is also presumed that the subject risk and appropriate premium will be developed in subsequent actuarial studies. Accordingly, this discussion solely considers the most economical, effective and advantageous means of implementing the desired guaranty.

In order for the guaranty to be effective, pensioners must be protected from the consequences of abnormally severe economic recessions. However, there is no apparent reason for the Federal Government to incur the administrative expenses of operating the guaranty and to absorb the losses arising from normal economic conditions when private industry is willing and able to do so. Accordingly, pension fund benefits could be guaranteed similar to the SBA's lease insurance program whereby private carriers would provide nationwide underwriting and administrative services and assume normal losses. The Federal Government would assume the responsibility for claims exceeding this level pursuant to a reinsurance agreement with private carriers. A portion of the total premium would be ceded to the Government for its share of the risk.

In order to control its risks, the Government could prescribe underwriting standards and qualifications to be met by pension funds to obtain the reinsured benefit guaranty. There may be certain types of

pension funds which present a marginal risk unacceptable to the private sector which could be insured exclusively by the Government.

If the cost of operating the guaranty program is important, then participation with private enterprise should certainly be considered. Insurance companies maintain regional, and in most instances nationwide, field representatives who have intimate knowledge of local conditions. Moreover, central administrative facilities are provided for collecting premiums, adjusting claims and efficiently handling the large volume of paper work that is inherent in an insurance operation. These existing facilities could be expanded to include the pension fund benefit guaranty activity at a considerably lower cost than if the Federal Government created an organization solely for this purpose. It is conceded that existing Government insurance administrative staff could also be enlarged to operate the subject program. However, this may still be more costly than the private enterprise alternative and could disperse operative control over an unwieldy myriad of Government agencies.

Furthermore, the allocation of Federal funds now being considered for an exclusive Government guaranty could be sharply decreased by the amount of the participating private insurance companies' financial resources. The joint venture concept would further reduce the Government's claims expense to the extent of the normal losses absorbed by private enterprise.

Perhaps the only objection to the proposed joint venture is that the

Government's regulatory control of pension funds may be diluted by the participation of private enterprise. However, it is submitted that close control can be exercised over pension funds independent of a benefit guaranty program.

ACCEPTANCE OF THE GUARANTY

Private enterprise's participation in the guaranty fund might make the whole idea more acceptable to employers. This is an important factor because they will be required to bear most of the insurance cost.

Furthermore, it may be easier for private carriers to deal with management and labor regarding administrative aspects of the guaranty program. Pension fund beneficiaries and their employers may be understandably reluctant to get involved with the red tape and delays generally associated with the Federal Government. These sentiments may be overcome by private enterprise's participation in the guaranty operations.

CONCLUSION

In view of the foregoing, it appears that the Federal Government and the pension fund system could derive considerable advantages by the participation of private enterprise in a benefit guaranty program. Accordingly, it is suggested that the Committee's further consideration of this matter should include (1) close cooperation between the Federal Government and the insurance industry during the planning stages of the

guaranty plan; (2) an actuarial determination of the normal losses and catastrophic claims level comprising the total risk and (3) the cost of operating the guaranty plan exclusively by the Government as compared to a joint enterprise with private insurance companies.

WELFARE AND PENSION PLANS INVESTIGATION

APRIL 16 (legislative day, APRIL 9), 1956.—Ordered to be printed

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

FINAL REPORT

Together with the

SUPPLEMENTAL VIEWS OF MR. ALLOTT AND A STATEMENT BY MR. NEELY

Pursuant to Senate Resolution 225 of the 83d Congress, as amended, and Senate Resolution 40 of the 84th Congress, as amended, the Committee on Labor and Public Welfare directed the Subcommittee on Welfare and Pension Funds to conduct an investigation of employee welfare plans and pension funds. The subcommittee, after making an extensive investigation and holding public hearings, has submitted a report of 366 pages to the committee. The committee herewith transmits the subcommittee report to the Senate in compliance with the above resolutions. The members of the committee other than the subcommittee have not found it possible to review and consider the report of the subcommittee within the time fixed by the resolutions, as amended, but transmit it to the Senate for the preliminary consideration of the Congress and the public. These members of the committee reserve judgment upon the recommendations made by the subcommittee.

The subcommittee report follows:

INTRODUCTION

The final report of this subcommittee of the Committee on Labor and Public Welfare covers a study and investigation of private employee welfare and pension plans which are subject to collective bargaining. It is submitted equally in the interest of management and labor upon whom our national economy rests.

Conducted pursuant to Senate Resolution 225, as amended (83d Cong., 2d sess.), and Senate Resolution 40 (84th Cong., 1st sess.), these studies were primarily directed at finding out whether further Federal legislation is necessary to protect the interests of the beneficiaries in

these programs. Such studies involved, among other things, an appraisal of the present functions of Federal agencies as well as the adequacy of existing State controls in the welfare and pension field.

The mandate which brought about the subcommittee's investigation of these programs did not arise from a desire on the part of Congress to meddle in the affairs of either labor or management; it became necessary because of unfavorable developments in the welfare and pension programs, as recognized in the President's message of January 11, 1954.

Man's quest for greater security spurred the introduction of welfare and pension programs. Wartime expansion, wage stabilization, favored tax treatment, an era of high prosperity and employment, and a desire for greater employer-employee harmony, all fanned by collective bargaining, caused their astonishing growth over the last decade.

From 1945 to 1954 the number of persons covered by group life insurance more than doubled—from 11.4 to 28.7 million. In the same period, those covered by insurance companies under group hospital expense policies increased more than fourfold—from 7.8 to 35.1 million—while those covered by Blue Cross plans rose from 19 to 44 million. A similar growth took place in the number of employees covered by private pension plans—from 5.6 to 12.5 million in the decade 1945-54.

Today an estimated 75 million individuals—workers and their dependents—rely upon some form of group benefits program to meet the contingencies of sickness, accident, old age, and death. The plans or insurance policies underlying all programs number approximately half a million. Total contributions to all programs in 1954 reached an estimated \$6.8 billion. Reserves of pension funds aggregate \$20 to \$25 billion.

The existence of welfare and pension programs is a tribute to the free enterprise system. They constitute an important underpinning of our economic security, broadening and supplementing the various governmental programs. They provide continued income for the sick wage earner, cover hospitalization and surgical costs, maintain purchasing power when the years of active earning are ended, and furnish security to dependents after the worker's death. They have revolutionized the concept of group insurance and have been a great boon to the insurance and banking industries. Their impact on the securities and investments markets can best be gaged in the light of the Securities and Exchange Commission report that pension funds reserves alone are currently the largest single source of equity capital.

The great good flowing from private employee welfare and pension programs is tempered with limitations inherent in many of them. Generally, when a worker is unemployed for a month or more, he no longer participates in the benefits. These programs are for the most part on a term basis and remain in effect only during active employment. This is particularly true of health or welfare programs but may be true of pension programs where employees leave the job prior to qualifying for retirement, for only about one-fifth have vesting rights under noncontributory plans (those in which the employer alone pays for the program). It is also true that the programs are at times used unfairly by labor and management as a lever on the em-

ployee—by the union to tie him to union membership and by management to tie him to the job.

These plans, sometimes called fringe benefits, have been bargained or installed on a cents-per-hour or percentage-of-payroll basis, a level-of-benefits basis, on a contributory or noncontributory basis, and on numerous other bases or combinations thereof.

It is apparent that the growth of these plans since the beginning of World War II has resulted in a gigantic, highly complex operation which has outrun and to an extent outmoded existing Federal and State laws and controls.

The subcommittee's studies and investigations indicate that most employee welfare and pension plans are being administered responsibly and honestly. However, the great good of these programs, and the high motives and conscientious effort on the part of most of those responsible for them, can be undermined by the serious abuses, maladministration, unsavory and unsound attitudes and practices found in some programs. These conditions originally flowed from the failure to provide adequate safeguards.

It is not surprising that in such an unsupervised development, many problems have arisen that merit public attention. Nor is it surprising that, with so much money involved and the absence of supervision, our investigation has indicated that an unscrupulous minority has preyed upon such funds; nor that there have been shocking abuses, such as embezzlement, collusion, kickbacks, exorbitant insurance charges, and various other forms of malfeasance. Mismanagement, lack of know-how, waste, extravagance, indifference, nepotism, and a lack of criteria for sound operation have contributed to the unnecessary drain on such funds with a consequent serious loss to the employee beneficiaries. That most of the programs are honestly administered is no excuse for the abuses, irregularities, and other deficiencies which have been found to exist. The fact that looting and dishonesty exist at all, points up the opportunity for abuse under the existing absence of controls.

These employer-employee plans, whether or not collectively bargained, or whether contributed to solely by management, or on a joint management-employee basis, actually, and under existing law, proceed on the basis that the contributions to them by management are in the nature of employees' compensation for employment or, stated in another way, " * * * that the cost of an employee's service is greater than the amount currently paid him as wages. * * *¹ We find that it has not followed that the employees accordingly have a right to know the cost of the programs, how the money is spent, the reserves maintained, and how the programs are managed.

It is startling to find an almost complete absence of any routine accounting to the beneficiaries of these programs. It appears to be accepted practice among the administrators of such programs to give little or no account of their stewardship and to treat the money more as their own than that of the beneficiaries. The attitude of secrecy usually prevails, particularly in the financing of the level-of-benefit type of program.

Should these programs of such vital importance to the national economy and to so many millions of people—both at present and

¹ Hearings, pt. 3, p. 1160.

looking far into the future—be permitted to operate under an 18th century philosophy of laissez-faire? If so, we may well find that in some period of adversity we may have a monster on our hands with which it will be very difficult to deal.

The subcommittee's studies have shown the importance of the problems involved and how they affect the well-being of the beneficiaries of these programs. The various abuses found in a minority of these programs and, more importantly, the vast proportions to which they have grown, place a grave responsibility on the Government to protect the interests of the beneficiaries. But to ignore the programs outside the area of collective bargaining, where some of the same problems exist, would be inappropriate and unjust.

From the facts developed, the subcommittee believes that legislation requiring disclosure at the Federal level is necessary. Specific control legislation at the State level is likewise indicated.

The subcommittee's study was begun in May 1954, under the chairmanship and direction of Senator Irving M. Ives, Republican, of New York. The 1954 investigation primarily concerned itself with the Taft-Hartley type, collectively bargained, jointly administered welfare plans. Twenty-nine plans were subjected to detailed study. An interim report was submitted on January 10, 1955. Certain gross abuses in the administration of welfare funds were set forth. Other evidence then before the subcommittee as to the administration of plans and certain insurance practices, as well as the serious nature of the preliminary findings, warranted further inquiry. This was authorized by Senate Resolution 40, adopted on February 5, 1955.

The subcommittee held hearings in March and April 1955, under the chairmanship of Senator Paul H. Douglas, Democrat, of Illinois. Representatives of labor, management, insurance, and banking participated in a roundtable discussion of general problems in the area; a number of welfare programs were reviewed; and two plans manifesting corrupt operation (the Pointers, Cleaners & Caulkers Union, Local No. 52, welfare fund and the Laundry Workers International Union welfare fund) were examined in detail. A second interim report was published July 20, 1955, covering these hearings.

The evidence developed and the knowledge gained in the initial stages of the investigation demanded that the scope of the inquiry be enlarged to cover pension plans, unilaterally administered welfare plans, and that further study be made of industrywide plans and other types of employee-security programs. Accordingly, the subcommittee staff undertook in the last 5 months of 1955 to study and investigate other phases of this vast and complex operation.

Surveys were made of welfare and pension plan patterns and practices in the steel, automobile, coal mining, clothing, electrical, and trucking industries.

A hearing was held in July to receive testimony from various Federal agencies, i. e., Internal Revenue Service, Department of Justice, National Labor Relations Board, Department of Labor, Department of Health, Education, and Welfare, and the Securities and Exchange Commission as to the extent of any supervision these agencies exercise over employee welfare and pension plans under existing Federal laws. Separate staff conferences of record were held with representatives of the insurance industry, the banking industry, management, and eight international labor unions, to obtain information,

advice, and their views on various aspects of welfare and pension plans.

A number of unilateral, jointly managed, and union administered welfare and pension programs were investigated, as well as several insurance companies. Seven days of hearings were held in November and December 1955, covering specific union, joint, and management administered plans, insurance company practices, maladministration, etc.

Initial findings from questionnaires sent to all insurance companies then known to be writing group insurance for variations of the Taft-Hartley type programs were set forth in the January 1955 interim report, but the study was extended to an intensive analysis of insurance company practices and costs with respect to this type of plan.

Information was obtained from 7 insurance companies doing 68 percent of the group life-insurance business, which reflected distribution as to volume, experience, retentions, etc., by size of policy.

As a result of repeated suggestions that interlocking directorates and financial transactions between large insurance companies and large policyholders might have an influence in the placing of group insurance on other than a low net cost basis, 10 of the largest insurance companies upon request furnished information in this area.

To determine practices with respect to investment policies and actuarial soundness in the administration of pension funds through separate trusts, 65 banks with the largest trust departments upon request furnished information relative to the number and types of plans they held, lists of investments in trustor's own property and securities, and their practices as to assuring the actuarial soundness of plans.

An overall statistical study was made as to the total number of employees covered by various types of welfare and pension plans.

Provisions of Federal and State laws were examined to determine the extent to which they might apply to welfare programs, pension trusts, trustee responsibility, actuarial soundness of programs, and the protection of employee beneficiaries.

In addition, during 1954-55, the staff examined hundreds of individual plans in varying degrees of detail and interviewed literally thousands of officers and employees of industry, labor, insurance, banking, and related businesses.

This report can only briefly summarize the investigations, studies and hearings conducted. It should also be quite apparent that the limitations of time and staff prohibited more than an overall sampling of a small percentage of the hundreds of thousands of welfare and pension programs in existence today. The process necessarily had to be selective and aimed at disclosing major weaknesses and abuses. As the subcommittee's inquiry was made more intensive, a greater variety of weaknesses and abuses was uncovered.

In its inquiries, the subcommittee has attempted to avoid delving into union affairs or corporate operations. Only when there was a commingling of welfare funds with other funds was this necessary. It has sought to preserve individual rights and has notified persons, insofar as possible, when the evidence about to be brought out in its hearings might reflect adversely upon them.

The March-April hearings have been published as parts 1 and 2 of the subcommittee's hearings; the July and November-December hearings, as part 3.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The subcommittee, on the basis of its studies and investigations, makes the following findings and conclusions:

1. Private employee welfare and pension programs have grown to such proportions in this country and involve the use of such large tax-exempt funds as to place upon the Government a grave responsibility for their sound operation and to protect the equities of the beneficiaries and the public interest.

(a) Over 75 million persons, employees and dependents, or about one-half of the population of the Nation, are covered in some measure by employee welfare and pension programs. This tremendous development has come about principally in the past 10 years.

(b) Over \$6.8 billion yearly are being contributed to such programs. Employers contribute approximately \$4.5 billion and employees \$2.3 billion. Between \$20 and \$25 billion have been amassed as reserves to meet the future contingencies of these programs, particularly future pension payments.

(c) The Government permits employers to deduct from taxable income their cost and contributions to these programs. The income from investment of reserves is also exempt from taxes.

(d) Since Congress has stated and the courts have held that employer contributions toward welfare and pension benefits are in the nature of compensation to employees, it must be concluded that whether the funds for such programs are contributed by the employers, the employees, or both, the employees have a right to know the financial details of such plans as well as to have their interest in such plans protected.

2. The lack of standards and the inadequacies of State and Federal laws have permitted employee welfare and pension programs to operate in such manner as to give rise to many abuses, problems, weaknesses and unsound practices which could jeopardize the operation of this system and give insufficient protection to the rights and equities of the employee-beneficiaries.

(a) While the great majority of welfare and pension programs are being responsibly and honestly administered, the rights and equities of the beneficiaries in many instances are being dangerously ignored. In other cases, the funds of the programs are being dissipated and at times become the hunting ground of the unscrupulous.

(b) There is no adequate legislation at either the Federal or State level to fully safeguard these welfare and pension funds or the rights of the employee-beneficiaries.

(c) Despite belief to the contrary, qualification by the Internal Revenue Service as to tax exemption for welfare and pension programs provides no real control over the operation of the plans and only minimum assurance of their actuarial soundness.

(d) A great many of these plans are sorely lacking in adequate accounting procedures. Auditing requirements in too many cases are non-existent. It is the exception when welfare and pension

programs provide for an accounting to or an audit on behalf of the beneficiaries.

(e) A serious problem at times in employer administered plans, particularly where the plan has been established or bargained on a level-of-benefits basis, is that the employer takes the position that he is delivering or guaranteeing an end-product, i. e., the benefits under the program, and that the costs of these benefits are private business costs, have no relation to employee compensation, and are therefore of no concern to the employees or others. If the employer's costs for these programs are a part of employees' compensation which he is permitted to deduct as such from his taxable income, then he is not delivering a product from his own costs and his employees are entitled to information on the financial operation of the plan.

(f) Many of the worst abuses found in welfare plan operations involve certain insurance practices. These abuses include high commissions, excessive administrative fees, high insurance company retentions, unequal treatment of the policyholders, activities of unscrupulous brokers and agents, including embezzlement of premiums, sometimes in collusion with union officials or management—mostly the result of inadequate control and nondisclosure to the interested parties.

(1) The insurance industry is entirely regulated by State law. Many State insurance authorities have been lax in cleaning up insurance practices. This is attributable in part to the fact that the problem of group insurance is interstate or national in scope and, perhaps in part, to the fact that some State regulatory agencies are too susceptible to the viewpoint of the industry;

(2) The insurance industry, which has long prided itself on maintaining high standards on a voluntary basis, has not yet set up a code of ethics to deter wrongdoing among its membership;

(3) Group insurance is a highly complex business, and serious impairment of beneficiaries' equities has at times occurred as a result of lack of knowledge of insurance practices on the part of those responsible for purchasing insurance;

(4) In many cases, group insurance is bought and not sold. The commissions paid by some insurance companies on group policies, frequently as high as 20 percent of the first-year premium, give many a broker or agent an unearned commission. Such commission practices affect plans administered solely by a union or by an employer as well as those jointly administered;

(5) The beneficiaries of self-insured welfare and pension plans do not presently have adequate protection under State laws.

(g) Some of the worst instances of individual abuses were encountered in the jointly managed multiemployer and union administered welfare programs. The unilateral nature of employer and union administered plans affords less opportunity for disclosure of information as to abuses or maladministration.

(h) Lack of know-how, mismanagement, waste, extravagance, bad bookkeeping and indifference have caused a serious dissipation of the funds involved in these programs generally.

(i) Actuarial and investment soundness are the keystones to successful operation of pension programs. In many cases too little attention has been devoted to these factors.

(1) Corporate or bank trustees, while discharging their stewardships capably, cannot be held responsible for the financial and actuarial soundness of the plan. Often under the trust instrument they cannot control investments which impair the equities of the beneficiaries;

(2) A number of pension plans invest in substantial percentages of the securities and properties of the employing companies.

3. The subcommittee believes that the enactment of a Federal disclosure act would bring a great measure of order to the operation of private employee welfare and pension plans. The primary objective, the subcommittee has concluded, is one of assuring the immediate and long-range stability of private welfare and pension programs without impairing their voluntary or free-bargaining character. As shocking as the cases of dishonesty and fund looting have been and as great as the need is to bring this matter under control, the most important objective is to assure the maximum usefulness and safety of these programs in order that they may better meet the contingencies against which they were established.

(a) It cannot be assumed that the States will act uniformly or speedily, or that the problem can be met on a piecemeal basis. It is unrealistic to suppose that the 48 States will devise uniform procedures within a reasonable time to protect the interests and equities of the beneficiaries of these programs, lacking stimulus from the Federal level; nor can it be anticipated that any 1 State is so influential in this area as to bring this about.

(b) Disclosure of the workings of welfare and pension plans to a Federal agency is a mild remedy, reserving to the States a wide area for additional control. There is much room, in fact, at the State level for enactment of legislation designed to more clearly fix the responsibilities of trustees and to strengthen insurance regulations.

RECOMMENDATIONS

1. The subcommittee recommends the enactment of a Federal registration, reporting, and disclosure act which would be effective for a 3-year period and which should require—

(a) Registration of all types of employee welfare and pension benefit plans which cover 25 or more employees. This registration should include identifying information respecting the plan as prescribed by the act and the regulations of the agency. It should be made within 90 days of the effective date of the act or the establishment of plans subsequent thereto.

(b) An annual report, as prescribed by the act and regulations thereunder, by all employee welfare and pension benefit plans which (1) include 100 or more employees and which (2) include less than 100 employees but are in fact operated or administered

on some common basis with other plans (namely, common officers or administrators, union bargaining representatives, or employers, etc.) and, together, include in the aggregate 100 or more employees. The report should be attested to by the principal officer or officers thereof, and contain a detailed financial statement of the operations based upon an audit in accordance with accepted standards of auditing addressed to the beneficiaries and certified by an independent public accountant.

(1) The administrative agency should have discretion to require reporting and disclosure by a particular plan or plans covering between 25 and 100 employees on an annual basis, or less frequently, and to require compliance with other provisions of the act when, in the opinion of the agency, such action is deemed necessary to accomplish the objectives of the act.

(c) Disclosure of information contained in the annual report should be made to the beneficiaries of the plan and other interested parties by making copies available for examination at the principal offices of the plan and in the public documents room of the administrative agency and by providing the beneficiaries with information from the report in prescribed summary form by personal delivery or mail.

(1) The Federal agency should have authority to cause further distribution of annual reports to any other Federal or State agency.

(d) Criminal penalties should be imposed for willful violation or failure to comply with the act or willful false statements or misrepresentations or omission of a material fact, or for unlawful or willful conversion of the funds of any plan or program.

(e) Constitutional authority for such an act should rest upon jurisdiction over taxation, interstate commerce, and the general welfare.

(f) The agency should be given the usual administrative powers to carry out the functions of the act, compel the production of records, conduct investigations, and take any other measures necessary to administration and enforcement.

(g) Based upon its studies, and after 2 years' experience with the act, the administrative agency should make a comprehensive report to the Congress and include therein its recommendations as to the continuance, simplification, or modification of legislation. This report should be furnished in time to permit Congress to take appropriate action before the expiration of the act.

2. The subcommittee has no strong view as to which Federal agency should administer such an act. It is possible to use any one of several existing agencies—namely, the Department of Labor, the Department of Health, Education, and Welfare, the Internal Revenue Service, or the Securities and Exchange Commission—since the functions of each of these agencies have some relation to this field. It might also be feasible to create a new independent agency for this purpose. For the present, the subcommittee is inclined to favor the Securities and Exchange Commission because of its organizational setup and its established success in the administration of disclosure type statutes.

3. The subcommittee also recommends the establishment of an advisory council to assist the Federal agency in the administration of such a disclosure act. The council should consist of 13 members, including 3 employee representatives, 2 representatives of management, a representative of the insurance industry, a representative of the banking industry, and 3 representatives of the general public, with the Secretaries of Labor and of Health, Education, and Welfare and the Commissioner of Internal Revenue ex officio members.

For a complete discussion of the subcommittee's recommendations on disclosure, see section IV: Need for Federal legislation.

PART ONE: THE FINDINGS

I. GROWTH, COMPLEXITIES, AND SCOPE OF WELFARE AND PENSION PROGRAMS

In many ways the unparalleled development of private employee welfare and pension plans is a testimonial to the genius and managerial ability of industry and labor.

These plans had their first beginnings many decades ago. However, the greatest growth has occurred since 1940, and more especially since 1945. For the most part, these systems grew up like Topsy. Within the last 10 years they have mushroomed with amazing speed and with almost no regulations and safeguards. It is surprising, in a system of such magnitude and complexity, that the abuses and weaknesses discovered by the subcommittee are not greater.

Welfare plans provide life-insurance or death benefits, disability insurance or payments during periods of disability, and hospital, surgical and medical insurance or direct provision of health services as required. They are a joint enterprise of the worker and his employer, and spread the losses incident to these contingencies over the group. They may take the form of a commercial insurance policy, self-insurance, or Blue Cross, Blue Shield, or similar nonprofit prepayment plans.

Pension plans provide benefits upon retirement due to old age or permanent disability.

Today, these programs provide in some degree various insurance coverages or retirement pensions for 75 million persons—29 million workers and their 46 million dependents. Thus, almost one-half the total population is affected by these plans. Their risk-spreading efforts have been cast in a framework of hundreds of thousands of collective-bargaining contracts, employer-employee arrangements, insurance policies, and trust agreements formulated by such diverse groups as union officials, corporate officers, insurance executives, bankers, and uncounted and uncountable mixtures and interplays of these plans.

At the end of 1954, the number of employees and their dependents covered under these plans, for the various types of benefits, were as follows:

Number of persons covered

Type of benefit	Employees	Dependents	Total	Employees covered as percent of all employees
	<i>Millions</i>	<i>Millions</i>	<i>Millions</i>	<i>Percent</i>
Welfare:				
Life insurance and death benefits.....	29.5	1.1	30.6	55.0
Accidental death and dismemberment.....	14.0	-----	14.0	-----
Temporary disability benefits.....	23.2	-----	23.2	43.6
Hospitalization.....	31.3	44.3	75.6	59.0
Surgical.....	28.3	39.0	67.3	53.0
Medical.....	17.3	21.4	38.7	32.0
Pensions.....	12.5	-----	-----	23.0

Approximately 60 percent of the workers who are covered for pension benefits and about 40 percent of those covered by the various welfare programs are under programs which are collectively bargained.¹

In 1954, total estimated employer-employee contributions to these programs amounted to \$6,846,200,000, of which employer contributions were \$4,537,900,000 and employee contributions, \$2,308,300,000.²

The payments into these programs are an investment in a sound national economy and continued prosperity. They are an investment in labor-management cooperation. The benefits flow to both groups.

A. FACTORS CONTRIBUTING TO GROWTH

The underlying factors responsible for the development of these benefit plans and their phenomenal growth in recent years have been the same as those responsible for the development of the various governmental insurance programs. These include the human desire for protection against income loss and other costs arising from illness, unemployment, disability, old age and death, and the fact that such protection can be obtained more economically on a group rather than an individual basis. Other important factors which have encouraged the development of these private employee welfare and pension programs have been:

(1) High corporation taxes during and since World War II, coupled with the allowance of tax deductions for contributions to these programs, thus permitting their establishment at a low net cost;

(2) Wage stabilization programs during and since World War II and the Korean conflict, which froze wage rates but permitted increased employee compensation in the form of these "fringe" benefits;

(3) Court decisions in the years 1948-50 which made welfare and pension matters a bargainable issue; and

(4) Since 1948, the drive of labor unions to obtain welfare and pension programs. Labor spokesmen state that another reason for the development of these programs has been the inadequacy of benefits under the governmental programs.

The development of health benefit programs has also been spurred by the advances in medical science which, while increasing the efficacy of medical care, have also increased its costs and make it difficult for individuals to meet those costs except on a spread-the-risk basis. Similarly, the development of private pension programs has been due, in part, to an increased interest in providing for old-age security.

B. GROWTH OF PROGRAMS

An indication of the phenomenal growth of these various benefit programs in recent years is the increase of group life insurance coverage from approximately 9 million in 1940 to 29 million persons as of the end of 1954; the increase in persons covered by insurance companies under

¹ Appendix I (p. 82) shows in detail the workers and dependents covered for each type of benefit under the various types of plans, and the number covered under and outside of collective bargaining.

² Details as to employer-employee contributions for the various coverages are shown in appendix II, p. 84

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group hospital expense policies from 38,000 in 1935 to 35 million; the growth of the Blue Cross plans from 214,000 participants in 1935 to 44 million; and the increase in persons covered by pension programs from 3.7 million in 1940 to 12.5 million in 1954. Tables indicating this growth are set forth below.

Growth of group life insurance in the United States¹

End of year	Number of master policies	Number of certificates	Amount of insurance in force (millions)	End of year	Number of master policies	Number of certificates	Amount of insurance in force (millions)
1912.....	25	12, 000	\$13	1935.....	19, 000	6, 112, 000	\$10, 208
1915.....	275	120, 000	100	1940.....	22, 000	8, 829, 000	14, 938
1920.....	6, 000	1, 600, 000	1, 570	1945.....	30, 000	11, 451, 000	22, 172
1925.....	12, 000	3, 200, 000	4, 247	1950.....	56, 000	19, 391, 000	47, 793
1930.....	20, 000	5, 734, 000	9, 801	1954.....	81, 000	28, 762, 000	86, 395

¹ Does not include group creditor insurance.

Growth of group hospital expense insurance and Blue Cross plan in the United States, 1935-54

Year (end of year)	Number of individuals covered		Year (end of year)	Number of individuals covered	
	Under group policies issued by insurance companies ¹	Blue Cross plans ²		Under group policies issued by insurance companies ¹	Blue Cross plans ²
1935.....	38, 000	214, 000	1950.....	22, 305, 000	37, 451, 000
1940.....	1, 800, 000	6, 012, 000	1954.....	35, 090, 000	44, 201, 000
1945.....	7, 803, 000	18, 881, 000			

¹ Almost all of these are employees and their dependents.

² Includes individual as well as group enrollment. About three-fourths are employees enrolled in groups and their dependents.

Growth in the number of private employee pension plans and in the number of employees covered thereunder¹

End of year	Number of plans	Number of persons covered	End of year	Number of plans	Number of persons covered
		<i>Thousands</i>			<i>Thousands</i>
1930.....	720	2, 400	1945.....	7, 425	5, 600
1935.....	1, 090	2, 600	1950.....	12, 330	8, 600
1940.....	1, 965	3, 700	1954.....	² 21, 000	12, 500

¹ Pensions in the United States, a study prepared for the Joint Committee on the Economic Report by the National Planning Association, 83d Cong., 2d sess., Joint Committee print, 1952, p. 11; data since 1951 from the Office of the Chief Actuary, Social Security Administration.

² Insured and funded plans, exclusive of pay-as-you-go.

C. TYPES OF ADMINISTRATION AND CONTROL

Generally, there are four main types of welfare and pension plans, considered from the standpoint of their administration and control:

1. Single employer administered plan;
2. Single employer-jointly (employer-union) administered fund;
3. Multiemployer-jointly (employer-union) administered fund;
4. Wholly union administered plan.

Virtually all plans fall into one or another of these classifications.

WELFARE AND PENSION PLANS INVESTIGATION

The subcommittee roughly estimates that the proportions of workers covered under welfare and pension plans through each of these four arrangements are as follows:³

	Welfare plans	Pension plans
	Percent 100	Percent 100
Total, all types of plans.....		
Single employer administered plan.....	92.0	86.0
Single employer-jointly (employer-union) administered fund.....	.5	.5
Multiemployer-jointly (employer-union) administered fund.....	7.0	13.0
Wholly union-administered plan.....	.5	.5

1. SINGLE EMPLOYER ADMINISTERED PLAN

This represents by far the most common type of arrangement, under which the employer, either under or outside of a collectively bargained agreement, administers a welfare or pension plan. The employer may contribute a fixed or unspecified portion of the cost. The typical arrangement for a welfare plan is one where the employer makes specified insurance benefits available to his employees and pays the remainder of the cost over and above specified employee contributions; less frequently the employer pays the entire cost. If the benefits are provided through an insurance carrier, the employer usually selects the carrier and receives the insurance dividend or experience rating refund, if there is one. In the case of a pension program, the employer administers and controls a plan which provides specified pension benefits upon retirement of employees who meet certain eligibility conditions. Most pension programs are noncontributory, i. e., the employer pays the whole cost; some are contributory, i. e., employees make contributions.

2. SINGLE EMPLOYER-JOINTLY (EMPLOYER-UNION) ADMINISTERED PLAN

While this type of plan also covers only the employees of a single company, it differs from that described in the preceding paragraph in that real control of the plan is shared by the employer and the union, as provided under section 302 (c) of the Labor Management Relations Act of 1947 (Taft-Hartley Act). Under such arrangements, in most cases, the management agrees with the union to contribute so many cents per employee-hour worked, or a specified percentage of its payroll, to a fund managed by a committee or a board of trustees representing the company and the union. The moneys in this fund are then used to finance the agreed upon welfare and/or pension benefits.

³ A recent survey in New York State found that of all employees who were covered under health and welfare plans approximately 71 percent were covered under single employer plans and 29 percent under multiemployer plans. In New York City the proportion of the workers covered under multiemployer plans was approximately 40 percent; in upstate New York, 9.5 percent. It is believed that the situation in upstate New York would be more characteristic of the country as a whole than New York City. Hence, it may be estimated that of the 29.5 million employees in the country who are covered for life insurance and death benefits, not more than 9.5 percent, or 2.8 million, would be covered through multiemployer jointly managed funds. The subcommittee's own study of insured welfare funds, i. e., of insurance policies written in which a welfare fund is the policyholder, found that the total premiums under all such policies amounted in 1953 to \$98 million. This is about 5 percent of the total premiums on all group insurance written by insurance companies that year.

3. MULTIEMPLOYER-JOINTLY (EMPLOYER-UNION) ADMINISTERED PLAN

This type of plan is typically established by contract between a union or unions and a number of employers. The agreement generally provides that all of these employers will make specified contributions into a fund, usually on the basis of so many cents per employee-hour worked, or a percentage of payroll. The fund is also jointly managed as required by the Taft-Hartley Act, by trustees representing the employers and the union, in equal numbers. (Too often this does not result in actual dual or joint control.) There may or may not be one or more neutral or public trustees. The fund sets up machinery for collecting contributions from the employers and for keeping records of the employees on behalf of whom the contributions have been made. Benefits are usually provided through purchase of insurance or payments or services furnished directly from the fund.

These multiemployer types of programs are found mainly in industries marked by small or numerous employers such as are found in the construction, coal mining, men's and women's clothing, cleaning and dyeing, laundry, trucking, restaurant, small scale retail merchandising, and other service industries. Frequently these funds are established on an area basis. However, some teamsters' funds cover many States, and some funds, such as the United Mine Workers, are on a national scale.

4. WHOLLY UNION-ADMINISTERED PLAN

These plans are managed by a local or international union. Participation in the plan may or may not be required of the members. The income of the funds is chiefly derived from dues and assessments paid by the membership.⁴ While plans of this sort are of long standing, they are at present relatively few and cover only small numbers of workers.

D. RELATIONSHIP TO GOVERNMENTAL INSURANCE PROGRAMS

Private welfare and pension plans have the same general objectives as the various social insurance programs developed by the Federal Government, the State governments, or the two acting in cooperation.

All private pension plans, in effect, are supplementary to the basic Federal old-age and survivors insurance system which now covers 51 million workers and in 1954 had total contributions of \$7,750 million. Most of the private pension plans have developed since the Social Security Act was passed in 1937; they therefore evidence a desire for benefits which are more generous than those available under the governmental program. Many private pension plans provide benefits in the event of permanent and total disability, before normal retirement age; the Federal program presently does not.

⁴There are a few wholly union-administered programs with employer contributions. These are plans which were established by collective agreement prior to January 1, 1946, and which under sec. 302 (g) of the Labor Management Relations Act, 1947, are exempt from the requirement of that act for joint control of such funds by union and management.

The past year, 1955, has seen the development of collectively bargained supplementary unemployment benefit plans, sometimes called the guaranteed annual wage. Such plans at the end of 1955 covered over 1 million workers. All of these plans, of course, are supplementary to the programs of unemployment compensation which the State governments, in cooperation with the Federal Government, have established and which cover approximately 37 million workers and entailed total contributions in 1954 of \$1,440 million.

The total face value of group life insurance in force at the end of 1954 was \$86 billion; it is estimated that the survivors benefits payable under the Federal OASI program are the equivalent of life insurance in force of \$345 billion.

Temporary disability insurance, as distinguished from workmen's compensation insurance, is not provided by Federal statute except in a few instances, such as railroad retirement, maritime and certain phases of State unemployment insurance laws. Four States do require such insurance: Rhode Island has an exclusively publicly operated plan; California, New Jersey, and New York permit coverage through insurance companies, a State fund, or self-insurance. This has stimulated the growth of private disability insurance.

The vast private programs complement the Government programs. Both play a vital role in our national life. It is apparent, therefore, that legislation must assure the soundness and honest administration of private programs in the interest of the beneficiaries.

II. ABUSES AND PROBLEMS IN WELFARE AND PENSION PLANS

This section deals with the abuses, weaknesses and problems disclosed by the subcommittee's studies of employee welfare and pension programs. Part Two of this report, to which occasional reference is made, details some of their ramifications by case histories.

A discussion of abuses and problems might leave the impression with the reader that there is something wrong with every private welfare and pension plan. The subcommittee wishes emphatically to point out that this is not the case. Perhaps too little has been said of the many sound practices found in the great majority of these plans and of the conscientious and ingenious efforts on the part of industry, labor, insurance, and banking to bring benefits to scores of millions of employees at low cost. However, the subcommittee is convinced that without some legislative direction the abuses, problems, and weaknesses which do exist will not be self-correcting.

Labor, some time ago, condemned dishonesty, created committees on ethical practices, established codes of ethics for the operation of employee welfare and pension plans, and recommended legislation toward that end. These codes of ethical practices will, in time, undoubtedly have a salutary effect but their objectives will not be quickly achieved. In many instances, representatives of labor have been involved in some of the worst abuses found to exist and, in some cases, they have been found unprepared for the responsibilities of trusteeship under these programs.

The insurance industry, while opposing Federal control or supervision in any degree, has not even set up a code of ethical practices to condemn the unscrupulous. The insurance industry—both insurance companies and agents and brokers—in some cases has profited from public ignorance of how insurance operates. The insurance industry insists that there is no cause for Federal concern since it is already under State supervision. However, in most of the cases involving insured welfare plans where irregularities or abuses were discovered, a member of the insurance industry was involved. Keen competition in the group insurance field, while having many beneficial effects, has also bred sharp practices in many instances and to some extent has led to unequal treatment of policyholders.

Management shares the responsibility for many of the serious problems and abuses of employee welfare and pension plans. Under many of the management-administered insurance and pension plans, employee-beneficiaries are not furnished information as to the costs of the plan, how it is being managed, its stability, and, in the case of pension plans, their ability to meet long-range obligations. Employers in too many cases have abdicated their responsibilities under jointly managed plans. In some instances such abdication resulted from coercion. Management, as well as labor, has at times been unreasonable and unsound in positions taken with respect to benefit programs.

The banking industry, while recognized as competently managing pension investments under corporate trusts, does not have the responsibility for actuarial soundness, often has too little control over proper investments, but sells the features of this type of plan without assuming all of the responsibilities which are necessarily inherent in a complete pension plan.

Whatever the problems, abuses or weaknesses, and regardless of who is responsible, the beneficiary stands to lose. Of course the employer also stands to lose. Whether it is a matter of inadequacies of existing law, corruption, bad investments, irregular insurance charges, or unsound practices, the result is an impairment to the stability and usefulness of this vast operation.

A. WELFARE PLANS

From the subcommittee's studies, it appears that in a large percentage of health and welfare plans, the financing consists of direct contributions from employees as well as employer contributions. Under collectively bargained welfare plans at least one-half of the cost is commonly covered by employer contributions. In voluntary plans outside of collective bargaining, the employer contributions are generally much less. By contrast, in pension plans it appears that most of the programs are financed solely by employer contributions.

The process by which moneys going into the financing of welfare programs may be irretrievably lost to the beneficiaries can best be understood by visualizing the operations of a conveyor belt. Employer and/or employee contributions are placed on and move along this belt through various stages to the end product: benefits provided beneficiaries under the programs. Sometimes all of the money is not placed on the belt. Sometimes it is dissipated or stolen in the process. Three and a half billion dollars pass along this belt annually. This attracts the services and attention of many people. There is, of course, no quarrel with the payment of honest and reasonable amounts for services properly rendered and for which proper accounting is made.

Unilateral employer-administered plans, union plans, and jointly managed plans in certain instances have some problems and abuses which, to an extent, are unique to the particular type of plan. Dishonesty or corruption cannot be held to be unique to any operation. However, the subcommittee discovered more irregularities in jointly managed or Taft-Hartley type plans than in unilateral employer plans and perhaps there is a higher incidence of abuse in this type of plan than in the larger number of employer-administered plans. It should also be stated, however, that much more time was given to the investigation of joint and multiemployer plans and that perhaps such plans lend themselves much more easily to the disclosure of abuses than the unilaterally administered plans.

Generally, irregularities and abusive practices will be discussed without regard to the particular type of plan and only those problems, abuses, or weaknesses which are peculiar to a particular type of plan will be treated separately.

1. PROBLEMS AND ABUSES PECULIAR TO THE TYPE OF PLAN

(A) UNILATERAL EMPLOYER-ADMINISTERED PLANS

Over 90 percent of all employees included in health and welfare programs are presently covered by this type of plan. While, at times, these plans are established or bargained on a cents-per-hour or percentage-of-payroll basis, or by specific amounts to be contributed respectively by the employees and the employer, a more typical arrangement is for the employees to pay a specified amount toward the costs of agreed-upon benefits, with management contributing the difference. This is called the level-of-benefits type of plan. If insurance costs go up, the employer's contribution goes up. If insurance costs go down, the employer's contribution declines also. In this type of plan, the employer usually receives any dividends or experience rating refunds paid by the insurance carrier.

It should be pointed out that in a substantial percentage of unilateral employer-administered plans the union has had a voice in the selection of the insurance carrier and in many instances participates through joint committees in the administration of employee benefit accounts or funds unilaterally established by employers. As shown in the study of the steel industry (sec. V, A), 18 of the 26 companies replying to a subcommittee questionnaire reported that the union had a voice in the selection of the carrier, either through negotiation with management or membership on joint insurance committees. Similarly, 13 of the 52 companies in the automobile and automotive parts industry responding to the questionnaire indicated that unions participated in selecting the insurance company (sec. V, B). Of the 1,596 policies issued by commercial carriers to jointly managed funds, unions, or employers where the union had a voice in selecting the carrier, the subcommittee found that 231 were issued to employers (sec. IX). Undoubtedly the proportion of policies held by employers where the union shares in the selection of the carrier is even greater than indicated since insurance companies would not be aware of all such cases.

(1) Employers' position as to disclosing costs

Management has been found to be most reluctant to disclose its portion of the costs in the level-of-benefits employer-administered type of plan. Its arguments are (a) that if its costs are revealed, the unions may make greater demands at the next bargaining session; (b) that as management is guaranteeing a specified program of benefits (the end product), with costs varying from year to year, regardless of the cost over and above employee contributions, it is no concern to the employees what these costs are; (c) that arrangements with insurance carriers are items of cost which neither management nor the insurance companies want to expose to the public or advertise to competitors; (d) that in programs bargained on a level-of-benefits basis with fixed employee contributions, particularly where there is more than one union involved, disclosure will result in employee unrest and dissatisfaction.

Labor contends (a) that management's reluctance to disclose its share of the costs is because it is doing the job cheaper than it will admit and wants to hide its costs; (b) that problems involved in a plan with more than one union are no different on a level-of-benefits

basis than on a cents-per-hour basis, where the cost is known; (c) that abusive insurance practices have demonstrated a real need for making available to all concerned the details of the cost of group insurance; and (d) that there is no greater guaranty of honesty in a unilateral company-administered plan than there is in a jointly administered or union-administered plan.

These arguments are the crux of the issues with respect to the disclosure of details on this type of plan. These issues involve: What effect will disclosure legislation have on collective bargaining? Will a mandatory disclosure statute enable unions to get access to information which, as yet, they have not been singularly successful in securing except on a case-by-case basis through National Labor Relations Board channels, and, if so, will this have harmful effects?

The subcommittee is naturally less concerned with the effect disclosure may have upon either management or unions that it is with the salutary effect it will have in increased protection for the beneficiaries. It appears to the subcommittee that management, in arguing that its costs in guaranteeing given insurance benefits are its own business under a level-of-benefits type of plan, loses sight of the fact that its expenditures in providing these benefits are as much a part of the employees' compensation for employment as if they were on a cents-per-hour or percentage-of-payroll basis. Certainly a real distinction can be made between plans where the employer contributes specified amounts toward employee benefits and plans where the employer guarantees the cost of the plan above specified contributions of employees. This distinction, however, would not appear to change the whole character of the employers' costs or contributions.

Management's costs for benefits under both welfare and pension programs have been treated by Congress and the courts as part of employees' compensation. In 1948 the National Labor Relations Board ruled in the *Inland Steel* case that the Labor Management Relations Act, 1947, required employers to bargain on company pension plans if the employees requested it. The language of the Board was in part as follows: "The term wages as used in section 9 (a) must be construed to include emoluments of value like pension and insurance benefits."⁵ The company appealed but the circuit court upheld the Board's decision.⁶ The Supreme Court denied certiorari.⁷

Later, in the case of *W. W. Cross & Co., Inc. v. N. L. R. B.* (174 Fed. 2d 875) the court, in upholding an NLRB ruling, stated:

* * * Indeed we narrow the question still further, for believing a group insurance program to fall within the scope of the word "wages" as used in the act (National Labor Relations Act of 1947) we see no need to consider, and therefore explicitly pass, the question whether such a program could also be included within the scope of the phrase "other conditions of employment."

⁵ 77 NLRB 1.

⁶ *Inland Steel Co. v. NLRB*, 170 Fed. 2d 247, 251 (1949). Here the court stated, "* * * While as the company has demonstrated, a reasonable argument can be made that the benefits flowing from such a plan are not wages, we think the better and more logical argument is on the other side, and certainly there is, in our opinion, no sound basis for an argument that such a plan is not clearly included in the phrase, 'other conditions of employment.'"

⁷ 336 U. S. 960 (1949).

When the Defense Production Act was enacted in 1950 it contained provisions empowering the President to issue regulations stabilizing "wages, salaries, and other compensation." These words were defined in the act to include "all forms of remuneration to employees by their employers for personal services including, but not limited to, * * * employer contributions to or payments of insurance or welfare benefits, employer contributions to a pension fund or annuity * * *"⁸

The Internal Revenue Code of 1954 under itemized tax deductions for trade and business expenses of individuals and corporations permits (sec. 162 (a) (1)) "a reasonable allowance for salaries or other compensation for personal services actually rendered." It is understood from officials of Internal Revenue that it is on the basis of section 162 (a) (1) that deductions from gross income in the computation of taxes are allowed employers for contributions to or payments of employee group insurance or other welfare benefits. Under subchapter D of the Internal Revenue Code of 1954 entitled "Deferred Compensation, etc.," section 404 provides that—

If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under section 162 * * * or section 212 * * * but if they satisfy the conditions of either of such sections, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year. * * *

In addition the United States Chamber of Commerce in its various studies of costs of fringe benefits converts them to an hourly wage cost. The United States Department of Labor, in its studies of wages, has for years compiled data on group insurance in its tabulation of supplemental wage practices.

It therefore would appear that there is much to support the contention that employer contributions to or payments for employee welfare or pension plans are included in the term "other compensation." It logically follows that the employees have a direct claim to information regarding the costs of such programs.

Even though employees had agreed to contribute specific amounts toward a program of guaranteed benefits with management contributing the balance of the total cost, it does not follow that in doing so they forfeited their right to know the costs of the benefits and the disposition of reserves or dividends.

The General Motors welfare program.—While a number of unilaterally administered level-of-benefits plans were studied, time permitted a detailed examination of only one, namely, that of the General Motors Corp. Since this plan is set forth in detail in section VI, A of this report, only the handling of reserves and the lack of disclosure of the details of the financial operation will be dealt with here.

Estimates made by the subcommittee staff based on data supplied by General Motors indicate that prior to 1950, the General Motors

⁸ Ch. 932, Public Law 774, 81st Cong., 2d sess., secs. 402 (b) (1) and 702 (e).

hourly rate employees paid 43 percent of the cost of the GM-Metropolitan Life group insurance plan, the salaried employees paid 35 percent, and the corporation paid 22 percent. Application of a 42.7 percent factor (the proportion of total net cost represented by hourly rate contributions) to the \$8.7 million in extended life insurance and rate reduction reserves in effect on August 31, 1950, produces an amount of \$3,665,000. However, in 1950, when the hourly rate employees went under a collectively bargained plan, these as well as other reserves accumulated under the General Motors policy for salaried and hourly rate employees were left with the salaried group.

General Motors justifies this action on the basis that, since the employees were paying a specified amount toward benefits and the corporation was paying the balance of the cost, any reserves accumulated came from General Motors' share and should be treated as General Motors funds. However, General Motors deducted from taxable income the entire cost of its share of the program as part of its employees' compensation under section 162 (a) (1) of the Internal Revenue Code.

It was testified at the subcommittee's hearings that, by amendment to the General Motors-Metropolitan policy, reserves left with the salaried group could be used by the hourly group if needed. The facts reveal, however, that there was never any need for such use. Significantly, in 1952, a cash dividend in excess of \$3 million was paid to the corporation on the salaried portion of the risk, over \$2 million of which came from reductions in the old age extended insurance and rate reduction reserves which had become disproportionately large for the salaried group as a result of the hourly reserves being left with that group.

In 1950, new reserves were started for the hourly rate group and by December 1954 \$10 million in old age extended insurance and \$5 million in rate reduction reserves had been accumulated. Between 1950 and 1954, the division of total costs, percentage-wise, for this plan, including reserves, was as follows:

Hourly:	<i>Percent</i>
General Motors' share.....	43.1
Employees' share.....	56.9
Salaried:	
General Motors' share.....	23
Employees' share.....	77

As of December 1954, the Metropolitan Life Insurance Co. held \$33 million in reserves which had been accumulated from premiums jointly contributed by both employees and management. A large part of these reserves would be released by the Metropolitan and returned to General Motors if the policy provisions included for the additional protection of the older employees or other arrangements were to be canceled. The employees have no right to these reserves. These facts were unknown to the employees of General Motors until they came out at the subcommittee's public hearing on November 29, 1955.

Under present law and court decisions the subcommittee concludes that General Motors' contributions to this program are in the nature of compensation to its employees and therefore their interest in these funds (both their direct contributions and those of the corporation) dictates their right to know what the insurance costs are, how the policy is managed and what reserves are behind the policy. The

subcommittee believes that General Motors' withholding of the details on the financing of the insurance plan from its employees is a serious defect in an otherwise good program.

(B) UNION-ADMINISTERED PLANS

This type of plan comprises a very small minority of all plans and no detailed investigation was made. Several programs were encountered, however, in which unions had taken over all administration in apparent violation of the joint management requirements of the Taft-Hartley Act. In addition to violations of the act where employer contributions went to union plans which had no jointly managed trust, the subcommittee found cases where there were commingling of union and welfare funds, use of funds for other than welfare purposes, favoritism in the payment of claims, extravagances, mismanagement, and one-man domination.

In what was formerly the UAW-AFL Amalgamated Local 286, Chicago, Ill., the union president, Angelo Inciso, insisted that the thirty-odd employers in the plan pay their insurance contributions as union dues (see sec. VII, A). (As of April 1, 1956, Angelo Inciso ceased to be an officer or member of the international union and, similarly, Local No. 286 was no longer affiliated with this international union.) This was an obvious circumvention of the Taft-Hartley provisions. The welfare plan was wholly union controlled. There was a complete commingling of moneys used for insurance and union operation, including dividends (approximately \$30,000) from the insurance. Inciso gained control of a small insurance company, switched the group policy to that company and managed its affairs without regard to regulation and sound insurance practices. He used the commingled funds for lavish gifts, luxury trips to resorts and abroad, and withdrew large sums for which he made no accounting. No adequate records were kept, no audits were conducted, and no proper accounting was made to the union members.

In the Pointers, Cleaners, and Caulkers Local 52 welfare fund, Chicago, Ill., a similar pattern emerged. There was a disregard for the provisions of the Taft-Hartley Act. There was no written collective bargaining agreement, no trust agreement setting up the welfare plan, and the welfare fund was entirely controlled and managed by James Gallagher, head of the union. However, testimony disclosed that management had made persistent efforts to secure such a trust agreement and failed because of lack of cooperation on the part of union officers. As the contributions flowed in they were siphoned off into a union fund and used for miscellaneous purposes, including unaccounted for large cash withdrawals. The plan was self-insured but no benefits were specified and those paid consisted of handouts at Gallagher's discretion, without any adequate accounting.

An examination was made of two so-called union welfare plans of locals of the United Association of Journeymen, Plumbers, and Apprentices of the Plumbing and Pipefitting Industries, Local 102, Knoxville, Tenn., and Local 211, Houston, Tex.⁹

In the Knoxville plan \$2 weekly payments were required from all union members working in that area, who were not members of local 102, for an alleged "welfare fund." According to union records,

⁹ See sec. VII, H, p. 286 *infra*.

\$129,000 was collected for this purpose but the local's officials admitted that not one cent of welfare benefits was paid from these funds.

In the Houston plan a similar practice was engaged in; weekly payments were collected from union members who were not members of this local. According to union records, \$95,000 was collected, approximately \$37,500 was paid out in benefits and the remainder was used for union business. The benefits paid in the Houston plan were to members of the local only, although the collections came exclusively from nonmembers of the local.

(C) JOINTLY ADMINISTERED AND MULTIEMPLOYER PLANS

The contributions for benefits in jointly administered single or multiemployer plans set up in conformance with the provisions of the Labor Management Relations Act, 1947, flow into a trust fund from which either premiums for insurance benefits are paid or the benefits are provided through self-insurance. Many abuses and problems have been found in this type of plan. A great deal of this subcommittee's and other Federal and State governmental committees' attention has been given to this type of plan, which covers less than 10 percent of employees receiving group benefits under all types of plans.

Reported scandals in these jointly administered plans first focused attention on the lack of control surrounding the employee welfare program administration. Frequently, a characteristic weakness of this type of plan, particularly in the multiemployer plan, is diffusion of responsibility. Employers typically agree to contribute on a cents-per-hour or percentage-of-payroll basis and then too often take the position that their responsibility is ended, which permits unscrupulous trustees and others to control the fund.

This type of plan in conformity with requirements of the Labor Management Relations Act, 1947, must have an equal number of employer and employee trustees. Theoretically, this should give a balance of control between management and labor. It is probably, in part, because of this joint representation that wrongdoing has been brought to light in many cases, since in the unilateral plan the administrator himself is the only source of complaint.

Some excellently operated jointly managed multiemployer plans have been reviewed by the subcommittee. Where there is conscientious, reasonable, and intelligent application to the administration of such plans, both by employer and employee representatives, the operation has been found to be exemplary.

(1) *Malfeasance and nonfeasance*

Many of the abuses in welfare funds have at their source the failure of trustees to be true to their trust. Union trustees have often used their trusteeships to serve personal gain. Employer trustees have sometimes connived with union trustees in such instances and at other times have closed their eyes. It was frequently found that employer trustees of joint funds completely abdicated their responsibilities. The subcommittee found instances of plans in which there had not been a meeting of the trustees for several years. In some instances, employer representatives took no interest whatever in the operation of the fund. In others, employer representatives designedly gave full control to the union in the hope that the union would eventually be discredited.

On the other hand, employer representatives in some cases were subjected to coercion.

The LWIU welfare fund case presents a good example of non-feasance on the part of trustees. Though the trustees in that case did not engage in all of the practices criticized in the paragraph above, they at least were remiss in certain of their responsibilities to the detriment of the beneficiaries of the fund. They appointed a broker as their agent to handle insurance premiums without making arrangements to review his activities; the broker subsequently embezzled some \$900,000 of these premiums, part of which was kicked back to an official of the Laundry Workers International Union. They permitted moneys secured through a discount in premium to be paid to welfare deputies appointed by the union without requiring any accounting for the expenditures by these deputies. Though they had certified public accountants to audit the fund, they did not see that a reconciliation was made with the insurance company. This case is discussed at length in the subcommittee's July 20, 1955, interim report.

(2) *Employer failure to make contributions*

Another problem which has arisen in the multiemployer jointly managed type of plan is the failure of some employers to make their agreed-upon contributions. The United Mine Workers report that they generally have about 30 suits pending to collect delinquent payments and that as of August 1954, they were suing some 15 delinquent coal operators to collect over \$300,000 due in royalty payments. In a Philadelphia fund reviewed by the staff, 75 percent of 140 employers were more than 2 months delinquent in their contributions.

(3) *Favored treatment to certain employers*

An offspring of the delinquent-payment problem is favored treatment of contributing employers. The examination of a Pennsylvania multiemployer welfare fund showed that some employers made no contributions. The fund records showed that more than 100 (or over 20 percent) of the contributing employers were delinquent in payments. In some plans examined there were indications that the business agents of the union may have made off-the-record settlements with the delinquent employers. This is a serious abuse.

2. PROBLEMS AND ABUSES INCIDENT TO THE PROCUREMENT OF INSURANCE

Even when welfare-plan contributions escape abuse at the source, and are placed on the conveyor belt as welfare plan insurance premium payments, investigation has amply demonstrated that, under the lack of existing controls, they are still vulnerable to dissipation and abusive practices.

Practically all welfare plans provide their benefits through the medium of insurance, and investigation has revealed that abuses and problems in welfare plan and fund administration sometimes arise in connection with the procurement of that insurance.

The insurance industry in the United States has been a tremendous influence in spreading economic security and has made it possible for employers to voluntarily supplement the Government's social-security system through group insurance. On the whole it is a highly efficient though complex industry, but its growth and interstate character in

the group field have made the opportunity for abuse great because State controls are inadequate.

Before a discussion of the problems and abuses incident to the procurement of insurance, it is believed that a short discussion of some of the salient characteristics will be helpful.

(A) HOW GROUP INSURANCE WORKS¹⁰

Although group insurance is sold by several hundred companies, the 10 largest companies probably write 85 percent of the business. Competition among them is intense.

The important characteristics of group insurance are: (1) with rare exceptions the agency system of distribution is used—as it is for other types of insurance; and (2) the claims experience of a given policy is the main factor controlling its costs, that is, each group is subject to experience rating.

For convenience, the following discussion will deal first, with the companies' relations with their agents and brokers; and second, with their relations with their policyholders.

It should be pointed out that the majority of the companies writing by far the greater percentage of group insurance are licensed to do business in the State of New York and, therefore, must comply with the laws and regulations of the department of insurance of that State. Therefore, when reference is made in this discussion to State requirements, the subcommittee principally has in mind those of the State of New York.

(1) *The agency system*

Typically, an insurance company obtains its business through general agents who, in turn, obtain most of their business through soliciting agents and brokers. In this kind of an arrangement, the company sometimes has little or no contact with the policyholder. Because of the technical nature of group insurance, the companies maintain special group departments, branch offices and field representatives to assist agents and brokers to obtain and retain business. Home and branch office personnel and field representatives are salaried company employees. Agents and brokers are paid commissions.

Commissions vary with the different companies. Typically, commissions are paid for 10 years provided the policy remains on the books. In addition, arrangements are frequently made for the continuance of commissions beyond this period as long as the policy remains in force. Generally there are two types of commissions: A large first-year commission, followed by smaller renewal commissions; or a smaller flat commission payable at the same rate—first year and renewal—calculated to produce the same amounts over a 10-year period. Again, typically, commission schedules are on a decremental scale, the rate becoming smaller as the amount of premium increases. For example, a frequently used scale calls for first-year commissions of 20 percent of the first \$5,000 of billed premium graded downward to 15 percent on the next \$5,000 and so on down to one-half of 1 percent, and less, on amounts in excess of \$500,000. It is on policies carrying yearly premiums of less than \$50,000 that such com-

¹⁰ The following discussion is limited to the manner in which commercial insurance carriers operate. Blue Cross and Blue Shield organizations function in an entirely different manner. No examination was made of their operations in connection with this study.

mission scales result in a material part of the premium dollar being paid to the broker. Renewal commissions are at 5 percent on the first \$1,000 of billed premium, 3 percent on the next \$4,000 and graded downward to one-half of 1 percent, and less, on amounts in excess of \$500,000. General agents receive an overriding commission on business placed through them by brokers. Some State insurance departments, as in New York, require the filing of commission schedules. Further some require that a commission must be charged on every case whether or not one was paid. Failure to do so is considered a form of rebating or discrimination and outlawed as such. The amount saved by not paying such commissions serves to reduce the insurance companies' overhead charges to all similar policyholders.

Administration of the group insurance business is such that carriers often enter into arrangements with agents or brokers or policyholders to perform much of the recordkeeping, accounting, issuance of certificates to the employees, claims handling, etc. When these functions are performed by an agent or broker, he is paid an administration or service fee by the company. When the policyholder does the job, he is given an administration allowance or premium discount. A few companies have arrangements with their most productive agents whereby the latter conduct virtually all the transactions with the policyholders. The agents bill their policyholders and remit net to the company.

(2) *Premium rates and experience rating*

The cost of group insurance to the policyholder is vitally affected by the claims experience of the group insured.

For the first year, the premium rate for life insurance is computed on the basis of the commissioners standard ordinary rate which is the same for all companies. For the other coverages, each company files with the State insurance department its own manual rate to which it is supposed to adhere. For second and subsequent years, the company generally varies the rate in accordance with the claims experience of the group. It may increase the premium rate if the ratio of claims incurred to billed premium is dangerously high; or it may reduce it if the experience is good. Sometimes fluctuating experience is met by an adjustment in the form of a dividend (if a mutual company) or an experience rating refund or retroactive rate reduction (if a stock company). The amount of this adjustment is computed in accordance with a retention formula, "retention" being defined as the "difference between the billed premium and the total of claims incurred and dividends." This retention is intended to cover commissions and other costs of obtaining the business, all administration costs, risk charges, taxes, reserves, and a surplus (or profit, in the case of a stock company). To the policyholder "retention" represents the amount of premium returned as claim payments plus that retained by the insurance carrier.

Significance of insurance practices.—The subcommittee has found that the procedures sketched above make irregularities possible. In short, to the extent that an insurance company's practices are flexible it makes available moneys that find their way to individuals who perform little or no service but who are in a position to swing the business. All of this adds to the cost of the insurance, affects the amount of the protection that can be afforded to the employees in whose interest the insurance has been obtained and the economic security of these employees.

Moreover, even when irregularities do not take place, group insurance is so complex and technical that policyholders who are not as sophisticated as others, or who do not have the benefit of expert advice, may be buying insurance at higher net cost than those who are more knowledgeable or better served. It has been pointed out that some insurance carriers do not treat all policyholders alike (see sec. VII).

One more point need be made. The importance of New York State as an industrial, commercial, and financial center makes it an ideal market for group insurance. Most companies want to do business in that State. The New York State Department of Insurance requires that insurance companies, wherever located, must conduct their entire business in accordance with New York State regulations if they want to do business in New York.

(B) LIMITATIONS OF INVESTIGATION OF INSURANCE PRACTICES

In the fall of 1954, the subcommittee sent questionnaires to all commercial insurance carriers doing group business. It confined its requests to group insurance issued to welfare funds and to other entities under arrangements whereby a trade union had a voice in the selection of the insurance carrier. On the basis of these questionnaires, the subcommittee found that certain companies had paid relatively higher commissions and service fees, and had enjoyed relatively higher retentions on the cases they reported (see schedules, sec. IX).

In view of the extremely large number of employer-administered insured plans (over 70,000), the subcommittee did not find it practical to ask insurance companies to furnish reports on such plans.

Irregular insurance practices were encountered in a high percentage of cases investigated by the subcommittee and field studies of these practices at the insurance company level were initiated last October. Rather intensive inquiries were made of two medium-sized companies which fully cooperated with the subcommittee staff. There is no reason to believe that the numerous questionable practices found to exist there in the handling of welfare plan group policies are peculiar to these companies. The indications were quite to the contrary and officials of the two companies testified that many of the practices were common throughout the industry. Inquiries at eight other companies reflected similar questionable and unusual practices. In some cases, these practices included special arrangements with favored brokers to pay extra commissions contingent upon favorable claims experience without the policyholder's knowledge, the effect being to reduce dividends; the payment of high flat commissions or a combination of commissions and administrative fees amounting to excessive payments; payment of administrative fees to persons who performed no services; inconsistent treatment of policyholders; withholding dividends earned, and charging excessive retentions despite good experience.

The subcommittee studies at the insurance company level in no way represent a comprehensive survey of the industry as a whole and no assumption is made that the entire industry engages in all the practices described. In fact the subcommittee believes that such practices are not engaged in my many companies. However, the practices uncovered, regardless of their extensiveness, are considered so

serious that if no action is taken by way of Federal disclosure legislation, the subcommittee feels that investigation in this area should continue.

(C) HIGH COMMISSIONS

Computing commissions on separate coverages.—The first interim report of this subcommittee discussed the manner in which commission schedules operate. That report points out that insurance carriers to varying degrees calculate commissions by applying the schedule to the premium on the coverages (type of benefit) separately rather than on the entire package. The effect of this practice is to increase materially the amount of the commissions payable on a particular case. The first interim report illustrates how on a case involving \$25,000 of annual premium, the commission schedule of 20 percent and 5 percent graded when applied to the \$25,000 would result in a first year commission of \$3,500 (14 percent) and renewal commissions of \$470 (1.9 percent) whereas if applied on the same amount divided evenly among the different coverages, the first year commission would be \$4,719 (18.9 percent) and the renewal commissions \$791 (3.2 percent).

This practice is found throughout the insurance industry and is indulged in by large as well as small carriers. For example, the Aetna Life Insurance Co., second largest group insurance carrier in the country, in reporting information requested by the subcommittee in 1954, set out the following with respect to commissions to agents and brokers:

Commissions on group policies in general: Group life, group accidental death and dismemberment, group disability, group hospitalization (including group surgical, etc.), and group major medical coverages, whether issued through a separate policy or through a rider to a policy, will each be considered as a separate policy for commission purposes.

Commissions on such policies will normally be computed by applying the commission rates indicated in either of the foregoing commission schedules to the premiums developed by the policy.

The "foregoing" commission schedules consisted of two decremental scales, one providing high first year and lower renewal year commissions decreasing in ratio to increased premium volume. The other provided lower, flat commissions for both first and renewal year premiums. It is understood that Aetna and most other companies will combine the coverages for commission purposes upon request by the policyholder.

Some carriers combine the premiums on fewer different types of coverages than others. Many companies figure commissions on 2 groups of coverage (life and casualty) but some companies figure commissions on as many as 5 different types of coverage. This manner of computing commissions, of course, is used regardless of the type of policyholder.

Setting up special commission schedules.—Certain insurance carriers set up special commission schedules to accommodate various brokers. Examples of this are the special commission arrangements entered into between the Security Mutual Life Insurance Co. and

Louis B. Saperstein; the Washington National Insurance Co. and the firm of Dash & Love, and the broker Harry D. Epstein; the Continental Assurance Co. and the firm of C. J. Simons Corp.; and the commission scales of the Mutual Benefit Health and Accident Association of Omaha.

It may be pointed out that, in the aggregate, commissions paid on 1,596 cases in force in 1952 reported by 70 carriers amounted to 3.4 percent of billed premiums.

In 1950, Louis B. Saperstein approached the Security Mutual Life Insurance Co. to underwrite a group insurance plan for the Laundry Workers International Union welfare fund if it would pay him his "regular" commission. He had life contracts with this company to receive a flat 10-percent first year renewal commission on all group business produced. The record shows that from April 1, 1950, to September 30, 1953, this broker received flat annual commissions of 10 percent on this case, or a total of some \$262,500, on total premiums of \$2,364,709.57, or approximately \$700,000 annually. Under a typical decremental scale he would have received approximately \$8,500 the first year and renewal commissions of about \$3,850, or a total of approximately \$18,125 for the 3-year period. In the case of this broker, the company established a commission scale acceptable to him in order to get his business. In 1953, when the company, after conferring with the New York State Insurance Department, informed Saperstein that it would have to reduce the commission, the insurance was shifted to another insurance company. Saperstein, as broker of record, received a commission of 6 percent plus an overriding commission of 2.5 percent as general agent of the new company. With respect to Saperstein's arrangements with Security Mutual, it should be noted that his contact within that company was primarily H. B. Wickes, vice president in charge of group operations. The subcommittee in its interim report of July 20, 1955, described the activities of Wickes in this case as subject to serious question, and stated that he unquestionably utilized his position with Security Mutual and his knowledge of the LWIU case to his own personal advantage.

An example of how an insurance company may have utilized excessive commissions to break into the group insurance field is that of the Mutual Benefit Health & Accident Association and Companion Life Insurance Co. (its affiliate). Mutual's annual group premium receipts increased from \$2 million in 1952 to \$12,600,000 in 1954. In the latter part of 1954 its commission scales provided as much as 30 percent graded the first year and 7 percent graded renewals—far in excess of the typical commission schedule.

Contingent commissions.—In addition to regular commissions, special arrangements were entered into by the Washington National Insurance Co. and the Continental Assurance Co. to pay extra commissions to certain brokers which were contingent upon the claims experience of the policies these brokers handled. In these cases, the lower the claims, the greater the extra commission. This practice certainly does not serve the best interests of the policyholders and beneficiaries. It is a built-in incentive to hold down claims which can result in denying just benefits to the beneficiaries in whose behalf the insurance has been issued. It is especially difficult to condone when, as in these cases, the policyholders were not aware of its existence.

The Washington National Insurance Co. paid the extra commissions, which it deducted from the policyholders' dividends, to two brokers, Dash & Love and Harry D. Epstein. This contingent commission amounted to 10 percent of earned premium on each of the group policies on which they were listed as broker of record and which developed a favorable claims experience. According to company figures, payments made to Dash & Love since 1952, and to Harry D. Epstein since 1951, are as follows:

Item	Dash & Love		Harry D. Epstein	
	Amount	Percent	Amount	Percent
Premiums.....	\$481,201	100.0	\$510,505	100.0
Total commission.....	65,008	13.5	61,151	12.0
Regular commission.....	42,560	8.8	48,414	9.5
Contingent commission.....	22,448	4.7	13,737	2.5

With respect to Harry D. Epstein, the company had an additional arrangement to assure him adequate compensation for his work in the handling of claims. It set up a "special claims account" of \$4,200 per year against which he could draw \$350 monthly. If the 10 percent contingency commissions should fail to yield \$4,200 in any 1 year, the company would make up the difference.

The effect of the contingency commission arrangement is to reduce the experience rating refunds payable to the policyholders. This is strikingly illustrated in the case of the Boot and Shoe Workers Union group insurance plans where the extra commissions paid to Dash & Love during the 3 policy years ending in 1952, 1953 and 1954 were several times the dividends paid the policyholders. The dividends in each of 3 policy years were divided as follows:

Policy year	Total	To Dash & Love	To policyholder
Dec. 1, 1951-Nov. 30, 1952.....	\$15,649	\$6,322	\$9,327
Dec. 1, 1952-Nov. 30, 1953.....	8,021	6,982	1,039
Dec. 1, 1953-Nov. 30, 1954.....	6,202	5,000	1,202

The experience on certain other policies was such that Dash & Love received extra commissions, while the policyholders received no dividends.

The extra commissions were payable on all policies—whether issued to a welfare fund, a union, or to an individual employer. In the case of Amalgamated Local 195 of the Meat Cutters and Butcher Workmen's Union, 3 policies were issued to the union and 5 to individual employers.

The testimony with respect to these two brokers makes it clear that neither the union nor the policyholders knew of these arrangements. One of these employers stated that he never heard of Dash & Love; that to his knowledge there was no broker on the case; and that all his dealings had been with the insurance company's field representative. Another stated that he had never seen either Dash or Love.

Similar assertions regarding commissions were made by union officials and employers in the Boot and Shoe welfare plans, where the policies were issued jointly to the union and the individual employers.

In another case involving the plan of the Torsion Balance Co., Clifton, N. J., a company official indicated that he had no knowledge of the fact that extra commissions were paid to Harry D. Epstein and deducted from the dividend that his company would otherwise receive.

The Continental Assurance Co. entered into an arrangement with the C. J. Simons Corporation of Newark, N. J., its general agent, whereby the company agreed to pay the corporation an annual "contingency bonus" or extra commission of from 2 to 10 percent of billed premiums depending on the claims experience on its entire business. The premium volume ranged between 2 and 3 million dollars per year. During the period 1951-55, the C. J. Simons Corp.'s contingency bonus alone totaled \$208,000. Again, this applied to any policy whether issued to a union, a welfare fund, or an employer policyholder.

There are numerous instances involving high commission arrangements which clearly gouge welfare-plan beneficiaries. It is seriously questionable whether such arrangements are necessary. Group insurance is bought and not sold in many cases. Too often it was found that most, if not all, of the administrative work connected with the insurance phase of welfare plans was performed by salaried personnel of the carrier while the producer (agent or broker) reaped the benefit of excess commissions and fees simply for having obtained the business.

(D) SERVICE AND ADMINISTRATION FEES

The nature of group insurance makes it practical, where a reasonably large group is involved, for the insurance carrier to delegate certain administrative functions to the policyholder. These generally include issuance of certificates to the employees, accounting of monthly premiums due the carrier, determination of eligibility for coverage and even payment of claims. Generally, a policyholder is given a premium discount (typically, of 1 to 3 percent) or additional dividend for performing these functions. The subcommittee's studies show that with respect to policies in force in 1952, 27 of 43 companies with a substantial volume of business paid service fees. Eleven companies paid fees of 2 percent or more of billed premiums.

However, many instances were found in which liberal service fees were paid not only to agents and policyholders but also to other persons who performed little or no service. In effect, these fees when paid to an agent are additional commissions. When paid to a third party, they verge on kickbacks, rebates, or commissions to an unlicensed agent.

Testimony before the subcommittee revealed many instances in which agents received unduly high service fees under circumstances that raise grave doubts as to the extent to which they were earned. For example, Eastern Casualty Co. paid the Cardinal Agency 7.5 percent until 1953 when the amount was reduced to 3 percent. This was in addition to 15 percent flat commissions on first year and renewal premiums. It paid the Alcor Agency 5 percent in addition to flat commissions of 12.5 percent. An official of the company testified that the fees were paid as compensation for administrative functions such as billing and claims processing.

The Mutual Benefit Health & Accident Association (Mutual of Omaha) combined various decremental commission schedules with incremental service fees which in effect resulted in a flat rather than a graded yield to the agents or brokers. As its volume of business increased, it gradually adjusted its commission and fee agreements with its agents. At present the company pays the standard graded 20 percent first year and 5 percent renewal commissions on new business. Service fees are at a level 3 or 4 percent. An example of how the earlier incremental service fee schedule worked is illustrated in the joint welfare fund of the International Union of Operating Engineers, Locals 14 and 15. In this case, according to an administration contract entered into April 30, 1952, between Mutual and the agent, Alphonse C. Corcillo, no first year fee was paid on the first \$20,000 of premium, but the fee then ranged from 5 percent on the next \$10,000 of premium up to 14.9 percent on all in excess of \$500,000. Renewal fees rose from 10 percent on the first \$10,000 of premium to 14.9 percent on all in excess of \$500,000. The use of an incremental scale for computing commissions and fees is contrary to general practice. Under this arrangement, Corcillo received combined commissions and service fees of 16.2 percent and 15.7 percent during policy years 1952-53 and 1953-54, respectively, on gross premiums totaling about \$187,000 in 1952-53, and about \$185,000 in 1953-54. As of April 1, 1954, Mutual initiated a policy of reducing service-fee payments to a flat 4 percent with the result that, in this particular case, combined commissions and service fees amounted to only 6.4 percent of gross premium of a little over \$303,000.

In another case, Local 445 of the International Brotherhood of Teamsters welfare fund, Victor D. Levitt, Jr., the broker for Mutual Benefit Health & Accident Association, was paid in addition to the regular and overriding commission, first-year service fees of 10 percent on the first \$1,000, graded down to 5 percent on all in excess of \$50,000, and on renewals 5 percent on the first \$1,000 graded up to 9 percent on all in excess of \$50,000. Companion Life, which carried the life insurance, paid the regular commissions plus a flat service fee of 6.5 percent for first year and renewal. Thus, this broker received combined renewal fees and commissions amounting to a flat 10 percent.

Many other instances were found where fees, as distinguished from commissions, were paid to agents. Among them were the administration fees of 4 percent paid by the Continental Assurance Co. to the C. J. Simons Corp. This, in spite of the fact that the agency was receiving a contingency bonus in addition to its regular commissions.

A novel arrangement was entered into by Dash & Love, the broker in the case, and Michael Tesoro, eastern representative of the boot and shoe workers union, in the welfare plans of that union carried by Washington National. In this situation, Dash & Love agreed to handle the union's insurance details in return for one-half of the dividends received by the union. In this case, the agents were already receiving extra commissions which were deducted from the policyholder's dividends. Thus they received, in addition, one-half of the dividends remaining payable to the policyholders.

The subcommittee is firmly convinced that such practices are wholly unreasonable and unwarranted. They represent an unnecessarily high charge against the beneficiaries, increase the net cost of insurance and

reduce the amount of money available for benefits to employees. There is no logical reason or justification for thus increasing the size of the payments to agents and brokers.

Policyholders and third-party fees.—Even more questionable is the payment of administration fees to certain policyholders or to other third parties who are in a position to swing the business but whose part in the administration of the plans is difficult to define. The most glaring example involves the Laundry Workers International Union welfare fund policy with the Security Mutual Life Insurance Co. Testimony showed that the company paid \$85,000 to E. C. James, as acting secretary-treasurer of the union, from September 1951 to October 1953, at the rate of \$2,500 monthly, allegedly for expenses incurred by the union in promoting its welfare plan. In addition, the company had agreed, in October 1950, to allow a 5-percent premium deduction to the fund to take care of administrative costs in processing and screening the claims.

The 5 per cent was allowed, allegedly because the company did not have the field staff necessary to service this nationwide fund. The trustees of the fund agreed that welfare deputies be appointed in each section of the country where the plan operated. Thus, by March 1955, 33 such deputies were appointed. They were paid 5 percent of the premiums paid on behalf of the members of the locals for which they were deputies. For example, James, as welfare deputy for Local 46 (Chicago) received almost \$78,000 from October 1, 1950, through September 30, 1954. Appearing before the subcommittee on March 29, 1955, James refused to tell how he handled this money on the ground that his answer might incriminate him. An interesting fact, in this connection, is that one of the welfare deputies, Sidney Brennan, was not a member of the Laundry Workers International Union but was a vice president of the Brotherhood of Teamsters. He received almost \$12,000 from 1952 through 1954.

The overloading of such costs to the premium is illustrative of both the insurance company's and the union and management trustees' disregard of the interest of the employees.

An unusual arrangement was uncovered by the subcommittee in which Mutual of Omaha insured some 3,600 members of 4 locals of the Mine, Mill and Smelter Workers Union employed by the Anaconda Copper Co. In this case, the company sought to reduce the commission of the regular agents in the case because it had agreed to pay a service fee to the union's insurance consultant, Paul Pinsky of San Francisco. From the facts available on this case, it is entirely possible that the service fees were nothing more than an inducement to retain the business.

In the cases in which Harry D. Epstein was broker, a pattern of 5 percent administration fees paid to union officials was developed. Washington National loaded the insurance premium by 5 percent to produce these fees. An insurance company official testified that these individuals contacted union members to explain the insurance program to them. The company also took the position that it had no legal obligations to verify whether these individuals actually rendered any service. In view of the fact that Epstein was already receiving liberal commissions, plus an extra contingency commission, was this not indeed a "loading" of the premium? It was testified that while Epstein denied that these fees represented a return for favors

rendered, he readily admitted that the "administrators" were union officials through whom he originally obtained the business.

In one welfare fund case involving Local 262 of the Bakery, Confectionery and Cannery Workers Union, Newark, N. J., Washington National paid over \$10,300 during a 4-year period to two coadministrators who were also officials of the local. Evidence shows that during the first 3 years, the company's checks were endorsed by the two coadministrators of the fund. These individuals, in addition, received small salaries and expense allowances from the fund plus, of course, their salaries as union officials.

Another case handled by Epstein concerns the Torsion Balance Co., of Clifton, N. J. This firm was the holder of a policy issued in 1953. In the 2 following years, it paid premiums totaling almost \$12,800. Washington National paid administration fees of 5 percent, first to James Grafagnino, a former official of the International Jewelry Workers Union, and then to his father-in-law, Dominic Tripode, an official of the local. Since the plan was a unilateral employer-administered plan, neither of these persons had taken any part in its administration. Company officials had never even heard of the first individual.

Testimony with respect to the Continental Assurance Co. is full of instances in which the company paid fees running as high as 6 percent to trustees of welfare funds who, in fact, performed no administrative functions. In some of these, the brokers or agents were already receiving administration fees. In one case, an insurance company employee questioned the administrative fee arrangements made by the branch office since the home office performed all administrative functions. In still other cases, allowances for administrative fees were being made in order to retain the business, although no administrative functions were performed.

Testifying before the subcommittee, officials of Continental Assurance Co. had difficulty in defining the administrative functions of these individuals. Upon further questioning, the company's vice president testified that 1 to 3 percent was an adequate administration fee. With respect to administrative allowances made to trust funds, these officials testified that they saw no reason why a trustee, as a policyholder, who chose to have his experience rating refund divided into two parts—one labeled "administration allowance," the other, "refund," should not be accommodated. It was the policyholder's money, they said, and he could get it any way he saw fit.

In too many cases, the use of administrative fees by individual trustees borders on a racket. In the C. J. Simons case, this agent of Continental was obviously paying administration fees out of his commissions and fees to various individuals in a position to swing business to him.

The practices described above are vicious. In the Simons case, the testimony tells the sad story of a broker who had to pay so-called administration fees to various and sundry individuals in order to obtain and keep a gross yearly business of between \$2 and \$3 million. Apparently, these were paid out of moneys received from the insurance company as commissions and fees. This agent's commitments were such that this source of funds eventually became insufficient and he began to withhold premiums from the insurance carrier.

(E) "SWITCHING"

"Switching" is the practice of transferring insurance from one carrier to another without disclosing the costs involved to the policyholder. "Control" of cases by agents and brokers is a common group insurance phenomenon. Switching involves the payment of high first-year commissions all over again. A "switch" means that installation costs and contingency and other risk-sharing reserves accumulated by one insurance company must be reaccumulated by the new carrier.

Based on reports from insurance carriers, the subcommittee's statistical analysis of group insurance transactions in cases where the union had some voice in the selection of the carrier shows that out of the 2,073 policies reported in force at the end of 1953, 10 percent had been shifted from one carrier to another. Of course, there are cases in which a carrier wants to "get off the risk" and advises the policyholder that his policy will not be renewed. In such cases, the latter seeks out a company that will take his risk and usually finds one. There are also cases in which the policyholder is not satisfied with the treatment he gets from the carrier and transfers his insurance to another. The record, however, shows cases, such as the LWIU-Saperstein case, where carriers were switched because the one would no longer continue the commission and fee arrangements. In this case, both Saperstein and certain of the fund trustees went to great lengths to make the switch.

Another example of switching is found in an insurance plan involving Local 195, Meat Cutters and Butcher Workmen of North America, Philadelphia. This plan was originally underwritten by the Continental Casualty Co., of Chicago, Ill., on January 1, 1952, through a broker, Dash & Love. A year later, it was switched to the Washington National Insurance Co. under commission arrangements which were more favorable to the broker. Some employers who were contributing to the program first learned of the change after it had been made.

This same broker handled an insurance plan involving the Boot and Shoe Workers Union, Philadelphia, which also was insured by Continental from August 1950 to December 1951, when it was likewise switched to Washington National.

In the Torsion Balance case, already cited, the insurance coverages had originally been carried by the State Mutual Life Insurance Co. and the Security Mutual Life Insurance Co. The agreement between this employer and the union (Playthings, Jewelry, and Novelty Workers International Union, CIO, Local 306) called for a specified program of benefits. In November 1952, a new agreement was entered into providing for contributions of $3\frac{3}{4}$ cents per hour, or \$6.49 monthly per employee, into a "fund" to be used for the purchase of insurance. At that time, the union requested the company, in writing, to cancel the outstanding policies and to place the insurance with the Washington National Insurance Co. through Harry D. Epstein, broker. This was done. The employer was the policyholder and administered the plan. The commission and fee arrangements which Epstein enjoyed have already been cited.

During the subcommittee's hearings, an official of the Continental Assurance Co. testified on a case in which the C. J. Simons Corp.

was the agent, and in which the policy was canceled and reissued and, therefore, first-year commissions were paid twice. This official said, " * * * I certainly expect that the producer or someone must have decided that there was going to be a first-year commission paid on that case, anyway, if not with us, it could be placed with some other carrier * * * ." When asked whether it seemed worth doing—paying a new commission again in order to keep the business, he answered, " * * * in our judgment we found that is what we had to do; yes." ¹¹

(F) DISCRIMINATORY TREATMENT OF POLICYHOLDERS

In its study of group insurance practices, the subcommittee has found that some insurance companies have given certain policyholders better treatment than others. Insurance companies under intense competition have made concessions to get and retain business. The complexities of group insurance are such that only knowledgeable buyers are able to judge for themselves the quality or value of the policy they buy. The cost of group insurance is reflected in the premiums charged the policyholder and, having due regard to claims incurred, in the dividends or experience rating refunds allowed by the company. It has been found that the net cost of insurance varies among different policyholders having similar size and experience and is frequently governed not only by competition but by the acumen of the buyer.

The General Motors-Metropolitan Life Insurance Co. group insurance policy is an excellent example of the best kind of treatment accorded to a policyholder. The interest which General Motors receives on certain types of reserves, including its "mean fund," and the fact that the normal contingency reserves on this policy are reserved for the policy alone, and that they are possibly recapturable by the corporation, makes it a policy uniquely favorable to General Motors.

The complex dividend or retention formulas used by the different insurance carriers to determine the amount of the dividend or refund, if any, that will be paid a policyholder are held in great secrecy and only a few companies, hesitatingly, made them available to the subcommittee. Basically, these formulas take the following into account: commissions and service fees and other acquisition costs; taxes; risk charges; home and field office administration expenses; cost of handling claims and a host of other miscellaneous costs, as well as reserves and in the case of stock companies, profits. When these items are subtracted from the premium, the remainder may be paid out as dividends or experience rating refunds.

Theoretically, all group cases come up for dividend or retroactive rate credit consideration once a year. Actually many small cases do not. This was clearly shown during the hearings.

Obviously, the determination of the amount of dividend, if any, that would be available requires an examination of the experience of the individual case.

Testimony before the subcommittee that insurance companies sometimes pursue variable policies with respect to dividends or rate credit refunds is very clear. In its field investigations, the subcommittee found case after case in which insurance carriers after an exchange

¹¹ Hearings, pt. 3, pp. 1356-1357.

of correspondence with policyholders or their representatives have paid dividends that otherwise would not have been paid, or paid more because of pressure.

When asked to comment on the lack of uniform policy, one company official testified that “* * * everyone is not treated alike. That is another fallacy of this bonus or dividend system under which we operate.”¹² An official of another company stated “I think that is probably true of most every company, frankly, and I think that is something you no doubt wish to consider carefully. The squeaking wheel gets oil.”¹³

When asked whether this practice that results in one group policy getting better dividend treatment than another operates in the same manner whether the policyholder is a trust fund or a single employer, this same official answered, “I would say so, due to several reasons. One could be a far more able representative of theirs. A man trained in group insurance very often, I think, forces the hand of insurers on that point. * * *”¹⁴

It was brought out at the subcommittee hearings that premium rates have been lowered in cases in which the policyholder or his agent has exerted some pressure on the carrier.

With respect to first-year premiums, as already indicated, the rates are in a sense fixed. For life insurance, they are based on a standard rate which is uniform for all companies doing business in New York State. For accident and health insurance, they must conform to the rates filed by the companies. In actual cases, however, it is possible for an insurance company to file a schedule so designed that it can apply only to one case. This is sometimes resorted to when the case is a desirable one and various companies are competing for it.

More common, however, is the response to pressure that may be exerted when the policy is renewed on its anniversary dates. Since the life insurance premium for a given group may be expected to rise simply because the group, on the whole, has become older, companies commonly recalculate the rates periodically. The subcommittee developed instances in which policyholders, or their agents, challenged the announced increases and the companies reduced the increases or eliminated them altogether. If no questions were raised, the rates stood.

With respect to renewal rates for accident and health insurance, many cases were found in which the rates were reduced, not because of favorable experience, but simply because the policyholders, or their agents, complained to the companies. In some of these cases, other insurance carriers were interested in acquiring the business. There were other cases in which the claims experience caused the company to require a rate increase but on account of pressure from the policyholder (or the agent) reduced the increase or eliminated it altogether.

The subcommittee has found an interesting case which illustrates one of the effects of collective bargaining in the area of group insurance. In this case, the policyholder was an employer company. The insurance company informed its field representative that it hesitated to make a dividend payment. It gave as its reason that other employers in the industry had indicated they were not interested in dividends

¹² *Ibid.*, p. 1253.

¹³ *Ibid.*, p. 1366.

¹⁴ *Idem.*

because the insurance had been purchased under an agreement with the union by which the employer was obligated to pay a certain specific amount for insurance and dividends would only be turned over to the union.

(G) EMBEZZLEMENT

Two cases cited have received special attention from the subcommittee because they illustrate what can happen when insurance agents, insurance companies, union officials, and employers fail to appreciate the position of trust they occupy in the operation of welfare plans.

The Saperstein case.—This case has been fully discussed in the subcommittee's second interim report. In March 1951, the trustees of the social security department of the Laundry Workers International Union appointed Louis B. Saperstein as their "insurance agent" to handle its relations with the Security Mutual Life Insurance Co. At the same time, they passed a resolution providing that, henceforth, all premiums payable to Security Mutual should be paid to Saperstein for transmittal to the insurance company. This method continued to April 1954.

In October 1953, the policy was transferred to the California Life Insurance Co. By that time, the LWIU had paid almost \$3,268,600 in premium for insurance with Security Mutual. Records, however, indicate that the insurance company received only \$2,356,200, or almost \$912,400 less than it should have. The embezzlement of over \$900,000 was traced to Saperstein, who was obviously in collusion with at least one of the union officials, E. C. James, secretary-treasurer of the international.

This case involved 50,000 beneficiaries located in almost every State of the Union. It involved employer-employee trustees from five States, Indiana, New Jersey, California, Pennsylvania, and Illinois. The headquarters of the plan was at Indianapolis, Ind. The broker, Saperstein, operated in Newark, N. J. The insurance company was domiciled in New York State. The secretary-treasurer of the union, James, resided in Chicago. Besides the outright embezzlement of over \$900,000 there was a host of other abuses and irregularities. This case was fully documented by the subcommittee nearly a year ago and was referred for attention not only to the United States Department of Justice and the United States Internal Revenue Service, but to the appropriate legal authorities in the five States.

No action has been taken.

Mr. James is still secretary-treasurer of the international union.

This is a glaring example of the inadequacy of present laws at either the State or Federal level. It also rather conclusively points up the complete inability of State authority to cope with abuses of this scope.

The Simons case.—The C. J. Simons Corp., of Newark, N. J., is a large insurance agency and serves as the northern New Jersey general agent for the Continental Assurance Company of Chicago, Ill. During the period 1951 through 1954, this company did an annual group business amounting to approximately \$2.5 million in premiums. Evidence developed by this subcommittee at public hearings in December 1955 reflect that an officer of this firm, William H. Croland, treasurer, who owned a half interest in the corporation, embezzled at least \$164,000 in insurance premiums in transit from numerous joint and employer-administered plans to the insurance carrier.

It was further developed that the insurance company learned of this from the Simons Corp. between January and August 1954, but failed to notify any public authorities of this crime. The Continental Assurance Co. settled this embezzlement with the Simons Corp. civilly, making full allowances for commissions, administration fees, and contingent commissions on the embezzled money, and they continued to do business with this firm which is still licensed in the State of New Jersey. No prosecutive action in this case has been initiated although the money involved was paid for the benefit of dozens of welfare funds and tens of thousands of employees. It is believed that the course followed by the insurance company in regard to this matter should be subject to close scrutiny.

3. SOME OTHER PROBLEMS

(A) COLLECTIVE BARGAINING AND WELFARE PLANS

Collective bargaining has had a tremendous influence on the growth and form of welfare plans. It has set patterns and trends which influence the character of all plans. For one thing, whether a plan is included in a collective-bargaining agreement or not, it is subject to collective bargaining. This means that the employer must watch the trend of collectively bargained plans, even if he has no bargaining relations with a trade union.

Collective-bargaining agreements run for a specific term—1 year, 2 years, etc. The plan, then, is subject to change at the expiration of the agreement. If the agreement is not extended or renewed, the plan may be discontinued. It may be said, therefore, that the economic security provided the employee rests, to a great extent, on the fortunes of collective bargaining.

Since collective bargaining is a continuing process, the plan may not reach its final form for some years. For example, there are trust funds which, in the initial stages, receive higher contributions than the schedule of benefits warrants. In such plans, the parties involved intend to improve the plan at some future date after some experience has been developed. Conversely, there are plans which initially provide more liberal benefits than the contributions warrant, but the unions involved expect that once the plan has been established, the employers will agree to the needed higher contributions. Both of these arrangements present problems.

Employers having agreed to contributions towards a plan—whether they are the sole administrators or coadministrators—frequently feel that the plan is really the union's plan and, therefore, take little or no interest in it.

(B) PROBLEMS OF SMALL GROUPS

Small groups cannot purchase group insurance as advantageously as larger ones. In fact, although many insurance companies will issue group insurance to employers with as few as 25 employees, according to insurance-industry information compiled by the subcommittee (see sec. V) the cost of such coverage amounts to one-third of the total premiums paid as against something less than 5 percent on large group insurance policies. Of course, self-insurance is ruled out for small employers because of the prohibitive risk and expense.

The laws of three States—New York, New Jersey, and California—which require employers to provide sickness and accident insurance benefits for their employees, have created a demand for group insurance on the part of small employers. Although the insurance may be obtained from State funds, if the employers find it desirable, the fact remains that the savings available to larger groups cannot be enjoyed by small employers.

The multiemployer trust funds, therefore, fill a real need. Although the subcommittee's investigations have shown that, in some cases, these arrangements have resulted in a diffusion of interest between employer and union trustees, such funds have functioned to the benefit of the employees covered when all trustees and the fund administrators have taken their responsibilities seriously.

In the main, it is desirable for small employers to group together. By doing so, they can enjoy the savings of large group operations, whether they self-insure or purchase insurance. One of the problems, however, is that one employer group may enjoy a better claims experience than another. To that extent, he helps carry the groups having poorer experience.

(C) STATE REGULATIONS AND INTERSTATE COMMERCE

By policy the Federal Government has reserved the regulation of group insurance to the several States. While self-insured plans and welfare funds as such have not yet come under State regulation, this is presently being considered.

The adequacies of State legislation are fully discussed in section V. The importance of the New York State insurance laws and regulations is also fully treated, as this State exerts a very strong influence on the insurance business throughout the country. Nevertheless, while this is true, the only means at its disposal to enforce regulations with respect to out-of-State companies, agents, and brokers is to revoke their rights to do business in New York State. Only one example need be cited. In the Simons case, the State of New York revoked William Croland's broker license. He can no longer do business in New York State. However, Croland's office was located in Newark, N. J. and he was licensed to do business in that State. New Jersey, so far as is known, has not revoked his license and Croland is still functioning as an insurance broker in that State.

Most insurance companies do business in more than one State. Many do business in all States. They have to abide by the laws in each of the States, pay taxes to each of the States—at different rates—report to each of them, et cetera. Compliance with the different regulations of each of the States is cumbersome. However, the companies have adopted procedures to do this.

The sale of individual insurance is undoubtedly a local matter and its regulation may properly belong primarily within the jurisdiction of State authorities. Group insurance, under the complexities and intricacies of modern business, however, presents an entirely different situation. Surely, a group policy issued to the General Motors Corp., or the United States Steel Corp., has an interstate character. The General Motors' policy was issued by a New York insurance company. The policyholder's headquarters is in Detroit, Mich., and its em-

ployees are working in plants and offices all over the United States and in foreign countries.

Similarly, many welfare plans operate in several States. Let us take the laundry workers' welfare fund. The union has 55 locals throughout the United States and in Canada. The decision to set up a welfare plan was made in Chicago at a union convention. The first local to negotiate such a plan was local 46 in San Francisco, Calif. Headquarters for the fund was established in Indianapolis, Ind. The insurance was purchased through a Newark, N. J., broker from an insurance company located in Binghamton, N. Y. The broker maintains bank accounts in Chicago, San Francisco, and Newark—at least. The 6 trustees of the fund were selected on a geographical basis and come from 5 States. The welfare deputies who handled claims were located in 33 different sections of the country.

Premium checks originated in Indianapolis, Ind., where they were signed by the chairman of the board of trustees, then forwarded to San Francisco to be cosigned by the secretary-treasurer of the board, who, in turn, forwarded them to the insurance agent in Newark. The latter would then deposit the checks to one of his bank accounts. Claims checks would be drawn by the insurance carrier in New York and generally forwarded to the 33 welfare deputies all over the United States. Premiums were embezzled by the broker and sent from Newark to an officer of the international in Chicago. The effectiveness of State regulation of welfare plans of such geographical scope is open to question.

(D) INVESTMENT OF WELFARE FUND SURPLUSES

Welfare funds commonly consist of contributions made by employers and/or employees. Premiums to insurance carriers, in insured plans, are paid from the funds so accumulated; in self-insured plans, benefits are paid directly from these funds. Under both methods the funds generally accumulate surpluses. This raises the problem of investment.

Most fund trustees are very careful with the investment of such funds and the principle of diversity of investments has been generally adhered to. Some trustees are very conservative. Many tend to invest their funds almost entirely in Government securities. Some funds have been slow in selecting their investments, others have been over-anxious to be in a liquid position, and have permitted large amounts to accumulate in their bank accounts—at no interest.

Some funds have invested in ventures of a social nature. For example, the funds of the International Ladies Garment Workers, the Amalgamated Clothing Workers, and the United Mine Workers, have used surpluses to finance medical facilities to carry out their health programs. To the extent that such investments have been made only after due deliberation, that the ventures are efficiently run, and that sound principles of investments have not been violated, these may be desirable. The sponsors of such plans must, of course, be very careful that by drawing moneys from their funds for such purposes they do not drain their resources to the point that they cannot meet their cash obligations for other direct benefits or for the payment of insurance premiums.

Other ventures of a social nature, in which welfare funds have been invested, are housing and vacation camps. These frequently yield a return on the capital invested. As long as these ventures are operated in a businesslike manner with no ulterior motive, the subcommittee finds no fault with them. However, this principle as well as sound investment practices have been violated in some instances. The investment of \$15,000 of moneys accumulated in the Philadelphia Fur Workers Union, Local 53, health insurance fund, for example, raises many questions. This sum was invested in a mortgage on property owned by the New Kinderland Camp Corp. and Camp Lakeland, Inc. The mortgage actually was a prior claim on a \$90,000 mortgage consolidating a series of 8 mortgages, 7 of which were once held by the International Workers Order. This organization was found to be a Communist organization by the supreme court of the State of New York. The aforementioned camps were also managed by an individual who, in the opinion of a justice of the New York Supreme Court, was a well-known Communist Party member.

(1) *Mortgages on union property*

Some funds have invested surpluses in mortgages on office buildings occupied, in whole or in part, by the unions with which they are associated. While these may be sound investments, there is a question as to whether such investments should be made and whether they would have been made had the union not been located in the building.

The difficulty of establishing what is to the benefit of the union and what is to the benefit of the welfare fund in investments of this type, even though the investment is a sound one, is illustrated in the case of the laundry workers welfare plan. At one time the fund invested approximately \$26,000 in a first mortgage on an office building in which the offices of local 52 were located. The secretary-treasurer of this local is also a trustee of the fund.

(2) *Investments in employer property*

In general, investment in the property of an employer is subject to question. When the securities of an employer are freely traded in the various stock exchanges, inclusion of the securities of participating employers in a fund's investment portfolio may be quite accidental. Such funds will remain more steady if not tied too closely to the economic affluence of the employer. From the point of view of the interest of the beneficiary the tie-in of his economic security with the fortunes of his employer will, in times of stress, affect materially the soundness of the fund.

The subcommittee has found instances in which fund investments in employer properties raise many questions. Much publicity has recently been given to the investment of \$2 million from one of the welfare funds of the teamsters union in the common stock of the Montgomery Ward Co. There is little question of the soundness of this investment. The fund portfolio remained well balanced. The stock was purchased at \$60 and recently quoted on the New York Stock Exchange at \$85. Its marketability is beyond question. Yet, officials of the union do not hesitate to admit that the stock was purchased for publicity reasons. It had been trying to organize the company without success for many years. After the purchase of the

securities was announced, organizational activities proceeded with much success.

In the Inciso case, the former UAW-AFL Chicago Local 286 had called a strike against one of the employers. In the course of negotiations it developed that the employer was pressed for cash to meet certain heavy tax payments. The union told the employer that it would loan him the money he needed after the strike was settled. The strike was settled and the union loaned the employer \$40,000 and obtained a chattel mortgage on the employer's equipment.

Again, in the laundry workers case, the fund approved a loan of \$35,000 in a 5-percent mortgage on property occupied by the New Linen Supply Co. In this case, the property had been appraised at \$40,000.

(3) Ownership of insurance companies

Only a few welfare funds own insurance companies. Two well-known examples of ownership of insurance companies by welfare funds are the Amalgamated Life Insurance Company of New York and the Amalgamated Life & Health Insurance Company of Illinois, owned by welfare funds of the Amalgamated Clothing Workers of America. Their admitted assets are \$9,300,000 and \$2,600,000, respectively, and they appear to be operated efficiently. The companies were set up because, at the time, the well-known insurance carriers were reluctant to underwrite a multiemployer plan and to insure the members of the union at standard rates. The membership of this union includes a high proportion of women, is generally of a high-age group, includes a high proportion of non-Caucasians, and traditionally has more or less seasonal employment. The companies' business is restricted to the union's welfare funds. They now cover about 500,000 workers and pay benefits of approximately \$1 million a month. Their underwriting expense was 8.3 percent of premiums in 1954.

The former UAW-AFL Amalgamated Local 286 presents an example of union domination, without ownership, of an insurance company. Angelo Inciso, head of the union, took over and managed the American Continental Insurance Co. as he saw fit regardless of State insurance law and regulations.

In another case, the California Life Insurance Co. was purchased by the social security department of the Laundry Workers International Union. Negotiations leading to this purchase originated in April or May 1953 between the president of the California Life Insurance Co. and an individual who was at the time an officer of the Security Mutual Life Insurance Co. In July of the same year, Security Mutual informed the broker of record, Louis B. Saperstein, that his commissions would have to be reduced and certain administrative payments to Eugene C. James, secretary-treasurer of the Laundry Workers International, would have to be discontinued. As of August 6, 1953, a group of the trustees of the LWIU welfare fund, the broker Saperstein, the officer of Security Mutual who had by then left that company, and certain officials of the LWIU, secured control of California Life, utilizing private funds. As of October 1, 1953, the insurance of the LWIU welfare fund was changed from Security Mutual to California Life.

Subsequently, through a series of transactions culminating in April 1954, the control of California Life was transferred to the social security department of the LWIU welfare fund. No finders fee or commissions were paid in connection with this transaction nor did any profit result to any of the individuals who had originally arranged for the purchase of California Life.

On June 3, 1954, Saperstein's contract with California Life was canceled. The president of the latter company testified that this was done as soon as he learned of the unfavorable publicity and involvement of Saperstein with the New York insurance authorities.

The explanation offered for the manner in which the purchase of California Life was effected was that the parties did not want it made public that California Life was being purchased by a labor union and it seemed doubtful to the trustees that the social security department could invest in common stock in the corporation unless such investment represented control.

The subcommittee had been informed that this investment by the social security department resulted in great benefit to the welfare fund; that its group insurance is now commission free; and dividends have been considerably larger than before.

Though the purchase of this insurance company finally culminated to the advantage of the welfare fund and without personal benefit to the individuals through whose efforts it was arranged, the manner in which the purchase was handled presents serious questions because of the possibility that these parties could have profited personally, because of possible conflicts of interest, and because the evidence raised considerable doubt as to the original intentions of the parties involved.

(E) INTERLOCKING DIRECTORATES AND FINANCIAL TRANSACTIONS

Labor union representatives have alleged that there are certain practices in the operation of unilateral employer-administered group insurance plans that result in the employees getting less insurance protection for the premium dollar expended than they otherwise would. One of these has to do with the instances in which an employer has purchased insurance from (or has continued an insurance policy with) an insurance company from which it has obtained a sizable loan. Another raises the question of the possible adverse effects of a concern dealing with a carrier to which it is related through interlocking directorates. The subcommittee has made special inquiries as to the extent to which such practices exist and has found some instances in which insurance transactions took place with companies with which the insurance carriers had financial relationships or interlocking directorates, or both. Time did not permit the subcommittee to determine whether or not interlocking directorates or the circumstances surrounding insurance company investments had any bearing on the purchase of group insurance. Of course, large insurance companies with large amounts of money continuously available for investment might quite accidentally find themselves investing in securities of their policyholders. The subcommittee feels that, per se, there is nothing wrong where a carrier has securities of, or has made loans to, a company for which it writes a group policy. However, the exclusion of bids of other companies simply in order to place insurance with a carrier with which the insuring company had a financial tie-up would

be a reprehensible practice. Section XI of this report discusses the inquiry directed by the subcommittee to the 10 largest group insurance companies with respect to interlocking directorates and financial transactions between the carriers and large policyholders. Because of lack of time to inquire into the various situations reported, the list of such transactions is not set forth but is being retained in the subcommittee's files.

(F) SELF-INSURANCE

The beneficiaries of self-insured plans do not presently have adequate protection under State laws.

While the staff did not study any self-insured employer-administered welfare programs, an intensive study was made of the United Mine Workers Welfare and Retirement Fund for the bituminous coal industry. This is an entirely self-insured program, which was found to be honestly and competently administered. Administrative expenses on the death benefit programs were calculated to be only 1.8 percent of the benefits paid, and on the medical care program 5.4 percent of benefits provided.

The subcommittee reviewed the experience of the self-insured welfare fund of the Distillery, Rectifying, Wine and Allied Workers' International Union. This fund formerly carried its insurance with Security Mutual Life Insurance Co., Louis B. Saperstein originally having been the broker and having received a 10 percent commission, as in the Laundry Workers International Union case.

As of October 1, 1955, this fund canceled its insurance with Security Mutual and undertook to provide the same benefits as theretofore on a self-insured basis. Testimony received at the hearings showed that 15 days after the fund instituted self-insurance the salaries of the office manager and the fund's attorney were raised from \$13,000 and \$10,000, respectively, to \$25,000 a year.

For a number of years up to June 1954, one of the trustees of this fund was Sol Cilento, who was then and is now executive vice president of local No. 2 of this union. Cilento was one of three individuals named by Saperstein as having received payoffs and kickbacks totaling \$299,000 over a 2-year period in 1951-52. Cilento was indicted in New York County but was freed of kickback charges on a legal technicality. There is some evidence that Cilento still exercises influence over the operation of this fund.

Testimony brought out at the hearings showed that in going to a self-insured basis the fund had received very little actuarial advice. Testimony also showed that certain dubious practices under the program when it was insured were continued under the new self-insured program. Two union trustees who were also union officials received fees as fund trustees of \$100 a month and payments of \$700 to \$800 a month as welfare representatives in addition to their union salaries. Various other officials and persons connected with local unions also received salaries as welfare representatives. Inasmuch as the fund directly administered all claims and benefit payments, it was not clear just what functions of value these welfare representatives performed for the payments they received.

Testimony at the hearings also brought out that the whole administration of the program was characterized by nepotism. Melvin M.

Dykes, the fund administrator, is a nephew by marriage of Cilento. Joseph O'Neill, chairman of the board of trustees and international union president, has two sons who are welfare representatives at salaries of \$800 and \$300 per month, respectively; Max Drexler, executive secretary of local No. 2, has a son who is a welfare representative at a salary of \$380 a month.

The subcommittee believes that the States might well regulate self-insured plans to a much greater degree than they do at present.

B. PENSION PLANS

Pension plans have at least two features which differentiate them from welfare plans and which warrant separate discussion. One of these features is that, unlike welfare plans which deal with short-term risks, pension programs deal with long-term future contingencies. If a welfare program is unsoundly designed in that income is insufficient to meet benefit costs, that fact comes to light almost immediately and steps can easily be taken to bring the two into balance. However, in the case of a pension program which is inadequately funded, the inability of the program to provide the pensions which have been promised will not come to light for a considerable period of years, and by that time any correction of the program so as to prevent a defaulting on pension obligations will be most difficult, if not impossible.

The second feature of pension programs which necessitates separate treatment is that, in general, these plans require the accumulation of large reserves which must be invested and the income from which becomes an important source of future pension payments. These reserves, which are growing rapidly in volume, and which are largely in the hands of insurance companies, banks and other trustees, create a whole series of problems. One of the most significant of these is to assure that the funds are wisely and prudently invested and that the equities of the beneficiaries are protected.

1. DESCRIPTION OF PENSION PROGRAMS

There are no firm figures as to the total number of pension plans in this country, inasmuch as some plans are quite informal in character.

There are known to be some 17,280 so-called insured plans—i. e., plans insured or administered by insurance companies¹⁵—and there are estimated to be approximately 4,000 so-called trustee plans, in which the pension fund is administered and invested by a bank or other trustee. In addition to these there are several thousand profit-sharing plans with retirement features, and probably many thousands of formal and informal pay-as-you-go plans.¹⁶

¹⁵ The Life Insurance Institute of America obtains reports annually from all insurance companies as to volume of group insurance written. These surveys cover pension and retirement plans insured or administered by insurance companies, and provide data on persons covered under such plans, total premiums paid, and reserves. Data for 1954 are reported in the Tally of Life Insurance Statistics, May 1955.

¹⁶ The Internal Revenue Service up to the end of 1954 had "qualified" 28,307 employee pension, profit-sharing, and stock-bonus trusts, as meeting the requirements for tax exemption under sec. 401 of the Internal Revenue Code of 1954, and had issued 1,734 rulings on termination of trusts, leaving some 26,573 such trusts qualified at that time. The Service estimated that at the end of 1955 there were approximately 30,000 "qualified" trusts. A study by the IRS in 1946 found that approximately 70 percent of the qualified trusts were pension plans, and 30 percent were profit-sharing trusts; stock-bonus plans constituted a negligible proportion.

Of the 17,280 insured plans at the end of 1954, 11,550 were individual policy pension trusts, 3,410 were deferred group annuity plans, 760 were deposit administration group annuities, and 1,560 were combinations or variations of these types of plans. Of the 3,915,000 employees covered under all "insured" plans, almost two-thirds—2,350,000—were covered under the deferred group annuity plans, and 835,000 were covered under deposit administration plans. In the case of all of these plans, other than deposit administration, annuities on an individual or group basis are purchased from an insurance company and the insurance company guarantees the payment of pensions or annuities in question. In the case of deposit administration, amounts estimated to suffice to meet future pension obligations are deposited with an insurance company which holds and invests these funds; however, the insurance company does not guarantee that the funds so deposited will be adequate for meeting future pension costs.

Under the so-called trustee plans, the employer or other entity establishing the plan, makes contributions into a pension fund. These contributions are of two sorts, those estimated to be required to fund pension obligations currently being earned by employees, and those required to fund the so-called past-service pension obligations. Some 80 to 90 percent of all pension plans of this type use a bank as corporate trustee to hold and invest the funds in accordance with a trust agreement. In most other cases a committee appointed by the employer performs this function. In some cases—a minority—the bank merely serves as custodian of the fund's securities or other holdings and has no discretion as to investments, the employer directing all investments. At the other extreme, the bank may have sole discretion as to investments. There are all variations in between these two poles, such as those in which the bank has investment discretion subject to such direction as the employer may from time to time wish to make, or in which the purchase of certain classes of securities or assets is specifically directed or specifically prohibited.

Under pay-as-you-go plans no pension fund is accumulated. The employer or other entity simply pays pensions out of current income as employees retire. The characteristic of such plans is that the costs are light in the initial years of the program, but then, other things being equal, increase progressively year by year as additional employees retire. Under these programs, employees have no security for future pensions other than the continued prosperity of the concern or entity operating the plan.

It is estimated that, at the end of 1954, approximately 12,500,000 employees were covered under all types of pension plans. About 7 million of these are covered under collectively bargained programs. Of the 12,500,000 covered employees, 3,915,000 were under insured plans, about 1 million were under pay-as-you-go plans, and the remainder, 7,585,000, under funded trustee plans.

Total reserves of all insured plans at the end of 1954 were \$9,800 million; total assets of all trustee funds at the end of 1954 were probably about \$12 billion¹⁷ at book value, and possibly close to \$13

¹⁷ The Securities and Exchange Commission, in its study of corporate pension funds, 1954 (release of October 12, 1955), found that these pension-trust funds had total assets at the end of 1954 of \$11,250 million. This study covered all corporations exclusive of banks, railroads, and nonprofit organizations. The pension-trust funds of banks, nonprofit organizations, and of jointly managed and union administered plans might bring the total close to \$12 billion at book values.

billion at market value. Total reserves of all plans are, therefore, about \$21.8 billion at book value.

Corporate pension and retirement trusts have been growing rapidly—from \$6,356 million at the end of 1951 to \$11,250 million at the end of 1954.

In 1954, total contributions to insured plans were \$1,325 million; total contributions to trustee plans were approximately \$1,868 million; and total contributions, i. e., benefits paid, under pay-as-you-go plans, about \$100 million.¹⁸ The grand total of contributions to all plans was \$3,293 million, of which approximately \$2,866 million are estimated to be employer contributions and \$427 million employee contributions.

The vast majority of all pension plans are established and administered by employers and cover the workers of a single corporation or such a corporation and its affiliates. In some employer-administered plans representatives of the employees participate in the administration of the program. Frequently, this is restricted to passing on applications for benefits; generally, it is the employer who really controls and manages the program.

Since 1946 a considerable number of multiemployer jointly managed plans have developed, i. e., plans established under an agreement between a union and a number of employers and jointly managed by trustees representing the union and the employers. Among the principal plans of this type are the United Mine Workers welfare and retirement fund, the pension plans of the International Ladies Garment Workers Union, the Amalgamated Clothing Workers of America, the International Brotherhood of Electrical Workers, and the recently formed Teamsters Central States, Southeast and Southwest areas pension fund. In addition, there are a small number of plans which are wholly administered by labor unions. These two types of plans together cover possibly 2 million workers, of which the great majority are covered under the jointly managed plans. Total contributions to these plans in 1954 are estimated at about \$140 million, of which \$120 million were employer contributions and the remainder employee contributions.

2. SUBCOMMITTEE STUDIES

A number of multiemployer jointly managed plans in the pension field were examined by the subcommittee. These included the pension program of the United Mine Workers welfare and retirement fund for the bituminous coal industry, the Teamsters Central States, Southeast and Southwest areas pension fund and, less intensively, the pension programs of the International Ladies Garment Workers Union and the Amalgamated Clothing Workers of America. The staff also reviewed a number of pension plans unilaterally administered by employers. Among these were the pension plans of General Motors Corp., Chrysler Corp., American Motors, the Automotive Tool & Die Manufacturers Association in Detroit, United States Steel, and a few others.

In addition to these studies of individual plans, the staff held conferences of record with the representatives of several very large banks

¹⁸ The pension program of the United Mine Workers welfare and retirement fund, which paid benefits of \$70 million in 1954-55, is included here as a pay-as-you-go plan.

which serve as corporate trustees for many pension plans, and with insurance company representatives relative to group annuities and deposit administration plans. Data were also obtained from 64 banks, each of which administers pension and other trusts with aggregate assets of over \$100 million, relating to the pension trusts which they administer.

All of these plans were funded trustee plans. The committee made no detailed study of insured pension plans.

Less attention was given to the development of possible abuses in the pension field than to the important problems of adequate funding, investment policies, the degree of disclosure of the financing of such plans to employee beneficiaries, etc. This of course does not mean that there are no abuses.

3. SOME OF THE PROBLEMS

Without question the long-range nature of pension plans makes the manner in which these plans are financed of the highest significance. Basically, as already pointed out, there are three methods of financing pension plans.

Pay-as-you-go plans present the greatest element of uncertainty. While such a plan may be adequate in that it can be expected to meet the benefit payments, the foundation of such a plan is only as strong as its sponsor. If he is in an expanding industry whose products can be expected to remain in demand and if he can be expected to remain in business indefinitely, then the employees covered by it need have no fear that their retirement benefits will one day be discontinued. However, only a very unique enterprise can be sure to remain prosperous in perpetuity. In fact, the industrywide pension plan in the anthracite coal industry reduced its scale of benefits simply because of the economic plight of the industry. This illustration is not intended to reflect on the character of pay-as-you-go plans. Under certain circumstances such a plan may be highly desirable. It is important, however, in any formalized pay-as-you-go pension plan that all those concerned with it are aware of its limitations. If they desire, they can then make their own arrangements to supplement the plan. Disclosure of the financial experience of such plans would keep interested parties informed.

The great distinction between pay-as-you-go plans and funded plans, whether trustee or insured, is that in the latter funds in the nature of deferred wages are currently set aside to meet future pension obligations to employees who qualify for benefits under the terms of the plan. If the pay-as-you-go plan is terminated, there is no such reserve.

Self-insured funded plans, usually trustee, present a far stronger element of certainty of payment of benefits. The more fully funded they are, the more certain the benefits. In these plans the manner and extent of funding are the responsibility of their sponsors, even where banks are used as trustees. Sometimes such plans at the outset spend more than is warranted by the moneys available in an effort to secure more liberal benefits. With experience, careful administration, and competent actuarial advice, the plan's finances can be adjusted to the point where it will become adequately funded. The long-range nature of pension plans lends itself to such adjustment. Here again,

the plan is as good as its sponsors. Whether or not a plan should be fully funded, or whether a plan must be fully funded in order to be adequately funded, is beyond the scope of this subcommittee. The subcommittee is convinced, however, that the manner of funding presents many problems and that proper funding is essential for the safeguarding of the employees covered by the plan. Employees get little security out of a pension plan that is discontinued. The manner of funding is so important that all interested parties should be kept fully informed as to the plan's experience, especially with respect to matters revealing the plan's ability to meet its commitments. This is as true in insured plans as in trustee plans, particularly as the moneys used to fund the plan are in the nature of employee compensation.

Investment of the assets of trustee plans presents other problems. Usually this is performed by corporate trustees and is their primary function. Sometimes they have full discretion in the selection of investments; sometimes by the trust agreement their discretion is limited. The investment earnings of the assets of a pension plan are most important. The higher the earnings, the lower the cost of the plan. The problem here is one of achieving the highest yield without sacrificing safety.

The corporate trustee's functions do not include those of determining the liabilities of the funds. It should be clearly understood that banks or other corporate trustees in selling the features of the trustee type of plan, such as higher income return on investment, do not have the responsibility for the actuarial soundness of the plan. These functions remain with the sponsor or sponsors of the plan and are usually performed by an actuary retained for this purpose.

In insured pension plans generally the insurance carrier assumes the responsibility for the determination of the liability of the sponsor for the investment and safety of the funds. In other words, the insurance company guarantees the payment of certain benefits dependent upon the premium paid. It follows that under these circumstances the assumptions used by insurance companies would naturally be more conservative than would be typical of trustee plans. The continuity of premium payments of course is a necessary prerequisite to an adequate funding of the insurance plan. Moreover, as the insurance company assumes the responsibility for evaluating the plan's liability, it reserves the right to make periodic reevaluations with a view to adjustment of premium.

In deposit administration plans, however, the problems are similar to those found in self-insured or trustee plans.

4. INVESTMENT IN THE ASSETS OR OBLIGATIONS OF THE EMPLOYER

Employees obviously have an interest in the wise and prudent investment of the funds which have been set aside to provide them with pensions. One of the problems in this connection is the investment by the fund in the assets or obligations of the employing company or its affiliates or other interested parties. Under some circumstances an investment of pension funds in the securities, obligations, or other property of the employer may well be part of a wise and prudent investment program, but an unduly large holding of this type may

not be in the interests of the beneficiaries. Furthermore, any large investment in the securities or obligations of the employing company tends to raise the question whether the fund is being operated for the sole interest of the beneficiaries. It is known that there are a certain number of funds which have invested in the assets of the employing company¹⁹ (see sec. XII).

In order to obtain more definite information on this point, the staff sent letters to 66 large banks, requesting lists of the pension plans for which they serve as corporate trustees and information as to provisions of trust agreements relating to investment in assets of the employer, and details as to such holdings in each case. These 66 banks were known to have some 5,269 pension and other employee trust accounts with aggregate assets of \$8,256 million. The pension trusts that these banks administer contain the vast bulk of the total assets of all pension trusts for which banks serve as trustees.²⁰

Replies from 64 banks showed that these banks administer a total of 5,053 plans of which 3,515 are pension plans and 1,538 are profit-sharing plans with retirement features. Of the pension plans, 324 are insured plans in which the holdings consist entirely or mainly of individual annuities, the banks having no investment functions.

Of the 3,191 noninsured plans, the trust agreement in 967 cases specifically permits investment in the employer's assets, in 650 cases specifically prohibits such investment, and in the remaining 1,574 is silent on this point. In at least 914 plans the bank has sole discretion as to investment.

Of the 3,191 noninsured plans, 195, or 6 percent, hold employers' assets or obligations in the fund, and in 65 cases such assets amount to more than 10 percent of the total assets of the fund. A list of these plans, together with a description of the assets so held, appears in section XII of this report.

The subcommittee staff has not had time to obtain detailed facts on the pension plans in which more than 10 percent of the fund consisted of the securities, obligations, leasebacks or other property of the employer. But the perusal of this list of pension plans raises a number of disquieting questions. It seems obvious to us that there are a number of instances in this list in which the heavy investment in the assets of the employer may not be in the interests of the beneficiaries and in which the investment may have been motivated, at least in part, by ulterior considerations.

One of the principles of wise investment is that there should be a diversification of risk. Where a concern is large and the character of its business is such that it gives every promise of being stable and permanent, some investment in the securities or assets of the employer may be part of a prudent investment program. Thus, the seven banks which are trustees for the General Motors Corp. pension fund have in the aggregate invested about 5 percent of the fund assets for which they are responsible in the bonds or common stock of General Motors Corp. and its subsidiaries. In an investment program which seeks wide diversification, such an investment may be considered quite prudent and sensible.

¹⁹ It may be noted in this connection that Canada prohibits investment of any part of a pension fund in the stocks, bonds, or other obligations of the employing company; that is, it refuses tax exemption for employer's contributions to a plan which makes such an investment.

²⁰ See hearings, pt. 3, p. 888.

But on the other hand, the investment of a large share of a pension fund in the employer's assets or securities appears to violate the common sense injunction of not putting all one's eggs in one basket. It appears to us that there are instances in the list set forth (sec. XII, pt. 2) where the heavy investment in the employer's securities or assets cannot be justified as a part of prudent management of pension funds. There are a number of cases in these lists where over 50 percent of the trust assets are invested in the securities or notes of the employer, and where the concern is a small one and quite possibly subject to wide swings in prosperity or adversity. In such instances, we doubt that these pension funds give real assurance to employees that the pensions to which they are entitled on retirement will actually be theirs.

The following discussion between Senator Douglas and Mr. C. Canby Balderston, Vice Chairman of the Board of Governors of the Federal Reserve System, bears directly upon this point:

Senator DOUGLAS. Leaving aside the question of profits, do you think as a general principle it is sound practice to have pension funds invested in stocks of the companies in which the men themselves are employed?

Mr. BALDERSTON. As you know, sir, there are some notable examples of growth companies where that practice has proven exceedingly beneficial to the employees.

Senator DOUGLAS. But excluding the profit-sharing plans?

Mr. BALDERSTON. Yes.

Senator DOUGLAS. But as to separate pension plans, do you think it wise general practice to have the funds invested in securities of the same company in which the men have jobs?

Mr. BALDERSTON. In general I do not. First of all, it violates the principle of diversification of investments, and secondly, it places employee funds that they should be able to rely upon in "rainy seasons" in the same company on which they depend for their jobs and livelihoods.

Senator DOUGLAS. But there is nothing to prevent this being done, is there?

Mr. BALDERSTON. No; it depends on how the instrument is drawn.²¹

There is a certain degree of control exerted over investment of pension fund assets in the securities, obligations or property of the employer under existing tax provisions. With respect to pension plans, the Internal Revenue Service requires that a full disclosure be made to it if trust funds are invested in the stock or securities of, or loaned to, the employer. Its regulations stipulate that a trust of this character, in order to be tax exempt, must be operated as part of a plan which is for the exclusive benefit of the employees or their beneficiaries. An incidental benefit may also inure to others provided that the primary purpose of benefiting employees is maintained. If the Internal Revenue Service finds that an investment in the stock or securities of, or a loan to, the employer results in the trust not being operated for the exclusive benefit of employees or their beneficiaries,

²¹ *Ibid.*, pp. 893-894.

the Service may revoke a prior favorable determination as to the qualification of the plan for tax exemptions.

Our studies in this area have not been sufficiently intensive or extensive to enable us to arrive at conclusions as to whether legislation would be desirable limiting investment of trust funds in the securities or obligations of the employer or in property used by the employer. However, we certainly believe that for the protection of the interests of the beneficiaries such investments should be subject to the laws and regulations of the various States and the question of the propriety of such investments should be the subject of further study. The subcommittee further believes that additional study should be given to this issue and that the States should review existing laws with respect to trusts with a view to making pension trusts subject to the same laws as to investments which apply to other types of trusts.

5. DISCLOSURE INFORMATION ON STATUS OF PENSION PLANS

It is not the general practice of those in charge of pension plans to make information as to the fund's operations available to the employees.

United States Steel's position in originally refusing even to give the subcommittee staff access to information regarding its employee pension fund portfolio is an excellent example of the attitude of a large percentage of employers. Under existing law these companies obtain tax concessions in return for welfare and pension plan contributions in lieu of wages. The employees work under the understanding that part of their compensation is in the form of a pension to be received later. As Mr. Robert C. Tyson, vice chairman of the finance committee, United States Steel Corp., stated at the subcommittee's hearings:

The funding of current service cost starts out by recognizing that the cost of an employee's service is greater than the amount currently paid to him as wages because, as he works, he concurrently establishes a possible claim to a pension. In a sense this is a claim to more pay for the same work * * *²²

It is impossible for the subcommittee to accept the policy of secrecy in the management of pension plans even though they may be noncontributory.

Public welfare demands that this policy be discontinued.

General Motors pension fund aggregated \$371 million at the end of 1954.

United States Steel's pension fund amounted to over \$700 million. The American Telephone & Telegraph and subsidiaries pension funds exceeded \$2 billion.

We cite the above only as cases involving enormous economic power and affecting the ultimate security of great numbers of our population. These programs are in part collectively bargained.

Both General Motors and United States Steel vigorously resisted any public disclosure of the details of their pension trust investments, the earnings of those investments, market values, costs of securities, and accretions to or declines in values.

²² Ibid., p. 1160.

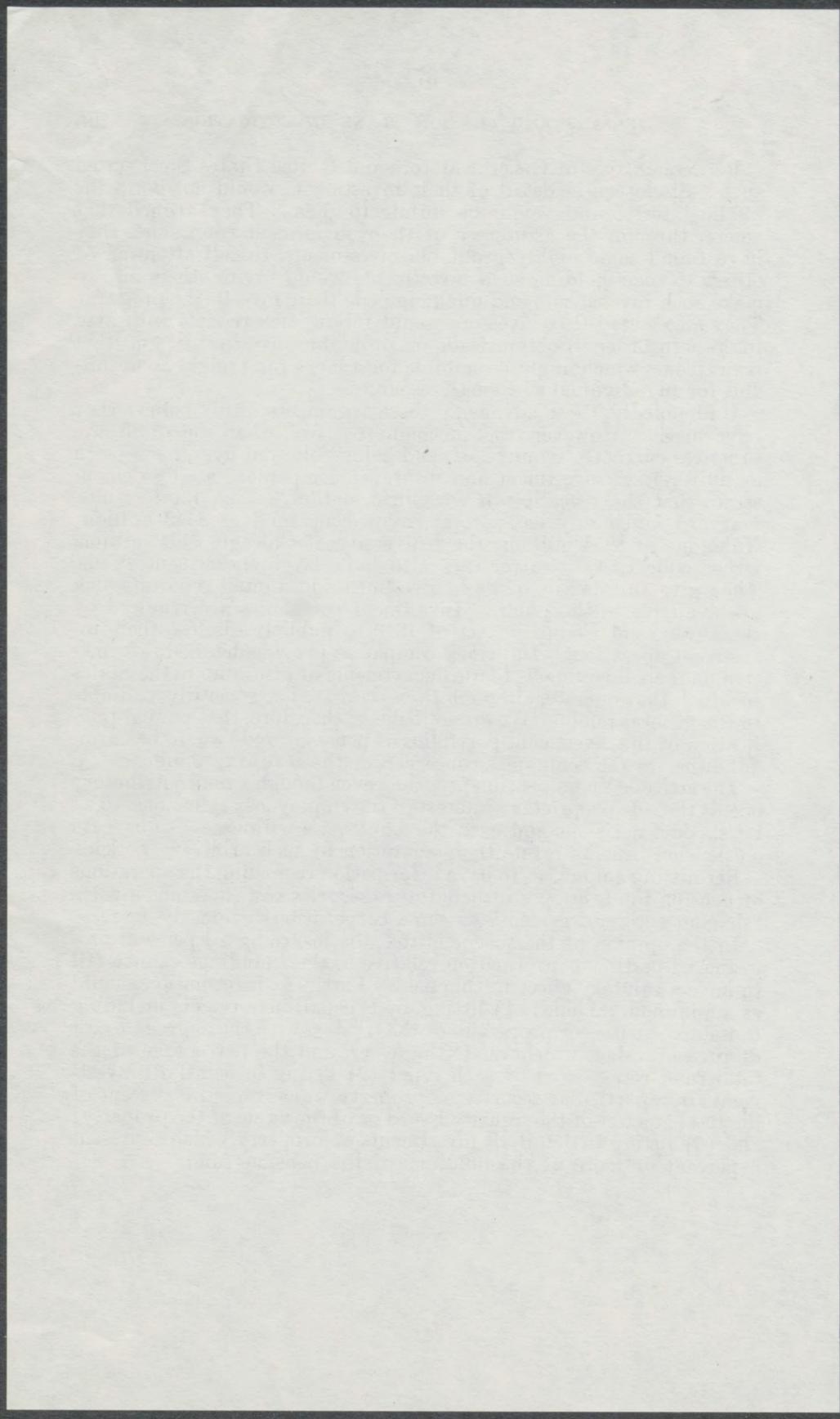
Representatives of General Motors and United States Steel stated that a disclosure in detail of their investments would not be in the public interest and would be unfair to them. They argued that where, through the astuteness of their investment counselors, they have found some highly profitable investments, to call attention of others to their holding such investments would invite others also to make such investments and might impede their investment program. They also stated that investors would follow such reports with avid interest in order to obtain leads on profitable investments, and that investments which might be suitable for a large fund might be unsuitable for an individual with small resources.

Undoubtedly, those advancing these arguments firmly believe they have merit. However, the subcommittee feels that the disclosure practices currently required of, and being followed by, others—such as universities, investment and insurance companies—amply demonstrate that the revealing of such information has no fatal results. Harvard University has a total endowment fund of \$442 million; Yale, one of \$214 million; the University of Chicago, \$144 million. Other colleges and universities also have large endowment funds. They give full details of their investments in annual reports which are available to the public. Investment companies are required by the Investment Company Act of 1940 to publicly disclose their investment operations. Insurance companies provide detailed information on their investments to the departments of insurance in the States in which they operate, although these data are not generally available to the general public. We do not believe, therefore, that annual publication of the investment portfolios of pension funds would be harmful either to the companies concerned or the investing public.

The attitude that a pension program, even though a noncontributory one, is the sole proprietary interest of the employer is fallacious. Tax laws, court decisions and even the employer's willingness to bargain on pension benefits refute the assumption of such arbitrary policies.

Permitting employees to have information regarding the operations of pension funds on which their future security rests does not involve "sharing the management" as some corporations evidently fear.

In the opinion of the subcommittee, disclosure by all pension programs of pertinent information relative to their holdings cannot fail to have a salutary effect in this field. Pertinent information should as a minimum include: (1) listing, by type, all investments including those in securities or properties of the trustor, with the aggregate cost or present value, whichever is the lesser, and the percentage of the total fund represented by each type; (2) listing in detail all investments in a particular security or property which exceed 5 percent of the total amount of the security issued or of the value of the property; and (3) listing in detail all investments or property which represent 5 percent or more of the holdings of the pension fund.



III. INADEQUACIES OF FEDERAL AND STATE LAWS

It has been asserted that welfare and pension funds are adequately protected by existing laws and regulations, both on the State and Federal level. This is a misconception.

Within its limits of time and manpower, the subcommittee staff undertook to survey the extent of existing legislation regarding welfare and pension funds at State and Federal levels.

A. EXISTING FEDERAL CONTROL OF WELFARE AND PENSION FUNDS

In brief, there are two Federal statutes which have some application to welfare and pension plans. They are the Labor Management Relations Act of 1947¹ and the Internal Revenue Code of 1954.

Mr. Rex A. Collings, Jr., Chief of the General Crimes Section of the Department of Justice, testified at the July 20, 1955, subcommittee hearing relating to the adequacy of the Labor Management Relations Act, in part, as follows:

* * * We have strong doubts that existing Federal legislation is adequate to cope with the problem of conserving welfare and pension funds for the exclusive use of the employee beneficiaries.

Section 302 of the Labor Management Relations Act, 1947 (29 U. S. C. 186) permits the establishment of welfare and pension funds, but does not provide any penalty for their maladministration. Section 302, with certain exceptions, prohibits payments by an employer to the representatives of his employees, and prohibits representatives from receiving such payments. One exception is payments to welfare and pension funds. Such payments are permitted provided that the funds are held in trust for the employees for pensions, medical care, unemployment benefits, and the like.

But there is no requirement that the funds be efficiently managed, and no prohibition against exorbitant salaries and expenses—against milking of a fund by its promoters. As long as the fund is established in accordance with the statutory language, there is no specific statute which makes it a Federal offense for the managers of the trust to ransack or loot the trust corpus.

* * * * *

No remedy is provided by section 302 for abuse of the trust purposes. Unless some other Federal statute is violated, abuses must be corrected in State courts, either through civil actions brought by employees against the trustees for breach

¹ 29 U. S. C. 186 (sec. 302).

of their duties, or criminal prosecutions for embezzlement or misapplication. The parties to the welfare and pension fund agreements are private persons.

* * * * *

* * * Section 302 does not provide a remedy in our opinion. To go on, you know frauds practiced by one private person against another ordinarily are not within the purview of Federal statutes. Of course, there are exceptions, for example, where there is mail fraud or fraud by wire. Abuses of welfare and pension funds may perchance fall within the purview of such statutes, but no Federal statute is specifically designed to combat such abuses.

There are other problems inherent in section 302. Section 302 only prohibits payments by an employer to representatives of his employees which do not fall within certain exceptions. It does not prohibit payments to others. There is some doubt that the section prohibits payments to a board of trustees composed of representatives both of employer and employees, even if not set up for a purpose permitted by the section.

In a very recent case, *United Marine Division v. Essex Transportation Co.* (216 F. 2d 410), the Court of Appeals for the Third Circuit held that trustees of a welfare fund chosen half by the employers' association and half by a union are not representatives of the employees within the meaning of section 302. There is an earlier case to the same effect, *Rice-Stia Co. v. St. Louis Institute* (22 L. R. R. M. 2528, E. D. Mo., No. 5787, June 15, 1948). The Government was not a party in either of these cases. Nevertheless, they pose a very difficult problem of interpretation of section 302 so as to make it effective. If these cases are correct, there is a very serious loophole in the law.

I note that the committee on labor and social security legislation of the Association of the Bar of the City of New York, in a report dated May 19, 1955, has expressed the view that these decisions "have to a substantial extent freed welfare funds from Federal control since trust funds are not covered by the act."

Another recent case is also of interest in this connection, although it did not involve a welfare and pension fund. In *United States v. Ryan*, decided July 1, 1955, the second circuit held that the term "representative" in section 302 means an exclusive bargaining representative, and that the officer of the union which was the exclusive bargaining representative was not a representative within the meaning of section 302.

* * * * *

You have asked how many prosecutions have been instituted under section 302 (c) (5). The answer is none. In our opinion section 302 (c) (5) is not a penal clause. It does not of itself make any act or omission a criminal offense.²

Section 302 of the Labor Management Relations Act of 1947 purports to make illegal and punishable by fine or imprisonment, any

² Hearings, pt. 3, pp. 902-904.

payment by an employer to a representative of his employees, except under certain specified conditions. With respect to welfare and pension fund payments which are one of the exceptions, the section requires an equal employer-employee administration under a written agreement with tie-breaking provisions.

The act provides for an annual audit of the trust fund "available for inspection by interested persons at the principal office of the trust fund and at such places as may be designated in the written agreement; * * *" The history of the act shows that its draftsmen believed that disclosure of pertinent information would afford the beneficiaries of the funds adequate protection against arbitrary and capricious acts of their administrators. It would also provide them with the information they would need to protect their rights in court. But as was pointed out in the subcommittee's first interim report³ this provision proved to be inadequate for at least 2 reasons: (1) as a result of the act's failure to specify the information to be included in the report, the usual report is not sufficiently detailed to disclose the nature of the fund's disbursements; and (2) the report usually is not given the wide distribution necessary for effective disclosure.

The act addresses itself to employer payments and delivery of "a thing of value" to representatives of his employées. Both the payments and delivery of "a thing of value" by the employers and their receipt or acceptance by the representatives are illegal. The act, however, exempts from this prohibition payments made to a trust fund for the purpose of providing welfare and pension benefits to the employees and their dependents. Thus, as pointed out by Mr. Collings, there is no penalty for abuses or maladministration.

The act deals with jointly managed plans; its scope does not include the great percentage of welfare plans, namely, all arrangements whereby the employer provides the benefits directly or through an insurer and all plans wherein the employer administers the plan. It also omits all arrangements whereby the benefits are provided by a union as long as the employer does not make a direct payment to the union.

The weaknesses of the act were discussed at some length in the first interim report of this subcommittee.⁴

The other Federal statute, the Internal Revenue Code, offers no real regulation or control of welfare plans and, because it was designed primarily for tax purposes, is only effective to a limited extent as regards pension plans. The interest of the Internal Revenue Service in these plans is limited to their tax aspects. Mr. Harold T. Swartz, Director of the Tax Rulings Division of the Internal Revenue Service, at a public hearing of the subcommittee on July 20, 1955, stated:

I would like to emphasize that the principal function of the Internal Revenue Service is the collection of Federal taxes. There are more than 70 different internal-revenue taxes so imposed. The collection of these taxes involves the processing of nearly 95 million tax returns. Obviously, we can neither examine nor audit all of these returns. We must channel our limited examining manpower to the items which are believed to be the most productive. Accordingly, only

³ Pp. 31-32, report of January 10, 1955.

⁴ *Ibid.*, pp. 26-33.

a small portion of our time can be devoted to examining into the annual information returns filed by exempt organizations.⁵

Under section 501 (c) (9) of the 1954 Code, voluntary employees' beneficiary associations are exempt from taxation after once qualifying and thereafter filing an annual information return. There is no penalty for failure to qualify or file the annual information return provided they actually qualify as an exempt organization. Actually only a minor percentage of welfare plans have qualified under this statute.

Employer contributions to welfare and pension plans are deductible as an ordinary and necessary business expense, under section 162 (a) (1) of the code which permits reasonable deductions for salaries or other compensation for personal services actually rendered. However, there are no mathematical or actuarial limitations on welfare deductions as there are with regard to funded pension deductions.

Federal legislation does cover pension plans to a degree in that the Internal Revenue Code of 1954 sets up certain requirements that must be met before a fund, or payments into it, can gain tax exemption. This is covered by section 401 of the code which, in general, requires that (a) the plan must be for the exclusive benefit of the employees or their beneficiaries; (b) no part of the trust fund or the income may revert to the employer; and (c) eligibility requirements, contributions, and benefits must not discriminate in favor of officers or supervisors.

A plan may lose its tax-exempt qualification if it engages in any of a list of "prohibited transactions," most of which involve dealings between the trustee and the entity which set up the trust that would benefit the concern to the detriment of the employees. However, as pointed out by Mr. Swartz during his testimony, "It should be understood that the transactions are not actually forbidden by the revenue laws but are 'prohibited' only in the sense of being inconsistent with continued tax privileges." It is apparent then that "regulation" by the Internal Revenue Service does not regulate as such, but merely allows certain tax exemptions in return for compliance. Mr. Swartz made this position clear when he told the subcommittee, "In seeing that the taxes levied by Congress are paid, the Revenue Service does not seek to act as a regulatory agency."⁶

There are some 28,000 information returns filed annually which include tax-exempt pension, profit-sharing, stock bonus, and annuity plans.

Thus, with the exception of the ineffective sections of the Labor-Management Relations Act, 1947, and the Internal Revenue Code, as discussed above, there presently exists no Federal statute, regulation, or authority which attempts to protect the rights of the beneficiaries of welfare and pension plans.

B. WEAKNESSES OF STATE REGULATION OF WELFARE AND PENSION PROGRAMS

The subcommittee staff undertook a study of the insurance, banking, and trust laws of eight States—California, Connecticut, Georgia,

⁵ Hearings, pt. 3, p. 847.

⁶ *Ibid.*, p. 838.

Illinois, Massachusetts, Missouri, Pennsylvania, and Texas—to determine the extent to which welfare funds are regulated by State authority. These States were selected because of diversified industry, degree of unionization, and insurance activity. The detailed results of that study are contained in the first interim report of the subcommittee. In summary, the report states:

With the exception of California and Massachusetts, where attempts have been made to regulate the activities of some types of pension associations, there is no indication that the States have thus far concerned themselves with the problem of the regulation of welfare and pension trust funds as separate legal entities.⁷

Since that report, New York and Washington have enacted legislation giving to the commissioner of insurance power to inspect all trustee welfare and pension funds. Specifically excluded are funds wherein a bank is trustee. Also excluded are plans in which there is no settlor-trustee relationship, but merely direct payment by the employer of the benefits. New York, in 1955, attempted to enact legislation regulating certain types of welfare funds, but this bill was vetoed. A bill embodying the principle of disclosure and applying to certain types of welfare plans was passed in the present session of the New York State Legislature, but has not been acted upon by the Governor.

In 1954 the Chamber of Commerce of the United States sent a questionnaire to the insurance commissioner of each State on the extent of regulation of welfare funds or insurance programs administered by a union or an employer. The various replies of the States were tabulated in a report of the chamber dated September 15, 1954, which indicates that almost without exception the States do not regulate the administration of these programs.

The States have legislation, regulation, and control in the general field of insurance which pertain to regular insurance companies and, of course, a large percentage of welfare plans are commercially insured. There has been little effort to regulate self-insured welfare programs.

Regulation of insurance is an area almost entirely dominated by the States. The extent is clearly determinable by reference to three important legal landmarks.

In 1869, the Supreme Court held that "issuing a policy of insurance is not a transaction of commerce" (*Paul v. Virginia*, 8 Wall. 168, 183). This "hands off" doctrine prevailed for 75 years until 1944 when the Court, in *United States v. Southeastern Underwriters Assn.* (322 U. S. 533), overruled the Paul case and in connection with an antitrust action held that interstate insurance contracts are subject to Federal legislation. Apparently as a result of this decision, many insurance companies questioned the authority of the State departments to regulate while others refused outright to comply with State regulations.⁸

⁷ P. 34, report of January 10, 1955.

⁸ " * * * Already many insurance companies have refused, while others have threatened refusal, to comply with State tax laws, as well as with other State regulations, on the ground that to do so, when such laws may subsequently be held unconstitutional in keeping with the precedent-smashing decision in the *Southeastern Underwriters* case, will subject insurance executives to both civil and criminal actions for misappropriation of company funds" (H. Rept. No. 143, Feb. 13, 1945, accompanying Public Law 15; 1945, U. S. C. Cong. Serv. 671).

Congress, the following year, passed Public Law 15, 79th Congress (1945)⁹ which removed existing doubts as to the right of the States to (a) regulate and tax the business of insurance, and (b) secure more adequate regulation of such business.

In 1955 the district attorney of New York County attempted to prosecute a welfare trustee, Sol Cilento of the Distillery Workers, for misuse of welfare funds, the indictment alleging almost \$300,000 in kickbacks of welfare funds to the trustee and 2 notorious underworld figures. The indictments were reluctantly dismissed, the trial judge stating, "Unfortunately, a trustee of a union welfare fund, except when he commits larceny, is not chargeable with a crime for violating his trust even though he simultaneously be an officer of the union." He urged the enactment of laws to punish such "morally reprehensible and ethically indefensible acts."¹⁰

In general, the State laws relate to certain technical matters such as the definition of "group insurance," minimum number of persons in a group, etc. The law of New York State is the most comprehensive of the various State laws. It is important because of its far-reaching influence. The importance of New York State as an industrial, commercial, and financial center makes it highly desirable for an insurance carrier to do business in that State. In order to do so an insurance company, regardless of the location of its home office, must conform to the New York State regulations. This applies not only to its New York business but to all of its business—anywhere in the country. The State of New York holds that the manner in which an insurance company does business anywhere affects its policyholders in New York State. Thus, a company's business anywhere in the United States must meet New York State standards. In effect, New York State

⁹ "The Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

"SEC. 2. (a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

"(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance or which imposes a fee or tax upon such business, unless such act specifically relates to the business of insurance: *Provided*, That after January 1, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act,^a and the Act of October 15, 1914, as amended, known as the Clayton Act,^b and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended,^c shall be applicable to the business of insurance to the extent that such business is not regulated by State law.

"SEC. 3. (a) Until January 1, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act,^a and the Act of October 15, 1914, as amended, known as the Clayton Act,^b and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended,^c and the Act of June 19, 1936, known as the Robinson-Patman Antidiscrimination Act,^d shall not apply to the business of insurance or to acts in the conduct thereof.

"(b) Nothing contained in this Act shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

"SEC. 4. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended known as the National Labor Relations Act,^e or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938,^f or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.^g

"SEC. 5. As used in this Act, the term 'State' includes the several States, Alaska, Hawaii, Puerto Rico, and the District of Columbia.

"SEC. 6. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected.

"Approved March 9, 1945."

^a 15 U. S. C. A., secs. 1-7, 15, note.

^b 15 U. S. C. A., sec. 12 et seq.

^c 15 U. S. C. A., secs. 41-51.

^d 15 U. S. C. A., secs. 13, 13a, 13b, 21a.

^e 29 U. S. C. A., sec. 151 et seq.

^f 29 U. S. C. A., sec. 201 et seq.

^g 46 U. S. C. A., sec. 861 et seq.

¹⁰ *People v. Cilento*, 143 N. Y. S. 2d 705.

regulates the insurance industry of the United States insofar as it is conducted by companies doing business in New York State.¹¹ Some of the industrial States, such as Illinois, have no legislation applying specifically to group insurance. In brief, New York State insurance regulations include—

- (a) Filing of specimen copies of insurance contracts and certificates;
- (b) Filing of schedules of commissions and of administration fees, since 1955;
- (c) The use of a standard premium rate on life insurance for the first year;
- (d) Adherence to rates filed with the State department of insurance for the first year on accident and health insurance;
- (e) Charging of commissions on every case;
- (f) Commissions to be paid only to licensed agents and brokers;
- (g) Service fees to be paid only to persons who perform functions that would otherwise be performed by insurance carriers, and
- (h) Uniform treatment of policyholders.

In spite of these regulations, the subcommittee has found that even with respect to group insurance purchased in New York State, there were instances in which commissions and fees were high enough to permit splitting them among various individuals. It found that in many cases, commissions were split with persons who were not licensed agents or brokers but who were, in fact, in a position to dictate which agent and insurance carrier would get the business. It found instances in which administration fees were paid to individuals who performed no work in connection with the administration of the plans. It found, with respect to insurance company retentions, that equal treatment was not afforded the policyholders. It found that with respect to agents and carriers domiciled outside the State recourse, beyond that of canceling their licenses, was most difficult. Other instances of irregularity and abuse found by the subcommittee indicate that some of the States charter insurance companies and license agents and brokers with little investigation of their reputations. For example, the manner in which the control of American Continental Life Insurance Co. of Chicago was transferred to the Inciso group, leaves much to be desired.

Of necessity, any discussion of State controls of pension funds requires an understanding of certain principles of trust law. Obviously a lengthy discussion of this subject cannot be undertaken in this report. Briefly, insofar as pensions are concerned, a trust arises by express agreement between the grantor or settlor (usually management) and the trustee, whereby the trustee invests the funds deposited with him for the benefit of the intended beneficiaries. It is a contract between private persons and, thus, the remedies are those of normal private contract litigation—an action for an accounting or for specific performance. Except in the rare case where larceny or embezzlement is committed, criminal laws are inoperative.

¹¹ The extent to which New York State regulates insurance companies domiciled in other States is illustrated by a recent ruling of the attorney general of New York State in which he ruled that the Connecticut General Life Insurance Co. of Hartford, Conn., cannot buy control of the National Fire Insurance Co., also of Hartford, without losing its New York license (reported in the National Underwriter, Jan. 26, 1956, p. 3, "New York Says Life Insurer Can't Own Fire Company").

The subcommittee in its first interim report discussed the rights and remedies of beneficiaries of trusts established to administer welfare and pension plans. As copies of that report are no longer available and the discussion is deemed sufficiently important, it is set out below:

* * * In the leading case of *Van Horn v. Lewis* (79 F. Supp. 541), the welfare and retirement fund of the United Mine Workers was held to be in the nature of a beneficial charitable trust. It has been said that health and welfare trusts which are the result of collective-bargaining agreements may properly be classified as charitable trusts inasmuch as they are for social betterment as against private gain and they are of such size and the membership qualifications are so broad that the trust provides substantial benefits of a charitable nature to the community in general.⁹ If it may be assumed that welfare and pension trusts arising out of collective bargaining are, in fact, in the nature of beneficial charitable trusts, then enforcement of the rights of the beneficiaries has been a responsibility of the State since 1601 when the Statute of Charitable Uses was enacted by Parliament (43 Eliz., ch. 4). Some States have provided by statute that an action may be brought by the attorney general upon his own information or upon the complaint of any interested party (which would include a beneficiary or beneficiaries) for the enforcement of a charitable trust. Thus, in Wisconsin, it is provided that if the attorney general refuses to act, a specified number of "interested parties" may bring an action in the name of the State on their own complaint.¹⁰ In addition, several States have statutes giving the attorney general or other State agencies the authority to require financial data and otherwise exercise supervision over charitable trusts.¹¹

The power, however, is not exclusively vested in the attorney general of the State. It is generally held that a person who has a special interest in the performance of a charitable trust can bring an action for its enforcement.¹²

While the States already have ample authority to act through their attorneys general following the commission of a breach of trust or the commission of any act of malfeasance in the administering of trust funds located within the State, there is a definite and growing trend toward the enactment of legislation at the State level which would set up administrative controls to prevent abuses by trustees and administrators of charitable trusts.¹³

Federal courts also have warned that abuses in the administration of health and welfare funds will not be tolerated:

"The burdening of the fund with undue administrative expenses or lush salaries for union officials will not be tolerated;

⁹ See Bogert, *Trusts and Trustees*, vol. 2A, p. 20 and also see *Union Pacific Railroad Company v. Artist*, 60 Fed. 365; *Guilford v. Arthur*, 158 Ill. 600, 41 N. E. 1009.

¹⁰ Wisconsin Laws, 1945, ch. 458, p. 822.

¹¹ Cf. New Hampshire Revised Laws, 1942, ch. 24, sec. 13A-13N, as amended; Rhode Island Laws, 1950, ch. 2617, as amended by laws 1951, ch. 2852; Massachusetts General Laws, ch. 217, sec. 19, as amended.

¹² See Scott, *Trusts*, p. 2054.

¹³ See Bogert, *Proposed Legislation Regarding State Supervision of Charities*, 52 Michigan Law Review 633 (March 1954).

excessive restrictions, either in the insurance policies or in the bylaws and regulations, or the providing of small benefits to the employee members in proportion to the amount contributed by the employee parties or the premiums paid, taking into consideration the risk involved, will cause more than a lifting of the eyebrows (*Upholsterers International Union v. Leathercraft Furniture Company*, (1949) D. C. E. D., Pa., 82 F. Supp. 570)."

As to the liability of trustees of health and welfare funds, the court in this case also said:

"As seen in *United Garment Workers of America v. Jacob Reed's Sons, et al.* (D. C. E. D., Pa., 83 F. Supp. 49), at page 52: 'The court considers such funds as rather sacred, and it is the purpose of the law that they be available when due under the contract.' Therefore, whenever the trustees use, or attempt to use, directly or indirectly, the fund for a purpose other than for the sole and exclusive benefit of the employee members, this court, when called upon, will enjoin the trustees from making the improper expenditure * * *. A provision in the bylaws or regulations denying the employee members the right to resort to the courts to protect their beneficial interest in the fund is of no legal effect."

Two recent cases indicate that the courts will look with favor upon the petition of a beneficiary even though his right to benefits has not vested. For example, in the case of *Bednar v. United Mine Workers Welfare and Retirement Fund, et al.* (DC, D. of C. (1953) ; 25 CCH Labor Cases, 68,352), a miner otherwise qualified was denied a pension by the fund's board of trustees because he had failed to work the last 2 days (March 29 and 30, 1946) of the eligibility period. As a result of a strike the mine then was shut down for 2 months. The miner did report again for work on June 3, 1946, after operations at the mine had been resumed, but was told that he could not be employed because of his age. He had received a check dated March 28, 1946, representing his pay for the period ending on that day, which was the last day he actually worked. The defense contended that the check was proof that the miner's employment had been severed on that date. The court held that the miner was entitled to a pension and that he was employed on a date subsequent to May 28, 1946, pointing out that it was through no fault of his that he was unable to work during the period of the shutdown. The court said, "The court is not willing to make a determination that a miner who has worked more than 20 years in the mining industry, and who for 2 days does not work is to be deprived of his pension rights because of failure to work on those 2 days." The court further refused to accept the defense's contention that because the miner received his last check on March 28, 1946, that was sufficient ground for holding that his employment with the industry had been severed on that date.

Similarly, in the case of *Forrish v. Kennedy* (Pa.; 1954 Sup. Ct.; 105 A. (2d) 67; 25 CCH Labor Cases, 68, 434) it was held that the trustees of a pension fund could not deny a pension to a coal miner who satisfied the eligibility require-

ments except for violation of the union's constitution which prohibits members of the union from engaging in the sale of intoxicating liquors. In 1909 the plaintiff in the case became a member of the United Miner Workers Union and maintained that membership by paying all dues and assessments until his retirement. From 1947 to 1950, he ran a restaurant and bar where intoxicating liquor was sold. The officers of his local union had full knowledge of his activities, but continued to accept his payments of dues and assessments. The trust agreement under which the trustees operated provided that the trustees would have full authority on questions of eligibility for benefits. They adopted a rule that membership in good standing in the union, which was a condition precedent to eligibility for benefits, must be certified in each case by the local and district union officers. It also provided that the international union was to have final say on all membership matters. After the plaintiff had become 60 years of age, an injury caused his retirement and he applied for a pension. The local union certified his membership in the union, which was confirmed by the district. However, the trustees refused to pay the plaintiff the pension, having determined in their own discretion that he was not a member of the union in good standing when he applied for his pension because of his having engaged in the sale of intoxicating liquor.

The court, in granting the plaintiff's petition, held that since the purpose of the trust was to provide, among other things, pensions on retirement and that the plaintiff had met all the requirements, including certification of membership in the union, he could not be denied a pension by the trustees. The court said that the purposes of a trust cannot be frustrated at the whim and caprice of the trustees and that courts of equity can always intervene to control such an unreasonable exercise of discretion.

It would thus appear that beneficiaries of welfare and pension trust funds established through collective bargaining have a means of protecting their rights and interests through the courts. However, as a practical matter, it is doubtful whether the beneficiaries are aware of the remedies so afforded or whether they are in any position to pursue a course of action to effectuate those remedies. If the trust instrument denies to the beneficiaries any right, title, or interest in or to the funds of the trust and if a beneficiary's rights remain potential rather than vested, a question immediately arises as to whether or not such beneficiary would have any standing in court. The very fact that there is a scarcity of case law involving the rights and remedies of beneficiaries of employee welfare and pension trust funds under either Federal or State law, is reason enough to doubt the effectiveness of available legal remedies.

It is a valid conclusion that the beneficiaries of these welfare and pension funds are confronted with definite problems in getting into court and successfully pleading a cause of action. As a practical matter, an employee-beneficiary will

probably think twice before agreeing to undergo the cost and risk of a suit which constitutes a challenge both to the power and authority of a board of trustees (which can grant or withhold benefits) and, in most cases, to the power and authority of his own union's leadership.

It is the consensus of the subcommittee that current State insurance, investment, and trust laws, in their general application, do not afford the means for effective regulation of private employee welfare and pension funds as separate and distinct legal entities. Furthermore, we are by no means sure that the legal rights and remedies available to the beneficiaries are, in themselves, fully adequate to protect their interests. It is our belief that the conservation of the funds and the protection of the rights and interests of the beneficiaries can be best assured not so much by resort to legal remedies, but through strengthening administrative controls both at the State and National levels * * *.¹²

The application of well-established doctrines of trust law to the field of employee benefit trust funds is a most difficult task. To an ever-increasing extent these funds are leaving the realm of usually understood trust principles and are posing an entirely new concept for dealing with property that has no parallel elsewhere in the law. In the majority of pension plans, there is no vesting and the intended beneficiaries at any given time consist of a varying number of employees who ultimately may, or may not, retire on pension. Thus, unless he has a vested interest, or until he actually retires and fails to receive his pension check, an employee has no legal status to demand anything of a trustee.

Another shortcoming of present pension trust understanding, bottomed on the same principle, is the unavailability to the employee of sufficient factual data to commence a lawsuit. Even before considering suit, one must be armed with somewhat more than suspicion. There must be some knowledge, no matter how vague, that the trustee acted improperly in accordance with the trust agreement. But the employee cannot get this information. Under the usual pension trust agreement only the settlor receives a copy of the trustees' report wherein would lie the basis for any possible legal action. The employee is excluded from receiving these data, notwithstanding the fact that he has more real interest in conserving the assets than has the settlor. The money is paid into the fund in return for his labor. He and his beneficiaries stand to suffer the loss if the funds are not available years hence, when he retires. A plan might be the subject of improper manipulation and dissipation for years, but as long as his checks come, the employee is powerless to hold rein over the disposition of the funds. Failure to disclose does violence to the very principle of funding, which is the heart of any sound plan.

Many of the rules applicable to conventional trusts are meaningless as to employee benefit trust funds. The settlor of the trust and the administrator are often the same person, in the corporate sense. The principal officers of the settlor corporation make up the "pension

¹² Interim Report, January 10, 1955, pp. 36-39.

committee," which, under the terms of the trust agreement, actually controls the disposition of the trust funds. As the administrator or trustee (not to be confused with a corporate trustee) in effect reports only to himself, there is no one to say he acted imprudently.

The logical conclusion is that present statutes are wholly inadequate and that there is no legislation at either the Federal or State level that will adequately safeguard these welfare and pension funds or the equities of their intended beneficiaries.

IV. NEED FOR FEDERAL LEGISLATION

Welfare and pension plans have mushroomed into a factor of major economic importance. Abuses, problems and weaknesses have hampered their effectiveness and will increasingly continue to plague them under the present lack of regulation. It is clear that in order to protect adequately the beneficiaries of these programs some action must be taken.

The major problem, the subcommittee has concluded from its studies and investigations, is one of assuring the immediate and long-range stability of private pension and welfare programs. As shocking as the cases of dishonesty and fund looting have been, and great as the need is to bring them under control, the greater objective is the promulgation of sound standards to assure most effectively the maximum usefulness and safety of these programs in order that they may better withstand the contingencies against which they were established. The breakdown of any significant part of either the pension or the welfare programs could, and undoubtedly would, amount to a major setback to our economy.

Poor management, no matter how well-intended, bad investments, lack of preparation for emergency conditions, or lack of managerial skill, can work as much damage to these programs as flagrant dishonesty. The overall need is for these programs to be carefully and wisely managed with the minimum of detailed regulation. Subsidiary to that need is the requirement that there be severe legal penalties applicable to the dishonest.

A. THE ALTERNATIVES

One alternative which has been suggested is that the Congress wait for the States to act in this field. The States, with a few exceptions, have not taken action. Can it be taken for granted that they will act? Or that they would act uniformly? Or that in every case the action would be effective? In many of these programs, the employers, unions, and insurance firms operate across State lines. The abuses and problems discovered cut across the broad pattern of business-labor relations, and across State borders.

Business firms are given a Federal tax credit for their contributions to these programs and, in producing goods or services, almost universally employ the facilities of interstate commerce. Collective bargaining agreements may involve firms or plans in several States. Organized labor is recognized as being of interstate and national composition.

To propose purely State action is to suggest that a problem of national scope be chopped into 48 sections, to be treated as each State legislature may dispose. Public interest directs that such a serious problem not be treated in a piecemeal fashion.

Another proposal suggests the requirement of regular auditing and reporting to the beneficiaries, but no reporting to a Federal agency. This approach appears inadequate to take care of the many problems posed.

Another suggestion has been made that Congress enact legislation for complete regulation of these programs at the Federal level. Obviously, this would impose a staggering load upon the Government and, upon the basis of investigation to date, the necessity for it has not been proved.

Ills and dangers which are demonstrably an element in present welfare programs can be lessened without detailed Federal regulation beyond the point which we propose.

The subcommittee proposes a Federal disclosure act. This is a moderate and sound approach. It leaves room for the States to take whatever additional action they may find necessary, without creating an area of conflict between the Federal and State jurisdictions. It should not interfere with State statutes regulating insurance companies and banks, the laws on trusts, or other such matters.

The subcommittee has come to its decision in favor of disclosure with considerable reluctance. However, no other decision is possible in the light of the evidence before us.

It is recognized that reporting will place an additional burden upon many corporations and unions. But, we believe that as the absolute minimum, such reports are necessary for the protection of the beneficiaries. We believe that the necessity for preparing such reports and furnishing annual audits will lead to more careful accounting systems, better management of the programs, sounder investments, more responsible trusteeship, and active interest on the part of employers and employees, and, in conjunction with criminal sanctions imposed, will deter dishonesty.

The Government grants a tax credit for employer contributions to these programs; it has a right to require that reports be rendered, showing in reasonable detail their stewardship. To grant tax credits for money that is placed in these programs which then, because of inadequate regulation, is squandered, embezzled, sunk in extreme risks, or otherwise lost to the beneficiaries, is foolish policy. An estimated \$6.5 billion of annual contributions to these programs demands Federal attention.

Certain penalties which we propose for willful embezzlement, conversion, false reporting, failure to file reports, or resistance to field investigations through the withholding or destruction of records, are moderately severe. Legislation must be made effective.

In addition, a disclosure act should spell out in detail what plans should be required to register, what plans should be required to report and disclose, and to whom, because an administrative agency should not be burdened nor vested with such discretion.

The administrative agency chosen to enforce this act should make a continuing study of the reports and the problems as disclosed by them. This study should be exhaustive, proceeding from the point at which the subcommittee has terminated its inquiry. Prior to the termination of the act, and based upon its studies and 2 years' experience with disclosure, it should make a comprehensive report to the Congress, outlining its findings, its evaluation of the act, and its recom-

mendations with respect to the continuance, simplification or broadening of legislation.

It is our desire to make the disclosure act an effective instrument to safeguard these vast programs, but at the same time to make it the least burdensome possible. We believe that with accurate and adequate accounting, the annual audit, and an open-faced exchange of information between the beneficiaries involved and others participating in the programs, the burden within a year of the enactment of the act will prove to be very reasonable and the security given the beneficiaries will be greatly enhanced.

We believe that business, unions, insurance companies, banks, and the tens of millions of beneficiaries, as well as the Nation generally, will applaud and support this reasonable objective. We believe also that once they have undertaken the proposed program, no group would willingly forego its salutary effects.

B. REGISTRATION, REPORTING, AND DISCLOSURE

The subcommittee recommends the enactment of a 3-year Federal registration, reporting, and disclosure act which would be applicable to all types of employee welfare and pension benefit plans.

1. REGISTRATION

All employee welfare and pension benefit plans covering 25 or more employees should register with a Federal administrative agency within 90 days of the enactment of this act or the establishment of plans subsequent thereto. This registration should furnish identifying information—namely, size and type of plan, whether or not collectively bargained, etc.—as prescribed by the act and the regulations of the agency.

2. REPORTING AND DISCLOSURE

(A) WHO SHALL FILE REPORTS?

(1) The subcommittee believes and recommends that reports be required of all private employers who employ 100 or more persons, and who have an employee welfare or pension program, or both. These plans cover the largest percentage of employees, by far; the moneys contributed by management to these plans are considered in the nature of employees' compensation, are exempted from taxation, and it is the exception rather than the rule for any accounting to be made to the employees.

Data from the old-age and survivors insurance program indicate that in first quarter 1953 there were some 82,000 employers with 50 or more employees and approximately 38,000 employers with 100 or more employees. The subcommittee estimates that about 30,000 reports would be filed under this requirement, and that the remainder would either be without programs, or included in multiemployer reports.

This volume of reports is a manageable one for an administering agency. It would cover the most important segments of business. It would relieve the smallest employers of the burden of reports; and it would not swamp the administrative agency with an impossible task.

Should reports be required of all employers having eight or more employees, according to OASI figures there could conceivably be

554,000 reports filed annually. Should reports be required of those having 20 or more employees, the number could go to 211,000. Until experience proves otherwise, such a volume would be too burdensome an operation.

(2) The subcommittee recommends that reports be required of all jointly managed plans, both welfare and pension programs, which include 100 or more employees. While the best statistics available indicate that there would possibly be only some 1,500 welfare reports in this category, and some 200 pension reports—in neither case a large figure—the importance and growing scope of such jointly managed programs require that they report.

(3) Wholly union-administered plans covering 100 or more employee-members should also file reports. The evidence discloses mismanagement and corruption in some of these programs. It is estimated that probably 100 welfare-fund reports and 50 pension reports would initially be made pursuant to this requirement.

(4) Employee welfare and pension plans which include less than 100 employees but which in fact are operated or administered on some common basis with other plans (namely, common officers or administrators, union bargaining representatives, or employers, etc.) and which together include in the aggregate 100 or more employees, should also be required to report and disclose.

These requirements would call for an estimated total of between 30,000 and 40,000 annual reports.

Under the formula proposed above, many otherwise vexing problems are eliminated. Voluntary associations of individuals, such as lodges, etc., would not be required to report. The subcommittee can see no necessity for their reporting.

While small independent plans would not be required to comply with the reporting provisions of the act, they should be required to register and give the essential details relative to their plans. However, the administrative agency should have discretion to require reporting and disclosure by a particular plan or plans covering between 25 and 100 employees on an annual basis, or less frequently, and to require compliance with other provisions of the act when, in the opinion of the agency, such action is deemed necessary to accomplish the objectives of the act.

(B) WHEN SHOULD REPORT BE MADE?

It is recommended with respect to insured plans that an annual report be filed within 120 days after the anniversary date of the policy. With respect to noninsured plans, the report should be filed 120 days after the end of the fiscal year of the plan but not later than April 1 of each year if the plan or fund is on a calendar-year basis. This should permit an orderly flow of reports, but the administrative agency should have the discretion of varying the date for filing an annual report, if this is deemed necessary.

(C) WHAT INFORMATION SHOULD BE REPORTED?

It is our conclusion that reports prescribed by the administrative agency should include at least the following:

(1) The name, address, and description of the plan or program including type of plan and type of administration; schedule of benefits; copies of plan or trust agreement; names and addresses of all trustees

or administrators, and their official positions as employer, employee or union representatives; and names and addresses of all employers or unions participating in the plan.

(2) As this is a report, information in which would ultimately be for the beneficiaries, it would be meaningless unless it were based upon a comprehensive audit of the financial position and the operations of the plan by an independent public accountant in accordance with accepted standards of auditing.

The report should at least include a detailed statement of financial position, receipts, expenses, benefits, and reserves; the amount contributed by the employer and the number of employees covered; the amount contributed by the employees; and, with the exception of clerical employees, the salaries and fees paid by the plan or fund, to whom paid and in what amount and for what purposes.

If a commercial insurance carrier is involved, the premium rate and the total premium charges should be included, as well as the number of persons covered; total claims, dividends, commissions, fees, and retentions; the names and addresses of brokers or agents, or others to whom commissions or fees were paid; the amount paid to each and the services rendered for this compensation.

The insurance company should be required to furnish to each employer plan or fund, within 90 days after the end of each policy year, a statement which will provide the information needed for the report.

If the plan is self-insured or if an agency other than a commercial insurance carrier is employed, a financial statement of the employer plan, fund, or agency should be required.

Details relative to the manner in which reserves of welfare plans are held or invested should be reported as recommended under (3) (b) below.

(3) In addition, pension plans and funds of whatever type required to report, should file the following:

(a) If the plan is funded—a trustee type of plan—reports should include the type and approved basis of funding, total contributions during the period covered by the report, broken down between employer and employees, current and past service liability, actuarial assumptions and number of employees covered, both retired and nonretired.

If a pension plan takes the form of a group annuity policy with a commercial insurance carrier or a deposit-administration-type plan, the same information should be filed. In addition, data with respect to all reserves accumulated under the plan should be included.

(b) The trustee type plan should also provide a summary statement of reserves and investments, broken down by type of investment, such as common stock, preferred stock, Government securities, and so forth, giving the aggregate cost of each type of security or property or the present value, whichever is lower, as well as the percentage of the total fund represented by such type of security or property.

All investments in securities or properties of the trustor and all parties in interest should be listed in detail, giving information as to cost, present value, and percentage of total fund.

All investments in a particular security or property exceeding 5 percent of the fund should be listed in the same detail.

(c) If an unfunded plan, the report should include the total amount paid to retired employees during the period covered by the report, the number of employees retired, details of any balance-sheet reserves set up, any available actuarial evaluations, liabilities imposed by contract, and a financial statement of the company or employer as of the last fiscal year.

(d) The administrative agency should have the authority to obtain any other appropriate information it requires in order to properly administer the act.

(D) HOW SHOULD REPORTS AND DISCLOSURE BE MADE?

The financial details of all reports should be certified to by an approved independent public accountant. If the plan is trusteeed, the report should be attested to by the trustees; if a union-administered plan, by the president and treasurer of the union; if a jointly administered plan, by the joint trustees; and if unilaterally administered by the employer, by a principal officer of the employer.

We recommend that, in addition to being filed with the Federal agency and being made available for examination by interested parties both at the principal offices of the plan and at public document rooms of the Federal agency, the annual report or a summary thereof as prescribed by the agency shall be furnished to the beneficiaries of the plan or fund by personal delivery or mail.

The Federal agency to which reports should be made should have the authority to require whatever further distribution is deemed necessary or desirable.

3. TO WHAT FEDERAL AGENCY SHOULD REPORTS BE MADE?

The Department of Health, Education, and Welfare, the Internal Revenue Service, the Department of Labor, and the Securities and Exchange Commission have been suggested as agencies for the administration of a disclosure act. It has also been suggested that an independent agency be created.

The Department of Health, Education, and Welfare administers the Government's old age and survivors insurance program the objectives of which bear a close relationship to private employee welfare and pension programs. However, it performs relatively few administrative or enforcement duties other than recordkeeping and payment of social-security claims, since the Internal Revenue Service collects the payments under this system. Under existing law, the Department conducts studies, analyses and statistical surveys on which thousands of employers rely in formulating their programs. It also has an actuarial staff, a decided asset to any administrative agency of a disclosure act. It has the know-how to analyze the objectives of group insurance, pensions, and medical-care programs. It has undoubtedly given much thought to ways and means of providing such benefits to workers and their dependents. It is objective, having no interest in organized labor or management, as such. It has administrative facilities throughout the country. However, it has had no experience in the administration and enforcement of a disclosure statute.

The Internal Revenue Service has jurisdiction over the tax deductions allowed employers in financing their plans, and for tax and other purposes qualifies pension plans. It also has a complete enforcement

system. However, this agency is the very opposite of a disclosure agency; its primary function is to administer the tax laws. It is specifically precluded from disclosure of data with respect to any individual taxpayer, nor under existing law is it concerned, except incidentally, with the actuarial soundness of any program it qualifies for tax exemption.

The Department of Labor is intimately concerned with collective bargaining and management-labor relationships in the broad field of private enterprise. It maintains regional investigation branches and enforces the Wage and Hour Act. It has developed advanced study and survey techniques through the Bureau of Labor Statistics, although in the main of a quantitative nature. The department has not had material experience in the enforcement of a disclosure statute.

The Securities and Exchange Commission is the only Government agency with a long period of successful administration of disclosure statutes. It is an independent agency. Its existing tested administrative machinery is particularly adapted to the area of administration of disclosure, factfinding, detecting frauds, and irregularities in complicated financial operations. It is a relatively small agency, but has a core of 500 or 600 trained analysts, lawyers, and investigators of long experience in complicated financial analysis and investigation. It has nine regional offices and several branch offices throughout the country.

It has some degree of familiarity with welfare and pension plans, as many companies must file these plans incident to registration statements and proxy contests. It has recently made a survey of financial holdings of pension trusts.

The agency has contributed over the past 20 years to raising accounting standards and practices and making registered accountants more responsible in the performance of audits. Its experience in this area would bear directly on any responsibilities charged to it under a disclosure statute.

As previously stated, the subcommittee has no strong views as to which agency should administer this act. It believes that the choice of an administrative agency is secondary to the necessity of obtaining adequate legislation. The agency selected for the task will have the dual responsibilities of protecting the beneficiaries against abuses and unnecessary drains on the funds contributed to welfare and pension plans and, equally important, of studying and appraising the financial strength and weaknesses of the operation toward the end of greater stability.

For the present the subcommittee is inclined to favor the Securities and Exchange Commission as the agency to administer such an act because of its past experience and its organizational setup.

4. JURISDICTION

The authority to require registration, reporting, and disclosure as well as the enforcement functions incident thereto rests upon the taxing authority of the Federal Government, the general welfare interest, and the interstate character of the many elements connected with such plans.

Much of the money involved in such plans is exempt by law from Federal taxation. The income from such plans is also exempt.

The activities of such plans frequently extend over many States and use the instrumentalities of interstate commerce.

5. PENALTIES

It is believed essential to prescribe penalties not only for failure to properly report and disclose pertinent facts required by law and the rules and regulations of the agency administering such a disclosure act but to prescribe severe penalties for dishonesty. Accordingly, it is recommended that the following penalties be prescribed:

(a) Any person who willfully violates or fails to comply with any provisions of the act or rules and regulations promulgated thereunder should be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

(b) Any person who makes a false statement or representation of a material fact knowing it to be false or who knowingly fails to disclose a material fact in any registration, report, or other document required to be submitted by the act or the rules and regulations thereunder should be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

(c) Any person who steals, unlawfully and willfully abstracts or converts to his own use or to the use of another, or embezzles any of the moneys, funds, securities, premiums, credits, property, or assets of any plan or fund should upon conviction thereof be fined not more than \$10,000 or imprisoned not more than 5 years, or both.

(d) The agency administering a disclosure act should have the authority and jurisdiction to restrain violations of, and to enforce any duty created by, or to compel disclosure of any information required by the act or regulations.

6. ADVISORY COUNCIL

The subcommittee fully appreciates the burden being placed upon a Federal agency in the administration of this registration, reporting, and disclosure act. It is also believed that continued consideration should be given to the effectiveness of the administration and the provisions of the act. Accordingly, it is recommended that an Advisory Council be established which shall be representative of labor, management, insurance, banking, Government, and the general public. This Council should act in an advisory capacity to the administrative agency, conduct reviews of the administration of the act and make appropriate reports and recommendations. The Council should meet at least twice a year and at such other times as deemed necessary by the administrative agency or the Council.

(a) The subcommittee recommends that the Advisory Council consist of 13 members, to be appointed in the following manner:

A representative of the insurance industry, a representative of the banking industry, and two representatives of management, all appointed by the Federal agency administering the disclosure act;

Three representatives of labor, appointed by the Secretary of Labor;

Three representatives of the general public, appointed by the President of the United States;

The Secretary of Health, Education, and Welfare, the Secretary of Labor, and the Commissioner of Internal Revenue, shall serve as ex officio members of the Council.

(b) The members of the Advisory Council shall receive compensation of \$50 per day and travel expenses, except for the ex officio members, while in meetings for the conduct of Council business.

(c) The Advisory Council may call upon the administrative agency for secretarial, clerical, and other services in connection with Council business.

(d) The Advisory Council may call upon other governmental agencies for statistical data, reports, and other information to assist it in the performance of its duties.

C. FEDERAL LEGISLATION ALREADY PROPOSED OR RECOMMENDED

There are 3 bills of a disclosure nature relating to welfare and pension plans which have been introduced in Congress during the past 2 sessions. In addition, the AFL-CIO has made comprehensive recommendations regarding a disclosure bill.

The bills already introduced and the AFL-CIO recommendations are described below:

1. S. 1717, 84TH CONGRESS, 1ST SESSION

Introduced April 18, 1955, by Senator Hubert Humphrey (Democrat, Minnesota). Originally introduced in the 83d Congress as S. 3649. This is a bill to amend the National Labor Relations Act and the Labor Management Relations Act of 1947 with respect to union-welfare funds. It would require unions to report the assets and liabilities of any trust fund which the union has established in accordance with section 302 (c) of the Labor Management Relations Act of 1947. The report, which would be filed with the Secretary of Labor, would include the amount and sources of payments to the fund; fund disbursements for benefits or other purposes, including salaries and expenses; investments of the fund; amounts paid to officer, employees, or agents as commissions, fees, gratuities, "or otherwise," by officers or agents of any insurance company doing business with the fund. The bill would require similar reports from employers who, pursuant to a collective-bargaining agreement, have (1) established or maintain a trust fund for the purpose of providing welfare benefits to employees and their dependents or pension benefits to employees, and who (2) solely administer such fund.

It provides that certain processes of the National Labor Relations Board would not then be available to such unions and/or employers unless they can show that prior thereto, they filed the reports prescribed by this bill.

This bill would also prohibit investments by trust funds in securities other than those in which the funds of life-insurance companies may be legally invested under the laws of the State where the principal office of the fund is located.

2. S. 3051, 84TH CONGRESS, 2D SESSION

Introduced January 26, 1956, by Senators Irving M. Ives (Republican, New York) and Gordon Allott (Republican, Colorado) (by request). This is a bill to provide for registration and reporting of

welfare and benefit plans and the reporting of appropriate information regarding their receipts, disbursements, assets, liabilities, and financial activities. The bill does not call for the amendment of any existing laws. Its jurisdiction is based on the Federal taxing authority and the general welfare. The registration and reporting requirements are applicable to all types of welfare or benefit plans without regard to method of establishment or administration. Responsibility for administration and enforcement of the bill is delegated to the Secretary of Labor. Penalties are provided for failure to comply with the provisions of the bill, and for false filing.

Under the provisions of this bill, the Secretary of Labor is given sole discretion as to the extent of the information which is to be filed by welfare and benefit plans. The bill does call for the reporting of "appropriate information respecting the receipts, disbursements, assets, liabilities, and financial activities" of these plans but further states that the "report shall include such information or documents relating to the incoming disbursements of the plan as the Secretary may prescribe." The Secretary is further authorized to exempt from any provision of the act any class or type of welfare or benefit plan, if he finds that the application of such provision to the plan is not required to effectuate the purpose of the act.

3. H. R. 2132—84TH CONGRESS, 1ST SESSION

Introduced January 13, 1955, by Mr. Ralph W. Gwinn (Republican, New York). Was originally introduced in the 83d Congress, 2d session, as H. R. 9705. This is a bill to amend section 302 of the Labor-Management Relations Act of 1947 with respect to jointly managed trust funds established for welfare and pension purposes. Prohibitions, already in parts (a) and (b) of section 302, making unlawful payments by an employer to a representative of his employees, and the receipt of any such payments by a representative, have been enlarged to preclude payments to, or receipt by, any fund of which the representative is an officer, director, trustee, or administrator. The bill requires that such funds operate under a trust agreement which, in addition to providing for an equal number of employee and employer trustees, shall also provide for a neutral trustee to be appointed by a Federal district court. It further requires that the trust agreement be filed under oath with the Department of Health, Education, and Welfare, and contain the detailed basis of benefit payments which shall be payable to all persons on whose behalf contributions to the fund are made without regard to union membership. The bill contains prohibitions with respect to trustees, union representatives, and employers connected with such funds in that it prevents them from receiving financial benefits, such as commissions, from the operation of the fund or the purchase of insurance by the fund, nor can they have an interest in, or serve as an officer of, any insurance carrier or broker through which the fund's insurance has been placed.

This bill requires that the trustees of such funds cause annual audits to be made, reports of which shall be filed and subscribed under oath with the Department of Health, Education, and Welfare, and be open to public inspection. The bill empowers the Secretary of the Depart-

ment to investigate allegations of noncompliance and to obtain court action for violations. It also contains criminal sanctions for willful violations of its provisions.

4. AFL-CIO LEGISLATIVE RECOMMENDATIONS

At the first constitutional convention of the AFL-CIO in New York City on December 7, 1955, a special committee presented a report embodying a number of recommendations and a comprehensive resolution pertaining to the administration and operation of welfare plans.

The committee recommended the enactment of Federal legislation which would require full disclosure of the financial operations of health, welfare and pension plans of all types. Those responsible for administration of such plans would be required to file detailed financial reports once each year with the Internal Revenue Service and to file certified duplicate copies with the Department of Labor where they would be made fully available to authorized parties. It was recommended that such a law should provide criminal penalties for nonfiling or false filing.

The committee also recommended State legislation to eliminate the mandatory charging of insurance commissions; prohibit the payment of excessive commissions and service charges to agents and brokers; the adoption and enforcement by the various State insurance commissions of a code of standards governing commissions and charges and a general tightening of the present State regulations of insurance. There was a further recommendation that additional legislation be enacted, if necessary, to require that fiduciary obligations applicable to various trustees under existing State laws be made to apply as well to trustees of health, welfare and pension plans.

This entire resolution was adopted by the convention. The portion thereof which deals with legislative recommendations is as follows:

2. Legislation should be enacted by the Congress of the United States, requiring annual reports and public disclosure of the financial operations of health, welfare and pension plans, including the details of the related financial transactions of insurance carriers and/or service agencies. Such legislation should contain the following essential elements:

(a) The law should be adopted and administered at the Federal level rather than through a multiplicity of State agencies. Parties responsible for the operation of health and welfare plans should be required to file reports with the Federal Government, regardless of whether or not they also file with a State governmental agency. As an expression of the public interest in the operation of tax-exempt programs and so as to avoid the complexity of determining whether such plans are intrastate or interstate in character, the reporting and disclosure requirement should be made a function of the Federal tax power.

(b) The filing and disclosure requirement should apply to all types of group health, welfare and pension plans, including those administered unilaterally as well as those administered jointly.

(c) The party or parties responsible for the adminis-

tration of a health, welfare or pension plan should be required to report the financial details of plan operations annually, on a standard form, with the Internal Revenue Service. The report should disclose, in adequate detail, the operations, transactions, expenses and investments of the fund. If a private insurance carrier is employed, the report should be accompanied by a statement from the carrier covering the particular account involved and containing a breakdown of premiums and retentions, showing the amount of dividends or rate credits paid or due, claims experience, the amount of commissions and service charges, and to whom those commissions and charges were paid.

The law should provide criminal penalties for nonfiling or false filing. While the Internal Revenue Service should not be granted the power to withhold approval of a health and welfare plan so as to delay its establishment or to require approval in advance of establishment as a condition of tax exemption, as a result of this legislation, the Service would be able to use the information contained in these reports as an aid to its normal enforcement operations.

(d) The party or parties responsible for filing these reports shall also, and at the same time, file a certified duplicate copy with the Department of Labor. It shall then be the duty of the Department of Labor to make these reports freely available on request to parties authorized to receive them—which shall include individual employees and their collective bargaining representatives, authorized Government agencies and committees of Congress, and State insurance departments. It shall also be the duty of the Department of Labor to undertake and to make public analytical studies and statistical summaries of the information derived through these reports.

The proposed statute should spell out in detail the information to be sought in a disclosure form with authority lodged in the Secretary of Labor to prescribe appropriate rules. In addition, since the whole field of health, welfare, and pension plans is still in such a fluid state, the law should require the establishment of an advisory committee to meet at regular intervals and to be composed of representatives from the important interest groups including organized labor. The purpose of the advisory committee would be to provide guidance to the government in the formulation of the disclosure schedule and in the administration of the act.

3. The legislation should be sought in the several States so as to achieve the following objectives:

(a) State insurance laws should be amended so that in cases where an agent or broker is not employed and no such services are rendered, the requirement that commis-

sions must nevertheless be paid to an agent or retained by the insurance carrier is eliminated.

(b) Where the services of agents or brokers are employed, the payment of excessive commissions and service charges should be banned. A code of standards governing commissions and charges should be adopted and enforced by state insurance commissions.

(c) State regulatory bodies governing insurance operations should be made more representative of the public and consumer interest. At present, State insurance commissions and departments tend to reflect and to be dominated by the special interests of the insurance industry.

(d) State insurance commissions and departments should be required to assume and exercise a greater degree of responsibility for the integrity, competence and character of agents and brokers who are licensed by the State. At the present time, such a license is virtually meaningless and offers no assurance to the public that a person having a license is reliable or subject to any really effective checks, surveillance or standards. As a minimum step, as a requirement for securing and holding a license, the records and accounts of agents and brokers should be subject to regular and thorough inspections, and they should be required to file regular reports with State insurance commissions disclosing and identifying every fee and commission received in connection with a group policy, issued as a part of a health and welfare plan, and the nature and purpose of expenditures made in the course of their business operations. The charging of excessive fees, commissions, or expenses and the making of unethical or improper payments to secure or to hold an account should result in the prompt revocation of the license to operate.

(e) Laws which, in a number of States, now stand, in the way of the development of consumer-sponsored, non-profit medical service prepayment plans should be repealed, so as to make constructive alternatives to limited cash indemnity insurance plans more generally available to trade union and other consumer groups.

(f) Laws which, in a number of States, prohibit employers from withholding any part of wages earned by an employee (except taxes) without written authorization, should be amended so as to exempt from such prohibitions deductions made for health and welfare plans developed through collective bargaining by employers and bona fide trade unions.

(g) The fiduciary obligations generally applicable to trustees under State law should be applicable to trustees of health and welfare plans. If additional legislation is necessary to bring about the result, it should be enacted.

WELFARE AND PENSION PLANS INVESTIGATION

Pension plans.....	19 12, 500	(4)	(4)	11 7, 200	(4)	(4)	5, 300	(4)	(4)
Trusteed and pay-as-you-go.....	8, 585			(9)			(9)		
Insured.....	13 3, 915			(9)			(9)		

¹ Based on Department of Labor data for mid-1954 with allowance for railroad and other employees not included in Department of Labor survey. Finance and Group Annuity Coverage, Life Insurance Association of America, Group written for nonemployee groups (storekeepers, lawyers, etc.) but the proportion of this in the total is believed to be negligible.

² Rough estimate, based on data in various trade union employee benefit association and company administered plans. Proceedings of 1954 convention of A. F. of L. (p. 74) show \$26,700,000 in death benefits paid preceding year. It is estimated that about two-thirds of this is through self-administered programs.

³ Not applicable.

⁴ Health Insurance Council, The Extent of Voluntary Health Insurance Coverage in United States, 1953, p. 26.

⁶ Assumes same ratio of dependents to employees as under all health programs. Includes all dependents of covered employees, not simply those for whom employers are paying part or all of cost under a collective bargaining agreement.

⁷ Health Insurance Council, 1954 survey; employees covered under employee group plans are estimated to be 75 percent of total number of subscribers.

⁸ Ibid., totals shown for independent plans after appropriate deductions for employees covered under other plans and for nonemployees and dependents.

⁹ Not available.

¹⁰ Estimate of Mrs. Van Eenam, Office of Chief Actuary, Social Security Administration, HEW.

¹¹ Based on Department of Labor data for mid-1954 with allowance for increase to end of 1954.

¹² Institute of Life Insurance, Tally of Life Insurance Statistics, May 1955.

WELFARE AND PENSION PLANS INVESTIGATION

APPENDIX II

Contributions under private welfare and pension plans, 1954

[Millions of dollars]

Type of benefit	Total contributions	Employer contributions	Employee contributions
Welfare plans:			
Life insurance and death benefits.....	882.1	525.7	356.4
Group life insurance.....	¹ 846.5	² 507.9	² 338.6
Self-insured death benefit plans.....	³ 35.6	⁴ 17.8	⁴ 17.8
Accidental death and dismemberment insurance.....	¹ 33.5	¹ 20.1	² 13.4
Temporary disability benefits and sick leave.....	684.6	464.8	219.8
Insured plans.....	¹ 473.6	² 283.8	² 189.8
Self-insured (trade union, employee benefit association, etc.).....	⁵ 60.0	⁴ 30.0	⁴ 30.0
Sick leave plans, private industry, formal plans only.....	⁶ 151.0	151.0	-----
Health insurance and services:			
Hospitalization.....	1,220.3	391.6	828.7
Blue Cross and Blue Shield plans.....	⁷ 602.9	⁸ 120.6	⁸ 482.3
Insurance companies.....	⁹ 502.4	¹⁰ 201.0	¹⁰ 301.4
All other, including independent plans.....	¹¹ 115.0	¹¹ 70.0	¹¹ 45.0
Surgical and medical.....	714.7	260.7	454.0
Blue Cross and Blue Shield plans.....	⁷ 246.0	⁸ 49.2	⁸ 196.8
Insurance companies.....	⁹ 353.7	¹⁰ 141.5	¹⁰ 212.2
All other, including independent plans.....	¹¹ 115.0	¹¹ 70.0	¹¹ 45.0
Major medical.....	⁹ 18.0	¹² 9.0	¹² 9.0
Pension plans.....	3,293.0	2,866.0	427.0
Trusted and pay-as-you-go.....	¹³ 1,968.0	¹³ 1,766.0	¹³ 202.0
Insured.....	¹⁴ 1,325.0	¹⁴ 1,100.0	¹⁴ 225.0
Total.....	6,846.2	4,537.9	2,308.3

¹ Life Insurance Association of America, Group Insurance and Group Annuity Coverage, 1954.² On basis of rough estimate that employers pay 60 percent and employees 40 percent of overall cost.³ Death benefits paid under A. F. of L. trade-union self-insured plans estimated at \$17.8 million (see note 3, Appendix I); contributions under other union and company and employee benefit association plans are estimated at a roughly equal amount.⁴ Estimated on basis of 50 percent from employer and 50 percent from employees or union members.⁵ Based on data in Voluntary Insurance Against Sickness, 1948-53 Estimates, Social Security Bulletin, December 1954, table 2. Contributions under self-insured plans were estimated at \$53 million for 1953 and \$45 million for 1952 and some increase in 1954 has been assumed.⁶ Total sick leave paid in 1954 estimated at \$360 million (see note 6, Appendix I). Of 7.9 million employees covered under these plans in 1953, 4.6 million were public employees and 3.3 million (42 percent) were employees in private industry. Forty-two percent of \$360 million equals \$151 million.⁷ Based on data from Blue Cross and Blue Shield Commissions, subscription income from employee groups is estimated on basis from Blue Cross Commission at three-fourths of total subscription income.⁸ Rough estimate based on a 1953 Blue Cross study of the extent of employer participation in paying subscription costs.⁹ Health Insurance Council, unpublished data from 1954 Survey of Accident and Health Insurance; data obtained through Division of Research and Statistics, Social Security Administration, Department of Health, Education, and Welfare.¹⁰ On assumption that employers pay 40 percent; employees, 60 percent.¹¹ Data from Division of Research and Statistics, Social Security Administration, Department of Health, Education, and Welfare. Based on data from Brewster, Agnes W., Independent Plans Providing Medical Care and Hospital Insurance: 1954 Survey, Social Security Bulletin, April 1955. Division of cost between employers and employees based largely on known situation for certain large plans.¹² Rough estimate.¹³ Based on Securities and Exchange Commission survey of Corporate Pension Funds, 1954 (release of October 12, 1955) which shows \$1,526 million under trusted plans of employer contributions and \$165 million of employee contributions. Profit-sharing plans with retirement features are included. Data for various jointly (employer-union) managed and union retirement funds indicate probable employee contributions of \$120 million and employee contributions of \$20 million to trusted funds. Allowance for pension contributions to trusted funds of banks and various nonprofit organizations (churches, universities, etc.) brings the totals to those shown.¹⁴ Institute of Life Insurance, Tally of Life Insurance Statistics, May 1955. These data from all life insurance companies show total contributions. It is believed that employers contribute a somewhat higher proportion of the total cost than under trusted plans.

SUPPLEMENTAL VIEWS OF SENATOR ALLOTT

These supplemental views are filed by the undersigned to express primarily a point of view separate and distinct from some of the conclusions drawn by the report but not with the findings in general. It is filed not to express a divergence from the fine bipartisan cooperation existing throughout the hearings and in the writing of the report but rather to emphasize certain items which the writer feels have not received sufficient emphasis in the report.

The question has arisen and been discussed by the staff and by members of the committee at great length as to the status of pension and welfare funds. The view of the majority of the committee is that all welfare and pension funds are benefits "in the nature of compensation" because of (1) the recourse to tax benefits by employers, (2) the various NLRB and court decisions, and (3) the wage-stabilization regulations of the Defense Production Act of 1950. This point of view embraces all types of funds whether pension or welfare, unilateral or bilateral, self-managed or insured, contributory or noncontributory, bargained or not bargained, level of benefits or fixed contribution. During all these years the principle of disclosure has not applied where there was bargaining upon a level-of-benefits basis. Those who bargained in this manner did so with full knowledge that the cost to the employer, the operation, and the management of the fund was the exclusive right of the persons managing it. Had either the employee or employer desired otherwise, he would have bargained on another basis than level of benefits.

Therefore, in the approach that all pension and welfare funds should be included in registration, reporting, and disclosure it has seemed obvious that the passage of such legislation would, in effect, deprive the manager of the fund of long-existing legal rights. By the same token, it would appear that we are depriving management, unions, and the individual employee of the free right to contract and by such contract to place upon one party or the other a full responsibility, and in some cases the hazard of expense, for the management of a fund. In one of the best definitive analyses of the American way of life it has been said that among other rights is the right to contract about our own affairs. It is incumbent to point out that the passage of legislation in the form suggested in the report to include all welfare and pension funds would deprive management, unions, and labor of the right to contract in this one important aspect. It is the deprivation of this existing right which is the fundamental basis for filing these supplemental views.

The writer must state frankly that he has sought to draw the line somewhere in this field, exempting those plans where registration, reporting and disclosure are not needed as indicated by the hearings, and in a manner which is fair and just to all persons concerned. He has not been able to do so without leaving areas where injustice or needed supervision might occur. In the field of pensions, which are usually funded, there seems to be a much greater justification for legislation disclosing the nature of the fund than there would be in welfare funds which are generally not funded. The adoption of the

principle of complete registration, reporting, and disclosure ends an era in which an employer may do anything in behalf of his employee without being liable for a complete accounting to the employee or the union. This would be modified to the extent that small employers are excepted.

The last point which it seems worthwhile to make and emphasize, although the report is not in disagreement in this respect, is that the following seem to be main areas of abuse in this field:

- (1) Excessive commissions.
- (2) Excessive administration fees.
- (3) Use of administration expenses for purposes other than administration.
- (4) Unequal treatment of insureds by insurance companies as to dividends or premium credits.
- (5) Nepotism.
- (6) Looting or embezzlement as well as gross misabuse of funds for "expenses" of fund officials.
- (7) A failure to achieve under the Taft-Hartley Act a true dual administration of funds.

Of these it would seem that the primary responsibility and possibility of curative legislation must lie with the State legislative processes. For example, joint self-policing by insurance companies themselves and State legislation are the only effective methods by which decremental commission norms can be established. And, contra, Federal legislation would be comparatively ineffective unless accompanied by tremendous administrative cost. In view of the great strides made by insurance companies, management, organized labor, and State legislatures toward adequate self-policing and legislation, there is a danger of setting up excessive Federal legislation which would be dual in purpose. The staff of this committee estimate that from thirty to forty thousand reports would be required to be filed each year and the size of a staff for properly auditing and compiling statistical material can readily be seen.

An added point not included in the report is that disclosure as defined in any legislation should also include the complete auditing, or exchange of complete auditing information, as between the various parties involved in any particular fund. There are six parties who may have interests in any given fund: the employer, employee, union, management, trustees, and insurance company. Information as to dates, number of employees covered, dividends, and so forth, should flow freely from as many of these parties as are involved in any fund to be covered. Such a procedure, for example, would have prevented the looting of the funds of the Laundry Workers Union by Saperstein. In that case, there being no privity between the contributing employers and the insurance company, and no valid acceptance of responsibility for auditing by any of the other parties, it was possible and comparatively easy for the looting to be done as described in the report.

In conclusion, the writer points out again that this difference in point of view lies in the conclusions drawn, not in the findings of the committee. In the area above outlined he would not want to be committed irrevocably to all-inclusive legislation if a fair, just, and reasonable line could be drawn—fair to all parties—which would cover

those areas where abuses are likely but which would still leave an area where men might have complete freedom to contract among themselves, and not be deprived of rights which in some areas they have contracted for at the present time.

GORDON ALLOTT.

STATEMENT OF SENATOR NEELY

Due to the pressure of many other duties, I have not been able to take as active a part as I wished to take in the preparation of this report. Therefore I wish to reserve judgment upon the recommendations made by the subcommittee.

MATTHEW M. NEELY.

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