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RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT, 1972

HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON

LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

S. 3598

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

JUNE 20 AND 21, 1972

PART 1



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

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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CONTENTS

Page

Text of S. 3598 ---- 2

CHRONOLOGICAL LIST OF WITNESSES

TUESDAY, JUNE 20, 1972

Hodgson, Hon. James D., Secretary of Labor, accompanied by Fred Hickman, Acting Assistant Secretary, Department of the Treasury; Richard Schubert, Solicitor; and Frank M. Kleiler, Deputy Assistant Secretary of Labor ---- 94

Hutton, William R., executive director, National Council of Senior Citizens ---- 147

Hughes, Peter, American Association of Retired Persons-National Retired Teachers Association ---- 154

McGill, Dan M., Ecker professor of life insurance, University of Pennsylvania, Philadelphia, Pa ---- 192

WEDNESDAY, JUNE 21, 1972

Griffiths, Hon. Martha W., a U.S. Congresswoman from the 17th District of the State of Michigan ---- 225

Smith, Hon. Henry P., III, a U.S. Congressman from the 40th District of the State of New York ---- 229

Cohen, Manuel F., former Chairman of the Securities and Exchange Commission ---- 230

Cookenbach, John M., executive vice president and secretary of the First Pennsylvania Banking & Trust Co., Philadelphia, Pa., and president of the American Bankers Association's Trust Division, accompanied by William F. Lackman, senior pension adviser, Morgan Guaranty Trust Co., New York City, chairman of the committee on employees trusts of the association; Jean M. Lindberg, senior vice president, the Chase Manhattan Bank, New York City, a member of the committee on employees trusts; and Robert L. Bevan, assistant Federal legislative counsel of the association ---- 250

Bernstein, Merton C., professor, Ohio State University College of Law ---- 296

Barberg, Warren W., chairman, National Association of Life Underwriters Committee on Federal Law and Investigation, accompanied by Marshall I. Wolper, CLU ---- 378

Augenblick, Robert L., president, Investment Company Institute, accompanied by David Silver, general counsel ---- 450

STATEMENTS

Augenblick, Robert L., president, Investment Company Institute, accompanied by David Silver, general counsel ---- 450

Prepared statement ---- 453

Barberg, Warren W., chairman, National Association of Life Underwriters Committee on Federal Law and Investigation, accompanied by Marshall I. Wolper, CLU ---- 378

Prepared statement of Marshall I. Wolper, with attachments ---- 382

Bernstein, Merton C., professor, Ohio State University College of Law ---- 296

Prepared statement:

June 21, 1972 ---- 305

August 29, 1966 ---- 340

Cohen, Manuel F., former Chairman of the Securities and Exchange Commission ---- 230

Cookenbach, John M., executive vice president and secretary of the First Pennsylvania Banking & Trust Co., Philadelphia, Pa., and president of the American Bankers Association's Trust Division, accompanied by William F. Lackman, senior pension adviser, Morgan Guaranty Trust Co., New York City, chairman of the committee on employees trusts of the association; Jean M. Lindberg, senior vice president, the Chase Manhattan Bank, New York City, a member of the committee on employees trusts; and Robert L. Bevan, assistant Federal legislative counsel of the association ---------- Page 250
Prepared statement ---------- 109
Griffiths, Hon. Martha W., a U.S. Congresswoman from the 17th District of the State of Michigan ---------- 225
Hodgson, Hon. James D., Secretary of Labor, accompanied by Fred Hickman, Acting Assistant Secretary, Department of the Treasury; Richard Schubert, Solicitor; and Frank M. Kleiler, Deputy Assistant Secretary of Labor ---------- 94
Prepared statement ---------- 109
Hughes, Peter, American Association of Retired Persons-National Retired Teachers Association ---------- 154
Hutton, William R., executive director, National Council of Senior Citizens ---------- 147
McGill, Dan M., Ecker professor of life insurance, University of Pennsylvania, Philadelphia, Pa ---------- 192
Prepared statement ---------- 205
Nash, Bernard E., executive director, National Retired Teachers Association and American Association of Retired Persons, prepared statement ---------- 160
Smith, Hon. Henry P., III, a U.S. Congressman from the 40th District of the State of New York ---------- 229

ADDITIONAL INFORMATION

Articles, publications, etc.:
Chapter VIII—Pension—Benefit Plans, Foundations, and Educational Endowments, an Institutional Investors Study ---------- 244
New Approaches to the Housing Crisis, from the Congressional Record—Extensions of Remarks, December 29, 1969 ---------- 320
Pension Funds in an Age of Discontinuity, by Julian Gumperz, reprinted from the Financial Analysts Journal, November-December 1970 ---------- 360
Chart comparing the vesting interest in the administration bill and similar bill proposed on pension benefits ---------- 103
Communication to:
Taft, Hon. Robert, Jr., a U.S. Senator from the State of Ohio, from Merton C. Bernstein, professor of law, Ohio State University, July 28, 1972 ---------- 371

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT, 1972

TUESDAY, JUNE 20, 1972

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

The subcommittee met, pursuant to notice, at 9:50 a.m., Senator Harrison A. Williams, Jr. (chairman) presiding.

Present: Senators Williams, and Javits.

Staff present: Mario T. Noto, special counsel; Michael R. Schoenenberger, assistant special counsel; Frank Cummings, minority general counsel; and Michael S. Gordon, minority counsel.

The CHAIRMAN. Good morning.

This is a hearing of the Senate Subcommittee on Labor of the Committee on Labor and Public Welfare.

We begin the hearings this morning on pension plan legislation, with specific focus on S. 3598, but we have other bills that are pending before the subcommittee which will be considered, too. At this point we will enter a copy of S. 3598.

(The bill referred to above follows:)

92D CONGRESS
2D SESSION

S. 3598

IN THE SENATE OF THE UNITED STATES

MAY 11, 1972

Mr. WILLIAMS (for himself, Mr. JAVITS, Mr. BEALL, Mr. CRANSTON, Mr. EAGLETON, Mr. KENNEDY, Mr. HUGHES, Mr. MONDALE, Mr. NELSON, Mr. PELL, Mr. RANDOLPH, Mr. STAFFORD, Mr. STEVENSON, and Mr. TAFT) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Retirement Income Security for Employees Act".

INDEX

Sec. 2. Findings and declaration of policy.
Sec. 3. Definitions.

TITLE I—ORGANIZATION

PART A—ADMINISTRATIVE ORGANIZATION

Sec. 101. Powers and duties of the Secretary of Labor.
Sec. 102. Appropriations.
Sec. 103. Office of administration.

PART B—COVERAGE, EXEMPTIONS, AND REGISTRATION

Sec. 105. Coverage and exemptions.
Sec. 106. Registration of plans.
Sec. 107. Reports on registered plans.
Sec. 108. Amendments of registered plans.
Sec. 109. Certificate of rights.

TITLE II—VESTING AND FUNDING REQUIREMENTS

PART A—VESTING REQUIREMENTS

Sec. 201. Eligibility.
Sec. 202. Vesting schedule.

PART B—FUNDING

Sec. 210. Funding requirements.
Sec. 211. Discontinuance of plans.

PART C—OPTIONAL ELECTION TO DIVIDE PENSION PLAN

Sec. 215. Optional election to divide pension plan.

PART D—VARIANCES

Sec. 216. Deferred applicability.
Sec. 217. Variances from funding requirements.

TITLE III—VOLUNTARY PORTABILITY PROGRAM FOR VESTED PENSIONS

Sec. 301. Program established.
Sec. 302. Acceptance of deposits.
Sec. 303. Special fund.
Sec. 304. Individual accounts.
Sec. 305. Payments from individual accounts.
Sec. 306. Technical assistance.

TITLE IV—PLAN TERMINATION INSURANCE

Sec. 401. Program established.
Sec. 402. Conditions of insurance.
Sec. 403. Assessments and premiums.
Sec. 404. Payments of insurance.
Sec. 405. Recovery.
Sec. 406. Pension Benefit Insurance Fund.

TITLE V—DISCLOSURE AND FIDUCIARY STANDARDS

Sec. 501. Standards.
Sec. 508. Fiduciary standards.

TITLE VI—ENFORCEMENT

Sec. 601. Provisions.

TITLE VII—EFFECTIVE DATES

Sec. 701. General provisions.

FINDINGS AND DECLARATION OF POLICY

SEC. 2. (a) The Congress finds that private pension, and other employee benefit plans and programs in the United States are intrinsically woven into the working and retirement lives of American men and women; that such plans and programs have become firmly rooted into our economic and social structure; that their operational scope and economic impact is interstate and increasingly affecting more than thirty million worker participants throughout the United States; that the pension assets of approximately $135,000,000,000, accelerating at more than $10,000,000,000 annually, represent the largest fund of virtually unregulated assets in the United States; that the growth in size, scope, and numbers of employee benefit plans is continuing rapidly and substantially; that Federal authority over the establishment, administration, and operations of these plans is fragmented and ineffective to secure the fulfillment of purpose and protection of retirement and welfare benefits due to the workers covered and affected; that deficient and inadequate provisions contained in a number of such plans are directly responsible for hardships upon working men and women who are not realizing their expectations of pension benefits upon retirement; that there have been found to be serious consequences to such workers covered by these plans directly attributable to inadequate or nonexistent fund-

ing of assets necessary to pay employee benefits, inadequate or nonexistent vesting provisions, lack of portability to permit the transfer of earned credits by employees from one employment to another; that terminations of plans beyond the control of employees, without necessary and adequate funding for benefit payments, has deprived employees and their dependents of earned benefits; that employee participants have not had sufficient information concerning their rights and responsibilities under the plans, resulting in loss of benefits without knowledge of same; that the lack of minimum standards of conduct required of fiduciaries, administrators, and trustees has jeopardized the adequate protection of employee benefits; and that it is therefore desirable, in the interests of employees and their beneficiaries, and in the interest of the free flow of commerce, that minimum standards be prescribed to assure that private pension and employee benefit plans be equitable in character and financially sound and properly administered.

(b) It is the declared policy of this Act to protect interstate commerce, and the equitable interests of participants in private pension plans and their beneficiaries, by improving the scope, administration, and operation of such plans, by requiring pension plans to vest benefits in employees after equitable periods of service; to meet adequate minimum standards of funding; to prevent the losses of employees'

earned credits resulting from change of or separation from employment; to protect vested benefits of employees against loss due to plan termination; and to require more adequate disclosure and reports to participants and beneficiaries of plan administration and operations, including financial information by the plan to the participant, as may be necessary for the employees to have a comprehensive and better understanding of their rights and obligations to receive benefits from the plans in which they are participants; to establish minimum standards of fiduciary conduct, and to provide for more appropriate and adequate remedies, sanctions, and ready access to the courts.

DEFINITIONS

SEC. 3. As used in this Act—

(1) "Secretary" means the Secretary of Labor.

(2) "Office" means the Office of Pension and Welfare Plans Administration.

(3) "Assistant Secretary" means the Assistant Secretary of Labor in charge of the Office of Pension and Welfare Plans Administration.

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

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

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

(7) "Employer" means any person acting directly as an employer or indirectly in the interest of an employer in relation to a pension or profit-sharing-retirement plan, and includes a group or association of employers acting for an employer in such capacity.

(8) "Employee" means any individual employed by an employer.

(9) "Participant" means any employee or former employee of an employer or any member or former member of an employee organization who is or may become eligible to receive a benefit of any type from a pension or profit-sharing-retirement plan, or whose beneficiaries may be eligible to receive any such benefit.

(10) "Beneficiary" means a person designated by a par-

ticipant or by the terms of a pension or profit-sharing-retirement plan who is or may become entitled to a benefit thereunder.

(11) "Person" means an individual, partnership, corporation, mutual company, joint-stock company, trust, unincorporated organization, association, or employee organization.

(12) "Employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or program, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning a pension or profit-sharing-retirement plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing or maintaining such a plan.

(13) The term "fund" means a fund of money or other assets maintained pursuant to or in connection with a pension or profit-sharing-retirement plan, and includes employee contributions withheld but not yet paid to the plan by the employer, or a contractual right pursuant to an agreement with an insurance carrier. The term does not include any assets of an investment company subject to regulation under the Investment Company Act of 1940.

(14) "Pension plan" means any plan, fund, or program,

other than a profit-sharing-retirement plan, which is communicated or its benefits described in writing to employees and which is established or maintained for the purpose of providing for its participants, or their beneficiaries, by the purchase of insurance or annuity contracts or otherwise, retirement benefits.

(15) "Profit-sharing-retirement plan" means a plan established and maintained by an employer to provide for the participation in the profits of the employer by the employees in accordance with a definite predetermined formula for allocating the contributions made to the plan among the participants and for distributing the funds accumulated under the plan upon retirement or death. Such plan may include provisions permitting the withdrawal or distribution of the funds accumulated upon contingencies other than, and in addition to, retirement and death.

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

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

(18) The term "administrator" means—

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

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

(19) "Initial unfunded liability" means the amount (on the effective date of title II, or the effective date of the establishment of a pension plan or any amendment thereto, whichever is later), by which the assets of the plan are actuarially required to be augmented to insure that the plan is and will remain fully funded.

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

(21) "Fully funded" with respect to any pension plan means that such plan at any particular time has assets actuarially determined, by a person authorized under section 101 (b) (1), to be sufficient to provide for the payment of all pension and other benefits to participants then entitled or who may be entitled under the terms of the plan to an immediate or deferred benefit in respect of service rendered by such participants.

(22) "Experience deficiency" with respect to a pension plan means any actuarial deficit, determined at the time of a review of the plan, that is attributable to factors other than the existence of an initial unfunded liability or the failure of any employer to make any contribution required by the terms of the plan or by section 210, except insofar as such failure to make a required contribution is treated as an experience deficiency under section 217 (a) (1).

(23) "Funding" shall mean payment or transfer of assets into a fund, and shall also include payment to an insurance carrier to secure a contractual right pursuant to an agreement with such carrier.

(24) "Normal service cost" means the annual cost

assigned to a pension plan, under the actuarial cost method in use (as of the effective date of title II or the date of establishment of a pension plan after such date), exclusive of any element representing any initial unfunded liability or interest thereon.

(25) "Special payment" means a payment made to a pension plan for the purpose of liquidating an initial unfunded liability or experience deficiency.

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

(27) "Covered service" means that period of service performed by a participant for an employer or as a member of an employee organization which is recognized under the terms of the plan or the requirements of part A of title II for purposes of determining a participant's eligibility to receive pension benefits or for determining the amount of such benefits.

(28) "Normal retirement benefit" means that benefit

payable under a pension or profit-sharing-retirement plan in the event of retirement at the normal retirement age.

(29) "Normal retirement age" means the normal retirement age under the plan but not later than age 65.

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

(31) "Accrued portion of normal retirement benefit" means that amount of benefit which, irrespective of whether the right to such benefit is nonforfeitable, is equal to—

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

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

(C) in the case of other types of pension plans, that portion of the prospective normal retirement benefit of a participant, which under rule or regulation of the Secretary is determined to constitute the participant's accrued portion of the normal retirement benefit under the appropriate plan.

(32) "Fixed-contribution multi-employer plan" means a collectively-bargained pension plan to which two or more

unaffiliated employers are required to contribute, and in which the rate of contribution, but not the amount of pension benefits to be provided under the plan, are specified in the collective-bargaining agreement or agreements.

(33) "Unaffiliated employers" means employers other than those under common ownership or control, or having the relationship of parent-subsidiary, or directly or indirectly controlling or controlled by another employer.

(34) "Qualified insurance carrier" means an insurance carrier subject to regulation and examination by the government of any State, which is determined by rule or regulation of the Secretary to be suitable for the purchase of the single premium life annuity or the annuity with survivorship options authorized under section 305 (2).

(35) "Vested liabilities" means the present value of the immediate or deferred pension benefits for participants and their beneficiaries which are nonforfeitable and for which all conditions of eligibility have been fulfilled under the provisions of the plan prior to its termination.

(36) "Unfunded vested liabilities" means that amount of vested liabilities that cannot be satisfied by the assets of the plan, as determined by rule or regulation of the Secretary.

TITLE I—ORGANIZATION

PART A—ORGANIZATIONAL STRUCTURE

POWERS AND DUTIES OF THE SECRETARY

SEC. 101. (a) It shall be the duty of the Secretary—

(1) to promote programs and plans for the establishment, administration, and operations of pension, profit-sharing-retirement, and other employee benefit plans in furtherance of the findings and policies set forth in this Act;

(2) to determine, upon application by a pension or profit-sharing-retirement plan, such plan's eligibility for registration with the Secretary under section 105 and, upon qualification, to register such plan and issue appropriate certificates of registration;

(3) to cancel certificates of registration of pension and profit-sharing-retirement plans registered under section 105, upon determination by the Secretary that such plans are not qualified for such registration;

(4) (A) to direct, administer, and enforce the provisions and requirements of this Act and the Welfare and Pension Plans Disclosure Act, except where such provisions are only enforceable by a private party;

(B) upon reasonable cause, to make appropriate and necessary inquiries to determine violations of the provisions of this Act, or the Welfare and Pension Plans

Disclosure Act, or any rule or regulation issued thereunder;

(C) for the purpose of any inquiry provided for in subparagraph (B), the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 1, 1914, are hereby made applicable to the jurisdiction, powers, and duties of the Secretary.

(5) to bring civil actions authorized by this Act subject to control and direction of the Attorney General;

(6) to appoint and fix the compensation of such employees as may be necessary for the conduct of his business under this Act in accordance with the provisions of title 5, United States Code, governing appointment in the competitive service, and chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, and to obtain the services of experts and consultants as necessary in accordance with section 3109 of title 5, United States Code, at rates for individuals not to exceed the per diem equivalent for GS–18;

(7) to perform such other functions as may be necessary to carry out the purposes of this Act.

(b) The Secretary is authorized to prescribe rules and regulations—

(1) establishing standards and qualifications for persons responsible for performing services under this Act as actuaries and upon application of any such person, to certify whether such person meets the standards and qualifications prescribed;

(2) establishing reasonable fees for the registration of pension and profit-sharing-retirement plans and other services to be performed by him in implementing the provisions of this Act, and all fees collected by the Secretary shall be paid into the general fund of the Treasury;

(3) establishing reasonable limitations on actuarial assumptions, including, but not limited to, interest rates, mortality, and turnover rates;

(4) such as may be necessary or appropriate to carry out the purposes of this Act, including but not limited to definitions of actuarial, accounting, technical, and other trade terms in common use in the subject matter of this Act and the Welfare and Pensions Plans Disclosure Act; and

(5) governing the form, detail, and inspection of all required records, reports, and documents, the maintenance of books and records, and the inspection of such books and records, as may be required under this Act.

(c) (1) The Secretary is authorized and directed to undertake appropriate studies relating to pension and profit-sharing-retirement plans including but not limited to the effects of this Act upon the provisions and costs of pension and profit-sharing-retirement plans, the role of private pensions in meeting retirement security needs of the Nation, the administration and operation of pension plans, including types and levels of benefits, degree of reciprocity or portability, financial characteristics and practices, methods of encouraging the growth of the private pension system, and advisability of additional coverage under this Act.

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

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

(e) In order to avoid unnecessary expense and duplica-

tion 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, including services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary, and to the extent permitted by law, to provide such information and facilities as the Secretary may request for his assistance in the performance of his functions under this Act.

APPROPRIATIONS

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

OFFICE OF ADMINISTRATION

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

(b) It shall be the duty of the Assistant Secretary of Labor under the supervision of the Secretary to exercise such power and authority as may be delegated to him by the Secretary for the administration and enforcement of this Act.

(c) Paragraph 20, of section 5315, title 5, United States Code, is amended by striking "(5)" and inserting in lieu thereof "(6)".

(d) The functions, books, records, and personnel of the Office of Labor Management and Welfare Pension Reports are hereby transferred to the Office of Pension and Welfare Plan Administration.

PART B—COVERAGE, EXEMPTIONS, AND REGISTRATION

COVERAGE AND EXEMPTIONS

SEC. 104. (a) Except as provided in subsections (b) and (c), titles II, III, and IV of this Act shall apply to any pension plan and any profit-sharing-retirement plan established or maintained by any employer engaged in interstate commerce or any industry or activity affecting interstate commerce or by any employer together with any employee organization representing employees engaged in commerce or in any industry or activity affecting such commerce or by any employee organization representing employees engaged in commerce or in any industry or activity affecting commerce.

(b) Titles II, III, and IV of this Act shall not apply to any pension plan or any profit-sharing-retirement plan if—

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

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

(3) such plan is established by a self-employed individual for his own benefit or for the benefit of his survivors or established by one or more owner-employers exclusively for his or their benefit or for the benefit of his or their survivors;

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

(5) such plan is established or maintained outside the United States primarily for the benefit of employees who are not citizens of the United States;

(6) such plan is unfunded and is established by an employer primarily for the purpose of providing deferred compensation for a select group of management employees and is declared by the employer as not in-

tended to meet the requirements of section 401 (a) of the Internal Revenue Code; or

(7) such plan is established or maintained by an employee organization and is administered and financed solely by contributions from its members.

(c) Title IV and part B of title II shall not apply to profit-sharing-retirement plans or money purchase plans.

(d) Titles V and VI shall apply to any plan covered by the Welfare and Pension Plans Disclosure Act and any pension plan or profit-sharing-retirement plan covered by this Act.

REGISTRATION OF PLANS

SEC. 105. (a) Every administrator of a pension or profit-sharing-retirement plan to which this title applies shall file with the Secretary an application for registration of such plan. Such application shall be in such form and shall be accompanied by such documents as shall be prescribed by regulation of the Secretary. After qualification under subsection (c), the administrator of such plan shall comply with such requirements as may be prescribed by the Secretary to maintain the plan's qualification under this title.

(b) In the case of plans established on or after the effective date of this title, the filing required by subsection (a) shall be made within six months after such plan is established. In the case of plans established prior to the effective

date of this title, such filing shall be made within six months after such effective date.

(c) Upon the filing required by subsection (a), the Secretary shall determine whether such plan is qualified for registration under this title, and if the Secretary finds it qualified, he shall issue a certificate of registration with respect to such plan.

(d) If at any time, the Secretary determines that a plan required to qualify under this title, is not qualified or is no longer qualified for registration under this title, he shall notify the administrator, setting forth the deficiency or deficiencies in the plan or in its administration or operations which is the basis for the notification given, and he shall further provide the administrator, the employer of the employees covered by the plan (if not the administrator), and the employee organization representing such employees, if any, a reasonable time within which to remove such deficiency or deficiencies. If the Secretary thereafter determines that the deficiency or deficiencies have been removed, he shall issue or continue in effect the certificate, as the case may be. If he determines that the deficiency or deficiencies have not been removed, he shall enter an order denying or canceling the certificate of registration, and take such further action as may be appropriate under title VI.

(e) A pension or profit-sharing-retirement plan shall

be qualified for registration under this section if it conforms to, and is administered in accordance with this Act, the Welfare and Pension Plans Disclosure Act, and in the case of a pension plan subject to title IV of this Act, applies for and maintains plan termination insurance and pays the required assessments and premiums.

REPORTS ON REGISTERED PLANS

SEC. 106. The Secretary may, by regulations, provide for the filing of a single report satisfying the reporting requirements of this Act, and the Welfare and Pension Plans Disclosure Act.

AMENDMENTS OF REGISTERED PLANS

SEC. 107. Where a pension or profit-sharing-retirement plan filed for registration under this title is amended subsequent to such filing, the administrator shall (pursuant to regulations promulgated by the Secretary) file with the Secretary a copy of the amendment and such additional information and reports as the Secretary by regulation may require, to determine the amount of any initial unfunded liability created by the amendment, if any, and the special payments required to liquidate such liability.

CERTIFICATE OF RIGHTS

SEC. 108. The Secretary shall, by regulation, require each pension and profit-sharing-retirement plan to furnish each participant, upon termination of service with a vested

right to an immediate or a deferred pension benefit or other vested interest, with a certificate setting forth the benefits to which he is entitled, including, but not limited to the name and location of the entity responsible for payment, the amount of benefits, and the date when payment shall begin. A copy of each such certificate shall be filed with the Secretary. Such certificate shall be deemed prima facie evidence of the facts and rights set forth in such certificate.

TITLE II—VESTING AND FUNDING REQUIREMENTS

PART A—VESTING REQUIREMENTS

ELIGIBILITY

SEC. 201. No pension or profit-sharing-retirement plan filed for registration under this Act shall require as a condition for eligibility to participate in such plan a period of service longer than six months or an age greater than twenty-one, whichever occurs later.

VESTING SCHEDULE

SEC. 202. (a) All pension or profit-sharing-retirement plans filed for registration under this Act shall provide under the terms of the plan with respect to service on or after the effective date of this title, or by amendment to the terms of the plan or by the establishment of a new plan with respect to service on or after such date, that:

(1) a plan participant who has been in covered

service under the plan for a period of eight years is entitled upon termination of service prior to attaining normal retirement age—

(A) in the case of a pension plan, to a deferred pension benefit commencing at his normal retirement age; or

(B) in the case of a profit-sharing-retirement plan, to a nonforfeitable right to his interest in such plan

equal to 30 per centum of the accrued portion of the normal retirement benefit as provided by the plan in respect of such service, or of such interest, respectively, and such entitlement shall increase by 10 per centum per year thereafter of covered service until the completion of fifteen years of covered service after which such participant shall be entitled upon termination of service prior to attaining normal retirement age to a deferred pension benefit commencing at his normal retirement age equal to 100 per centum of the accrued portion of the normal retirement benefit as provided by the plan with respect to such service, or to the full amount of such interest in the profit-sharing-retirement plan;

(2) the pension benefits provided under the terms of a pension plan, and the interest in a profit-sharing-

retirement plan referred to in subparagraph (B) of paragraph (1) shall not be capable of assignment or alienation and shall not confer upon an employee, personal representative, or dependent, or any other person, any right or interest in such pension benefits or profit-sharing-retirement plan, capable of being assigned or otherwise alienated; except that the Secretary may by regulation provide for the final disposition of plan assets when beneficiaries cannot be located or ascertained within a reasonable time.

(b) Any participant covered under a plan, for the number of years required for a vested right under this section, shall be entitled to such vested right regardless of whether his years of covered service are continuous, except that a plan may provide that—

(1) three of the eight years required to qualify for the 30 per centum vested right under subsection (a) shall be continuous under standards prescribed under subsection (c), and

(2) service by a participant prior to the age of twenty-one may be ignored in determining eligibility for a vested right under this section, unless such participant or an employer has contributed to the plan with respect to such service.

(c) The Secretary shall prescribe standards, consistent

with the purposes of this Act, governing the maximum number of working days, weeks, or months, which shall constitute a year of covered service for purposes of this Act. In no case shall a participant's time worked in any period in which he is credited for a period of service for the purposes of this section, be credited to any other period of time unless the plan so provides.

(d) Notwithstanding any other provision of this Act, a pension or profit-sharing-retirement plan may allow for vesting of pension benefits after a lesser period than is required by this section.

PART B—FUNDING

FUNDING REQUIREMENTS

SEC. 210. (a) Unless a waiver is granted pursuant to part C of this title, every pension plan filed for registration under this Act shall provide for funding, in accordance with the provisions of this part, which is adequate to provide for payment of all pension benefits which may be payable under the terms of the plan.

(b) Provisions in the plan for funding shall set forth the obligation of the employer or employers to contribute both in respect of the normal service cost of the plan and in respect of any initial unfunded liability and experience deficiency. The contribution of the employer, including any contribu-

tions made by employees, shall consist of the payment into the plan or fund of—

(1) all normal service costs; and

(2) where the plan has an initial unfunded liability, special payments consisting of equal amounts sufficient to amortize such unfunded liabilities over a term not exceeding:

(A) in the case of an initial unfunded liability existing on the effective date of this title, in any plan established before that date, forty years from such date;

(B) in the case of an initial unfunded liability resulting from the establishment of a pension plan, or an amendment thereto, on or after the effective date of this title, forty years from the date of such establishment or amendment, except that in the event that any such amendment after the effective date of this title results in a substantial increase to any unfunded liability of the plan, as determined by the Secretary, such increase shall be regarded as a new plan for purposes of the funding schedule imposed by this subsection and the plan termination insurance requirements imposed by title IV.

(3) special payments, where the plan has an experience deficiency, consisting of equal annual amounts suffi-

82-079 O - 72 pt. 1 - 3

cient to liquidate such experience deficiency over a term not exceeding five years from the date on which the experience deficiency was determined.

(c) Within six months after the effective date of this title or within six months after the date of plan establishment, whichever is later, the plan administrator shall submit a report of an actuary (certified under section 101(b)) stating—

(1) the estimated cost of benefits in respect of service for the first plan year for which such plan is required to register and the formula for computing such cost in subsequent years up to the date of the following report;

(2) the initial unfunded liability, if any, for benefits under the pension plan as of the date on which the plan is required to be registered;

(3) the special payments required to liquidate such unfunded liability and experience deficiencies in accordance with subsection (b); and

(4) the actuarial assumptions used and the basis for using such actuarial assumptions.

(d) The administrator of a registered pension plan shall cause the plan to be reviewed not less than once every five years by a certified actuary and shall submit a report of such actuary stating—

(1) the estimated cost of benefits in respect of service in the next succeeding five-year period and the formula for computing such cost for such subsequent five-year period;

(2) the surplus or the experience deficiency in the pension plan after making allowance for the present value of all special payments required to be made in the future by the employer as determined by previous reports;

(3) the special payments which will liquidate any such experience deficiency over a term not exceeding five years; and

(4) the actuarial assumptions used and the basis for using such actuarial assumptions.

If any such report discloses a surplus in a pension plan, the amount of any future payments required to be made to the fund or plan may be reduced or the amount of benefits may be increased by the amount of such surplus. The reports under this subsection shall be filed with the Secretary by the administrator as part of the annual report required by section 7 of the Welfare and Pension Plans Disclosure Act, at such time that the report under such section 7 is due with respect to the last year of such five-year period.

(e) The Secretary may exempt any plan, in whole or in part, from the requirement that such reports be filed where the Secretary finds such filing to be unnecessary.

DISCONTINUANCE OF PLANS

SEC. 211. (a) Upon complete termination, or substantial termination (as determined by the Secretary), of a pension plan, all contributions by an employer, an employee organization, an employee, or other person, in respect of the deferred pension benefit prescribed in section 202 (a) shall be applied under the terms of the plan as follows—

(1) first, to participants in the plan who have retired prior to the date of such termination and have been receiving benefits under the plan;

(2) second, to those participants in the plan who, on the date of such termination had the right to retire and receive benefits under the plan;

(3) third, to those participants in the plan who had acquired vested rights under the plan prior to termination of the plan but had not reached normal retirement age on the date of such termination; and

(4) fourth, to any other participants in the plan who are entitled to benefits under the plan pursuant to the requirements of section 401 (a) (7) of the Internal Revenue Code of 1954.

(b) Upon complete termination, or substantial termination (as determined by the Secretary), an employer, and the employees if the plan so provides, shall be liable to pay all amounts that would otherwise have been required to be paid to meet the funding requirements prescribed by section 210

up to the date of such termination to the insuror, trustee, or administrator of the plan.

(c) Upon complete termination, or substantial termination (as determined by the Secretary), of a profit-sharing-retirement plan, the interests of all participants in such plan shall fully vest.

(d) In any case, the Secretary may approve payment of survivor benefits with priorities equal to those of the employees or former employees on whose service such benefits are based.

PART C—OPTIONAL ELECTION TO DIVIDE PENSION PLAN

SEC. 215. (a) Notwithstanding any other provision of this Act, an existing plan subject to this title may elect, pursuant to regulations, to divide the plan and its trust into two separate plans and trusts or within the same plan and trust, into two separate plan and trust accounts as follows:

(1) the continuing plan or plan and trust account (hereinafter referred to as "continuing plan") which shall be a continuation of the plan as it existed immediately before the effective date of this title and which shall cover those participants who have credited service under such plan as of such date and who elect to remain covered by the provisions of such plan;

(2) the new plan or new plan and trust account (hereinafter referred to as "new plan") which shall

cover all new participants and all participants who would be eligible to continue coverage under the continuing plan but who elect to waive such coverage and to participate instead in the new plan.

(b) A plan which elects to make the division permitted by subsection (a) shall—

(1) assure that the new plan conforms in all respects to the vesting provisions of this title but may maintain the continuing plan without regard to the vesting provisions of this title;

(2) assure that contributions to the new plan are made at a rate not less than the contribution to the continuing plan;

(3) assure that the continuing plan shall transfer to the new plan on the effective date of the election assets determined to be actuarially equivalent to the total amount of contributions made to the plan or credited to the participants covered by the new plan with respect to the previous service of such participants before the effective date of the election as provided for in section 215 (a) (2).

(c) A plan which elects to make the division permitted by subsection (a) shall provide that—

(1) no new participant shall become covered by

the continuing plan after the division is elected by the plan; and

(2) all new participants shall be covered only by the new plan.

(d) All divided plans or plan and trust accounts established or maintained pursuant to the provisions of this section shall conform to all other requirements imposed by this Act and shall be subject to the plan termination insurance provisions of title IV. In accordance with regulations, continuing plans maintained pursuant to the provisions of this section shall insure participants and beneficiaries thereunder against loss of benefits derived from such vested rights as may be provided by such plan and which arise from termination of such plan before it has been fully funded.

(e) Nothing in this section shall limit the obligation of a party to a collective bargaining agreement to bargain collectively, to the extent required by law, with respect to the making of an election pursuant to this section.

PART D—VARIANCES

DEFERRED APPLICABILITY

SEC. 216. Upon a showing that the initial compliance with the vesting or funding requirements of this Act would be unduly burdensome, impractical, or would otherwise adversely affect the interests of the participants or beneficiaries of a particular plan, the Secretary may defer such applicability for a period not to exceed a total of three years.

VARIANCES FROM FUNDING REQUIREMENTS

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

(1) any employer or employers are unable to make annual contributions to the plan in compliance with the funding requirements (under subsections (a) and (b) of section 210), and he has reason to believe that such required payment for that annual period cannot be made by such employer or employers, the Secretary may waive the annual contribution otherwise required to be paid, and prescribe an additional period of not more than five years for the liquidation of such annual funding deficiency, during which period the funding deficiency shall be liquidated by prescribed equal annual payments. Any funding deficiency permitted under this section shall be treated for the purposes of any actuarial report required under this Act as an experience deficiency under section 210;

(2) no waiver shall be granted unless the Secretary is satisfied after a review of the financial condition of the plan and other related matters that—

(A) such waiver will not adversely affect the interests of participants or beneficiaries of such plan; or

(B) will not impair the capability of the Pen-

sion Benefit Insurance Fund to equitably underwrite vested benefit losses in accordance with title IV,

(3) waivers granted pursuant to this provision shall not exceed five consecutive annual waivers.

(b) Where a plan has been granted five consecutive waivers pursuant to subsection (a), the Secretary may—

(1) order the merger or consolidation of the deficiently-funded plan with such other plan or plans of the contributing employer or employers in a manner that will result in future compliance with the funding requirements of part B of title II of this Act without adversely affecting the interests of participants and beneficiaries in all plans which may be involved;

(2) where necessary to protect the interests of participants or beneficiaries, or to safeguard the capability of the Pension Benefit Insurance Fund to equitably underwrite vested benefit losses, under title IV, order plan termination in accordance with such conditions as the Secretary may prescribe; or

(3) take such other action as may be necessary to fulfill the purposes of this Act.

(c) No amendments increasing plan benefits shall be permitted during any period in which a funding waiver is in effect.

(d) (1) Notwithstanding the requirements of part B

of title II of this Act the Secretary shall by rule or regulation prescribe alternative funding requirements for fixed-contribution multi-employer plans which will assure sufficient assets to cover the plan's benefit commitments.

(2) The period of time provided to fund such fixed-contribution multi-employer plans shall be a period which will actuarially assure that such plan has adequate assets to meet the plan's benefit commitments, and which reflects the particular circumstances affecting the plan, industry, or other pertinent factors, except that no period prescribed by the Secretary shall be less than forty years.

(3) No fixed-contribution multi-employer plan shall increase benefits beyond a level for which the fixed contributions made to the plan would be actuarially determined to be inadequate unless the fixed contribution rate is commensurately increased.

(e) Where upon application and notice to affected or interested parties by the plan administrator of a pension plan funded by the contributions of two or more unaffiliated employers, the Secretary determines that the withdrawal from the plan by any employer or employers has or will result in a significant reduction in the rate of aggregate contributions to the plan, the Secretary may take the following steps:

(1) require the plan fund to be equitably allo-

cated between those participants no longer working in covered service under the plan as a result of their employer's withdrawal, and those participants who remain in covered service under the plan;

(2) treat that portion of the plan fund allocable under (1) to participants no longer in covered service, as a terminated plan for the purposes of the plan termination insurance provisions of title IV; and

(3) treat that portion of the plan fund allocable to participants remaining in covered service as a new plan for purposes of the funding standards imposed by part B of title II of this Act, any variance granted by this section, and the plan termination insurance provisions of title IV.

TITLE III—VOLUNTARY PORTABILITY PROGRAM FOR VESTED PENSIONS

PROGRAM ESTABLISHED

SEC. 301. (a) There is hereby established a program to be known as the "Voluntary Portability Program for Vested Pensions" (hereinafter referred to as the "Portability Program"), which shall be administered by and under the direction of the Secretary. The Portability Program shall facilitate the voluntary transfer of vested credits between registered pension or profit-sharing-retirement plans. Nothing in this title or in the regulations issued by the Secretary

hereunder shall be construed to require participation in such Portability Program by a plan as a condition of registration under this Act.

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

ACCEPTANCE OF DEPOSITS

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

SPECIAL FUND

SEC. 303. (a) There is hereby created a fund to be known as the Voluntary Portability Program Fund (hereinafter referred to as the "Fund"). The Secretary shall be the trustee of the Fund. Payments made into the Fund in

accordance with regulations prescribed by the Secretary under section 302 shall be held and administered in accordance with this title.

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

(1) administer the Fund;

(2) report to the Congress not later than the first day of April of each year on the operation and the status of the Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next two fiscal years and review the general policies followed in managing the Fund and recommend changes in such policies, including the necessary changes in the provisions of law which govern the way in which the Fund is to be managed; and

(3) after amounts needed to meet current and anticipated withdrawals are set aside, deposit the surplus in interest-bearing accounts in any bank the deposits of which are insured by the Federal Deposit Insurance Corporation or savings and loan association in which the accounts are insured by the Federal Savings and Loan Insurance Corporation. In no case shall such deposits exceed 10 per centum of the total of such surplus, in any one bank, or savings and loan association.

INDIVIDUAL ACCOUNTS

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

PAYMENTS FROM INDIVIDUAL ACCOUNTS

SEC. 305. Amounts credited to the account of any participant under this title shall be paid by the Secretary to—

(1) a member plan, for the purchase of credits having at least an equivalent actuarial value under such plan, on the request of such participant when he becomes a participant in such member plans; or

(2) a qualified insurance carrier selected by a participant who has attained the age of sixty-five, for the purchase of a single premium life annuity in an amount having a present value equivalent to the amount credited to such participant's account, or in the event the participant selects an annuity with survivorship options, an amount determined by the Secretary to be fair and reasonable based on the amount in such participant's account.

TECHNICAL ASSISTANCE

SEC. 306. The Secretary shall provide technical assistance to employers, employee organizations, trustees, and administrators of pension and profit-sharing-retirement plans in their efforts to provide greater retirement protection for individuals who are separated from employment covered under such plans. Such assistance may include, but is not limited to (1) the development of reciprocity arrangements between plans in the same industry or area, and (2) the development of special arrangements for portability of credits within a particular industry or area.

TITLE IV—PLAN TERMINATION INSURANCE

PROGRAM ESTABLISHED

SEC. 401. There is hereby established a program to be known as the "Private Pension Plan Termination Insurance Program (hereinafter referred to as the "Insurance Program"), which shall be administered by and under the direction of the Secretary.

CONDITIONS OF INSURANCE

SEC. 402. (a) The insurance program shall insure participants and beneficiaries of those plans registered under this Act against loss of benefits derived from vested rights which arise from the termination of such plans.

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

(1) such rights were earned after the effective date of this Act;

(2) such rights are not vested after a lesser period than is required by this Act;

(3) such rights as provided for in the plan do not exceed: (A) in the case of a right to a monthly retirement or disability benefit for the employee himself, the lesser of 50 per centum of the average monthly wage he received from the contributing employer in the five-year period after the registration date of the plan for which his earnings were its greatest, or $500 a month; (B) in the case of a right of one or more dependents or members of the participant's family, or in the case of a right to a lump-sum survivor benefit on account of the death of a participant, an amount no greater than the amount determined under clause (A);

(4) the plan is terminated more than three years after the date of its establishment or its initial registration with the Secretary, except that the Secretary may in his discretion authorize insurance payments in such amounts as may be reasonable to any plan terminated in less than three years after the date of its initial registration with the Secretary where (A) such plan has been established and maintained for more than three years prior to its termination, (B) the Secretary is satisfied that during the period the plan was unregis-

tered, it was in substantial compliance with the provisions of this Act, and (C) such payments will not prevent equitable underwriting of losses of vested benefits arising from plan terminations otherwise covered by this title;

(5) such rights were created by a plan amendment which took effect more than three years immediately preceding termination of such plan; and

(6) such rights do not accrue to the interest of a participant who is the owner of 10 per centum or more of the voting stock of the employer contributing to the plan, or of the same percentage interest in a partnership contributing to the plan.

ASSESSMENTS AND PREMIUMS

SEC. 403. (a) Upon registration with the Secretary, each plan shall pay a uniform assessment to the insurance program as prescribed by the Secretary to cover the administrative costs of the insurance program.

(b) (1) Each registered pension plan shall pay an annual premium for insurance at uniform rates established by the Secretary based upon the amount of unfunded vested liabilities subject to insurance under section 402.

(2) For the three-year period immediately following the effective date of this title, such premium shall not exceed 0.2 per centum of a plan's actuarially-projected un-

82-079 O - 72 pt. 1 - 4

funded vested liabilities subject to insurance under section 402.

(3) (A) The Secretary is authorized to prescribe different uniform premium rates after the initial three-year period based upon experience and other relevant factors.

(B) Any new rates prescribed by the Secretary shall be effective at the end of the first period of sixty calendar days of continuous session of the Congress after the date on which the proposed rates are published in the Federal Register, unless between the date of such publication and the end of the sixty-day period, either House passes a resolution stating in substance that that House does not favor the proposed rate change.

(C) For the purpose of subparagraph (B)—

(i) continuity of a session is broken only by an adjournment sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day period.

(c) Assessments and premiums referred to in this section shall be prescribed by the Secretary only after consultation with appropriate Government agencies and private persons with expertise on matters relating to assessment and

premium structures in insurance and related matters, and after notice to all interested persons and parties.

PAYMENT OF INSURANCE

SEC. 404. (a) No plan insured under this title shall terminate without approval of the Secretary. The Secretary shall not approve a plan termination unless he is satisfied that the requirements of this Act and those of the Welfare and Pension Plans Disclosure Act have been complied with and that such termination is not designed to avoid or circumvent the purposes of this Act.

(b) As determined by the Secretary, subject to the conditions specified in section 402, the amount of insurance payable under the insurance program shall be the difference between the realized value of the plan's assets and the amount of vested liabilities under the plan.

RECOVERY

SEC. 405. (a) Where the employer or employers contributing to the terminating plan or who terminated the plan are not insolvent (within the meaning of section 1 (19) of the Bankruptcy Act), such employer or employers shall be liable to reimburse the insurance program for any insurance benefits paid by the program to the beneficiaries of such terminated plan to the extent provided in this section.

(b) An employer, determined by the Secretary to be liable for reimbursement under subsection (a), shall be liable

to pay a percentage of the terminated plan's unfunded vested liabilities equal to 100 per centum less the percentage of the ratio of the plan's unfunded vested liabilities to the net worth of the employer.

(c) The Secretary is authorized to make arrangements with employers, liable under subsection (a) for reimbursement of insurance paid by the Secretary including arrangements for deferred payment on such terms and for such periods as are deemed equitable and appropriate.

PENSION BENEFIT INSURANCE FUND

SEC. 406. (a) There is hereby created within the Treasury a separate fund for pension benefit insurance to be known as the Pension Benefit Insurance Fund (hereafter in this section called the fund) which shall be available to the Secretary without fiscal year limitation for the purposes of this title.

(b) All amounts received as premiums, assessments, or fees, and any other moneys, property, or assets derived from operations in connection with this title shall be deposited in the fund.

(c) All claims, expenses, and payments pursuant to operation of the program under this title shall be paid from the fund. From time to time, and at least at the close of each fiscal year, the Secretary shall pay from the fund into the Treasury as miscellaneous receipts interest on the cumulative

amount of appropriations provided as capital to the fund, less the average undisbursed cash balance in the fund during the year. The rate of such interest shall be determined by the Secretary of the Treasury, taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable Treasury obligations. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

(d) All moneys of the fund, except appropriated funds, may be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

TITLE V—DISCLOSURE AND FIDUCIARY STANDARDS

SEC. 501. In addition to the filing requirements of the Welfare and Pension Plans Disclosure Act, it shall be a condition of compliance with section 7 of such Act that each annual report hereinafter filed under that section shall be accompanied by a certificate or certificates in the name of and on behalf of the plan, the administrator, and any employer or employee organization participating in the establishment of the plan, designating the Secretary as agent for service of process on the persons and entities executing such certificate or certificates in any action arising under the Welfare and Pension Plans Disclosure Act or this Act.

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

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

"(15) The term 'administrator' means—

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

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

"(16) The term 'employee benefit plan' or 'plan' means an employee welfare benefit plan or an employee pension

benefit plan or a plan providing both welfare and pension benefits.

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

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

"(19) The term 'adequate consideration' when used in section 14 means either (A) at the price of the security prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (B) if the security is not traded on such a national securities

exchange, at a price not less favorable to the fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer.

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

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

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

"(23) The term 'accrued portion of normal retirement benefit' means that amount of benefit which, irrespective of

whether the right to such benefit is nonforfeitable, is equal to—

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

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

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

"(24) The term 'security' has the same meaning as in the Securities Act of 1933 (15 U.S.C. 77(a)).

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

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

(b) Paragraph (1) of section 3 of such Act is amended

by inserting the words "or maintained" after the word "established".

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

(d) Paragraph (3) of section 3 of such Act is amended by striking out the word "plan" the first time it appears and inserting in lieu thereof the word "program".

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

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

"(13) The term 'party in interest' means any administrator, officer, trustee, custodian, counsel, or employee of any employee benefit plan, or a person providing benefit plan services to any such plan, or an employer, any of whose employees are covered by such a plan or any person controlling, controlled by, or under common control with, such employer or officer or employee or agent of such employer or such person, or an employee organization having members covered by such plan, or an officer or employee or agent of such an employee organization, or a relative, partner, or joint venturer or any of the above described persons."

SEC. 503. (a) Section 4(a) of the Welfare and Pension Plans Disclosure Act is amended by striking out the words "welfare or pension", "or employers", and "or organizations" wherever they appear.

(b) Paragraph (3) of section 4(b) of such Act is amended to read as follows:

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

(c) Paragraph (4) of section 4(b) of such Act is amended by inserting before the period the following: ", except that participants and beneficiaries of such plan shall be entitled to maintain an action to recover benefits or to clarify their rights to future benefits as provided in section 604 of the Retirement Income Security for Employees Act".

(d) Section 4(b) of such Act is further amended by adding at the end thereof the following new paragraph:

"(5) such plan is established or maintained outside the United States primarily for the benefit of employees who are not citizens of the United States."

SEC. 504. (a) Section 5(b) of the Welfare and Pension Plans Disclosure Act is amended to read as follows:

"(b) The Secretary may require the filing of special terminal reports on behalf of an employee benefit plan which

is winding up its affairs, so long as moneys or other assets remain in the plan. Such reports may be required to be filed regardless of the number of participants remaining in the plan and shall be in such form and filed in such manner as the Secretary may prescribe."

(b) Section 5 of such Act is further amended by adding at the end thereof the following new subsection:

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

SEC. 505. Section 6 of the Welfare and Pension Plans Disclosure Act is amended to read as follows:

"SEC. 6. (a) A description of any employee benefit plan shall be published as required herein within ninety days after the establishment of such plan or when such plan becomes subject to this Act.

"(b) The description of the plan shall be comprehensive and shall include the name and type of administration of the plan; the name and address of the administrator; the schedule of benefits; a description of the provisions providing for vested benefits written in a manner calculated to be understood by the average participant; the source of the financing

of the plan and identity of any organization through which benefits are provided; whether records of the plan are kept on a calendar year basis, or on a policy or other fiscal year basis, and if on the latter basis, the date of the end of such policy or fiscal year; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part. Amendments to the plan reflecting changes in the data and information included in the original plan, other than data and information also required to be included in annual reports under section 7, shall be included in the description on and after the effective date of such amendments. Any change in the information required by this subsection shall be reported in accordance with regulations prescribed by the Secretary."

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

(b) Section 7(a)(1) of such Act is further amended by striking out the word "investigation" and inserting in

lieu thereof the words "notice and opportunity to be heard", by striking out the words "year or if" and inserting in lieu thereof the words "policy or fiscal year on which", adding a period after the word "kept", and striking out all the words following the word "kept".

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

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

"(3) The administrator of an employee benefit plan shall cause an audit to be made annually of the employee benefit fund established in connection with or pursuant to the provisions of the plan. Such audit shall be conducted in accordance with accepted standards of auditing by an independent certified or licensed public accountant, but nothing herein shall be construed to require such an audit of the books or records of any bank, insurance company, or other institution providing insurance, investment, or related function for the plan, if such books or records are subject to periodic exam-

ination by any agency of the Federal Government or the government of any State. The auditor's opinion and comments with respect to the financial information required to be furnished in the annual report by the plan administrator shall form a part of such report."

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

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

"(1) the amount contributed by each employer; the amount contributed by the employees; the amount of benefits paid or otherwise furnished; the number of employees covered; a statement of assets, liabilities, receipts, and disbursements of the plan; a detailed statement of the salaries and fees and commissions charged to the plan, to whom paid, in what amount, and for what purposes; the name and address of each fiduciary, his official position with respect to the plan, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest;

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

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

"(B) the aggregate cost and aggregate value, by type or category, of all other investments, and separately identifying (i) each investment, the value of which exceeds $100,000 or 3 per centum of the value of the fund and (ii) each investment in securities or properties of any person known to be a party in interest;

"(3) a schedule showing the aggregate amount, by type of security, of all purchases, sales, redemptions, and exchanges of securities made during the reporting period; a list of the issuers of such securities; and in addition, a schedule showing, as to each separate transaction with or without respect to securities issued by any person known to be a party in interest, the issuer, the type and class of security, the quantity involved in the transaction, the gross purchase price, and in the case of a sale, redemption, or exchange, the gross and net proceeds (including a description and the value of any consideration other than money) and the net gain or loss;

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

"(A) by type or category of asset the aggregate amount of purchases, sales, and exchanges; the

aggregate expenses incurred in connection therewith; and the aggregate net gain (or loss) on sales, and

"(B) for each transaction involving a person known to be a party in interest and for each transaction involving over $100,000 or 3 per centum of the fund, an indication of each asset purchased, sold, or exchanged (and, in the case of fixed assets such as land, buildings, and leaseholds, the location of the asset); the purchase or selling price; expenses incurred in connection with the purchase, sale, or exchange; the cost of the asset and the net gain (or loss) on each sale; the identity of the seller in the case of a purchase, or the identity of the purchaser in the case of a sale, and his relationship to the plan, the employer, or any employee organization;

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

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

"(B) was in default, or

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

"(D) exceeded $100,000 or 3 per centum of the value of the fund,

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

"(6) a list of all leases with—

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

"(B) any party in interest,

including information as to the type of property leased (and, in the case of fixed assets such as land, buildings, leaseholds, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; if property is leased from persons

described in (B) the amount of rental and other expenses paid during the reporting year; and if property is leased to persons described in (A) or (B), the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, the expenses paid for the leased property during the reporting period, the net receipts from the lease, and with respect to any such leases in default, their identity, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

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

"(8) if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier, the report shall include a statement of assets and liabilities and a statement of receipts and disbursements of such common or

collective trust or separate account and such of the information required under paragraphs (2), (3), (4), (5), (6), and (7) of section 7 (b) with respect to such common or collective trust or separate account as the Secretary may determine appropriate by regulation. In such case the bank or similar institution or insurance carrier shall certify to the administrator of such plan or plans, within one hundred and twenty days after the end of each calendar, policy, or other fiscal year, as the case may be, the information determined by the Secretary to be necessary to enable the plan administrator to comply with the requirements of this Act; and

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

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

(e) Section 7 (d) of such Act is amended by striking out the capital "T" in the word "The" the first time it

appears in paragraphs (1) and (2) and inserting in lieu thereof a lower case "t".

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

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

"(1) the type and basis of funding,

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

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

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

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

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

"(A) (i) the actuarial assumptions used in computing the contributions to a trust or payments under an insurance contract, (ii) the actuarial assumptions used in determining the level of benefits, and (iii) the actuarial assumptions used in connection with the other information required to be

furnished under this subsection, insofar as any such actuarial assumptions are not included in the most recent actuarial report,

"(B) (i) if there is no such report, or (ii) if any of the actuarial assumptions employed in the annual report differ from those in the most recent actuarial report, or (iii) if different actuarial assumptions are used for computing contributions or payments than are used for any other purpose, a statement explaining same.

"(7) a statement showing the number of participants who terminated service under the plan during the year, whether or not they retain any nonforfeitable pension benefits, their length of service by category, the present value of the total accrued benefits of said participants and the present value of such benefits forfeited, and

"(8) such other information pertinent to disclosure under this subsection as the Secretary may by regulation prescribe."

(g) Section 7 of such Act is further amended by striking out in their entirety subsections (f), (g), and (h).

SEC. 507. (a) Section 8 of the Welfare and Pension Plans Disclosure Act is amended by striking out subsections (a) and (b) in their entirety and by redesignating subsec-

tion (c) as subsection (a). The subsection redesignated as subsection (a) is further amended by striking out the words "of plans" after the word "descriptions", striking out the word "the" before the word "annual", and adding the word "plan" before the word "descriptions".

(b) Such section is further amended by adding subsections (b), (c), and (d), to read as follows:

"(b) The administrator of any employee benefit plan subject to this Act shall file with the Secretary a copy of the plan description and each annual report. The Secretary shall make copies of such descriptions and annual reports available for public inspection.

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

"(1) the administrator shall make copies of the plan description (including all amendments or modifications thereto) and the latest annual report and the bargaining agreement, trust agreement, contract, or other instrument under which the plan was established and is operated available for examination by any plan participant or beneficiary in the principal office of the administrator;

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

"(3) the administrator shall furnish: (i) to every participant upon his enrollment in the plan and within thirty days after each major amendment to the plan, a summary of the plan's important provisions and requirements of the amendment, whichever is applicable, written in a manner calculated to be understood by the average participant; such explanation shall include a description of the benefits available to the participant under the plan and circumstances which may result in disqualification or ineligibility; and (ii) to every participant every three years (commencing January 1, 1975), a revised, up-to-date summary of the plan's important provisions and major amendments thereto, written in a manner calculated to be understood by the average participant; and (iii) to each plan participant or beneficiary so requesting in writing a complete copy of the plan description (including all amendments or modifications thereto) or a complete copy of the latest annual report, or both. He shall in the same way furnish a complete copy of the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established and operated. In accordance with regulations of the Secretary, an administrator may make a reasonable charge to cover the cost of furnishing such complete copies.

"(d) In the event a plan is provided alternative stand-

ards of vesting, funding, or both, pursuant to title II of the Retirement Income Security for Employees Act, the administrator shall provide notice of such action to each participant in a manner calculated to be understood by the average participant, and in such form and detail and for such periods as may be prescribed by the Secretary."

SEC. 508. Section 14 of such Act is amended to read as follows:

"SEC. 14. (a) (1) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter referred to as the 'Council') consisting of nineteen members appointed by the Secretary. Not more than ten members of the Council shall be members of the same political party.

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

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

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

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

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

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

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

SEC. 509. The Welfare and Pension Plans Disclosure Act is further amended by renumbering sections 15, 16, 17, and 18 as sections 16, 17, 18, and 19, respectively, and by inserting the following new section immediately after section 14:

"FIDUCIARY STANDARDS

"SEC. 15. (a) Every employee benefit fund established to provide for the payment of benefits under an employee's benefit plan shall be established pursuant to a duly executed trust agreement which shall set forth the purpose or pur-

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

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

"(A) solely in the interests of the participants and their beneficiaries;

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

"(C) in accordance with the documents and instruments governing the fund insofar as is consistent with this Act, except that (i) any assets of the fund remaining upon dissolution or terminaton of the fund shall, after complete satisfaction of the rights of all beneficiaries to benefits accrued to the date of dissolution or termination, be distributed ratably to the beneficiaries thereof or, if the trust agreement so provides, to the contributors thereto; and (ii) that in the case of a registered pension or profit-sharing-retirement plan, such

distribution shall be subject to the requirements of the Retirement Income Security for Employees Act.

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

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

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

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

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

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

"(F) loan money or other assets of the fund to any person known to be a party in interest;

"(G) furnish goods, services, or facilities to any person known to be a party in interest;

"(H) permit the transfer of any property of the fund to, or its use by or for the benefit of, any person known to be a party in interest; or

"(I) permit any of the assets of the fund to be

held, deposited, or invested outside the United States unless the indicia of ownership remain within the jurisdiction of a United States District Court, except as authorized by the Secretary by rule or regulation. The Secretary may by rule or regulation provide for the exemption of any fiduciary or transaction from all or part of the proscriptions contained in this subsection, when the Secretary finds that to do so is consistent with the purposes of this Act and in the interest of the fund and its participants and beneficiaries. However, no such exemption shall relieve a fiduciary from any other applicable provisions of this Act.

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

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

"(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the fund, except that no person so serving who already receives full-time pay from an employer or an association of employers whose employees are participants in the plan under which the fund was established, or from an employee organization whose

members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred and not otherwise reimbursed;

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

"(4) engaging in the following transactions;

"(A) purchasing on behalf of the fund any security which has been issued by an employer whose employees are participants in the plan, under which the fund was established or a corporation controlling, controlled by, or under common control with such employer, except that (i) the purchase of any security is for no more than adequate consideration in money or money's worth, and (ii) that if an employee benefit fund is one which provides primarily for benefits of a stated amount, or an amount determined by an employee's compensation, an employee's period of service, based on fixed contributions which are not geared to the employer's profits, no investment shall be made subsequent to the enactment of this amendment by a fiduciary of such a fund in securities of such an employer or of a corporation controlling, controlled by, or under

common control with such employer, if such investment, when added to such securities already held, exceeds 10 per centum of the fair market value of the assets of the fund. Notwithstanding the foregoing, such 10 per centum limitation shall not apply to profit sharing, stock bonus, thrift and savings or other similar plans which explicitly provide that some or all of the plan funds may be invested in securities of such employer or a corporation controlling, controlled by, or under common control with such employer, nor shall said plans be deemed to be limited by any diversification rule as to the percentage of plan funds which may be invested in such securities. Profit sharing, stock bonus, thrift or other similar plans, which are in existence on the date of enactment and which authorize investment in such securities without explicit provision in the plan, shall remain exempt from the 10 per centum limitation until the expiration of one year from the date of enactment of Retirement Income Security for Employees Act. Nothing contained in this subparagraph shall be construed to relieve profit sharing, stock bonus, thrift and saving or other similar plans from any other applicable requirements of this section;

"(B) purchasing on behalf of the fund any security other than one described in (A) immediately above, or selling on behalf of the fund any security which is acquired or held by the fund, to a party in interest: *Provided*, That (i) the security is listed and traded on an exchange subject to regulation by the Securities and Exchange Commission, (ii) no brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with such transaction, and (iii) adequate consideration is paid;

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

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

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

82-079 O - 72 pt. 1 - 6

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

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

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

"(f) No fiduciary may be relieved from any responsibility, obligation, or duty imposed by law, agreement, or otherwise. Nothing herein shall preclude any agreement

allocating specific duties or responsibilities among fiduciaries, or bar any agreement of insurance coverage or indemnification affecting fiduciaries, but no such agreement shall restrict the obligations of any fiduciary to a plan or to any participant or beneficiary without prior approval of the Secretary.

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

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

a crime in which any of the foregoing crimes is an element, shall serve—

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

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

whether such conviction occurred before or after the date of enactment of this section. For the purposes of this subsection, the term 'consultant' means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

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

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

TITLE VI—ENFORCEMENT

SEC. 601. Whenever the Secretary—

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

(2) issues an order under section 107 denying or canceling the certificate of registration of a pension or profit-sharing-retirement plan, or

(3) determines, in the case of a pension plan subject to title II, that there has been a failure to make required contributions to the plan in accordance with the provisions of this Act or to pay required assessments or premiums under title III, or to pay such other fees or moneys as may be required under this Act,

the Secretary may petition any district court of the United States having jurisdiction of the parties, or the United States District Court for the District of Columbia, for an order requiring the employer or other person responsible for the administration of such plan to comply with the requirements of this Act as will qualify such plan for registration or compel or recover the payment of required contributions, assessments, premiums, fees, or other moneys.

SEC. 602. Whenever the Secretary has reasonable cause

to believe that an employees' benefit fund is being or has been administered in violation of the requirements the Welfare and Pension Plans Disclosure Act or the documents governing the establishment or operation of the fund, the Secretary may petition any district court of the United States having jurisdiction of the parties or the United States District Court for the District of Columbia for an order (1) requiring return to such fund of assets transferred from such fund in violation of the requirements of such Act, (2) requiring payment of benefits denied to any beneficiary in violation of the requirements of such Act, and (3) restraining any conduct in violation of the fiduciary requirements of such Act, and granting such other relief as may be appropriate to effectuate the purposes of this Act, including, but not limited to, removal of a fiduciary who has failed to carry out his duties and the removal of any person who is serving in violation of the requirements of section 15 (h) of the Welfare and Pension Plans Disclosure Act.

SEC. 603. Civil actions for appropriate relief, legal or equitable, to redress or restrain a breach of any responsibility, obligation or duty of a fiduciary, including but not limited to, the removal of a fiduciary who has failed to carry out his duties and the removal of any person who is serving in violation of the requirements of section 15 (h) of the Welfare and Pension Plans Disclosure Act or against any person

who has transferred or received any of the assets of a plan or fund in violation of the fiduciary requirements of the Welfare and Pension Plans Disclosure Act or in violation of the document or documents governing the establishment or operation of the fund, may be brought by any participant or beneficiary of any employee benefit plan or fund subject to the Welfare and Pension Plans Disclosure Act in any court of competent jurisdiction, State or Federal, or the United States District Court for the District of Columbia, without respect to the amount in controversy and without regard to the citizenship of the parties. Where such action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

SEC. 604. Suits by a person entitled, or who may become entitled, to benefits from an employee benefit plan or fund, subject to the Welfare and Pension Plans Disclosure Act may be brought in any court of competent jurisdiction, State or Federal, or the United States District Court for the District of Columbia, without respect to the amount in controversy and without regard to the citizenship of the parties, against any such plan or fund to recover benefits required to be paid from such plan or fund pursuant to the

document or documents governing the establishment or operation of the plan or fund, or to clarify rights to future benefits under the terms of the plan. Where such action is brought in a district court of the United States, it may be brought in the district where the plan is administered, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

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

(1) allow a reasonable attorney's fee and costs of the action to any party;

(2) require the plaintiff to post security for payment of costs of the action and reasonable attorney's fees.

(b) A copy of the complaint in any action brought under section 603 or 604 shall be served upon the Secretary by certified mail, who shall have the right, in his discretion, to intervene in the action.

(c) Notwithstanding any other law, the Secretary shall have the right to remove an action brought under section 603 or 604 from a State court to a district court of the United States, if the action is one seeking relief of the kind the Secretary is authorized to sue for under this Act. Any such removal shall be prior to the trial of the action and shall

be to a district court where the Secretary could have initiated the action.

SEC. 606. The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932, shall not be applicable with respect to suits brought under this title.

SEC. 607. Suits by an administrator or fiduciary of a pension plan, a profit-sharing-retirement plan, or an employees' benefit fund subject to the Welfare and Pension Plans Disclosure Act, to review final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this Act, or to compel action required under this Act, may be brought in the name of the plan or fund in the district court of the United States for the district where the fund has its principal office, or in the United States District Court for the District of Columbia.

SEC. 608. Any action, suit, or proceeding based upon a violation of this Act or the Welfare and Pension Plans Disclosure Act shall be commenced within five years after the plaintiff has notice of the acts or events forming the basis of the claim. Truthful disclosure of a fact in any form or other document required to be filed with the Secretary shall be deemed such notice.

SEC. 609. (a) It is hereby declared to be the express intent of Congress that, except for actions authorized by section 604 of this title, the provisions of this Act or the Welfare and Pension Plans Disclosure Act shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the subject matters regulated by this Act or the Welfare and Pension Plans Disclosure Act, except that nothing herein shall be construed—

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

(2) to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities or to prohibit a State from requiring that there be filed with a State agency copies of reports required by this Act to be filed with the Secretary; or

(3) to alter, amend, modify, invalidate, impair, or supersede any law of the United States other than the Welfare and Pension Plans Disclosure Act or any rule or regulation issued under any law except as specifically provided in this Act.

(b) Subsection (a) of this section shall not be deemed to prevent any State court from asserting jurisdiction in any action requiring or permitting accounting by a fiduciary during the operation of an employee benefit fund subject to the

Welfare and Pension Plans Disclosure Act or upon the termination thereof or from asserting jurisdiction in any action by a fiduciary requesting instructions from the court or seeking an interpretation of the trust instrument or other document governing the fund. In any such action—

(1) the provisions of this Act and the Welfare and Pension Plans Disclosure Act shall supersede any and all laws of the State and of political subdivisions thereof, insofar as they may now or hereafter relate to the fiduciary, reporting, and disclosure responsibilities of persons acting on behalf of employee benefit plans, an employee benefit fund subject to the Welfare and Pension Plans Disclosure Act except insofar as they may relate to the amount of benefits due beneficiaries under the terms of the plan;

(2) notwithstanding any other law, the Secretary or, in the absence of action by the Secretary, a participant or beneficiary of the employee benefit plan or fund affected by this subsection, shall have the right to remove such action from a State court to a district court of the United States if the action involves an interpretation of the fiduciary, or reporting, and disclosure responsibilities of persons acting on behalf of employee benefit plans subject to the Welfare and Pension Plans Disclosure Act;

(3) the jurisdiction of the State court shall be conditioned upon—

(A) written notification, sent to the Secretary by registered mail at the time such action is filed, identifying the parties to the action, the nature of the action, and the plan involved; and satisfactory evidence presented to the court that the participants and beneficiaries have been adequately notified with respect to the action; and

(B) the right of the Secretary or of a participant or beneficiary to intervene in the action as an interested party.

TITLE VII—EFFECTIVE DATES

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

(b) Titles II, III, and IV of this Act shall become effective one year after the date of enactment of this Act, except that, with respect to any plan the terms of which have been agreed upon pursuant to a collective-bargaining agreement which is in effect on the date of enactment of this Act but which expires after the effective date of titles II, III, and IV, such titles shall become applicable to such plan on the date of expiration of such collective-bargaining agreement, but in no event later than three years after the date of enactment of this Act.

The CHAIRMAN. The aim of this legislation is both the form and reform of various aspects of our Nation's private pension plan system.

The ability of this system consistently to fulfill the promise of retirement security for American workers has been in doubt for some time.

The Congress has long been concerned with this issue, and for more than 2 years the Labor Subcommittee has been engaged in a detailed study of private pension plans.

In my judgment, the findings of our subcommittee study have brought into clear focus a number of specific shortcomings in private pension plans. And, I believe they provide overwhelming evidence of the need for legislation to correct many of these deficiencies. It is my hope that the hearings we begin today will provide further guidance as to the best form that new law can take.

I will say that previous efforts to legislate improvements in our private pension plan system have provided invaluable guidance and important precedents for our subcommittee. Those efforts go back to the hearings held in 1957 by the Senate Subcommittee on Welfare and Pension Plans, chaired by Senator John F. Kennedy.

That series of hearings led to passage of the original Welfare and Pension Plans Disclosure Act, in 1958. Another round of hearings, chaired by Senator Pat McNamara in 1961, documented the need for improvements in the Disclosure Act, which were passed the following year.

Our current study has very clearly shown that the 1958 act has not been sufficient to assure employees of receiving the pension benefits to which they are entitled. Through staff inquiries—through hearings held here in Washington—and through field hearings held recently in other cities—the subcommittee has found that many private pension plans fail to make good on their promise of retirement security. One worker after another has told us how the pension benefits he expected never materialized. And, significantly, a number of employers have agreed that there are serious shortcomings in the pension plan system.

The deficiencies uncovered by our study have been well documented in various reports published by the subcommittee, so I shall not go into them in detail now. However, I do want to mention five which appear to be among the most serious:

First, there is the widespread problem of inadequate, or nonexistent, vesting provisions. As a result of this situation, employees who have spent 10, 20, or perhaps 30 years with a company may be denied retirement benefits.

Second, we have found that many funds have inadequate assets with which to meet their obligations to workers. This condition often surfaces—with tragic consequencies—when a plan is terminated because a plant shuts down, or a company is sold or moves to another place.

Third, many employees are forced to forfeit pension benefits because they find it necessary to change employers but are unable to take with them the pension benefits already earned.

Fourth, there is almost no uniformity in the rules of conduct which must be observed by fiduciaries and plan administrators. As a result, these people often cannot be held to account by plan participants who may be deprived of benefits they had coming.

Finally, we have seen an appalling lack of communication between pension plan administrators, and plan participants. Frequently, workers are not even sure of what conditions they must meet to be eligible for retirement benefits. And almost never do they know just how their plan is funded, how actuarially sound it is, or what will happen to them if it is terminated.

In my judgment, the subcommittee has developed a clear picture of the most pressing problems in private pension plans. We are now beginning the more difficult task of trying to correct these problems.

One approach to that task is S. 3598, the Retirement Income Security for Employees Act of 1972. This bill was introduced on May 11 by Senator Javits and myself, and has been sponsored by 13 other members of the Committee on Labor and Public Welfare.

These sponsors are: Senators Beall, Cranston, Eagleton, Kennedy, Hughes, Mondale, Nelson, Pell, Randolph, Stafford, Stevenson, Taft, Schweiker, and, in addition, Senators Hart and Humphrey.

The bill has been carefully designed so that it would not in any way inhibit the continued growth of private pension plans.

Instead, it is fully compatible with such growth. The only goal of this legislation is to insure that American workers receive the pension benefits which they have earned, and which they have been promised. I believe the bill would accomplish that in an efficient and effective manner.

However, I want to stress at the outset of these hearings that the subcommittee intends to consider proposed approaches to this problem.

We are looking forward to a useful dialog. We welcome all viewpoints.

Hopefully, the result will be the most effective law to accomplish our goal of strengthening private pension plans.

Now I will turn to Senator Javits, who has been part of the whole evolution of national concern for legislation of private pension plans and their improvement.

Senator Javits.

Senator JAVITS. Mr. Chairman, 5 years ago, I introduced the first comprehensive pension reform bill to provide for minimum standards of vesting, funding, reinsurance, portability, fiduciary standards, and enforcement of private pension plans.

According to the statistics released this year by this committee, in a sample of plans qualified under existing law and which had during those 5 years 2.9 million participants and held during those 5 years $10 billion in assets, these were the forfeitures:

For every one participant who earned vested rights, 13 employees, each with more than 10 years of service, forfeited all their pension rights.

For every one participant who earned vested rights, five employees, each with more than 15 years of service, forfeited all their pension rights.

For 5 years this legislation has been the focus of national attention, and deservedly so. But 5 years is enough. Forfeitures continue and they need not. Those workers with 10 and 15 years of service who got no pensions from their plans certainly could not afford the losses they sustained. And we as a nation cannot afford another 5 years before we put the matter right.

Mr. Chairman, 8 years ago, the Studebaker pension plan in South Bend, Ind., collapsed.

That was the collapse that I think awakened us all to this very serious and unjust situation. There was vesting in that plan, but insufficient funding. Over 4,000 employees with vested rights, more than 10 years of service, and between the ages of 40 and 59, lost 85 percent of their pension benefits.

Since then, Mr. Chairman, other employees have suffered similar losses. Indeed, according to a Bureau of Labor Statistics report, during the 10 years before the Studebaker collapse, some 8,100 qualified retirement plans with a coverage of about 475,000 participants collapsed.

Mr. Chairman, 6 years ago, the Permanent Investigations Subcommittee conducted an extensive investigation into misuse of pension assets. As a member of that committee, I recall that the committee discovered that an unethical union leader could and did divert over $2 million in pension assets to a dummy corporation in Liberia which he controlled; could and did divert another $2 million to another dummy corporation in Puerto Rico, which he controlled; and yet, the Justice Department testified at those hearings that "the manipulations I have just described in no way lend themselves to successful prosecution under the present state of the law."

We have known, for the last 6 years, that the law gave little or no protection against misapplication of pension funds by unscrupulous pension administrators. We have known how to correct these loopholes. We cannot afford another 6 years without corrective action.

We have had hearings, from countless perspectives, in committee after committee, on both sides of Capitol Hill. In 1966, we had hearings in the Government Operations Committee and the Joint Economic Committee. In 1968, we had hearings in this committee. In 1969, 1970, and 1971, we had hearings in the House Education and Labor Committee. And we have had 2 years of investigations in our Labor Subcommittee.

In the interim, we have had the benefit of the recent White House Conference on the Aging, which recommended, among other things:

> That the Federal Government should require early vesting and/or portability, survivor benefits and complete disclosure to beneficiaries of eligibility and benefit provisions in plans.
>
> In addition, Federal requirements should assure fiduciary responsibility, minimum funding requirements, and protection through reinsurance and other measures, of promised benefits.

Only last month, the Senate Special Committee on Aging recommended, among other things:

> Major reforms in private pension plans, including minimum standards for vesting, funding, and reinsurance; a uniform standard for fiduciary responsibility; and greater disclosure requirements about the provisions in pension plans, plus an intensive effort to cover those not likely to be protected by existing plans.

And our own subcommittee, without a dissenting vote, has recommended, in its own interim report, the establishment by Federal law of minimum standards of vesting, funding, fiduciary responsibility, disclosure, a portability program, and consolidation of these requirements in a single agency.

Mr. Chairman, this is not a partisan matter. Five years ago, I introduced the first vesting-funding-reinsurance-fiduciary pension plan.

The Johnson administration introduced similar legislation in two separate bills. The Nixon administration has proposed a fiduciary standards bill and a vesting bill. And the bipartisan membership of this committee—15 or 17 members—have now joined in cosponsorship of the new Williams-Javits pension reform bill.

We have studied the matter exhaustively: investigatory hearings, questionnaires, statistical analyses, and information from private and governmental bodies, are all available to us, and have been for some time.

This is a legislative hearing. It is on a bill with enough consponsors to assure its passage. I know the chairman shares the view that this is a top priority item, and that we should pass it.

With that in mind, I trust that the witnesses we are about to hear—from industry, labor, government, the public, and interested groups—will present us with constructive testimony.

Previous hearing records have been packed with debate over whether anything should be done. I think we have passed that point, and what we need now is careful analyses of these bills, with a view to making sure they are correct in each detail, properly drafted, and properly tailored to fit the needs of pension participants and their plans.

I look forward to these hearings as the last key step before we mark up this legislation and put it to a vote in the Senate.

Mr. Chairman, before I close, I would like to first pay a tribute to the Chairman who, in an unparalleled way, in a most extraordinary example of public service, has worked with me in the development of this legislation. I am delighted to engage in this partnership which has been one of the most satisfying of my whole career; and also, Mr. Chairman, to congratulate the administration—I differ with them as to what ought to be done; and I want to go much further than they do—but the fact is, they have come forth with their prescriptions, including the prescription for vesting, and that alone is a start.

I am very hopeful that with the Chair's tremendous leadership and cooperation, and with the administration concurring in the fact that we should act, we can produce a bill even this year.

The CHAIRMAN. I appreciate that very much, Senator Javits. We have, I think, fashioned after a rewarding study, a good thing in this legislation. The pleasure has been mine to work with you, and I commend you for your wisdom and input into this whole area, the need for pension legislation, that has continued for better than a decade.

We are looking forward to a useful dialogue. We have asked for the views of those agencies in the Federal Government which we believe would have an interest or be affected by the legislation being considered by this committee. All these responses and views expressed will be made a part of this record so that these too may be given deliberation by the subcommittee in its consideration of the most effective legislation which can be brought out of the committee. Additionally, any views, opinions, and suggestions made by any individuals or organizations within the private sector who would be similarly affected will also receive the consideration by the subcommittee.

Secretary Hodgson, we welcome you back to your committee and the Senate, and look forward to your statement on this vital, pivotal area in the needs of working people.

STATEMENT OF HON. JAMES D. HODGSON, SECRETARY OF LABOR, ACCOMPANIED BY FRED HICKMAN, ACTING ASSISTANT SECRETARY, DEPARTMENT OF THE TREASURY; RICHARD SCHUBERT, SOLICITOR; AND FRANK M. KLEILER, DEPUTY ASSISTANT SECRETARY OF LABOR

Secretary HODGSON. Thank you, Mr. Chairman, and Senator Javits.

The Chairman says he looks forward to my statement. As I looked at the statement that we were going to present to this committee and noted the minutes and hours. I saw that I could be droning away if I read the entire statement. So I decided to submit the statement for the record and cut it back as much as possible for my presentation directly to the committee. I had that done, and even what remained seemed to me to be still much too much. I tried to cut that back some, and I hope I have got this down to under a half hour.

But first, I would like to introduce those who are with me at the table here this morning:

Mr. Fred Hickman, Acting Assistant Secretary of the Treasury for Tax Policy, is here to help us with matters particularly in the tax area.

Mr. Richard Schubert, who is Solicitor of the Department, is on my left.

On my right is Mr. Frank Kleiler, Deputy Assistant Secretary for Labor Relations Planning and Evaluation, a man who has studied and become a man of considerable expertise in the pension sphere over a considerable period of time.

I would share and identify myself with one statement made a few moments ago by Senator Javits, that the recognition of the need for attention to this subject on the part of the Congress has not been considered a partisan matter. It is something that we ought to work together on to produce a kind of legislation that will do the job the workers of this country need. So I am pleased to have the opportunity to discuss with you the major pension reform proposals now pending in Congress.

At the outset, I would like to provide some background and maybe a bit of perspective on this subject.

A vast range of methods of compensating American workers exists today. Methods include many forms of direct wage payments, a list of wage supplements, various payments for time worked, insurance-type provisions for cushioning workers against adversity, and provisions designed to relate worker income to economic gain or productivity.

Importantly, they also include a wide variety of programs to provide income when the worker is no longer able to work, usually for reasons of age or disability. These pension or retirement progams, as they are known, are themselves widely diverse in form, structure, and coverage. Some owe their existence to employer initiative; some are the product of collective bargaining. In the last half century this Nation's private pension system has grown apace in scope, financial worth and worker benefits.

Today, because of this system's diversity and complexity, there is practically nothing that can be said about these pension programs that hold true for each and every one of them. But as a whole, the private pension system in the United States has assumed a critically impor-

tant role in our worker compensation picture and the funds involved are of awesome size. Accordingly, in these circumstances, certain things should be noted:

1. Under its existing status, the U.S. private pension system has enjoyed a dramatic growth with the great benefits to workers and their employers alike. We should avoid clouding the climate that produced such growth.

2. Any form of compensation as critically important to the welfare of the Nation's workforce as our private pension system deserves careful attention by the Congress, with a view towards examining the need both for safeguards and for further growth opportunities.

3. The private pension system is so complex and so interrelated with other compensation elements that some well-intended proposals could prove to be a disservice to the Nation's workers and to collective bargaining.

Finally, let me say that I know of no aspect in the whole sphere of employee relations in the Nation that is more in need of greater technical understanding and expertise than our pension system. So I would conclude that while some surgery should be performed on this Nation's pension system, it should be performed with a practiced and knowledgeable hand and only after the most careful diagnosis.

Your invitation requested my views on S. 3598, the Retirement Income Security for Employees Act. As you know, in December 1971, President Nixon sent two pension reform bills to Congress. The first of these is S. 3012, now pending before a different Committee. The individual Retirement Benefits Act, as it is named, would amend the Internal Revenue Code to provide a "Rule of 50" minimum vesting standard, and to increase opportunities for individual workers and the self-employed to help assure their retirement security.

The President's second bill, S. 3024, the Employee Benefits Protection Act (EBPA) would amend the Welfare and Pension Plans Disclosure Act of 1958 (WPPDA) to improve reporting and disclosure requirements, provide new fiduciary standards for the conduct of pension plan personnel, and strengthen the enforcement powers of both the Secretary and plan participants and beneficiaries. Together, these two bills present a balanced and prudently prepared group of reforms and incentives which will enhance retirement security prospects for virtually all workers, including some 30 million who are not covered by private plans, and at the same time will foster expansion of the private pension plan system.

S. 3598, on the other hand, is very comprehensive. It provides not only for broadening reporting, disclosure and publication requirements, widely expanded enforcement procedures, and new fiduciary and vesting standards, but also mandates funding standards, provides for a voluntary portability mechanism and requires termination insurance. Administration of all these provisions would be lodged in the Department of Labor, under a new Assistant Secretary. I would be less than candid if I did not admit that the Department is flattered by this expression of confidence. However, in the hopes of avoiding a massive repetition of the popular television commercial in which the obviously discomfitted gentleman sits on the edge of his bed ruefully regretting his appetite, let me suggest that it would not be in the best interests of American workers for the Department of Labor to serve them such a meal at this time.

To carry the analogy one step further, I would say that the meal is too large and it is not well balanced, containing some courses which have not been shown to be necessary and which might cause substantial indigestion; that it would not be served to some of the people who need it most; and that part of the meal should be served by a different waiter.

Commenting directly and in greater detail, let me begin with the subject of Vesting. Conceptually, vesting means that the benefit rights accrued by a plan participant will not be forfeited, even if he changes jobs or stops working before the normal retirement age. There is now a growing range of opinion that limited Federal vesting standards are both desirable and necessary for our private pension plan system.

Examining the vesting question, we found that, overall, more than two-thirds of all private pension plan participants are not now vested. Of course, this figure includes large numbers of young, short-service workers who may obtain vested rights later on in their careers. But a disturbingly large number of older workers are not protected by vesting: 40 percent of plan participants age 45 or more are not vested; 26 percent of plan participants age 55 or more are not vested.

Pensions, by their very nature, are of greatest concern to the older worker. One does not have to do much collective bargaining to understand that. Accordingly, this lack of vested rights for older workers is critical, or they experience the greatest hardships when benefit losses occur, and an older worker who loses benefit rights has far less opportunity to obtain a pension from a subsequent employer than does a younger worker.

While we found a need for some vesting—especially among older workers—we recognized that a federally-established vesting standard would raise costs for those plans without vesting and for those currently offering slow vesting. If these increased costs were excessive or ill-constructed, vesting could come at the expense of reduced future benefit payments for retirees and could discourage new or improved pension plans. We therefore proposed the "Rule of 50" as a minimum standard; one which would be acceptable in cost but which would bring rapid vesting for middle-aged and older workers.

The "Rule of 50" requires 50 percent vesting whenever any combination of age and years of plan participation equals 50, with vesting of an additional 10 percent each year for 5 years thereafter. Thus, a worker who begins to participate in a plan at age 30 would, at the age of 40, with 10 years of covered service, become 50 percent vested; he would become 100 percent vested after 5 additional years.

To complement our vesting standard, the administration bill has minimum service and age standards for eligibility to participate in a plan. An employer could not establish a service requirement for plan participation in excess of 3 years or a minimum age requirement in excess of 30 years. However, an employer would not be required to cover a new employee who first becomes eligible when he has attained an age which is within 5 years of the normal retirement age under the plan.

On the most important feature of the Rule of 50, rapid vesting of older workers, some have questioned whether job prospects for older workers might be jeopardized. Because of the way we have structured this provision, little basis exists for such fears.

At the outset, it is important to bear in mind that it costs a great deal more to include an older employee in a pension plan without any vesting than a younger employee. The basic reason for this differential is the short period over which investment income may accumulate for an older employee. Thus, even before vesting standards are considered, there is a deterrent to hiring an older employee today. The Rule of 50 will have only a minimal impact on the existing situation.

Also, under the administration bill, an older worker may be required to have up to 3 years of service before he begins to participate in a plan. Thus, an older worker must complete a reasonable trial period before he can begin vesting. Once an older worker has remained 3 years, he is very likely to remain voluntarily with his employer until retirement, and thus will not cause any additional cost by virtue of the vesting standard. Furthermore, as I just mentioned, a new employee whose age is within 5 years of normal retirement age need not be covered under the plan. As a result, the cost of bringing older workers into a plan and vesting them under the Rule of 50 is but little higher than the cost of not vesting them at all. For these reasons, the Rule of 50 should not be so onerous as to provide an employer with a significant disincentive to the hiring of older workers.

The Rule of 50 would raise the number of workers with vesting from 31 percent to 45 percent of all private pension plan participants. More importantly, among participants age 45 and over, the percentage with vesting would rise from 60 percent to 92 percent. Thus, the Rule of 50 would assure benefit rights for virtually all older plan participants.

The graded 15-year standard in S. 3598 would also increase the number of vested participants, but it would be nowhere as helpful to middle-aged and older workers. Under the Rule of 50, a worker hired at age 47 would have to be fully vested no later than 8 years afterward, while under the graded 15-year standard, he would only begin to vest after 8 years.

A case can no doubt be made for many forms of vesting. But I am convinced that the assignment of a higher priority for the retirement security of the older worker is more responsive to worker needs than is a program to provide that a younger worker gets some pension some day. The Rule of 50 strikes a very good balance between the urgent retirement needs of older workers and the longrun interest of younger workers.

The President's "Individual Retirement Benefits Act" proposal also contains two other features which we believe are essential. The first will help end the pension inequity that now exists between workers covered by private plans and those who are not so covered or are inadequately covered by allowing the latter to claim appropriate deductions on their income tax returns for savings which they have earmarked for retirement. The second will liberalize the tax rules for pension and profit-sharing plans of the self-employed and their employees, thereby broadening coverage under these plans. In my written statement these provisions are explained in greater detail.

Let's talk now about funding and termination insurance.

S. 3598 includes mandatory standards for funding and establishes a termination insurance program. As the President announced in his December 1971 message to Congress on private pension plans, a study of plan terminations is now being conducted jointly by the Depart-

ments of Labor and Treasury. The study will be completed in December 1972 and will provide us with necessary and up-to-date information on the extent of benefit losses under pension plans which are terminated.

While there have been several pension plan studies on the incidence of termination and the number of employees affected, none to date have thoroughly examined the nature of or the effects of terminations. To assume that every termination adversely affects plan participants is patently incorrect. We know, for instance, that some terminations result from mergers of multiemployer, union negotiated plans and from corporate mergers and acquisitions, and that the participants of the terminated plan are often covered under the successor plan, with equal or sometimes even better benefits resulting. On the other hand, we also know that some terminations have been highly prejudicial to participants. But we don't have accurate data on the true extent of prejudicial terminations, or on the degree of benefit losses thereunder. Our joint study with the Treasury Department will furnish this information; and I am firmly of the opinion that such information is a crucial prerequisite to the formulation of Federal policy on these issues.

There are also some major, national policy questions that must be answered before imposing requirements such as for full funding. Mandatory plan funding has broad Federal policy implications of at least three types: plan costs, the economy, and tax policy.

Primarily, as regards the interests of plan participants and beneficiaries, a funding requirement will affect benefit levels. The cost of full funding must be absorbed by the plan, and this means either a lowering of present or prospective benefit levels or, if benefit levels are maintained, a raising of contributions. This, in turn, could affect other aspects of employees' compensation. Also, required full funding could raise plan costs to the extent that the formation of new plans and the expansion of existing plans might be curtailed.

The issue of termination insurance raises smaller questions. It, too, involves costs with implications bearing on benefit levels and expansion or contraction of the private pension system, the economy, and tax policies. More importantly, at least for the present, it seems premature to propose mandatory termination insurance until we know the extent to which terminations are actually prejudicial to plan participants. As I stated earlier, we know that some well publicized plan terminations have adversely affected participants, but we also know that during the period 1955 to 1965, the total number of terminations affected, on the average, less than one-tenth of 1 percent of all workers covered by plans in each year.

Our pending study will provide the hard, current data we need to evaluate the need for funding, termination insurance, or both, and will give us better answers than are now available on the implications flowing from these proposals. The information we are gathering also may be useful in establishing appropriate insurance rates, if an insurance approach needs to be adopted in the future.

Finally, even with the types of data that can be derived from our current study of terminations, it could be very difficult to design and administer a termination insurance program which would adequately safeguard against benefit losses and at the same time not hamstring pension plans in such a mesh of rules and requirements that they could no longer comprise a viable, private system.

One critical problem is how to define the risk that is to be insured against. If it is limited to bankruptcy of the employing enterprise, it would not cover the notorious Studebaker case. If it extends to losses resulting from any type of plan termination or curtailment, what safeguards are necessary to keep the happening of the insured event from being substantially under the control of the parties who maintain the plan? If some form of liability is imposed on an employer who continues in business after plan termination, how is that liability delineated so that it does not drive the employer out of business and thereby throw his employees into unemployment? I am very much afraid that answers to such questions which are based on sketchy data might well lead to serious problems.

Turning now to the subject of portability, I must emphasize at the outset that portability is an idea which has been discussed for years, yet its apparent attractiveness as a concept continues to be belie severe practical problems of both cost-benefit and implementation.

In the first place, the private pension plan system in the United States is a diversified one; we have many types of plans to meet many types of needs and circumstances. Indeed, the variety of plan types is a significant element in the competition among employers for the workforce. Any portability system, because it places a premium on uniformity of the plans it would embrace, introduces a tendency to limit the variety of plan types and, in the process, to curtail this vital element of competition.

Secondly, portability proposals generally call for a system for transferring the current monetary value of a pension to a central fund, and later a transfer of the money to another plan entered by the employee or use of the money to purchase a paidup annuity for the employee. Considering any such system, the question arises, What will it accomplish? The stated purpose is usually twofold: Either to increase the eventual value of the benefit or, at the very least, to facilitate the accumulation of a series of such benefits. As a practical matter, it seems probable that neither of these goals can be obtained without incurring some additional costs, to the detriment of benefit levels, or subjecting the benefit to a greater risk. And obviously, if the system's costs or risks outweigh its advantages, it will not be successful.

Even as regards voluntary portability, we have questions about what would be accomplished, and at what possible cost to participants' interests. For instance, when the monetary value of a vested benefit is transferred out of a plan, it presumably would be done on a fully funded basis. If the overall plan is not fully funded, wouldn't the employer have to make an additional contribution to the plan? If not, wouldn't less money be left for the remaining participants? This might not be much of a problem if the number of vested separations is relatively small. However, if the number is large, the movement of money out of the plan fund could seriously endanger its integrity and might well precipitate termination of the plan.

While the idea of providing for portability of pensions is appealing on the surface, no program yet proposed appears to provide practical solutions to the administrative and cost problems. I am informed that in Canada, intensive effort was given to solving portability problems, but practical difficulties such as establishing a central agency to which credits of plan members would be transferred were insurmount-

able. It should be noted that Canadian legislation many years ago authorized the establishment of an agency for the purposes of receiving, holding, and disbursing pension benefit credits, but because of massive disinterest by unions and industry, this authorization has never been used.

Now, let us turn to "Fiduciary Standards, Reporting and Disclosure, and Enforcement."

The administration's proposals on reporting and disclosure, fiduciary standards and enforcement procedures, as embodied in S. 3024, stem from our recognition that effective fiduciary standards are essential, that improved reporting and disclosure are necessary, and that strengthened enforcement powers for participants and beneficiaries as well as the Secretary are crucial if these substantive changes are to be effective.

My statement for the record discusses these proposals in further detail, but I will not at this time reiterate these views because the case for this type of legislation has been made clearly over and over again. The WPPDA must be amended to assure that all persons in fiduciary capacities adhere to basic minimum standards of conduct, as befits the managers of funds with a total combined value of approximately $145 billion.

In most of their respects, the provisions of S. 3024 and S. 3598 are similar or identical. However, there are several differences on which I would prefer the administration's proposal.

Some of these differences are highly technical and a few are substantive. I will not undertake to discuss them formally at this time; they are in the statement for the record. I hope that, after examination, Congress will act with dispatch on these matters.

Mr. Chairman, I want to thank you for the opportunity to present my views. In the interest of time, I have skipped over some sections of my testimony that should be placed before the committee, but I know an exchange of views is probably more rewarding at this point than reading the rest of my statement.

I will be happy to answer any questions the subcommittee may have.

The CHAIRMAN. Thank you very much, Mr. Secretary. I would anticipate that after we have had our questions personally put to you that there might be many unanswered questions that we will want to submit in writing and have a written exchange on some of the more complex and detailed aspects of your proposals; and we would fully understand it.

First of all, the legislation you propose deals with broadly and basically vesting, and the other broad area of the concern is the individuals who are not a larger pool of employees, the self-employed that have no plan; is that basically about it?

Secretary HODGSON. Exactly right. If you step back and take a look at the private pension system in this country, you immediately see certain things. About half of the American workers are covered by some kind of plan, and another half are not. Now, we take a look at both halves: As for the first half, we see a need for better protection of those employees' benefits through fiduciary responsibility and some sort of vesting; as for the other half, we see a great group of people that are not yet covered by this system.

Should we not create greater opportunities and stimulate and motivate greater coverage for this group? We have tried to design an approach that meets the needs of both groups and put some balance between the two of them.

The CHAIRMAN. Of course, you appreciate that the second aspect is not one of our legislative areas of jurisdiction. It is in the Finance Committee, that is, for the taxes. Basically, this is what we used to call the Jenkins-Keogh program extended.

Secretary HODGSON. The Keogh part of it is a major part of it.

The CHAIRMAN. This is an extension of the Keogh Act; is that right?

Secretary HODGSON. That is one of the elements of it; yes, a major element.

The CHAIRMAN. We will leave that to Senator Long and his committee in their spare time to wrestle with that.

Secretary HODGSON. None of your committees particularly have any spare time, we understand, these days.

The CHAIRMAN. The other part is in the area where we have our legislation, Senator Javits and I and the other members of this committee.

It comes to grips with this question of vesting, the Rule of 50: to be eligible, you need a minimum of 3 years of covered employment?

Secretary HODGSON. It may be that those who are devising the pension plan, either through collective bargaining or employer initiative will choose to use that 3-year period as a period during which the new employee does not qualify for participation in the plan; it is there for that purpose. They can, if they wish, use that 3-year period.

The CHAIRMAN. It could be that after a minimum of 3 years of employment, plus age, with the total of the additional equaling 50, there is a vested benefit; is that it?

Secretary HODGSON. The idea is to total age and service to get a total of 50 and, at that point, you are 50 percent vested. Each year thereafter you vest 10 percent more so that in 5 more years you are fully vested.

The CHAIRMAN. Our vesting under S. 3598 begins at 8 years with increments added after that.

Now, of course, we deal with funding. In your legislation, how does it make that vesting real by requiring funding to meet the benefits?

Secretary HODGSON. Funding is something that we do not believe that the Congress should get into at this time.

We believe that funding is a kind of element of the private pension system which in the observance of a well-understood and clearly documented need, is best left to a determination by the bargainers, by the empolyees and the employer, so that formal requirements in the funding area will not serve to restrict and restrain the kind of vigor and vitality that the growth of the private pension plan system has shown. We think that what we have suggested in the way of vesting will not significantly do that; but to go beyond resting would very clearly, in our judgment, do that.

The CHAIRMAN. Just in a brief summary, it impresses me that some of the greatest tragedies we have seen have been plans with good vest-

ing, I mean vesting that was realistic in terms of the workers' needs, but without funding, and when there is a termination or change of employment, nothing materializes. There is no benefit in fact.

The last one that came to us was the Ballantine Brewery, Newark, N.J. The vesting was great, the funding nearly zero; and in many of these cases, benefits, also zero.

Now, this is why we are in a position of saying to ourselves that we are going to honestly legislate a requirement of vesting; we can only back it with requirements of funding, insurance for termination and portability to make it real.

I am going to stop at that point. I want to turn to Senator Javits.

Senator JAVITS. Mr. Secretary, the thing that troubles me about the Rule of 50, we might as well get right to the target, is that its ostensible advantage is confined to the one employer. For whom the employee's service and age make the qualifying combination.

You assume that people who are older have never been young.

Well, the answer is, they have been young and they have worked hard when they were young, and they earned pension credits when they were young, but never got anything out of it.

You might think it sounds good that if you are an older person you only have to work 3 years to begin to get something, but something in what? Only in the result of your labor after that, not in the result—as in social security—of the labor throughout your working life.

So, Mr. Secretary, with all due respect—and I doubt we are going to resolve it in our debate—we believe that we are in our bill much more pragmatic in recognizing the fact that when you spend a lifetime at work, you are going to pick up a number of interests in pension plans, and you should, if you change jobs, get retirement benefits based on those years of service.

With that in mind, I submit for the record a chart comparing the vesting in the administration's bill and our bill, showing the rate of vesting and the amount of vested benefits at various intervals.

You come out about the same in the ultimate. We think in our bill we give the benefit of being able to latch on to pieces of pensions from a number of employees, which cumulatively would be of more benefit to the worker.

I ask unanimous consent to submit this for the record.

The CHAIRMAN. It will be included in the record.

(The information referred to follows:)

AGE AT HIRE	YEARS OF SERVICE	YEARS OF CREDITED SERVICE UNDER PLAN		ATTAINED AGE	RULE OF 50		S.3598		WHICH IS BETTER, IN EQUIVALENT FULL YEARS OF FULLY VESTED CREDIT
		Rule of 50 (assumes exclusion of all svc. before age 30 and 1st 3 yrs of svc. as provided in H.R.12272 Sec. 2(a))	S.3598 (Assumes exclusion of svc. before age 21, as provided in S.3589 Sec. 201)		% Vested	In Years of Credited Svc.	% Vested	In Years of Credited Svc.	
20	5	0	4	25	0%	0	0%	4	The worker hired at age 20 is better off under S.3598 at all ages thereafter.
	10	0	9	30	0%	0	40%	9	
	15	5	14	35	0%	5	90%	14	
	20	10	19	40	50%	10	100%	19	
30	5	2	5	35	0%	2	0%	5	The worker hired at age 30 is better off under S.3598 at all ages thereafter
	10	7	10	40	0%	7	50%	10	
	15	12	15	45	80%	12	100%	15	
	20	17	20	50	100%	17	100%	20	
40	5	2	5	45	0%	2	0%	5	The worker hired at age 40 is better off under S.3598 at all ages thereafter, except that at age 50, he falls slightly behind, briefly, & then moves ahead again. Under S.3598 moreover, this worker would be much more likely to have earned a vested pension from a previous employer.
	10	7	10	50	80%	7	50%	10	
	15	12	15	55	100%	12	100%	15	
	20	17	20	60	100%	17	100%	20	
50	5	2	5	55	60%	2	0%	5	The worker hired at age 50 is slightly behind under S.3598 until he reaches age 64, when he moves ahead. But he is still better off under S.3598, because he would very likely have earned vested pensions from previous employers, which he would not have earned under the Rule of 50.
	10	7	10	60	100%	7	50%	10	
	15	12	15	65	100%	12	100%	15	

Senator JAVITS. I will make that available to the Secretary for their critical comment.

Also, Mr. Secretary, would you be kind enough now or later to tell us where you got the analyses on page 9 of your statement relating to the number of workers who would be benefited by the rule of 50; that is, what you would call the "increasing percentage"? The percentage would be increased over what? Over our bill? Or over the present situation? We do not know exactly where you got those figures.

Secretary HODGSON. I think not only those figures, but any others we are using or have been used in other testimony, that will be of interest to this committee, we will be glad to supply where we got them and how we got them and, in detail, work with you to establish a reliability to your satisfaction.

I would like to comment on one word you used that I think perhaps dictated our selection of the rule of 50 over the kind of vesting that you have proposed; that word is "pragmatic."

There are just enormous numbers of concepts and combinations of vesting that could be considered by this committee. You have mentioned one and we have mentioned one, and the literature is filled with others.

But we took a look at what we are really trying to do. We are trying to provide vesting for those who are the most interested in it and need it most to have some retirement income; and that clearly is the older worker, and we are trying to do this in a way where you will get the most for your money.

By concentrating on the older worker, who is critically interested in it—and those who have been bargaining for younger workers and older workers know the tremendous expression by employers and employer interests themselves in supporting the need for a vesting kind of concept in a pension plan between the two groups—we are concentrating on those who are most interested in it, who need it the most, and who can get the most for your money. That is the reason we did it. It was a purely pragmatic selection.

Senator JAVITS. Isn't the pragmatism which dictated your approach also attributed to cost?

Secretary HODGSON. That is right; where you get most for your money.

Senator JAVITS. Wait a minute.

When the administration testified before the House Ways and Means Committee, their case was that the rule of 50 would cost less. They were not trying to get at it that it was better, essentially, than our rule. They said it would cost less. Is that not a fact, that what you are primarily cranking in is the cost which may be—as you claim—lower than the cost of the vesting in our bill. That was a very important element in dictating the way you framed it, was it not?

Secretary HODGSON. It was a very important element; but I would like to suggest to the committee that it not look to this question on cost on the basis that it is denying somebody something. Costs in connection with any feature of the American compensation system come from a total pie or total package of compensation that applies to the American workers in the workplace. As I say, there are all sorts and forms of it, and when you put some more cost in one place, you take it out of something else. So you cannot view it as a single item.

Senator JAVITS. One other thing, Mr. Secretary, about the Rule of 50 that troubles us very deeply, is the question of age discrimination which appears to be a sore spot because the younger worker does not even begin to participate until he reaches age 30. One of the things that we have found that is troublesome about the social security system, and the way in which we up the cost of social security for the younger worker, is that he is rather resentful about the fact that it takes so long for him to perceive the benefits of it.

Under our plan, the younger worker has rather immediate prospects. Under your plan, generally speaking, the younger worker will have no immediate prospects.

Would you wish to comment on that?

Secretary HODGSON. Well, two things:

First, the younger workers' interest in compensation traditionally—and I would say almost increasingly, from the emphasis we see in collective bargaining negotiations and elsewhere—is not in the fact of a retirement plan or pension plan or the nature or form of it as it is in the case of older workers and for very obvious reasons. So, usually, the younger worker's interest in the early periods of his career is in the immediacy or the amount of compensation he is receiving and the kind of job opportunity that he is presented with. As a result, he tends to move around in his early career until somewhere in his middle years he fastens upon an employer and stays with him. This means that a worker at different ages has different interests, and he is not nearly as interested in the part or form of a retirement plan in the period in which he is experimenting and exploring in the job market, as he is later on.

The second thing we can say about this is that the extent to which the rule of 50 would serve as a disincentive toward hiring older workers, it seems to us, has been reduced to an absolute minimum and really does not amount to much of a disincentive. The figures that we have on this indicated—and I will supply this committee with some additional figures that the Treasury has prepared to compare these respective costs—that the cost is minor, and with the provisions for excluding an employee during the first 3 years of his service and an employee whose age is within 5 years of normal retirement, there would be no real disincentive to hiring an older worker. For these reasons, costs of vesting older workers under the rule of 50 are reduced to a minimum that would not have a serious or even material deterring effect on their employment.

So we believe if you took a profile of the American work force and examined the nature of their interest in compensation, quite clearly, up through the first third of their working life, the worker would show a very minor interest in retirement and pension plans for the same reason he is somewhat resentful of the fact that he does not get anything out of social security because he sort of has a "right now" psychology in his earlier years. That changes as he gets older.

What we have done is tried to tailor an approach to his own psychology and his own interest; and considering these factors, as well as the factor of comparative cost, we believe that the rule of 50 serves the best interests of the respective age groups in the American work force.

Senator JAVITS. Mr. Secretary, I do not agree with you at all, and for this reason:

One of the problems of the American worker is the erosion of his morale. Somehow or other, our system does not appear to give him enough inducement, given the degree of loyalty and devotion which the system needs urgently.

We felt that one of the great advantages of pension reform was to give the worker an additional vested interest in the economy. I think by simply accepting the thesis that the younger worker is not interested, we do not do anything for ourselves by reform of the pension system—we simply give way to the status quo.

In addition, I think we also weigh the job-getting capability of the older worker against him by loading the cost at that end.

Some of our older people are very anxious to have as much of an open job opportunity as they can.

For those reasons, as I said, I doubt if you and I could reconcile our views on the rule of 50. But I wanted to have our argument of record, as you are obviously having yours.

Secretary HODGSON. I can understand that, but I continue to feel, as exemplified by the interests that they show in such things as collective bargaining, the difference between the interest of the younger work force and the older work force is substantial; and we can improve morale if we are responsive to those interests; and that is what we have tried to do here; so I will not press the point further.

Senator JAVITS. You and I will not reconcile our views, but I did want to juxtapose both views.

Moving on to the question of funding, I think that there is a very strong point, as far as we are concerned, in giving the worker the assurance that, at the end of the road, he will get what he wants, what he has bargained for, again giving him more confidence in the private pension system.

I must say I cannot see how you can both leave out any provision for funding and any provision for insurance. I just cannot see how you can do both and yet expect that we are actually reforming the system.

Now, you say, Mr. Secretary, that we do not know enough about the matter of plan termination insurance; but we did not know enough about insurance, for example, for brokerage accounts, and we insured them.

The reason we did was because the national interest simply required that we do it, even before we have had all the actuarial experience we might want.

I think the same thing is true here.

I rate reinsurance and funding on the same level as vesting. I think this has been a big deficiency in these plans.

Would you care to comment?

Secretary HODGSON. Yes.

It reflects also on observations made by the Chairman earlier about examples which can properly be characterized as horror stories, where people thought there was some money at the end of the line and there proved not to be.

The fact is, though, I do not believe it is wise to legislate on the basis of horror stories without taking a look at the whole picture.

It may very well be that our study will reveal a need for termination protection. It would not surprise me at all if it does. If so, if we find that some sort of an approach to deal with this problem of reinsurance or funding is warranted after we complete the study we are making, it will be an approach tailored to the real need and to the nature of the need rather than what at the present time might be a shot in the dark and a shot that would hit other targets in addition to the ones it is intended to hit.

So that is the reason we believe that we ought to leave subjects like reinsurance and funding to a period of time when we really have the kind of data that is needed to grapple with it. There have been some very fascinating studies made of this, but they have always been a bit here and a piece there, and nothing that really is conclusive or sufficient for Federal policymaking, in our judgment.

Senator JAVITS. Mr. Secretary, finally, on portability; as I say, that too is a subject on which we state our reasons of record; but that is about all we can do.

On portability, why should you take exception to a voluntary portability plan, to try it out and see if it can work, when again, the issue of worker motivation is so highly at stake in terms of both his mobility and his morale?

Therefore, aren't both helped by the fact that we give him an opportunity for portability?

Secretary HODGSON. I would say no for two reasons.

The first is, what are we trying to do here? We are trying to insure that the fellow who is in a pension plan and who believes that because he is there, he will have some benefits at the time of his retirement, actually will have them. Now, vesting is one way of doing that. Portability is another.

We believe that vesting is the better way. But there still, as you say, why not consider voluntary portability? It has the smell of sweet reasonableness and being voluntary, employer and employee can work this out.

Why not?

I think for one thing it is a sleeves-in-the-vest proposition. I think it flies in the face of natural motivation of employers to expect them to develop an interest in providing portability that is an invitation for a worker to leave their employ. It is highly dubious that much will result from this kind of situation, maybe a few odd cases.

In Canada they tried something similar, but there was not a single success. The principal thing is, if you hold that out as a prospect, you are indicating to an employee that he may have something that I do not think he will have, and that is one of the problems at the present time. Some employees will think they have got some coverage, and they will realize nothing from it.

From our stand point, we prefer to go the vesting route and nail it down there, rather than on the portability side.

Senator JAVITS. It seems to me if you are going to go the vesting route, that our vesting makes much more sense in terms of continuous working life.

In addition to your argument that the employer should not be bothered with it if he does not want to be bothered with it, he does not have to under our voluntary portability scheme. He, too, remember,

is competing for labor in terms of types of jobs, and so on; so he has an interest and may very well want to offer portability so he can be attractive in the labor market.

Mr. Chairman, be that as it may, I think what I wanted to do was to juxtapose our arguments to those of the Secretary, and I think I have done that.

I thank the Secretary and the Chair.

The CHAIRMAN. Thank you, Senator Javits.

We no doubt will want to confer with you, Mr. Secretary, on other matters that will arise. You suggested an ongoing working relationship, and we appreciate that and look forward to it.

Secretary HODGSON. Mr. Chairman, I thank you very much. I appreciate the chance of expressing the administration's views on this. Following our study of this year, we will probably have added views.

As I said to you in private conversation, we do have some additional data in the way of additional figures that we will present for the record, along with the record of the hearing.

Thank you very much.

The CHAIRMAN. What is the hearing record on the administration's program? You have had some full hearings in the House?

Secretary HODGSON. We have had hearings by the Ways and Means Committee in the House only.

The CHAIRMAN. That is the extent of your testimony?

Secretary HODGSON. That is right.

Senator JAVITS. I would like to join the Chair that we will expect an ongoing relationship and hope that—though, much as we seem to differ at the moment—we can find more meetings of the mind.

Secretary HODGSON. There is one thing we are certainly in agreement on, and that is the need for further protection for those who are under plans at the present time, at least those plans that do not have vesting.

Senator JAVITS. That is the biggest step forward.

(The prepared statement of Secretary Hodgson along with other material subsequently supplied for the record follows:)

STATEMENT OF
SECRETARY OF LABOR JAMES D. HODGSON
on
PENSION REFORM LEGISLATION
before the
SUBCOMMITTEE ON LABOR
SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

June 20, 1972

Mr. Chairman; Members of the Subcommittee:

I am pleased to appear here today and to have an opportunity to discuss with you the major pension reform proposals now pending in Congress. Let me at the outset try to provide some background and a bit of perspective to this subject.

A vast range of methods of compensating American workers exists today. Methods include many forms of direct wage payments, a list of wage supplements, various payments for time not worked, insurance-type provisions for cushioning workers against adversity, and provisions designed to relate worker income to economic gain or productivity. Importantly, they also include a wide variety of programs to provide income when the worker is no longer able to work, usually for reasons of age or disability. These pension or retirement programs,

82-079 O - 72 pt. 1 - 8

as they are known, are themselves widely diverse in form, structure and coverage. Some owe their existence to employer initiative, some are the product of collective bargaining. In the last half century this nation's private pension system has grown apace in scope, financial worth and worker benefits. Today, because of this system's diversity and complexity, there is practically nothing that can be said about these pension programs that holds true for each and every one of them. But as a whole, the private pension system in the United States has assumed a critically important role in our worker compensation picture and the funds involved are of awesome size.

Accordingly in these circumstances, certain things should be noted at the outset:

1. Under its existing status, the U.S. private pension system has enjoyed a dramatic growth with great benefits to workers and their employers alike. We should avoid clouding the climate that produced such growth.

2. Any form of compensation as critically important to the welfare of the nation's workforce as our private pension system deserves careful attention by the Congress with a view toward examining the need for both safeguards and for further growth opportunities.

3. The private pension system is so complex and so interrelated with other compensation elements that some well-intended proposals could prove to be a disservice to the nation's workers and to collective bargaining.

Finally, let me say I know of no aspect of employee relations in the nation that is more in need of greater technical understanding and expertise than our pension system. So, I would conclude that while some surgery should be performed on this nation's pension system, it should be performed with a practiced and knowledgeable hand and only after the most careful diagnosis.

Your invitation requested my views on S. 3598, the "Retirement Income Security for Employees Act." As you know, in December 1971, President Nixon sent two pension bills to Congress. The first of these is S. 3012, now pending before a different Committee. The "Individual Retirement Benefits Act," as it is named, would amend the Internal Revenue Code to provide a "Rule of 50" minimum vesting standard, and to increase opportunities for individual workers and the self-employed to help assure their retirement security. The President's second bill, S. 3024, the "Employee Benefits Protection Act (EBPA)," would amend the Welfare and Pension Plans Disclosure Act of 1958 (WPPDA)

to improve reporting and disclosure requirements, provide new fiduciary standards for the conduct of pension plan personnel, and enhance the enforcement powers of both the Secretary and plan participants and beneficiaries. Together, these two bills present a balanced and prudently prepared group of reforms and incentives which will enhance retirement security prospects for virtually all workers, including the some 30 million who are not covered by private plans, and at the same time will foster expansion of the private pension plan system.

S. 3598, on the other hand, is very comprehensive. It provides not only for broadened reporting, disclosure and publication requirements, widely expanded enforcement procedures, and new fiduciary and vesting standards, but also mandates funding standards, provides for a voluntary portability mechanism and requires termination insurance. Administration of all these provisions would be lodged in the Department of Labor, under a new Assistant Secretary. I would be less than candid if I did not admit that the Department is flattered by this expression of confidence. However, in the hopes of avoiding a massive repetition of the popular television commercial in which the obviously discomfitted gentleman sits on the edge of his bed ruefully

regretting his appetite, let me suggest that it would not be in the best interests of American workers for the Department of Labor to serve them such a meal at this time. To carry the analogy one step further, I would say that the meal is too large and is not well balanced, containing some courses which have not been shown to be necessary and which might cause substantial indigestion; that it would not be served to some of the people who need it most; and that part of the meal should be served by a different waiter.

VESTING

Commenting directly and in greater detail, let me begin with the subject of vesting. Conceptually, vesting means that the benefit rights accrued by a plan participant will not be forfeited, even if he changes jobs or stops working before the normal retirement age. There is now a growing range of opinion that limited Federal vesting standards are both desirable and necessary for our private pension system.

Examining the vesting question, we found that overall, more than two-thirds of all private pension plan participants are not now vested. Of course, this figure includes large numbers of young, short-service workers who may obtain vested rights later on in their careers. But a disturbingly large number of older workers are not protected by vesting:

40 percent of plan participants age 45 or more are not vested;

34 percent of plan participants age 50 or more are not vested;

26 percent of plan participants age 55 or more are not vested.

Pensions, by their very nature, are of greatest concern to the older worker. Accordingly, this lack of vested rights for older workers is critical, for they experience the greatest hardships when benefit losses occur, and an older worker who loses benefit rights has far less opportunity to obtain a pension from a subsequent employer than does a younger worker.

While we found a need for some vesting -- especially among older workers -- we recognized that a Federally-established vesting standard would raise costs for those plans without vesting and for those currently offering slow vesting. If these increased costs were excessive or ill-constructed, vesting could come at the expense of reduced future benefit payments for retirees and could discourage new or improved pension plans. We therefore proposed the "Rule of 50" as a minimum standard; one which would be moderate in cost but which would bring rapid vesting for middle-aged and older workers.

The Rule of 50 requires 50 percent vesting whenever any combination of age and years of plan participation equals 50, with vesting of an additional 10 percent each year for five years thereafter. Thus, a worker who begins to participate in a plan at age 30 would, at age 40 with 10 years of covered service, become 50 percent vested; a worker, age 45 with 5 years of covered service, would also acheive 50 percent vesting. Both would be 100 percent vested after 5 additional years.

To complement our vesting standard, the Administration bill has minimum service and age standards for eligibility to participate in a plan. An employer could not establish a service requirement for plan participation in excess of three years or a minimum age requirement in excess of 30 years. However, an employer would not be required to cover a new employee who first becomes eligible when he has attained an age which is within 5 years of the normal retirement age under the plan.

Under our bill, these vesting and eligibility standards would be written into the Internal Revenue Code and plans would have to adhere to them to maintain their tax-qualified status. It is for this reason that the Administration bill would be administered by the Treasury Department, which has the expertise necessary for this particular job. In

this regard, the President's proposal would not disturb the primary and appropriate role of the Treasury Department as the Federal agency administering matters related to the tax qualification of private pension plans.

On the most important feature of the Rule of 50, rapid vesting of older workers, some have questioned whether job prospects for older workers might be jeopardized. Because of the way we have structured this provision, little basis exists for such fears. At the outset, it is important to bear in mind that it costs a great deal more to include an older employee in a pension plan without any vesting than a younger employee. The basic reason for this differential is the short period over which investment income may accumulate for an older employee. Thus, even before vesting standards are considered there is a deterrent to hiring an older employee today. The Rule of 50 will have only a minimal impact on the existing situation. Also, under the Administration bill, an older worker may be required to have up to three years of service before he begins to participate in a plan. Thus, an older worker must complete a reasonable trial period before he can begin vesting. Once an older worker has remained three years, he is very likely to remain voluntarily with his employer until retirement, and thus will not cause any additional cost by virture of the vesting standard. Furthermore, as I just mentioned, a new

employee whose age is within 5 years of normal retirment age need not be covered under the plan. As a result, the cost of bringing older workers into a plan and vesting them under the Rule of 50 is but little higher than the cost of not vesting them at all. For these reasons, our vesting standard should not be so onerous as to provide an employer with a significant disincentive to the hiring of older workers.

The Rule of 50 would raise the number of workers with vesting from 31 percent to 45 percent of all private pension plan participants. More importantly, among participants age 45 and over, the percentage with vesting would rise from 60 percent to 92 percent. The number of workers in private pension plans with vested rights would increase by 3.6 million, of whom 3 million would be age 45 or over. Thus, the Rule of 50 would assure benefit rights for virtually all older plan participants.

The graded 15 year standard in S. 3598 would also increase the number of vested participants, but it would be nowhere near as helpful to middle-aged and older workers. Under the Rule of 50, a worker hired at age 47 would have to be fully vested no later than 8 years afterward, while under the graded 15-year standard, he would only begin to vest after 8 years.

Instead of emphasizing the retirement needs of these older workers, S. 3598 places relatively greater emphasis on guaranteeing small vested benefits for younger short-service workers. For example, as we understand the vesting formula in S. 3598, a worker newly employed at age 21 must be allowed to participate in a pension plan 6 months later and would be 30 percent vested 8 years after that, at age 29. While this worker would have a vested benefit collectable at retirement, the benefit would be rather small because it is based, first, on only a few years of service and second, on the lowest earnings of his career.

In contrast, young workers under the age of 30, who typically have a high turnover rate, could be excluded from plan participation under the Rule of 50, thus minimizing both costs and administrative problems for plans and allowing pension contributions to be used

for better pensions for older workers nearing retirement. The younger workers who are now excluded will, in turn, benefit from improved pensions as they near retirement age.

A case can no doubt be made for many forms of vesting. But I am convinced that the assignment of a higher priority for the retirement security of the older worker is more responsive to worker needs than is a program to provide that a younger worker gets some pension some day. The Rule of 50 strikes a very good balance between the urgent retirement needs of older workers and the long-run interest of younger workers.

Two other features of the Administration bill are noteworthy. One is the treatment of years of service prior to the enactment of the vesting standard. Under the Rule of 50, years of service prior to enactment are counted for purposes of determining when an employee begins to vest, but would vest only benefits earned after enactment. This approach means that many plan participants would begin earning vested benefits as soon as the Act becomes effective, not years later.

The second point is that the Administration's vesting standards would apply to all tax qualified plans, including those with 25 or fewer participants. While a size exemption is appropriate for reporting and disclosure requirements and

fiduciary standards because of the small amounts of money involved and the close contact between the plan and its participants, the rationale does not hold up when the subject is vesting standards. The lack of vesting can be equally prejudicial to an employee whether the plan is large or small. And a reasonable vesting standard such as the Rule of 50 imposes no serious administrative burden on a small plan. As a matter of fundamental social policy, all plans should provide a reasonable measure of vesting.

INDIVIDUAL RETIREMENT PLANS AND H.R. 10 PLANS

The President's"Individual Retirement Benefits Act" proposal also contains two other features which we believe are essential. The first will help end the pension inequity that now exists between workers covered by private plans and those who are not so covered or are inadequately covered by allowing the latter to claim appropriate deductions on their income tax returns for savings which they have earmarked for retirement. The second will liberalize the tax rules for pension and profit-sharing plans of the self-employed and their employees, thereby broadening coverage under these plans.

Now I am by no means a pension tax expert and I know that these proposals are before a different Committee, but I mention them here because they illustrate the balance in the

President's program. The most innovative of these proposals is the tax deduction for retirement plan contributions by individuals. This proposal is aimed at what many think may be the most serious flaw in the private retirement system -- the fact that only about half of the private, non-agricultural workforce is covered and many of them are inadequately covered. This means that some 30 million workers do not now benefit from the tax advantages enjoyed by those who are participating in qualified plans. These persons, who must save on their own for retirement, receive none of the advantages of tax deferral available to persons covered by employer-financed pension plans. Many other workers are in plans providing low benefits. They, too, must rely on their independent non-deductible savings to finance adequate retirement income.

To assist these persons, the President has proposed a limited tax deduction for retirement savings. A worker not covered by a pension plan could establish his own individual retirement plan and deduct from his Federal income tax annual contributions to it of up to the lesser of 20 percent of earned income or $1,500. The investment earnings of these contributions would be exempt from tax. The permanent contribution would provide substantial amounts of retirement income -- contributions

of $1,500 annually beginning at age 40 would provide for a male at age 65 a yearly retirement income of $7,500. Even if contributions do not begin until age 55 they would provide a yearly retirement income of nearly $2,000. A worker covered by a low benefit plan would also receive this deduction, but his limit would be reduced by the amount of employer contributions made on his behalf.

This offset, combined with the $1,500 limit in deductions, assures that most benefits would go to moderate income workers. We estimate that about 14 million persons will receive tax benefits with about 70 percent of the tax benefits going to workers earning less than $15,000. The deductible limit and offset are also important, because without them, there might be an incentive for employers to curtail plans covering large numbers of employees and allow their top company executives to take care of themselves without providing corresponding benefits for lower paid employees. With the limit and offset, there is no such incentive, and interference with the continued vitality of the private pension plan system is avoided. Thus, by preserving the interest of those who now benefit most from employer plans, the Administration proposal encourages growth of the pension system.

Encouraging employers to increase pension coverage for their employees is one of the main reasons why the President's program includes a liberalization of the tax rules governing H.R. 10 (Keogh) plans. Under the proposed rules, the deduction limit for the self-employed would be raised to the lesser of 15 percent of earnings or $7,500 per year. Since the self-employed who establish an H.R. 10 plan are required to cover their employees under the plan and make proportionate contributions on their behalf, this will help to expand both coverage and benefits.

In this regard, our bill also recognizes the widespread concern over the increasing tendency of unincorporated business organizations to adopt the corporate form simply because the tax laws allow superior treatment for pension arrangements of corporations. Pension plan considerations should not be the sole or overriding factor in a businessman's determination

of the form in which he will operate his enterprise. Increasing the deductible limit in H.R. 10 plans will help to allay the tendency to move to a corporate form simply because of pension plan advantages.

FUNDING AND TERMINATION INSURANCE

S. 3598 also includes mandatory standards for funding and establishes a termination insurance program. As the President announced in his December 1971 message to Congress on private pension plans, a study of plan terminations is now being conducted jointly by the Departments of Labor and Treasury. The study will be completed in December 1972 and will provide us with necessary and up-to-date information on the extent of benefit losses under pension plans which are terminated.

While there have been several pension plan studies on the incidence of termination and the number of employees affected, none to date have thoroughly examined the nature or the effects of terminations. To assume that every termination adversely affects plan participants is patently incorrect. We know, for instance, that some terminations result from mergers of multi-employer, union-negotiated plans and from corporate mergers and acquisitions, and that the participants of the terminated plan are often covered under the successor plan, with equal or better benefits resulting. On the other hand, we also know that some terminations have been highly prejudicial

to participants. But we don't have accurate data on the true extent of prejudicial terminations, or on the degree of benefit losses thereunder. Our joint study with the Treasury Department will furnish this information, and I am firmly of the opinion that such information is a crucial prerequisite to the formulation of Federal policy on these issues.

There are also some major, national policy questions that must be answered before imposing requirements such as full funding. Mandatory plan funding has broad Federal policy implications of at least three types. First, as regards the interests of plan participants and beneficiaries, a funding requirement will affect benefit levels. The cost of full funding must be absorbed by the plan, and this means either a lowering of present or prospective benefit levels or, if benefit levels are maintained, a raising of contributions. This, in turn, could affect other aspects of employees' compensation. Also, required full funding could raise plan costs to the extent that the formation of new plans and the expansion of existing plans might be curtailed.

Second, with respect to the economy, full funding would mean the accumulation of even larger funds of capital by benefit plans. Our economic system is especially reliant on the generation and ready availability of risk capital; it is essential for both growth and innovation. Any proposal that might redirect existing capital flows must be carefully

considered. Third, the tax implications of a funding requirement are potentially great. Since contributions to qualified employee benefit plans are deductible, any increase in the level of such contributions means an immediate decrease in Federal tax revenues. In this era of tight Government budgets, any such decrease must, at the very least, be clearly justified by resulting benefits, as well as acceptable on its own terms as a budgetary matter. Finally, it must be recognized that all of these implications are intensified by considering funding in tandem with vesting. Vesting itself means greater plan liabilities and the costs of funding these greater liabilities are raised accordingly.

The issue of termination insurance raises similar questions. It, too, involves costs with implications bearing on benefit levels, expansion or contraction of the private pension system, the economy, and tax policies. More importantly, at least for the present, it seems premature to propose mandatory termination insurance until we know the extent to which terminations are actually prejudicial to plan participants. As I stated earlier, we know that some well publicized plan terminations have adversely affected participants, but we also know that during the period 1955-1965, the total number of terminations affected, on the average, less than one tenth of one percent of all workers covered by plans in each year. The information we are gathering also may be useful in establishing appropriate insurance rates, if an insurance approach

needs to be adopted in the future. Our pending study will provide the hard, current data we need to evaluate the need for funding, termination insurance, or both, and will give us better answers than are now available on the implications flowing from these proposals.

Finally, even with the types of data that can be derived from our current study of terminations, it could be very difficult to design and administer a termination insurance program which would adequately safeguard against benefit losses and at the same time not hamstring pension plans in such a mesh of rules and requirements that they could no longer comprise a viable, private system. One critical problem is how to define the risk that is to be insured against. If it is limited to bankruptcy of the employing enterprise, it would not cover the notorious Studebaker case. If it extends to losses resulting from any type of plan termination or curtailment, what safeguards are necessary to keep the happening of the insured event from being substantially under the control of the parties who maintain the plan? If some form of liability is imposed on an employer who continues in business after plan termination, how is that liability delineated so that it does not drive the employer out of business and thereby throw his employees into unemployment. I am very much afraid that answers to such questions which are based on sketchy data might well lead to serious problems.

PORTABILITY

Turning now to the subject of portability, I must emphasize at the outset that portability is an idea which has been discussed for years, yet its apparent attractiveness as a concept continues to belie severe practical problems of both cost-benefit and implementation. In the first place, the private pension plan system in the United States is a diversified one; we have many types of plans to meet many types of needs and circumstances. Indeed, the variety of plan types is a significant element in the competition among employers for the workforce. Any portability system, because it places a premium on uniformity of the plans it would embrace, introduces a tendency to limit the variety of plan types, and, in the process, to curtail this vital element of competition.

Secondly, portability proposals generally call for a system for transferring the current monetary value of a pension to a central fund, and later a transfer of the money to another plan entered by the employee or use of the money to purchase a paid-up annuity for the employee. Considering any such system, the question arises, what will it accomplish? The stated purpose is usually two-fold: either to increase the eventual value of the benefit, or, at the very least, to facilitate the accumulation of a series of such benefits. As a practical matter, it seems probable that neither

of these goals can be obtained without incurring some additional costs, to the detriment of benefit levels, or subjecting the benefit to a greater risk. And obviously, if the system's costs or risks outweigh its advantages, it will not be successful.

Even as regards voluntary portability proposals, we have questions about what would be accomplished, and at what possible cost to participants' interests. For instance, when the monetary value of a vested benefit is transferred out of a plan, it presumably would be done on a fully funded basis. If the overall plan is not fully funded, wouldn't the employer have to make an additional contribution to the plan? If not, wouldn't less money be left for the remaining participants? This might not be much of a problem if the number of vested separations is relatively small. However, if the number is large, the movement of money out of the plan fund could seriously endanger its integrity and might well precipitate termination of the plan.

While the idea of providing for portability of pensions is appealing on the surface, no program yet proposed appears to provide practical solutions to the administrative and cost problems. I am informed that in Canada, intensive effort was given to solving portability problems, but practical difficulties such as establishing a central agency to which credits of plan members would be transferred

were insurmountable. It should be noted that Canadian legislation many years ago authorized the establishment of an agency for the purposes of receiving, holding, and disbursing pension benefit credits, but because of massive disinterest byy unions and industry, this authorization has never been used.

S. 3598 also contains a portability technical assistance provision. Under the language of this provision, it appears that the Secretary of Labor would be required to provide technical assistance to employers, employee organizations, and other parties in their efforts to provide greater retirement protection for employees who are separated from plan coverage. The section mentions development of reciprocity arrangements and of special arrangements for portability of credits, but it does not limit assistance to such mechanisms. I would like to point out that praiseworthy achievements along these lines have been accomplished through private initiatives. In 1964, for example, the International Ladies Garment Workers Union merged 50 plans into a single plan. Other unions have made notable progress in working out reciprocity agreements. Such developments should be encouraged, but the initiative should remain in the private sector. Portability and reciprocity arrangements often involve hard bargaining on intricate issues, matters which I believe are best left to the parties themselves unless they seek outside help. This section is another

example of the undesirable tendency of S. 3598 to interject the Government directly into virtually all phases of pension plan administration.

Given the diversity, vigor and flexibility of our private pension system, elements which I believe to be desirable and worth preserving, the problems encountered by portability proposals simply do not admit to easy solution. Indeed, the enactment of Title III of S. 3598 in its present form may create the illusion that the Federal Government has solved these problems. But as I have indicated, there has not yet been presented a portability program which would materially contribute to the attainment of our overall objective: an increase in the retirement security of the American worker. In fact, because of the adverse affect on competitive incentive, it is dubious that the concept is sound. For these reasons, and because much of the retirement security we want to provide can be attained by effective vesting standards, the Administration does not favor enactment of portability legislation at this time.

FIDUCIARY STANDARDS, REPORTING AND DISCLOSURE, AND ENFORCEMENT

The Administration's proposals on reporting and disclosure, fiduciary standards and enforcement procedures, as embodied in S. 3024, stem from our recognition that effective fiduciary standards are essential, that improved reporting and disclosure are necessary, and that strengthened enforcement powers for participants and beneficiaries as well as the Secretary are crucial if these substantive changes are to be effective. President Nixon asked Congress to enact a bill to accomplish these goals in March 1970, and again in December 1971. On both occasions, it was made clear that most employee benefit plans are honestly and efficiently managed. Nevertheless, the failings of the few plans which are not so managed, and the great harm that can befall participants in such plans, fully justifies our call for the new protections and standards. Indeed, the similarity between the Administration bill and Title V of S. 3598 is a clear indication that there now exists widespread support for both the concepts and the approaches which the President has recommended.

In recent years, representatives of this Department, including my predecessor, now Secretary of the Treasury George Shultz, and others have testified before Congress in

support of bills similar to our proposal. I will not at this time reiterate these views because the case for this type of legislation has been made clearly over and over again. The WPPDA must be amended to assure that all persons in fiduciary capacities adhere to basic minimum standards of conduct, as befits the managers of funds with a total combined value of approximately $145 billion. The financial transactions in which these funds engage must be disclosed in sufficient detail to enable plan participants and beneficiaries to monitor plan operations and assure themselves of their funds' integrity. Enforcement powers must be sufficient to make these new protections meaningful.

In most of these respects, the provisions of S. 3024 and S. 3598 are similar or identical. However, there are several differences which merit short discussion. I have serious misgivings about the tendency, the Title V and elsewhere in S. 3598, to substitute administrative discretion for clear and unambiguous rules. The bill abounds with provisions requiring the exercise of administrative discretion by the Secretary. The value of the flexibility sought to be achieved by these provisions must be carefully weighed against the possibilities of uncertainty that may be created thereby.

Another difference relates to the substitution, in S. 3598, of the Secretary for the Parole Board of the Justice Department as regards exceptions to the 5-year criminal prohibition. This prohibition bars persons convicted of certain crimes from serving in fiduciary or other sensitive plan positions for a period of five years after conviction or after the end of imprisonment as a result of the conviction. In S. 3024, the Parole Board has authority to shorten the five year period if it finds that the convicted individual's service with the plan would not be contrary to the purposes of the Act. The provision in question was modeled on an analogous provision in the Labor-Management Reporting and Disclosure Act. The procedure established therein utilizes the expertise of the Parole Board, and there is no reason to contend that the Secretary of Labor is more qualified in making a determination on the degree of a convicted criminal's rehabilitation than is the Parole Board.

Still another difference involves triggering the investigatory powers of the Secretary. While both S. 3598 and S. 3024 would provide for substantially similar fiduciary and reporting requirements, the Administration bill would render those requirements much more effective by broadening clearly the investigatory powers of the Secretary of Labor in a manner vitally needed to effectuate compliance.

Section 9(d) of the WPPDA presently requires that the Secretary obtain certification of reports filed under the Act before he can investigate, and he can investigate only when there is a "complaint of violation not satisfied by such certification" or when he "continues to have reasonable cause to believe investigation may disclose violations of the Act." There are also references to certification in section 7(b) of the WPPDA. Our bill, in sections 7(d) and 9(c), would eliminate the complaint, certification, and reasonable cause requirements and would authorize the Secretary to conduct an investigation when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of the Act.

Because S. 3598 does not amend Section 9(d) of the WPPDA directly, it is not clear whether the requirements of that subsection would continue to be effective. Perhaps the certification and complaint provisions would be nullified implicitly by Section 506(d) of S. 3598, in combination with section 101(a)(4)(B), which directs the Secretary, upon reasonable cause, to make appropriate and necessary inquiries to determine violations of the Act. In any event, I believe this important point should be clarified. Even if the certification and complaint provisions would be nullified, the retention of the restrictive "reasonable cause" requirement in Section 101 (a)(4)(B) would seriously impede the enforcement function

of the Department. We need investigatory authority broad enough to allow us to conduct audits of pension plan records without having to overcome the evidentiary threshold of reasonable cause to believe there is any violation. Pension funds should be subject to audits similar to bank examinations and the audits of insurance companies conducted by State insurance departments.

Moving to enforcement powers, I believe that the Administration bill achieves a desirable balancing between the need for enforcement powers strong enough to secure the rights provided elsewhere in the bill and the importance of preventing harassment suits and excessive intervention by the Government in plan management and operation. For example, under section 9(e)(1)(B) of our proposal, primary responsibility for the collection of disputed benefit payments would lie with the participant himself, but the new disclosure provisions will greatly increase his ability to ascertain his rights, and expanded access to the courts will enhance his ability to enforce those rights.

Our bill is not intended to give the Department of Labor the job of investigating the merits of claims for benefits which have been denied by a plan administrator on the basis of the eligibility rules of the plan. On the other hand, S. 3598 would place the Secretary directly in the business of suing to recover allegedly denied benefit

payments. Given the Secretary's litigation authority in section 602 of S. 3598, combined with the general enforcement duty placed on him by Title I of that bill, it is not difficult to envision a situation in which he becomes primarily responsible for the collection of all disputed benefit payments.

I am also disturbed by the breadth of litigation authority given to participants and beneficiaries in S. 3598. Section 604 would seem to allow for lawsuits against plan administrators brought by persons with only inchoate, contingent interests in benefits. It also appears to authorize a suit by a participant to compel payment of another participant's benefit. The Administration bill limits such authority to participants and beneficiaries only, and only with respect to their own benefits.

Turning to the reorganization of the Department of Labor proposed in S. 3598, I note that section 103(d) of the bill would transfer the functions, books, records and personnel of the office of Labor-Management and Welfare-Pension Reports to the new office that would be created. The present LMWP office administers both the WPPDA and the Labor-Management Reporting and Disclosure Act (LMRDA), a law which deals with the affairs of labor

organizations, and has no direct relationship to welfare and pension plans. I assume that it was not the intention of the bill's draftsman to transfer LMRDA operations along with the welfare and pension plan operations.

There are other differences between S. 3024 and Titles V and VI of S. 3598 in which I would prefer the language of the Administration bill. Some of these are found in section 503(b) and (d) (coverage), section 507(c)(3) (publication), and section 15 (b)(2)(I) (investment of plan funds outside the United States). Other differences are highly technical, and I will not undertake to discuss them at this time. Perhaps all of these problems can be explored by our respective staffs so that we can achieve accommodation.

To conclude, I urge that active consideration be given to S. 3024 so that its reporting, fiduciary and enforcement provisions, for which there is wide support, may be enacted quickly. I hope, too, that after examination, Congress will act with dispatch on S. 3012 to provide the Rule of 50 vesting standard and the new opportunities for individuals to increase retirement security prospects for themselves and their families. Together, these Administration bills

constitute a well-balanced package of protections and innovations that will inure to the benefit of all American workers and their families.

Vesting standards should place emphasis on the needs of middle-aged and older workers, who deserve our attention on a priority basis. The 30 million American workers not covered by pension plans need opportunities to assure their retirement security. With regard to fiduciary, reporting, and disclosure aspects, the great similarities between the Administration bill and Title V of S. 3598 offer encouragement that minor differences can be resolved, and that the standards and protections embodied in their provisions will soon become law.

Thank you, Mr. Chairman, for this opportunity to present my views. I will be happy to answer any questions you or the Subcommittee members may have.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

PENSION
JUL 27 1972

JUL 26 1972

Honorable Harrison A. Williams, Jr.
Chairman, Committee on Labor and
Public Welfare
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Enclosed is the transcript of Secretary Hodgson's testimony on pension reform legislation of June 20, 1972, reviewed and corrected for grammatical and technical errors. Also enclosed is a copy of the Secretary's complete statement for insertion in the record following his transcribed remarks.

During questioning after Secretary Hodgson delivered his testimony, Senator Javits requested background information relating to figures on the percentage of workers who would be benefitted under the Rule of 50. He also asked specifically about the basis of comparison for those percentage figures. The Secretary replied that he would gladly furnish that information as well as data on other figures cited in his statement. This information follows.

I. The basis of comparison for the percentage figures cited on pages 6 and 9 of the Secretary's statement is the current situation (i.e., the absence of Federal vesting requirements) and not the situation as it might exist if a graded 15 year vesting standard such as that proposed in S. 3598 were in effect. Figures for percent of pension plan participants not now currently vested by age group and figures for changes in the percent of participants with vesting under the Rule of 50 were derived by the Treasury Department from its study of corporate retirement plans and from data furnished to Treasury by actuarial consultants, including the A. S. Hansen, Inc. study "Survey of Private Pension Plans" of December 11, 1970. These data included the current vesting requirements of plans and the age and service distributions of plan participants.

A table showing the current distribution of pension plan participants with vesting by age group and the effects of the

Rule of 50 and a 10 year standard on the current distribution was submitted by then Assistant Secretary of the Treasury Edwin S. Cohen as part of his statement of May 8, 1972 before the House Ways and Means Committee in support of the Administration vesting bill. A copy of that table and of another table showing estimated vesting costs are enclosed.

II. As regards figures on deductions for individual retirement savings, the retirement income figures at the top of page 14 of the Secretary's statement are based on straight-life pensions for males, assuming a 5 percent interest rate.

The estimate of the number of persons receiving tax benefits under the proposal was based on information concerning utilization rates among the self-employed of H. R. 10 retirement deductions and utilization rates by Canadian taxpayers of the individual retirement savings deductions permitted under Canadian law. Large numbers of persons currently contributing to public and private retirement plans will also receive tax benefits.

The estimate that 70 percent of tax benefits will go to workers earning less than $15,000 reflects primarily the effects of the offset for employer contributions made on behalf of employees already covered by retirement plans. Employer contributions made on participants' behalf are presumed to equal 7 percent of income received from the employer. The offset results in a lower deduction limit the higher the income of the participant. Thus at an income of $10,000, the deduction limit for a participant is $800. At 15,000, the deduction limit is $450, while at incomes of $21,429 and over, the deduction limit is zero. There is strong evidence that most high-income employees already participate in retirement plans and thus would be subject to the offset for employer contributions.

III. The reference to percent of employees affected by plan terminations during the period 1955 - 1965 was based on a study by the Bureau of Labor Statistics, "Characteristics of Terminated Retirement Plans - 1955-65" (BLS Report No. 369).

Sincerely,

Frederick L. Webber
Special Assistant
for Legislative Affairs

Enclosures

cc: Honorable Jacob K. Javits
United States Senate
Washington, D. C. 20510

COMPARISON OF BENEFITS FROM VESTING

(50% VESTING OR BETTER)

(MILLIONS OF PERSONS)

AGE	CURRENT SITUATION		10 YEAR SERVICE	RULE OF 50
	TOTAL PARTICIPANTS	PERCENT VESTED	PERCENT VESTED	PERCENT VESTED
UNDER 30	6.3	1.6	3.2	1.6
30 - 40	5.3	13.2	35.8	15.1
40 - 45	3.0	36.7	60.0	56.7
45 - 50	2.9	44.8	65.5	75.8
50 - 55	2.5	56.0	76.0	100.0
55 - 60	2.0	70.0	85.0	100.0
60 AND OVER	1.5	80.0	86.7	100.0
TOTAL	23.5	30.6	45.5	45.9

Table V

EFFECT OF RULE OF 50 ON HIRING OF OLDER EMPLOYEES

1. EMPLOYER'S DISCOUNTED COST OF PROMISING $100 PENSION AT AGE 65 TO AN EMPLOYEE

Age	Without Vesting	Under Rule of 50
25	$20	$30
35	$125	$155
45	$310	$340
55	$570	$585

---COST FIGURES ARE FOR SINGLE-PREMIUM ANNUITY OF $100 PER YEAR, BEGINNING AT AGE 65

---ASSUMES STRAIGHT LIFE ANNUITY FOR MALES, WITH ASSETS INVESTED AT 5%.

---ASSUMES TYPICAL EMPLOYEE TURNOVER RATE [FOR EXAMPLE, 85% OF EMPLOYEES AGE 25 WILL LEAVE THEIR PRESENT EMPLOYMENT BEFORE AGE 65; ONLY 3% OF THOSE AGE 55 WILL LEAVE.]

2. EMPLOYEES HIRED WITHIN 5 YEARS OF RETIREMENT NEED NOT BE VESTED

3. PARTICIPATION NEED NOT BEGIN UNTIL 3 YEARS AFTER HIRING

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

JUN 13 1972

RECEIVED
JUN 15 1972
Labor & Public Welfare Committee

Honorable Harrison A. Williams, Jr.,
Chairman, Committee on Labor
and Public Welfare
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request for Department of Labor reports on S. 2486, S. 3024 and S. 3598. S. 2486 is intended to amend the Welfare and Pension Plans Disclosure Act (WPPDA) to tighten reporting requirements, provide fiduciary standards, and strengthen enforcement powers. It is virtually identical to the Administration's S. 3589, introduced in the 91st Congress. S. 3024, the "Employee Benefits Protection Act," is the current Administration bill on reporting, fiduciary standards, and enforcement. S. 3598, the "Retirement Income Security for Employees Act," is a very broad bill, covering reporting, fiduciary standards, vesting, funding, portability, and plan termination. It amends the WPPDA, and provides that both it and the amended WPPDA would be administered and enforced by a new administration in the Department of Labor.

As you know, the Administration also has pending in Congress S. 3012, the "Individual Retirement Benefits Act," to amend the Internal Revenue Code to require a "rule of 50" vesting standard, to provide tax incentives for individual retirement savings, and to liberalize the tax treatment of retirement plans established by the self-employed, the so-called H.R. 10 or Keogh plans. S. 3024 and S. 3012, together, set forth Administration proposals in the pension field; they provide increased protection for pension

plan participants and beneficiaries where the need has been demonstrated and they significantly expand opportunities for individuals to assure their retirement security. Under these proposals, authority is placed in this Department with respect to reporting and fiduciary standards, and in the Department of the Treasury as regards vesting, individual retirement contributions, and other changes in the tax laws. This is an appropriate arrangement since the Department of Labor can draw upon its WPPDA experience in administering the amended reporting and new fiduciary requirements, while administration of vesting standards and other provisions of the Internal Revenue Code relating to retirement plans is properly within the purview of the Treasury Department.

Also, as the President stated in his message to the Congress on Pension Plans of December 8, 1971, a joint Labor-Treasury study is now underway on the matter of plan terminations. That study will be completed at the end of calendar 1972, and will provide us with necessary, up-to-date information to determine what Federal policy should be on questions such as funding, the nature of the employer's liability, and termination insurance. For these reasons, I will not at this time comment on these aspects of S. 3598. On the matter of vesting, I will defer to the Secretary of the Treasury, adding only that I believe the increased protection for older workers that would result from enactment of the rule of 50 in S. 3012 makes that vesting provision preferable to, and more in the public interest than the 15-year graded vesting provision in S. 3598.

As regards the provisions of S. 3598 and S. 2486 dealing with reporting and fiduciary standards, perhaps the most significant point is their similarity to the corresponding provisions of the Employee Benefits Protection Act. The introduction of these bills confirms that we now have wide agreement on the principles of detailed reporting, greater disclosure and fiduciary responsibility and obligations.

To be sure, there are some differences, but the important consideration is that there now exists a firm basis on which to move forward rapidly toward enactment of reporting and fiduciary legislation.

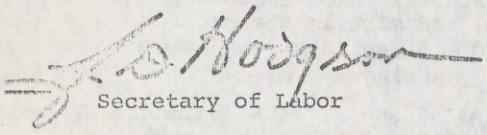
The last remaining subject, portability, has several practical limitations. In view of the wide variety of types of pension plan arrangements under our flexible and diversified system, it is a matter which is not susceptible to easy solution. I believe that passage of effective vesting requirements and opportunities for individual retirement contributions, as provided in S. 3012, will greatly increase the retirement security of all employees, the objective sought to be served by portability proposals.

In conclusion, I favor prompt enactment of S. 3024 and S. 3012, rather than S. 3598 and S. 2486, for I believe that the Administration's proposals constitute an effective combination of expanded protections and increased retirement security opportunities in the private pension field.

I am looking forward to discussing these matters during the upcoming hearings on S. 3598.

The Office of Management and Budget advises that there is no objection to this report and that enactment of S. 3024 and S. 3012 would be in accord with the program of the President.

Sincerely,



Secretary of Labor

The CHAIRMAN. The next witness is Mr. William R. Hutton, executive director, National Council of Senior Citizens.

STATEMENT OF WILLIAM R. HUTTON, EXECUTIVE DIRECTOR, NATIONAL COUNCIL OF SENIOR CITIZENS

Mr. HUTTON. Thank you, Mr. Chairman.

The CHAIRMAN. We welcome you here and appreciate your being here, Mr. Hutton, and look forward to your statement on the very important matter before us.

Mr. HUTTON. The U.S. pension plan system as it now stands, we in the National Council of Senior Citizens believe, is a gigantic lottery and a great many members of the National Council—some of them are here today from our Greater Washington Council—will be able to tell you, have learned this to their sorrow.

The inadequacy and injustice of the pension system has been well documented. I want to give one or two examples.

At a recent hearing before the Senate Special Committee on Aging on the private pension system, the National Council of Senior Citizens presented a witness, Marie Montoby, of Brooklyn, N.Y., who told lawmakers of working 27 years for a Brooklyn department store—Namm-Loesers—and being denied a pension because her pension plan required that she work 25 years for the store and be 65 years of age to qualify for a pension.

She said she lacked 10 months of the eligible age level when the store closed permanently and the pension plan was discontinued.

At the same hearing, Ed Murphy, assistant editor of the National Council of Senior Citizens' newspaper, Senior Citizens News, told lawmakers why he never collected a private pension.

A Grand Rapids, Mich., newspaper where he was employed 18 years discontinued publication in 1959, and the newspaper's pension plan was liquidated.

Murphy suceeded in locating a job as associate editor of the Machinists, weekly newspaper of the International Association of Machinists, where he could have qualified for a private pension after 10 years' service but, because of mandatory retirement rule voted by the union membership long ago, he was retired from that job at age 65 without a pension.

In deference to the Machinists Union, it should be pointed out that Murphy joined the union staff knowing he could not qualify for a pension. But he needed a job.

However, Murphy may yet collect a pension under the National Council of Senior Citizens employee pension plan which pays a retirement benefit amounting to 2 percent a year of average income, with immediate vesting. Murphy has been on the National Council of Senior Citizens staff 6 years.

I need not, I feel, give this distinguished body any more instances of the unfairness and injustice of the U.S. private pension system. Heartrending evidence of the system's failure and deficiencies has been recorded in many congressional hearings.

Members of the National Council of Senator Citizens have seen private pension plans grow like Topsy in recent years.

I say "grow like Topsy," but I wondered to what depth we really mean.

I was rather astounded by remarks by the Secretary of Labor previously who said that, for example, half of the people involved are "covered under such plans" and he said there was a great self-employed group which should be covered, and was that not much more important?

But you know, that "coverage" reminds us very much of their insurance coverage, which you are supposed to get, but you find an awful lot of holes in it when it is actually delivered, and coverage of a pension plan which delivers so little—as both Senator Javits and you have found out in 51 corporation pension plans is not coverage at all. It is the real coverage which is needed.

Private pension plans now cover approximately half the Nation's wage and salaried workers but, as I have sought to point out, comparatively few retired men and women are actually collecting private pension benefits.

Among retired workers receiving social security benefits, only 8 percent of nonmarried men and women and 21 percent of couples also receive private pensions.

When Federal benefits of every kind of individuals are accounted for, less than one-third—30 percent—of the married couples and 14 percent of the other beneficiaries have a private—second—pension. That is damn low.

The National Council of Senior Citizens has campaigned many years on behalf of meaningful Federal regulation of the private pension system. Our membership strongly supports the bipartisan William-Javits bill—S. 3598—which, I am informed, has the backing of 15 out of the 17 members of the Senate Labor and Public Welfare Committee.

Our membership is for the Williams-Javits bill because it would:

Assure a worker covered by a private pension plan at least 30 percent of the pension benefit stipulated under the plan after 8 years service and 100 percent after 15 years service.

We think that is a great step forward.

We support it because it would set standards for employer contributions to pension plans so there is always enough cash to pay all benefits guaranteed under the plan.

Another thing the Secretary said this morning on funding, which struck me as being nothing short of incredible. He said he hoped we would forget about funding in this bill. We are not all experts like the Secretary; but the experience of our senior citizens is that where there is no funding, there is usually no pension.

We are for the Williams-Javits bill because it will create eligibility requirements for trustees under private pension plans and provide procedures for termination of plans.

It would establish a Federal Office of Pension and Welfare Plan Administration to administer and enforce the requirements of the Williams-Javits bill.

I was also shocked by the Secretary's reluctance to accept the management of this plan and bill. As a matter of fact, it is very disappointing recently to see similar reactions in so many of the branches of Government. We have had it in OEO, where they do not want pro-

grams and now the Department of Labor; they seem to want to preside over the dissolution of their own empires, and it is rather shocking to us.

If the Department of Labor is incapable of handling this legislation concerning private pension systems, which in the Secretary's own words this morning, "have assumed a critical role in our worker compensation picture," then it is clear that something must be done to make the Department efficient and capable to handle such matters.

If the Secretary is ready to throw in the towel, maybe Congress, through this committee, should step in and make some recommendations of its own.

The National Council of Senior Citizens supports the Williams-Javits bill because it is the best and most comprehensive measure of its kind to come before Congress.

However, we would like to see it improved, particularly in the area of portability of private pensions.

It does have the beginnings of a reinsurance plan and we hope that the committee will strengthen this area of the bill.

While we recognize the political considerations that account for the Williams-Javits bill's provision for voluntary portability for vested pensions, we respectfully submit that the issue of portability goes to the heart of any meaningful private pension legislation.

Portability of pensions has been realized to a considerable extent under major multiemployer pension plans such as the International Association of Machinists labor-maangement pension plan and multiemployer pension plans for members of the International Typographical Union, the Marine Engineers Beneficial Association, the AFL–CIO building trades, the Carpenters, Amalgamated Clothing Workers, the Operating Engineers, the International Ladies Garment Workers Union, the Bakery and Confectionery Workers, and the International Brotherhood of Electrical Workers.

Unfortunately, the Williams-Javits bill's only concession to portability for single-employer pension plans is the voluntary portability proposal mentioned above. This would be in the form of a voluntary pension fund for which the U.S. Secretary of Labor would be the trustee and administrator, reporting regularly to Congress on the fund's status.

The fund would be invested in institutions insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, with a limit of 10 percent investment in any single institution.

A participant transferred from one plan to another may request the Secretary of Labor to pay out of the Federal voluntary pension account an amount sufficient to purchase pension coverage that is actuarially equivalent.

Unless the cash in a participant's account is transferred to another employer's pension plan at the request of the participant, the Secretary of Labor must use what is due the participant, to purchase from a qualified insurance carrier a single-premium life annuity payable when the participant reaches 65.

It is evident to the National Council of Senior Citizens that the lack of almost any effective Federal regulation governing private pension plans promoted the proposal for voluntary portability of private pensions.

The argument for this voluntary portability program is that the Williams-Javits bill would set up Federal standards in the area of private pensions which might eventually form the basis for making portability of single-employer private pension plans mandatory.

Likewise, the National Council of Senior Citizens favors establishment of a Federal reinsurance corporation to guarantee payment of private pensions if, for any reason whatever short of a major war or other national calamity, there is any delay in a private pension payment. This, in our opinion, should be a matter of right, enforceable automatically when a participant in a private pension plan files a claim with the Government alleging nonpayment of what is due.

Likewise, the National Council of Senior Citizens would rather see the age 65 annuity described above invested in Government bonds at the customary or prevailing interest rate than invested with a private life insurance firm.

Experience with insurance companies as fiscal intermediaries under the medicare health insurance program for the elderly suggests this precaution.

In saying this, our membership nevertheless sees the Williams-Javits bill as coming closer to the recommendation on private pension plans of the 1971 White House Conference on Aging than other pending legislation in this area.

The White House Conference delegate voted this recommendation in the area of private pensions:

> Social security benefits provide a basic protection which should continue to be improved but which can be augmented through private pension plans.
>
> The Federal Government should take action to encourage broader coverage under private pension plans and insure receipt of benefits by workers and their survivors.
>
> It should require early vesting and/or portability, survivor benefits, and complete disclosure to beneficiaries of eligibility and benefit provisions of the plans.
>
> In addition, Federal requirements should assure fiduciary responsibility, minimum funding requirements and protection, through reinsurance and other measures, of the promised benefits.

The Nixon administration's legislative proposal in the area of private pensions comes nowhere near realizing the goals outlined in the White House Conference on Aging recommendation.

I regret to say this is also true of many other of the White House Conference recommendations which are gathering dust in the archives.

In fact, the Nixon private pension proposal can best be described as a giveaway to private insurers, banks, and investment agencies rather than a private pension reform bill.

As I understand it, the Nixon proposal, while addressing itself to Federal standards for private pensions, has more impact on Federal tax policies than on private pension standards.

The proposal would open a new tax loophole for wealthy individuals while adding to the profits of private insurers, banks, and investment firms.

Under the Nixon proposal, individuals may take an income tax deduction amounting to 20 percent of earned income up to $1,500 a year for cash set aside for individual retirement plan.

Relatively few members of the National Council of Senior Citizens were ever in a position to save $1,500 a year for retirement or for anything else. Even more to the point, how many workers in this era of steadily rising prices can put away $1,500 per year for retirement?

Quite plainly, the Nixon private pension proposal is not for men and women with low- or moderate-level incomes. It is for the well-to-do.

The administration has described its private pension proposal as helpful to older workers.

The Secretary of Labor, during the interval, talked to some of our members here on that subject. This, Mr. Chairman, is rhetoric and nothing more. The number of low- and moderate-income men and women who would benefit from this proposal is infinitesimal.

The Nixon proposal would raise the deductible—for income purposes—limit on pension contributions by the self-employed from 10 percent of earned income up to $2,500 a year to 15 percent of earned income up to $7,500 a year.

If a professional man or woman, starting at age 35, saves $7,500 a year for 30 years, that individual will have accumulated approximately $590,000, if this money is invested so there is a return of 6 percent per year. This could open a gaping tax loophole for the well to do.

Mr. Chairman and members of this distinguished subcommittee, the National Council of Senior Citizens sees an urgent need for closing existing tax loopholes instead of creating new ones.

Specifically, we would like to see an end to the fast depreciation tax loophole voted by Congress last year which accelerates the 20 percent tax writeoff allowance for industrial machinery and equipment.

Another tax loophole also voted by Congress last year is the provision allowing U.S. firms to ship exports through subsidiary firms—called domestic international sales corporations—and in doing so, defer indefinitely one-half of their export profits.

These tax loopholes have been added to the perennial loophole known as the mineral depletion allowance.

The Nixon private pension proposal would, if enacted, provide still another tax loophole.

Another feature of the Nixon private pension proposal would, in the view of the National Council of Senior Citizens, have the effect of discriminating against older workers.

The Nixon proposal would provide for vesting—guaranteeing the right to a pension payment—one-half of an accrued pension benefit when the pension beneficiary's age and years of service on the job total 50 years.

Under this proposal, employees within 5 years of retirement would not be covered. Because of the cost of funding a pension for anyone close to age 50 is comparatively high, many employers would balk at undertaking this expense.

The National Council of Senior Citizens considers the Nixon proposal a tax benefit offered in the name of private pension reform.

It is for the reasons stated that the National Council of Senior Citizens supports the Williams-Javits private pension reform bill calling for minimum Federal standards for vesting—guaranteeing the right to a private pension—for setting minimum qualifications for pension trustees and for funding pension plans and establishing a private pension plan termination insurance program to protect employees against loss caused by an employer's bankruptcy.

In conclusion, Mr. Chairman, and subcommittee members, I would like to point out that a worker's stake in the private pension system is

great and will be much greater in the years ahead but, at best, beneficiaries of private pensions will continue to be concentrated largely among higher paid wage and salaried workers while those having the greatest need in their retirement years will be least likely to receive private pensions.

In short, the social security system will continue to be America's basic method of assuring the aged an adequate level of income.

So, while the National Council of Senior Citizens favors private pension reform, our membership recognizes that the main reliance of wage and salaried workers for retirement income must be now and in the foreseeable future on social security benefits.

That is why the National Council of Senior Citizens seek to raise social security benefits to a level that will guarantee the elderly a floor of income high enough to abolish the poverty that now plagues from 5 to 7 million elderly across the Nation.

Thank you very much.

The CHAIRMAN. Thank you very much. Yours is a great statement.

Your work with the National Council, of course, has been heralded here many, many times; and I echo all of the prior plaudits of the work you are doing; and we appreciate the strength and conviction your statement has afforded our effort here.

In summary, I gather as far as the vesting provisions are concerned, you recommend little change?

Mr. HUTTON. Yes; we would like early vesting, but little change.

We think this is a very good bill and the best we have seen come along for a long time, a great step forward. I hope we can convince enough members of the administration's party to go along with this; and I am sure Senator Javits will do his best to get his colleagues to join.

Senator JAVITS. I would like to join the Chair in endorsing everything our chairman has said and to tell you that you will make it possible to rally my colleagues; because you know from your long experience that colleagues are rallied by public support, and your support reflecting such a broad public basis is critically important, especially on this issue of vesting, as the administration is trying to sell us all on the fact that they are favoring older people. I do not think they are. I do not think older people want it that way.

They want the whole range of people helped by reform. I think I know them pretty well. That is what they want. You have helped enormously in this testimony.

Thank you very much.

The CHAIRMAN. One or two other questions.

Now, what was the concluding date of the White House conference?

Mr. HUTTON. December 2. It began on November 28 and ended December 2.

The CHAIRMAN. December 2.

The administration's program was introduced after that—the middle of December of last year?

Mr. HUTTON. Yes, sir.

The CHAIRMAN. On December 14 it was introduced here by Senator Curtis, after time to reflect some of the conclusions of the conference.

Mr. HUTTON. The reports of each of the needs-meeting areas and of the special sessions had been delivered to the President by Dr. Arthur

Fleming, who was the chairman of the conference. That was on the night of December 1.

On December 2, the President made a closing speech at that conference, at which he said that he would not like to see the recommendations of the White House conference gather dust in the Archives. He said he intended to see that this would not be so; and yet, he has ignored so many of the things.

For example, the White House conference came out for a 25-percent increase in social security. It was after that, in his aging message, and by sending his Secretary of the Treasury down to the Senate Finance Committee, that the administration came out for only 5-percent increase in social security.

There are many other aspects and the pension plan is another one.

Many other things were neglected.

For example, the White House conference came out for a fully comprehensive national health security program, financed under the social security system. We have heard nothing about that.

There were several hundred recommendations, and as a matter of fact, what we have to consider is that this was the voice of the people. It was not just the voice of older Democrats. There are many, many older Republicans who were present at the White House conference and, in fact, they were really in the majority if you really got down to it. But these people, meeting together, seeing the need, came out with wonderful recommendations; and at this moment, the administration is looking out the window, looking the other way.

The CHAIRMAN. Finally, Mr. Hutton, the legislation we have looks forward to a retirement benefit. That retirement benefit is in terms of dollars.

Mr. HUTTON. Yes, sir.

The CHAIRMAN. Too few always; but dollars.

I wonder if you people at the Council have been thinking at all in terms of a retirement benefit that is not just in a dollars amount in a check that goes to a beneficiary; but a benefit that could be described more in terms of a social benefit?

For example, the possibility of investing part of a pension fund in good housing that would be avaliable to the beneficiaries of that fund.

Have these considerations been before you?

Mr. HUTTON. They have been discussed in various workshops that we have had. I do not know that we have gotten very far. It is a great idea. People only need money in order to meet their needs. If they can be given, for example, adequate health care, so they do not have to pay doctors; and if they can have a decent home in which to live when they retire and not have to pay rent, that would be part of the pension plan.

Of course, it is a suitable thing. There are lots of ways in which pension plans can be developed.

In our interviews with retired workers, of course, it has become obvious that only a minority of workers spend a lifetime or even 20 years with one employer. It is quite common to change jobs three of four times in a working career of 35 or 40 years.

This does not mean that a worker is unstable. It may just reflect an individual's desire to better herself or better himself or the need to shift because of technological change; and sometimes that technological change wipes out old jobs and they have to find new ones.

But I know in recent years, particularly in the aerospace industry on the west coast, budgetary cuts, and the recession, have caused many to lose their jobs before they could nail down their pension rights, so that there are difficulties and they might have to collect perhaps four small pensions in certain areas. There may be difficulties presented here in just how you transfer that into social benefits.

But I think most of our older people are receptive to this idea. I want to just emphasize one more thing which Senator Javits said.

Our older people are not just interested in themselves. They do not see themselves, and we do not operate as a narrow vested interest. They want to try to better America. They try to improve things for their sons and daughters and their grandchildren. There is a great natural bridge between the elderly and the young; and they do not want to be a selfish group waiting for Congress to throw something into their hands.

They are looking at this in terms of whether it is good for the people and good for the country.

Senator JAVITS. I am so glad to hear you say that. I know it is true.

The CHAIRMAN. How many members does the national council have now?

Mr. HUTTON. It has some 3 million members, sir, in some 3,000 clubs.

The CHAIRMAN. I think it could be said accurately that you speak for most of them.

Mr. HUTTON. I hope so, sir. I think we do. And certainly those members of the affiliated clubs of ours. We just had a convention that ended 2 weeks ago, and we had nearly 3,000 delegates from all parts of the country.

They were unanimous in their support of this bill.

The CHAIRMAN. It is an active organization with full participation in the meetings?

Mr. HUTTON. It is. It is a social action group.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Next, we have the American Association of Retired Persons—National Retired Teachers Association, Mr. Peter Hughes.

We welcome you.

STATEMENT OF PETER HUGHES, AMERICAN ASSOCIATION OF RETIRED PERSONS-NATIONAL RETIRED TEACHERS ASSOCIATION

Mr. HUGHES. I am Peter Hughes, legislative representative of the National Retired Teachers Association and the American Association of Retired Persons.

These are associations, as you know Mr. Chairman, representing a combined national membership of over 4 million persons.

Accompanying me today is Mr. James Hackney, a member of our legislative staff.

Mr. Chairman, I have been asked by Mr. Bernard Nash, NRTA–AARP executive director, who is on his way to the International Gerontological Conference, to extend his greetings and apologies for not being here. Also Mr. Cyril Brickfield, our legislative counsel, who unavoidably is out of town today; sends his apologies and his greetings. They have asked me to present a summary of our testimony, Senator; and if I may summarize, I will proceed.

Our associations appreciate this opportunity to appear here today for the purpose of presenting on behalf of older persons in general and our membership in particular, our comments, criticisms, and recommendations, with respect to those legislative proposals which are designed to regulate more closely the continuing development and operation of the private retirement benefit system.

At this time, I request our full statement, as well as my remarks, be made a part of the hearing record and that I be allowed to summarize the major recommendations of our associations, beginning with the first paragraph on page 4 of the summary.

The CHAIRMAN. Very good.

The entire statement will be made a part of the record and inserted at the end of your testimony.

Mr. HUGHES. While it must be acknowledged that the private pension system, despite its alleged and established deficiencies, is significant in terms of the number of workers covered, the number of retirees to whom benefits are paid, the aggregate amounts of employer-employee contributions, the extent of accumulated reserve assets and their actual and potential economic and social impact; and while it must be further acknowledged that the performance of the private pension system continues to improve with respect to coverage, vesting, funding, and even benefit levels, nevertheless, if the probability of benefit receipt by today's workers is to be maximized, comprehensive statutory regulation is needed.

I might note at this time that this committee is taking the initiative in moving toward this end and we congratulate you.

The inequity inherent in the present system and the size of both the annual Federal subsidy to qualify plans and the assets already accumulated by the entire system sufficiently justify such regulation.

The satisfaction of the income needs of the retiree should not depend on a plethora of plan requirements and intrinsic contingencies that are usually arbitrary and often beyond the individual worker's control.

A comprehensive legislative program should deal not only with malfeasance of plan administrators and the consequences of business failures and plan terminations, but also with the broad spectrum of questions such as adequacy of funding, insurance, minimum standards for eligibility and vesting, the transferability of credits and more meaningful disclosure; in short, the establishment of certain minimum standards to which retirement plans must conform, unless specifically exempted, both absolutely and as a condition precedent to qualification for favorable income tax treatment under the Internal Revenue Code.

While public policy should continue to provide incentives for the growth of private plans and improvement in the level of benefits paid by such plans, the soundness and fairness of the entire private retirement benefits system must be enhanced in order to assure that it will produce benefits rather than disappointment during the employee's retirement.

Turning over to page 6, I would like to start with our specific recommendations in regard to private pension plan legislation.

No. I. A minimum service requirement of 3 years or less for participation in and coverage by a private pension plan should be established, both absolutely and as a condition precedent to qualification

under the income tax laws in order to expand coverage and equalize the tax treatment under qualified corporate and owner-employee plans.

We note S. 3598, the Williams-Javits bill, provides for coverage after 6 months of service. We support this provision if it is determined to be cost feasible.

No. II. Since the absence of early vesting provisions in private pension plans is a major factor in the failure of otherwise covered employees to receive retirement benefits, early graded vesting or full vesting after a period of not more than 10 years should be required by law, and should be made a condition precedent to plan qualification for income tax purposes.

S. 2 and S. 3598 provide early vesting, with full vesting after 15 years.

Congressman Dent's bill, on the other hand, provides full vesting after 10 years. There is some question in our minds as to whether this all-or-nothing approach is advisable. By the all-or-nothing approach, I am referring to Congressman Dent's bill.

No. III. In view of the reality of present and projected labor force mobility, early vesting requirements should be supplemented by the establishment of a federally funded clearinghouse to enable an employee, as he moves from job to job within the country's economy, to transfer accumulated pension credits between plans.

Our associations strongly support these provisions.

No. IV. Since inadequate funding of private pension plans places an unwarranted financial risk on former employees during retirement, minimum funding standards for all private plans other than those of Federal, State, and local governments, their agencies and instrumentalities should be enacted to require both absolutely and as a condition precedent to tax qualification that all liabilities for benefits arising from current services be fully funded on an annual basis and those attributable to past services be funded over a statutorily established, reasonable period of time; the funding of increases in benefits levels subsequent to the establishment of a plan should be amortized over a similar period.

What we are saying is we really want to see all plans fully funded as early as possible. We feel that the cost feasibility is a fundamental consideration in deciding 25, 30, or 40 year schedules for funding past services liability.

No. V. In order to prevent an employer from indirectly diverting pension plan assets for business use, a statutory limitation should be set upon the amount of the plan's trust funds which may be invested in the securities of the employer corporation.

VI. In order to protect plan participants and beneficiaries in the event of a plan being terminated without funds sufficient to meet accumulated pension obligations and as a complimentary feature to the minimum funding standard, pension insurance should be statutorily required both absolutely and as a condition precedent to tax qualification for all pension plans other than those of Federal, State, and local governments, their agencies and instrumentalities.

VII. Since pension benefit levels are usually a function of preretirement levels of income and since the public policy objective of providing adequate retirement security for as many older persons as possible is not promoted by the extension of large although indirect

the minimum funding standard, pension insurance should be statutorily imposed on the level of contributions made to a tax qualified plan for the projected benefit of each participant or on the level of benefits paid to each beneficiary by a tax qualified plan.

VIII. In order to encourage employee savings for retirement, employee contributions to employer pension plans whether or not tax qualified, should be deductible within reasonable limitations in computing adjusted gross income; but the maximum amount of any such annual deduction should be subject to reduction on account of contributions made by the employer, on the employee's behalf, to tax qualified plans.

IX. In order to eliminate a variety of publicized and documented fiduciary abuses, such as party-in-interest transactions, double-dealing and personal aggrandizement—all of which threaten the security of the participants and beneficiaries of private pension plans—the Welfare and Pension Plan Disclosure Act should be amended: (1) to incorporate a prudent man standard of conduct for all persons included within a broad fiduciary category defined by statute, and (2) to provide for effective enforcement of that standard by plan participants and beneficiaries, and the appropriate Federal regulatory agency acting on their behalf.

We support provisions contained in S. 3598 in this regard.

No. X. In order to scrutinize properly the operation and statutory compliance of private pension plans, the Welfare and Pension Plan Disclosure Act should be further amended to require that: (1) the annual financial report by each private pension plan include an independent accountant's opinion of the plan's financial condition based on an annual audit; (2) such reports include more detailed information, especially with respect to funding methods and actuarial methods; (3) the designated Federal regulating agency with which such annual reports are filed make an annual comprehensive and detailed report to Congress concerning the operation and financial conditions of private pension plans; (4) pension plan administrators furnish each participant at the time of his enrollment in the plan a comprehensive summary of the plan's important provisions and his rights and obligations thereunder; and (5) plan administrators furnish each participant on an annual basis a statement indicating whether he has a vested right to pension benefits or the earliest date on which such right will vest and the level of vested benefits which have accrued.

Point No. V is particularly important. Therefore, we support section 105 of H.R. 1269.

No. XI. Since the present income tax laws constitute a substantial disincentive to individual saving for retirement, the retiree often finds that he must subsist on social security or other public benefit payments without any appreciable supplement because he failed to attain coverage under a private pension plan, or if covered, failed to receive any benefits, or if benefited, failed to receive more than token amounts; therefore, public policy should be modified to permit the common law employee to establish his own private pension plan, the contributions to which would be deductible within reasonable limitations in computing gross income.

The maximum amount of any such deduction could be subject to reduction on a dollar for dollar basis, by: (1) the amount which he or

his employer on behalf of himself contributes to a tax qualified pension plan, and (2) any amounts which he contributes to a nonqualified plan for which he is allowed a deduction for income tax purposes.

Judged in the light of the recommendations made by our associations, the more significant private pension plan proposals, S. 2, S. 3598, H.R. 12272, and H.R. 1269, all contain certain deficiencies.

While S. 2, S. 3598, and H.R. 1269 are the more comprehensive and are more in accord with the positions taken by our associations, none contains a proposal similar to that of section 3 of H.R. 12272, which would allow to individuals a deduction in computing adjusted gross income for limited amounts contributed to individual custodial accounts established by them or to private pension plans established by their employers.

We believe that the concept of individual pension plans, if properly controlled and limited to prevent utilization as another tax shelter by affluent citizens, would readily accommodate the reality of labor force mobility and would function as a reasonable means of providing an additional measure of retirement income security.

With respect to vesting, our associations must oppose any standard which will provide additional incentive for age discrimination in employment.

While we recognize that the rule of 50 approach adopted by H.R. 12272 would afford pension right protection to those workers who are presently nearing retirement, we feel that the protection provided by this approach, standing alone, would be offset by its tendency to promote just such discrimination.

The Congress may, however, consider the merits and cost feasibility of utilizing for a term of 10 or 15 years this rule of 50 approach in conjunction with another enacted early vesting standards similar to that proposed by H.R. 1269, S. 2, or S. 3598 in order to aid those workers who are approaching retirement and who would not otherwise benefit from the vesting standard favored by our associations because of inability to satisfy the minimum service requirement.

It is the conviction of our associations that enacted standards which result in the expansion of employee coverage under private pension plans and the liberalization of vesting requirements under such plans will maximize the probability of private pension reciept by future retirees only if such standards are reinforced by a statutorily established funding schedule adequate to assure coverage of obligations accrued under such plan.

An insurance requirement would add an additonal measure of protection. Any legislation enacted by the Congress that includes standards for coverage and vesting but fails to include requirements for funding and insurance will be a legislative gesture designed more to assusage worker discontent than to provide retirement benefits.

We find this point to be a major deficiency of H.R. 12272.

Our associations believe that the recommendations we have made with respect to the increased regulation of the private retirement benefit system would, if embodied in enacted legislation, increase retirement income security for the worker and assure continued growth and improvement for the entire system.

Our concern with the failing of certain aspects of this system should not be regarded as a blanket condemnation. Federal standards established after thorough consideration of all relevant factors, especially cost, would simply raise those plans judged to be deficient to minimally acceptable levels.

Certainly any legislation that does not operate to improve the equity and overall performance of the private retirement benefit system and promote rather than inhibit its future development would be of little comfort and no benefit to the future retirees.

That is the end of our statement, Mr. Chairman, but I want to emphasize that our associations basically support the Javits-Williams bill, and look forward to its early enactment.

The CHAIRMAN. Very good.

Together with your full statement that is in the record, that is very comprehensive; and we appreicate it.

Thank you.

(The prepared statement of Mr. Nash follows:)

TESTIMONY OF

BERNARD E. NASH, EXECUTIVE DIRECTOR

NATIONAL RETIRED TEACHERS ASSOCIATION

AND

AMERICAN ASSOCIATION OF RETIRED PERSONS

BEFORE THE

SUBCOMMITTEE ON LABOR

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

REGULATION OF THE PRIVATE
RETIREMENT BENEFIT SYSTEM

JUNE 20, 1972

NRTA-AARP STATEMENT WITH RESPECT TO FEDERAL REGULATION OF THE PRIVATE PENSION SYSTEM

I am Bernard E. Nash, Executive Director of the National Retired Teachers Association and the American Association of Retired Persons, affiliated, nonprofit, nonpartisan, social welfare organizations, with a combined membership of over four million older Americans.

Our Associations appreciate the opportunity granted by the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, to appear here today for the purpose of presenting on behalf of older persons in general and our membership in particular, our comments, criticisms and recommendations with respect to those proposals which are designed to regulate more closely the continuing development and operation of the private pension system. We hope that our testimony will both stimulate and assist this Subcommittee's development of a comprehensive statutory scheme of minimum Federal standards for the effective regulation and more efficient utilization of private pension plans as a means of supplementing retirement income.

I. Introductory Remarks

Our Associations believe that the pursuit of a meaningful period of social interaction, participation and conbribution by the individual during the later years of life would be more readily attainable if the older person were not so often condemned to the strictures of impaired health, inadequate dwellings, immobility and substance income -- all of which often combine to divest him of whatever remains of his zeal for life. With respect to the satisfaction of the basic, material meeds of the older person, the responsibility for adequate resource allocation rests with the collectivity of society. While considerable progress has been made in recent years, the degradation and humiliation of poverty persist as frequent incidents to the process of aging. While this

country's economic, industrial and medical progress have combined to permit an increasing proportion of the population to reach old age, these same factors have also combined to reduce the older person to a dependent condition, tending to deprive him of his traditional function, status and dignity.

By this trend our Associations are both frustrated and disturbed. With a net increase of 3.5 million persons, age 65 and over, between the 1960 and 1970 censuses, one out of every ten persons in this country today is an older American.[1] Moreover, the 1970 level of 20 million older persons is expected to increase to 25 million by 1985, and to 28 million by the year 2000.[2]

The cumulative impact of a variety of disparate factors, including the Social Security earnings limitation, prevailing policies and practices of mandatory retirement, reduced manpower requirements and the technological obsolescence of labor skills, have resulted in the exclusion of an increasing percentage of the older population from participation in the labor force.[3] Consequently most older Americans are dependent for a high proportion of their total income on a variety of public programs designed to transfer current purchasing power from the younger, working population, to the older population through a system of transfer payments. Unfortunately, the levels of such payments are, by themselves, quite inadequate to maintain a satisfactory level of income for retired persons, many of whom are without other income sources.

Excluded from the labor force, the older person finds himself also excluded from participation in the standard of living made possible by the increased economic productivity to which he contributed his labor during his working years. While the increases in public benefit levels during 1970 have apparently arrested the prior impact of inflation on

retirement income purchasing power,[4] even that respite may be only temporary unless H.R. 1,[5] with its critically needed automatic benefit adjustment section[6] is soon enacted into law. Moreover, despite the 1970 increases in public benefit levels, 4.7 million persons age 65 and over -- about one-fourth of the total older population -- still reside in households in which the aggregate income fell below the poverty levels established for that year.[7] The projected economic status for the increasing population of older Americans appears bleak indeed.

To ameliorate the impact of age on individual income, new sources must be utilized to supplement the basic, but inadequate retirement benefits provided by the public benefit systems. To accommodate the projected income needs of this increasingly substantial, yet least visible minority population, attention should be focused on encouraging personal savings for retirement and on utilizing more effectively the private pension system, which has assumed a prominent role in providing supplemental retirement benefits for a growing portion of retirees.

II. Background: Growth and Development of Private Pensions as a Means of Supplementing Retirement Income.

While the first private pension plan was established in this country as early as 1875 by the American Express Company, by 1940 only 4 million persons were covered by such plans. However, during World War II and the subsequent Korean conflict, high corporate profits and the ceilings imposed by the Federal Government on direct wages provided considerable impetus for the expansion of coverage under pre-existing plans and for the establishment of new ones.[8] This trend was further reinforced by the decision of the 7th Circuit Court of Appeals in Inland Steel Co. v. N.L.R.B.,[9] in which pension rights were clearly

designated[10] as an appropriate subject for collective bargaining under the Labor Management Relations Act of 1947.[11]

In the Inland Steel case, the 7th Circuit recognized for the first time the modern character of private pension plans. Implicit in the decision was the interpretation that private pensions, particularly when they result from the collective bargaining process, are a part of the wage structure. In the light of the then-existing public policy against immediate wage increases, private plans were established or expanded to provide a form of deferred compensation for employees. Inland Steel and subsequent cases have thoroughly eroded that former point of view which considered private pensions as a mere gratuity completely within the discretion of the employer.[12]

Private pension coverage today extends to over thirty million workers and the number of pensioners exceeds 4.2 million.[13] Moreover, private plans have accumulated reserve assets of over 130 billion dollars,[14] which amount is expected to increase to $225 billion by 1980.[15] Indeed, the private pension system is not only a major element in the economic security of a substantial percentage of American workers, but also a significant source of financial power, the economic impact of which directly or indirectly affects the daily life of each citizen.

Other indicia of the size of the private pension system today are the annual amounts of employer and employee contributions and the aggregate amount of benefits paid annually to retirees. In 1968, for example, employers contributed 9.4 billion dollars to private plans and employees 1.3 billion, for a total contribution of 10.7 billion dollars.[16] In the same year, 3.7 million retirees received private pension payments aggregating over 5 billion dollars.[17] However, while the 5 billion dollars of benefit payments to retirees under private plans in 1968 was only

one-third of the 15 billion paid to retirees under O.A.S.D.I. in that year, the 115 billion dollar private pension reserve fund was over four times greater than the 28 billion O.A.S.D.I. trust fund at that time.[18]

It is evident that many isolated and often unrelated factors have contributed to the expansion and continuing improvement of the private pension system. Among the more significant factors are: (1) the public concern for economic security fostered by the experience of the 1930s;[19] (2) the desire of workers for participation in this country's high standard of living throughout their retirement years; (3) the desire of employers to attract and retain more productive labor, and eliminate the less productive through retirement;[20] (4) the average worker's inability to provide adequately for his own retirement through personal savings and investment without a substantial reduction in his standard of living;[21] and (5) the extensive tax subsidies offered by the Federal Government.

The Revenue Act of 1921,[22] providing an exemption from current taxation of the income of a trust created by an employer as part of a stock bonus or profit sharing plan for the exclusive benefit of employees, marked the advent of the continuous Federal policy of favorable income tax treatment of private pensions.[23] Today the Internal Revenue Code extends preferential treatment to employer pension, stock bonus, profit sharing and bond purchase plans, provided such plans inure to the exclusive benefit of the employees and their beneficiaries.[24] Subject to specific limitations, contributions to qualified retirement plans which constitute the great bulk of private plans today,[25] are deductible as a current business expense by the employer,[26] and excludable from the current income of the employee.[27] Until distributed to plan beneficiaries,

the accumulated earnings and appreciation of plan assets are exempt from Federal income taxation.[28] Moreover, even employees with non-forfeitable, vested interests under such plans, recognize no income until distribution is made[29] -- and then at preferential tax rates.[30] The annual Federal revenue loss from this combination of tax concessions to qualified plans amounts to a substantial annual subsidy of about one billion dollars.[31]

Despite the dimensions of the private pension system today, and despite the significant public subsidy represented by the annual revenue loss, a high percentage of retirees who experience coverage under one or more private pension plans for some or all of their working years, will fail to receive any benefits at retirement. The exact size of this group of future non-recipients is difficult to project either in terms of numbers or as a percentage of covered workers because of the necessity to extrapolate varying trends with respect to such items as the extension of coverage, the liberalization of vesting requirements and the fluctuation of worker mobility. It is, however, certain that a variety of contingencies will substantially diminish the probability of private pension receipt.

For those workers who are not during their working years covered by any private plan -- nearly 50 per cent of the current labor force -- the private pension system affords no solution to their retirement income needs. Many other workers, although covered under one or more plans, will ultimately receive no benefits because of failure to meet the appropriate vesting requirements. Under most private plans, the age and/or service requirements for vesting incidentally take advantage of the high separation rate of this country's mobile labor force. In 1970 alone almost 4 million workers left their jobs.[32]

Moreover, many plans fail to distinguish between voluntary and involuntary employment terminations. Lay-offs, discharges, business failures or relocations and corporate reorganizations can deprive an employee of his potential or actual right to receive a pension. Over 1.8 million workers were discharged in 1970;[33] in the same year, over 10,000 business failures were recorded.[34]

Unless the pension plans provide to the contrary, an employee who for any reason ceases work will be disqualified from pension eligibility.[35] In such cases, death prior to vesting will effectively bar any benefit claim by the deceased employee's estate or beneficiaries.[36] Moreover, in the absence of a death benefit provision in the plan, the survivor of even a vested plan participant will be precluded from receiving any benefits.[37] Even employee disability may be an effective bar to compliance with the vesting requirements under a particular plan.[38]

The Subcommittee on Labor of the Senate's Committee on Labor and Public Welfare released on March 31, 1971, a preliminary report of the operation of private pension plans covering almost one-third of the thirty million persons presently covered by such plans.[39] This report dramatically illustrated the difficulties resulting from nonexistent or inadequate vesting provisions. The study found that forfeiture of pension benefits by plan participants was extremely high, in that 92 per cent of all active participants since 1950 who left plans which required eleven or more years of service for vesting and 73 per cent of all active participants since 1950 in the plans with ten years or less for vesting, did not qualify for benefits upon termination of employment.[40]

It must be acknowledged that the private pension system, despite its alleged and established deficiencies, is significant in terms of the number of workers covered, the number of retirees to whom benefits are

or will be paid, the aggregate amounts of employer-employee contributions, and consequently, the extent of accumulated reserve assets and their actual and potential economic and social impact. It must be further acknowledged that the performance of the private pension system continues to improve with respect to coverage, vesting, funding and perhaps, benefit levels. However, in order to maximize the probability of benefit receipt, comprehensive statutory regulation is needed. The very size of both the annual Federal tax subsidy to qualified plans and the assets accumulated by the private pension system should be sufficient justification for such regulation.

The multiplicity of purposes which have combined to produce the present private retirement system must not be allowed to supersede society's concern for the well-being of the individual during retirement. For example, while pension plans have often been used by employers to attract and retain productive workers, the result has been either to deny benefits to mobile employee who fails to meet the eligibility or vesting requirements or to deprive the economy of the labor force mobility necessary to accommodate rapid technoligical changes.[41] Mobility is a characteristic of the labor force, and, indeed, an important factor considered by employers in projecting the amount of contributions necessary to pay a pre-determined level of benefits; to this reality the private pension system must be accommodated. To the extent that public and private purposes in fostering the development of this system are incongruent, the public purposes must prevail. The satisfaction of theincome needs of the retiree should not depend on a plethora of plan requirements which are usually arbitrary and often beyond the individual's control. As a consequence of responsible participation in society, the retiree is entitled to share equitably in its resources.

III. The Present Regulatory Scheme

While the growth and development of the private pension system has been substantial, Federal regulation of its scope and operation has been minimal and piecemeal. The Securities Act of 1933[42] and the Securities and Exchange Act of 1934[43] require that those pension trusts which purchase stock in employer corporations must file annual reports. The Labor Management Relations Act[44] provides for a written pension agreement, irrevocable use of trust funds for benefit payments, and equal union-management representation in fund administration and arbitration of disputes.[45]

The Welfare and Pension Plan Disclosure Act of 1958[46] was designed to eliminate a variety of administrative abuses by requiring disclosure of financial and other information to plan participants, beneficiaries and the Secretary of Labor.[47] However, the Act relied excessively for enforcement on fortuitous policing by plan beneficiaries.[48] Although the Welfare and Pension Plan Disclosure Act Amendments of 1962,[49] granting to the Secretary of Labor the authority to promulgate rules and regulations, conduct investigations and secure injunctive compliance, strengthened the original legislation, the Act remains essentially an information gathering device.[50]

The Internal Revenue Code[51] and Regulations further regulate the scope and operation of the private pension system. The essence of enforcement under the tax laws lies primarily in the power of the Internal Revenue Service to grant or disallow qualified status to a pension plan -- thus determining the availability of the statutory tax advantages for

both the employer and employee. However, the present statutory requirements for plan qualification are limited, and are intended to assure only that employees receive the benefits from contributions and that favorable tax treatment is not accorded to plans which discriminate in favor of managerial personnel or corporate shareholders.

More specifically, conditions attached by statute or rule for determining the income tax qualification of private pension plans include certain minimum funding standards and a nondiversion-of-funds rule making pension trusts irrevocable and requiring that pension funds be used exclusively for employee benefit.[52] Also included is a statotory prohibition against discrimination in favor of supervisory or other highly compensated employees or employees who are officers or stockholders of the employer corporation.[53] Numerous other regulations control such matters as the completeness and definiteness of the pension plan, the permanence of the plan, the limitations on employee contributions and the conditions governing plan termination.[54] Almost totally within the employer's discretion, however, are the policy decisions regarding benefit levels, administration and asset investment.

The eclectic nature of these various disclosure, labor and revenue statutes underscores the insufficiency of the present level of protection for the retiree. The problems with, and the failings of, the private pension system require a comprehensive legislative program dealing not only with malfeasance of plan administrators and the consequences of business failures and plan terminations, but also with the broad spectrum of questions such as adequacy of funding, insurance, minimum standards of eligibility and vesting, the transferability of credits, more stringent fiduciary standards and more meaningful disclosure - in short - the establishment of certain minimum standards to which retirement plans

must conform, absolutely and as a condition of qualification under the Internal Revenue Code. While public policy must continue to provide incentives for the growth of private pension plans and improvement in the level of benefits paid by such plans, their soundness and fairness must be improved. However, the enactment of norms designed to achieve these ends must be tempered by the cost consequences of effecting such improvements.

IV. NRTA-AARP Position and Recommendations

If it is society's objective to assure an adequate level of retirement income for us many older Americans as possible, a comprehensive statutory scheme is needed to provide: (1) minimum standards for private pension plans with respect to coverage, vesting, portability, funding and insurance; (2) more stringent fiduciary standards and more meaningful disclosure; and (3) tax incentives designed to encourage individual savings for retirement.

1. Coverage

The Internal Revenue Code already contains rules governing employee participation under private plans which qualify for favorable income tax treatment; however, the requisite minimum service requirement for plan participation varies. The pension plan of a corporate employer will qualify with respect to employee coverage if any one of three alternative tests is satisfied;[55] however, employees with less than five years of service need not be counted in applying these tests.[56]

Tax qualified owner-employee plans[57] must cover all employees with more than three years of service.[58] The more rigorous statutory requirement with respect to coverage under an owner-employee plan is apparently justified by the increased possibility for discriminatory abuse under such plans.

NRTA-AARP believe that by establishing a minimum service requirement of three years or less for participation in a private pension plan, and by making this requirement a condition precedent to qualification under the income tax laws, employee coverage would be necessarily expanded and the income tax treatment of qualified corporate and owner-employee plans would be equalized. Since the employee job separation rate tends to be higher during the earlier years of employment, and since funds released as a result of employee forfeitures under qualified plans must be applied to reduce future employer contributions,[59] expanded employee coverage could be effected with a minimum increase in employer costs.

2. Vesting

While most private pension plans alread have some form of pre-retirement vesting provision introduced as a result of unilateral action by the employer or as a result of collective bargaining with a labor union, such vesting ranges from immediate full vesting to what is commonly referred to as "late" vesting. While the trend is toward earlier vesting, some plans still withhold vesting of benefit rights until the employee's retirement.

A study[60] by the Pension Research Council (Wharton School of Finance and Commerce) showed that, as of 1966, 47 per cent of the participants in sampled pension plans were under plans with "early" vesting provisions, 34 per cent were under plans with "intermediate" vesting provisions, and 19 per cent were under plans with "late" vesting provisions.[61] Under the classifications utilized in the study, "early" was full vesting with ten years of service or less, "intermediate" was full vesting with eleven to twenty years of service, and "late" was full vesting with twenty-one or more years; also, included within this latter category were those plans providing for vesting only upon the employee's normal retirement.[62]

Another study[63] based on a random sampling of pension plans drawn in 1969 found that 2.2 per cent of the sampled plans provided for immediate vesting, but 7.5 per cent provided for no preretirement vesting.[64] Among multi-employer plans, 41 per cent had late preretirement vesting and 15.4 per cent had no vesting prior to retirement.[65]

Unlike employee coverage, the vesting of employee benefits under private pension plans is virtually without statutory regulation at the present time. The Internal Revenue Code requires that an employee's right to his allocable interest under an owner-employee plan, which qualifies for favorable income tax treatment, must vest immediately and completely at the time contributions are paid;[66] corporate pension plans, however, are not required even as a condition precedent to qualification for favorable income tax treatment to provide for vesting prior to employee retirement, except in the event of plan termination or complete discontinuance of employer contributions.[67]

As a matter of equity and fair treatment NRTA-AARP believe that an employee covered by a private pension plan should be entitled, after a resonable period of service, to protection of his retirement benefits against the hazards of employment termination. If the services of a worker who has accepted lower wage levels for the promise of a pension during retirement are voluntarily or involuntarily terminated prior to vesting, the worker forfeits the deferred portion of the compensation he should have otherwise received. Furthermore, deferred vesting tends to impede the labor force mobility needed to accommodate the rapid technological changes in the economy. To the extent that a worker will fail to receive anticipated benefits from a private pension plan, he will be that much more dependent upon public programs for the maintenance of an adequate level of retirement income -- with the increased cost burden of

such programs devolving upon the younger members of the labor force.

Since the absence of early vesting provisions is a major factor in the failure of otherwise covered employees to receive retirement benefits, our Associations believe that minimum statutory standards should be established with respect to vesting. Any such standards, however, must attempt to balance the factors of employee equity and labor force mobility against the employer's need to attract and retain productive personnel and to limit the increased cost of pension plans to reasonable dimensions.

Early vesting as contrasted with late vesting or no vesting prior to retirement age will materially increase the cost of pension programs.[68] In the absence of preretirement vesting, pensions become payable only to employees who continue to work for the employer until retirement age, thereby eliminating, as prospective pensioners all those employees who, for a variety of reasons, do not continue in the employer's service until retirement.[69] Had pension rights of such employees been vested when the separations occurred, however, they would have carried the rights with them and on reaching retirement age, would have been entitled to benefits earned during the earlier period of employment.[70] Each step taken toward earlier vesting provisions in a plan increases the funding cost by in effect the amount of the "carry-away" benefits subsequently becoming payable as a result of the vesting change.[71] Obviously, then, the more liberally a statutory vesting formula protects employee benefits, the more expensive the formula is. Since the resources available for the funding of private pension plans are limited, and since these limited resources must be utilized to fund not only the increased obligations which result from more liberal vesting provisions but also those which result from the granting of past service credits and higher benefit levels, the choice

of a statutory standard must be made with care and deliberation so as to minimize any retardation in the improvement of existing plans and any disincentive in the establishment of new ones.

Of those proposals which have been introduced into Congress for the establishment of minimum Federal standards with respect to vesting, the Nixon Administration's "rule of 50" approach, represented by H.R. 12272,[72] and S. 3012[73] the early full vesting approach, represented by H.R.1269,[74] and the early graded vesting apprach respresented by S. 2[75] and S. 3598[76] merit thorough consideration. Under the Administration's proposal, 50 per cent of an individual employee's rights to benefits from a qualified private pension plan of a corporate employer would vest when the employee's age plus his years of participation in the plan totalled 50 attainment of full vesting would require an additional five years of employment service. In contrast with this "rule of 50" approach, the requirement of H.R. 1269 is basically full vesting of benefit rights after ten years of employment under a pension plan whether tax qualified or not. S. 2 would require vesting to start at a level of 10 per cent after six years of service, adding an additional 10 per cent each year until 100 per cent vesting is achieved after 15 years of employee service. S. 3598 differs from S. 2 only insofar as vesting would begin at a 30 per cent level after eight years of service, followed by equal annual 10 per cent increments until full vesting is achieved after 15 years of employee service.

In view of the high degree of mobility of the United States labor force and the consequent non-receipt of benefits by a significant percentage of former employees who, during their working years, were covered by one or more private pension plans, NRTA-AARP urge the enactment of an early vesting standard which will be applicable to all

such plans, and compliance with which will be required as a condition precedent to favorable income tax treatment. However, our Associations must oppose any such standard which provides incentive for age discrimination in employment. While we recognize that the "rule of 50" approach would protect the pension rights of those workers who are approaching retirement, we feel that the protection provided by this approach, standing alone, would be counterbalanced by its tendency to promote discrimination in this hiring of older workers. While our Associations recognize that this proposed vesting standard would be an improvement over present conditions prevailing in the private pension system with respect to vesting, we tend to favor early graded vesting or full vesting after a service period of not more than ten years.

The Congress should, however, consider the merits and cost feasibility of utilizing for a term of ten or fifteen years, the "rule of 50" approach in conjunction with an enacted early vesting standard similar to that proposed by H.R. 1269, S. 2 or S. 3598, in order to aid those workers who are presently nearing retirement and who would not otherwise benefit from the vesting standard favored by our Associations because of inability to meet the ten or fifteen year service requirement. At the end of the appropriate term of years, the "rule of 50" alternative would be phased out, leaving the vesting of employee benefits dependent solely upon the satisfaction of the minimum, statutorily established service requirement and eliminating age as a factor in determining the vesting of pension benefits.

3. Portability

In view of the reality of labor force mobility which reflects a higher rate of job separation in the earlier years of employment, early vesting requirements should be supplemented by the establishment of a Federally

funded clearing house to enable the employee accumulating pension credits under more than one plan to transfer such credits between plans. The theory behind the clearing house concept has been described by Senator Jacob Javits (R. N.Y.) as follows:

> "... vested credits by definition have some value, and it is not too difficult to compute the current discounted value of any such credit. An employee leaving one plan and transferring to another may wish to transfer the value of his vested credits, through the clearing house, into another plan to purchase credits of an equivalent value in the second plan, under which he begins to work."

Since the proposed Federal clearing house would maintain records with respect to the employee as he moves from job to job within the economy without the necessity of costly employer administrative duplication, cost incentive sufficient to encourage employer participation in the agency should obviate compelling such participation by statute.

4. Funding

Additional statutory requirements are necessary to assure that employees actually receive vested retirement benefits. Under the Internal Revenue Code, a private plan which qualifies for favorable income tax treatment need only contain funds sufficient to cover benefits attributable to present employee services and to cover the interest charge on benefits attributable to service prior to the establishment of the plan.[77] Since inadequate funding places an unwarranted financial risk upon employees during retirement, minimum funding standards for all private plans other than those operated by Federal, state or local governments, their agencies and instrumentalities, should require both

absolutely and as a condition precedent to qualification for favorable income tax treatment, that all liabilities for benefits arising from current services be fully funded on an annual basis, and those attributable to past services be funded over a reasonable period of time.[78] Subsequent increases in benefit levels should be funded in a similar manner. NRTA-AARP believe that enacted standards which result in the expansion of employee coverage under private pension plans and the liberalization of vesting requirements under such plans will maximize the proability of private pension receipt by retirees only if such standards are reinforced by a statutorily established funding schedule adequate to assume coverage of pension obligations accrued under such plans. Penalties, including mandatory termination of a plan, should be prescribed for failure to meet the established schedule.

In order to prevent an employer from indirectly diverting pension plan funds for business use, a statutory limitation should be set upon the amount of trust funds which may be invested in the stock of the employer corporation.[79] Our Associations believe that such a limitation will promote the diversification of plan assets and further enhance employee security.

5. Insurance

As a complementary feature to the minimum funding standard, pension insurance should also be statutorily required of all plans, both absolutely and a condition precedent to favorable income tax treatment for all private pension plans, other than those of Federal, state or local governments, their agencies or instrumentalities. Such insurance would protect plan participants and beneficiaries in the event a plan is terminated without funds sufficient to meet accumulated pension obliga-

tions. Thus, should a plan be terminated for any reason before accrued obligations were fully funded whether or not the funding was in accord with the statutorily prescribed schedule, the insurance would provide the additional security needed by the vested participant or plan beneficiary.

6. Employer Contributions to Qualified Plans

Under the Internal Revenue Code, contributions to a pension plan on behalf of a self-employed individual may not be deducted in excess of 2,500 dollars or ten per cent of earned income, whichever is less.[80] However, with respect to qualified corporate pension plans, there are no dollar or percentage contribution limitations.[81] Since benefit levels are often a percentage of preretirement income levels and since the public policy objective of providing adequate retirement income security for as many older persons as possible is not promoted by the extention of indirect tax benefits to affluent individuals, dollar limitations should be statutorily imposed on the level of benefits paid by private pension plans which qualify for favorable Federal income tax treatment. Imposing statutory or regulatory limits on the level of employer contributions to such plans would be a more actuarially difficult method of achieving the same end.

7. Employee Contributions to Private Pension Plans

While the Federal income tax laws allow voluntary employee contributions to qualified plans,[82] such contributions are subject to statutory limitations and are not deductible in computing taxable income for the taxable year in which such contributions are made.[83] The earnings from such employee contributions are, however, exempt from taxation until retirement.[84]

In order to encourage employee savings for retirement, NRTA-AARP believe that public policy should be changed to allow employee contributions to employer pension plans, whether or not qualified for favorable income tax treatment, to be deducted subject to reasonable limitations in computing adjusted gross income. The maximum amount of any such annual deduction should, however, be subject to reduction on account of employer contributions to tax qualified plans.

8. Fiduciary Standards

In order to eliminate a variety of publicized and documented ficuciary abuses,[85] such as party-in-interest transactions, double-dealing, manipulation and personal aggrandizement -- all of which threaten the security of the participants and beneficiaries of pension plan -- our Associations urge that the Welfare and Pension Plan Disclosure Act be amended to incorporate effective fiduciary standards designed to eliminate unethical practice and to provide for their effective enforcement. Plans should be established pursuant to a written trust agreement; contributions o such plans should constitute a trust for the exclusive purposes of providing benefits to plan beneficiaries and paying the reasonable costs of plan administration.[86]

Fiduciaries must be required to act solely in the interest of plan particpants and beneficiaries according to a prudent man standard and must refrain from engaging in any transactions which would conflict with the interests of such parties.[87] Transactions creating probable conflicts of interest should be specifically enumerated and prohibited. Any fiduciary who breaches his trust responsibilities by engaging in such transactions or otherwise should be personally liable for any losses resulting therefrom; with respect to co-fiduciaries, liability should

be joint and several.[88] The statutory definition of fiduciary should be broad enough to make subject to the prudent man standard, anyone who has or exercises any power of control, management or disposition with respect to plan assets or who has authority or responsibility in the plan's administration.[89] Finally, plan participants and beneficiaries and the designated Federal regulatory agency acting on their behalf should be allowed to bring civil actions in the Federal courts in order to redress breaches of fiduciary responsibility or to remove a fiduciary who has failed to carry out those responsibilities.[90]

9. Disclosure

In order to scrutinize properly the operations and statutory compliance of private pension plans, our Associations urge that the Welfare and Pension Plan Disclosure Act be amended to require that the annual financial report include an independent accountant's opinion of the plans financial condition based on his annual audit.[91] Moreover, such reports should include information more detailed than that presently required, particularly information with respect to plan funding methods and actuarial assumptions. The Federal agency, with which such reports are required to be filed, should in turn, be required to make an annual comprehensive and detailed report to Congress concerning the operation and financial condition of private plans.

The existing requirements of the Welfare and Pension Plan Disclosure Act with respect to the furnishing of information to employees should be expanded to require plan administrators to furnish to each participant at the time of his enrollment in the plan a summary of the plan's important provisions; such summary should be written in a manner calculated to be understood by the average man and should include an explanation of the participant's rights and obligations under the plan.[92]

Major plan amendments should be reported to plan participants and beneficiaries in a similar manner. Plan administrators should be additionally required to furnish to each participant on an annual basis a statement indicating whether such person has a vested right to pension benefits or the earliest date on which such right will vest, and the level of vested benefits which have accrued.[93] Finally, upon the termination of the employment of a vested plan participant, the plan administrator should be required to provide him with a statement of his rights and privileges under the plan.[94]

10. Individual Retirement Plans

Since private pension plans are an essential factor contributing to the retirement income security of older persons, it is unreasonable to require a retiree to subsist on social security or other public benefit payments merely because he failed to attain coverage or if covered, failed to receive benefits or if benefitted, failed to receive more than token amounts.[95] The private pension system should encourage both employers and employees to provide for worker security during retirement through the use of plans which qualify for favorable Federal income tax treatment. The right to use qualified plans with their incidental tax advantages was extended to owner-employees in 1962 by the Self-Employed Individuals Retirement Act;[96] the extension of a similar right to common law employees is long overdue.

Our Associations believe that existing tax laws substantially discriminate against the common law employee by depriving him of any incentive to save for his own retirement, thereby making his participation in a plan subject to employer caprice. While qualified pension plans of corporate employers or owner-employees function with respect to contributions and investment earnings under the shelter of income

tax deferment, any savings set aside personally by the common law employee for his retirement, must be out of income already subject to the income tax with the earnings from any such savings in turn subject to annual income taxation.[97] Public policy must be modified to encourage individual savings for retirement.

Each common law employee should be permitted to establish his own retirement plan, irrespective of the wishes of his employer. His contributions should be deductible within reasonable limitations in computing adjusted gross income, but subject to reductions on a dollar for dollar basis by: (1) the amounts which he or his employer on his behalf contributes to a qualified plan, and (2) the amounts which he contributes to a nonqualified plan. While it may be necessary to limit the financing of such plans to the use of government securities in order to eliminate potential abuse, if properly controlled, such plans could function as a means of providing an additional measure of retirement income security that would readily accommodate the reality of labor force mobility.

In view of this position, our Associations must generally support the proposal of section 3 of H.R. 12272, which would allow to individuals a limited deduction in computing adjusted gross income for amounts contributed to individual custodial accounts which they have established or to private retirement plans established by their employers. However, in considering the merits of such legislation, the Congress must consider the cost to the Federal Government in the form of reduced revenues and the proportion of employed persons who would have sufficient disposable income to avail themselves of the tax incentives.[98] While it may be argued that this legislative proposal would further complicate the problem of Federal budgetary deficits, the cost of the program might be completely offset by the long range savings in social welfare costs to

Federal, state and local governments.[99] Moreover, the treatment of employees covered by social security or railroad retirement and those not so covered must be equitable.

A final consideration upon which Congressional attention must be focused is the desirability of deferring tax liability until an individual's retirement. Even though the aggregate tax liability normally would be less and the net savings by the individual larger, under the tax deferment route, nevertheless, since retirement is usually a period of reduced income even the lower tax liability may be overly burdensome to the individual.[100] The current tax treatment of social security benefits under which employee's social security contributions are not deductible for income tax purposes while benefits are ot subject to tax , might seem to indicate that public policy favors the individual's settling the involved tax bill during his working years when his higher income generally affords him greater flexibility.[101]

V. Conclusion

Our Associations believe that the recommendations we have set forth with respect to the increased regulation of the private retirement system are both reasonable and realistic. We are firmly opposed to those interest groups which are resisting legislative attempts to improve the equity and financial soundness of the private pension system; we are also opposed to those who are advocating complete Government control. The ends of reform legislation in the private pension area must be increased retirement income security for the worker and continued growth and improvement for the private retirement system.

Our concern with the failings of certain aspects of the private retirement system should not be regarded as a blanket condemnation of that system. The recommendations we have made should serve to eliminate

existing inequities and should contribute to the strengthening and improvement of the entire system. While our remarks have been directed at private pension plans, their applicability to other components of the private retirement system, such as profit-sharing plans, should be limited only by the nature of these other components. We hope that the effect of enacted Federal standards will be to raise those plans found to be deficient to minimally acceptable levels. Anylegislation developed by Congress that does not operate to improve the overall equity and performance of the private retirement system and promote, rather than inhibit, its future growth would be in our judgment, a failure.

FOOTNOTES

[1] H. Brotman, FACTS AND FIGURES ON OLDER AMERICANS: THE OLDER POPULATION REVISITED, H. E. W. (Social and Rehabilitation Service and Administration on Aging) Pub. No. 182, P. 1, (1971).

[2] H. Brotman, THE OLDER POPULATION: SOME FACTS WE SHOULD KNOW, H. E. W. (S. R. S. AND AOA) Pub. No. 164, p. 3, (1971).

[3] H. Brotman, FACTS AND FIGURES ON OLDER AMERICANS: AN OVERVIEW 1971, H. E. W. (S. R. S. and AOA) Pub. No. 20005, p. 1, (1972).

[4] H. Brotman, FACTS AND FIGURES ON OLDER AMERICANS: INCOME AND POVERTY IN 1970 - ADVANCE REPORT, H. E. W. (S. R. S. AND AOA) Pub. No. 183, p. 4 (June, 1971).

[5] H.R. 1, 92d Cong., 1st Sess. (1971).

[6] Id. §102

[7] H. Brotman, FACTS AND FIGURES ON OLDER AMERICANS: AN OVERVIEW 1971, H. E. W. (S. R. S. AND AOA) Pub. No. 20005, p. 8 (1972).

[8] Levin, "Proposals to Eliminate Inequitable Loss of Pension Benefits," 15 VILL. L. Rev. 527, 528, (1970).

[9] Inland Steel Co. v. N. L. R. B., 170 F. 2d 247 (7th Cir. 1948), cert. denied, 336 U. S. 960 (1949).

[10] Id. at 251

[11] Labor-Management Relations Act § 2 (d), 29 U. S. C. §158 (d) (1969).

[12] It is interesting to note, in this regard, that during the 90-day wage and price freeze, between August 15th and November 12th, 1971, President Nixon's Cost-of-Living Council ruled that pension contributions by employers were to be subject to the same restrictions as direct wages.

[13] Pension and Welfare Plans, Hearings before the Subcommittee on Labor, Committee on Labor and Public Welfare, U. S. Senate, 90th Cong. 2nd Sess. 225 (1968) (hereinafter cited as "1968 Senate Hearings").

[14] 77 Cong. Rec. S 7604 (daily ed. May 11, 1972).

[15] 1968 Senate Hearings, supra note 13.

[16] "Employee-Benefit Plans in 1968," 33 Soc. Sec. Bull. 43, (Table 5) (April, 1970).

[17] Id.

[18] 33 Soc. Sec. Bull. 39 (Table M-5) (November, 1970).

[19] U. S. Dept. of Commerce, Bureau of the Census, Statistical Abstract of the United State 293 (1967).

[20] D. McGill, FUNDAMENTALS OF PRIVATE PENSIONS 21-23 (1964).

[21] Task Force for the Senate Special Committee on Aging, 91st Cong., 1st Sess., Economics of Aging: Toward a Full Share of Abundance - A Working Paper viii (1969).

[22] THE REVENUE ACT OF 1921, 42 Stat. 227 (1921).

[23] Norman, "Private Pensions: A Study of Vesting, Funding and Integration," 21 U.Fla. L. Rev. 141, 143 (1968).

[24] I. R. C. § 401 (a) (2).

[25] AMERICAN ENTERPRISE INSTITUTE, THE ADMINISTRATION'S PRIVATE PENSION PROPOSAL 3 (1972).

[26] I. R. C. § 404.

[27] I. R. C. §§ 402 (a), 403(a).

[28] I. R. C. §§ 401 (a), 501(a).

[29] See I. R. C. §§ 72, 402 (a), 403 (a).

[30] I. R. C. §§ 72 (a), (c), (d), (n).

[31] PRESIDENT'S COMMITTEE ON CORPORATE PENSION FUNDS AND OTHER RETIREMENT AND WELFARE PROGRAMS, PUBLIC POLICY AND PRIVATE PENSION PROGRAMS, A REPORT TO THE PRESIDENT ON PRIVATE EMPLOYEE RETIREMENT PLANS ii, 3 (Jan. 29, 1965)

[32] Based on a separation rate of 4.8 % of the total 1970 civilian labor force of over 82 million workers; this rate is slightly above the average annual separation rate of 4.7% from 1968-1970. MONTHLY LAB. REV., August, 1971, at 91 (Table 4), 98 (Table 15).

[33] MONTHLY LAB. REV. August, 1971, at 98 (Table 15).

[34] Levin, supra note 8.

[35] Finnell v.Cramet, Inc., 289 F.2d 409 (6th Cir. 1961); Schneider v. McKesson and Robbins, Inc., 254 F.2d 827 (2d Cir. 1958); Gorr v. Consolidated Foods Corp., 253 Minn. Repts. 375, 91 N.W. 2d 772 (1958).

[36] Frietzsche v. First W. Bank and Trust Co., 168 Cal. App. 2d 705, 336 P.2d 589 (1959).

[37] Webb v. Warren Co., 113 Ga. App. 850, 149 S.E. 2d 867 (1966).

[38] Smith v. Union Carbide Corp., 350 F. 2d 259 (6th Cir. 1965), rev'g. 231 F. Supp. 980 (E. D. Tenn. 1964); Bogda v. Cheverolet-Bloomfield Div., Gen. Motors Corp., 8 N. J. Super. 172, 73 A2d 735 (1950).

[39] Preliminary Report of the Private Welfare and Pension Plan Study, 1971, U. S. Senate Committee on Labor and Public Welfare (1971).

[40] The study included 87 plans, 51 of which had no vesting or vesting with 11 or more years of service, 36 of which had provisions for vesting after 10 years of less of service (Preliminary Report, at 8).

[41] Norman, supra note 23 at 149.

[42] SECURITIES ACT OF 1933, 48 Stat. 74.

[43] SECURITIES AND EXCHANGE ACT OF 1934, 48 Stat. 881.

[44] LABOR-MANAGEMENT RELATIONS ACT, 61 Stat. 136, 157 (1947), 29 U. S. C. § 186 (1964).

[45] Norman, supra note 23, at 146.

[46] WELFARE AND PENSION PLAN DISCLOSURE ACT OF 1958, 72 Stat. 997, 29 U.S.C. §§ 301-09 (1964).

[47] Norman, supra note 23, at 146.

[48] Id.

[49] WELFARE AND PENSION PLAN DISCLOSURE ACT AMENDMENTS OF 1962, 76 Stat. 35.

[50] Norman, supra note 23, at 146.

[51] I. R. C. §§ 401-404, 501-503.

[52] AMERICAN ENTERPRISE INSTITUTE, supra note 25 at 4.

[53] Id.

[54] Id.

[55] I. R. C. § 401 (a) (3)-(4) An owner-employer is an employer who owns an entire interest in an unincorporated business or a partner who owns more than 10 percent of either the capital or profits interest of a partnership.

[56] I. R. C. § 401(a).

[57] Congress enacted H.R. 10 as the Self-Employed Individuals Retirement Act of 1962, Pub. L. No. 87-792, 76 Stat. 809 to ameliorate the disparity between the tax treatment of owner-employee plans and the more favorable treatment of corporate employer plans.

[58] I. R. C. § 401(d)(3)

[59] Reg. § 1. 401-7(a)(1963); Rev. Rul. 421, 1969-2 Com. Bull. 59, 79.

[60] F. Griffin and C. Trowbridge, STATUS OF FUNDING UNDER PRIVATE PENSION PLANS 40 (1969).

[61] AMERICAN ENTERPRISE INSTITUTE, supra note 25, at 21.

[62] Id.

[63] C. Fischer, VESTING AND TERMINATION PROVISIONS IN PRIVATE PENSION PLANS 14-15 (1970).

[64] AMERICAN ENTERPRISE INSTITUTE, supra note 25, at 21.

[65] Id.

[66] I. R. C. § 401 (d) (2) (A).

[67] I. R. C. § 401 (a) (7).

[68] AMERICAN ENTERPRISE INSTITUTE, supra note 25 at 20.

[69] Id.

[70] Id.

[71] Id.

[72] H. R. 12272, 92d Cong. 1st Sess. (1971).

[73] S. 3012, 92d Cong., 1st Sess. (1971).

[74] H. R. 1269, 92d Cong., 1st Sess. (1971).

[75] S. 2, 92d Cong., 1st Sess. (1971).

[76] S. 3598, 92d Cong., 2d Sess. (1972).

[77] Reg. § 1. 401 (c)(2)(vi)(b).

[78] 59 Geo. L. Rev. 1299, 1322 (1971).

[79] Id., at 1324.

[80] I. R. C. § 404 (e).

[81] I. R. C. § 404 (a)(1).

[82] Rev. Rul. 185, 1959-1 Com. Bull. 86.

[83] I. R. C. § 262.

[84] Rev. Rul. 178, pt. 2 (b), 1965-2 Com. Bull. 94, 99.

[85] 77 Cong. Rec. S 7619 (remarks of Senator Taft) (daily ed. May 11, 1972).

[86] See S. 3598, 92d Cong., 2d Sess. § 509 (1972); H. R. 1269, 92d Cong. 1st Sess.§ 111 (1971).

[87] Id.

[88] See S. 3598, 92d Cong. 2d Sess. § 509 (1972).

[89] See H. R. 1269, 92d Cong. 1st Sess. § 111 (1971).

[90] Id. at § 106.

[91] See S. 3598, 92d Cong., 2d Sess. § 506 (c) (1972).

[92] Id. at § 507 (b).

[93] See H. R. 1269, 92d Cong., 1st Sess. § 105 (1971).

[94] Id.

95 59 Geo. L. Rev., supra note 78, at 1336.

96 Pub. L. No. 87-792, 76 Stat. 809.

97 AMERICAN ENTERPRISE INSTITUTE, supra note 25, at 13.

98 Id. at 17.

99 Id.

100 Id.

101 Id.

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The CHAIRMAN. Our next witness is Prof. Dan M. McGill, director, Pension Research Council, University of Pennsylvania.

We appreciate your being with us to help us in our deliberations.

We have been looking forward to your statement.

STATEMENT OF DAN M. McGILL, ECKER PROFESSOR OF LIFE INSURANCE, UNIVERSITY OF PENNSYLVANIA, PHILADELPHIA, PA.

Mr. MCGILL. I am aware of the time limitations under which you are operating. I do have a formal statement here that I would like to have included in the record at the end of my testimony.

It was a carefully prepared statement, although I did it over the weekend.

I hesitate to speak extemporaneously on some of these issues, but in deference to your schedule, I will do so and will attempt to leave some time for questions that you might have.

The CHAIRMAN. Very well. We will have your full statement in the record and certainly will study it completely and draw the attention of other members to it.

Mr. MCGILL. I did not prepare a summary; so I am looking at my paper and picking out the key points.

On the scope of the proposed legislation, if there are no constitutional barriers, I would much prefer to see this act applied to the retirement system for State and local government employees, as well as those of private employers. I feel there are tremendous problems involved in that area.

The pension research council has a manuscript at press that calls attention to many of the problems with retirement systems for public employees, and I feel that the principal standards contemplated by your legislation would be well applied to plans in the public area.

On vesting, I might read a page or two, because I did state this rather carefully.

The arguments in favor of early vesting are not as overwhelming as some advocates would have you believe. There are some perfectly respectable arguments in favor of restricting retirement benefits under a pension plan to long-service employees and even to those who remain with the employer until retirement. Within the limits of any given level of contributions to a pension plan, vesting prior to retirement is in competition with other desirable features that might be incorporated in the plan, including a lower retirement age, reduced discounts for early retirement, widows' benefits, disability benefits, and even the basic level of benefits at normal retirement.

To provide for vesting at any point in time short of actual retirement is to favor, to the extent of the cost involved, the interests of terminating employees over those who remain with the employer until retirement or the beneficiaries of those who die before or after retirement.

The prescription by law of a minimum vesting standard would encroach upon the essentially unfettered right of management and labor to decide how the available plan resources should be allocated among the various plan participants and among the various benefit features that could be embodied in a plan.

It would arbitrarily set a higher priority on one type of benefit than on others that might reasonably be provided and, in effect would, with respect to retirement benefits, place a higher priority on the interests of younger, short-service employees than on those of older, longer service employees.

In my mind, however, the arguments in favor of early vesting outweigh those against it. Moreover, I have now come to the conclusion that early vesting should be mandated through legislation or regulation.

I think the mandatory vesting can be justified on any one of three grounds: (1) equity; (2) difficulty of communicating to plan participants the consequences of nonvesting; and (3) the social role of private pensions.

To me the latter argument is especially compelling. It seems anamalous to many people that private pension plans should be expected to meet a public need.

However, examination of pension plan developments in Canada, the United Kingdom, and Western Europe provides ample evidence as to the complementary nature of public and private pension plans and to the public roles assigned to private pension plans in many of the countries.

I go ahead in the paragraph to indicate what that relationship has been in Europe.

In a book due off the press July 5, called "Preservation of Pension Benefit Rights," I set out what I regard to be the guiding principles of a program of mandated vesting.

I have attempted to analyze your bill within the framework of those principles that I developed in my mind over a long period of years of thinking about these problems.

The first principle is that the legislation should have the broadest possible scope, consistent with administrative feasibility and other regulatory objectives. Here I find your bill to fit that principle with the exception that you do not cover the plans of State and local governments. I am sure you have good reason for not doing so; but I wish you would, and I am delighted to see that you have applied it to collectively bargained, multiemployer plans, as well as to single-employer plans.

Aparently you have provided that it will apply to pay-as-you-go plans.

On the requirements for vesting, I have indicated the second principle is that up to a specified age, the mandated standard for vesting should recognize both age and service.

I happen to favor the rule of 50, but without the grading feature in the Treasury bill. I think it is a more flexible standard.

Under this standard, the benefits of any individual entering a plan at age 30 or above would vest in full within a maximum period of 10 years. With each increase of 1 year in the entry age of the participants, the required period of service would be reduced by 6 months. Individuals entering the plan below age 30 would have to offer more than 10 years of service, but they could expect to have many years of credited service ahead of them. An entrant as young as 20 would have to accumulate only 15 years of credited service to the meet the vesting requirement.

In any event, a nonvested termination of a young employee is not a matter of serious consequence, since his benefit accruals would tend to be small and he would have ample opportunity in the years ahead to earn vested benefit credits in other plans or to make alternate arrangements for his old-age financial needs.

I believe that your entry standard of 6 months is too short. I listened with great interest to the exchange that Senator Javits had with the Secretary of Labor on the interest of young people in pensions.

At the University of Pennsylvania we have found it very difficult to persuade young professors to participate in our pension plan, even though the University of Pennsylvania is willing to contribute a substantial sum of behalf of each participant. The professors below 30, or even older, are voluntarily giving up that contribution simply to avoid making a personal contribution to the plan.

So I really do not believe that people in their 20's are highly aware of pensions and are concerned about the possible loss of benefits during that particular stage of their lives. I think they get very much concerned about them later; and I believe that the rule of 50 or something similar would meet the objective that we all seem to have in mind.

The service to be recognized is the third principle, and there I indicate that the legislative vesting standards should recognize all credited service whether rendered prior or subsequent to enactment of the legislation.

I regard this to be a serious flaw in your generally excellent bill.

I think it is very important that the plan recognize service that has been rendered prior to enactment of the bill, not only for satisfaction of vesting requirements, but also in terms of the benefits themselves. It would take a whole generation of workers to have their benefits preserved under the bill as presently drafted.

Canada chose a compromise between the proposal I am making and the one in the bill, by recognizing past service for the satisfaction of the vesting requirements but vesting only the benefits that accrue in the future under the mandated standard.

I personally would like to see past service considered in full for benefit purposes as well as qualification purposes.

Limitation on benefits to be mandatorily vested:

I do not feel strongly on this point, but in view of the fact that I believe that social utility is a basic rationale for mandatory vesting, the amount of benefits preserved for any individual should relate in rough fashion to the public interest in that individual.

I suggest in my statement there should be some limit on the amount of benefits that would have to be mandatorily vested.

A fifth point I feel very strongly about, and there is nothing in your bill about it, is there should be a complete prohibition against cash withdrawals from a pension plan by a participant after his benefits have vested, except under special circumstances. In other words, employee contributions should be locked in; employer contributions are locked in. If we are really serious about preserving benefits for workers' old age, I think we have got to protect him against his own weakness.

It has been observed throughout the world that if you give an employee the opportunity to withdraw his contribution in cash upon termination of service, he will take that cash, even if it means that

he is sacrificing benefits purchased with employer contributions that have an actuarial value many times the value of the cash that he is getting back. Many countries have now placed limitations upon the withdrawal of cash.

The CHAIRMAN. On that withdrawal business, there has to be a companion feature to the retirement plan—a lot of withdrawals are made and there has not been vesting——

Mr. MCGILL. That may be so.

The CHAIRMAN. You are employed in a place 5 years, and vesting does not begin for 8 years.

If you leave at that point, there is no incentive to keep it in.

Mr. MCGILL. That is true.

Unfortunately, most of the contributory plans use what we call conditional vesting. I do not care for it, but it happens to be a fact that if the plan is contributory and the terminating employee exercises his right to withdraw his own contributions, the benefits purchased with employer contributions will be divested. Even in the face of that, they will almost invariably withdraw their own money. There have been instances of people in their sixties within 2 or 3 years of retirement who will take out their money and give up all of the pension that has accrued.

I am delighted to see that the bill does require documentary evidence of vested rights when a participant leaves a plan. That is not the general practice today. I think it is a great oversight in plan draftsmanship.

On the mechanism for preserving benefits, I am distressed to hear all the talk about portability, because I do not believe that most people—and I say this with all respect—really know what they mean by "portability." I regard portability to be a part of a broad subject of preservation of pension benefit rights, and I feel there are only two ways of preserving benefits: through vesting or reciprocity.

Portability is nothing but a way of implementing a vesting provision. It is not something that is separate and apart from vesting. I feel that vested benefits ought to be preserved in only one of two ways, by retaining a deferred claim against a plan with documentary evidence of such claim or by the purchase of annuities from life-insurance companies.

What most people seem to mean by portability is that a terminating employee would be permitted to take the actuarial value of his accrued benefits and transfer it to a successor employer. That sounds fine in principle, and I endorse the concept, but there are some real actuarial problems involved in that. Such a procedure would have to be put under the direction of the Secretary of Labor, and he would have to issue rules and regulations as to the basis under which benefits could be transferred from one plan to the other, including actuarial assumptions that would be used.

It would not permit the benefits to grow over time through investment in equities, for example, an objective long espoused by Professor Bernstein.

As I read the bill, the benefits would simply be frozen at the level at which they had been vested, and it would be another complicated way of trying to preserve benefits. I do not think it is necessary. I see nothing particularly wrong about it, except it just is not needed and would

complicate the administration of the law. So I do not favor even the voluntary portability title that is in the bill.

The final bill is one that is very similar to the one I just advanced, and that is the vested benefit of a terminating participant should be fixed in amount at the point of termination. In fact, it is asbolutely necessary for it to be fixed under many types of benefit formulas. In my prepared statement, I go ahead and indicate that it is a part of the concept of whether or not a vested benefit should grow over time. There are those who believe that the employer, in taking on a new worker, should grant retroactive benefit increases to the person for service rendered to another employer. I just do not believe that is applicable to the American employers at the present time.

So I think that the individual's benefits should be fixed at the point of vesting and he should be given a certificate, setting out the amount of vested benefits, when they will be due, how he collects them, and so forth.

I also believe—which you will see in a few moments—that these promises should be protected by mandatory funding standards and possibly even with termination insurance.

This is all I have to say on the vesting part of the bill.

On funding, I have long been an advocate of adequate funding and have long been an advocate of mandatory standards of funding. The principal criticism I find with your bill in this regard is that you would permit too long a period for the funding of the initial or accrued liability. You would permit 40 years. This is strictly a matter of judgment, but I think 30 years is long enough. Even 25 would not be too bad.

I like the idea that you would require funding of any experience deficiency within 5 years; that is a very ingenious technique for checking on the appropriateness of the actuarial assumptions.

I am a little concerned that you seem prepared to make an exception for collective bargaining multiemployer plans. These are very important plans. They cover millions of employees. They serve a need that cannot be met in any other way, as I see it. Yet, many of them are funded on what most experts would regard to be an inadequate basis, just meeting the normal costs currently and paying only the interest on past service liability.

If the plans were to continue in operation in perpetuity this rate of funding would obviously be adequate. On the other hand, if they do not fund the unfunded liability and the plan eventually terminates, someone will be left holding the bag. While it would create some problems for certain multiemployer plans, I feel that the multiemployer plan should be forced to conform to the same standards as single employer plans. Certainly a 40-year standard would not be unduly burdensome, and even a 30-year standard would not cause disruption in most of the plans.

You might have to grant transitioned extension for some of the plans that are inadequately funded, but there are some plans, some nationally known, that do not have enough money to pay benefits to people in a retired status. In other words, the assets in those plans are less than actuarial value of benefits payable to retired people.

I would not favor a provision giving the Secretary of Labor the authority to set the actuarial assumptions to be used in these funding standards. Enforcement of the proposed standards would admittedly

pose a problem. I personally would start out by putting the responsibility on the actuaries servicing the plan. There shall be a system of accreditation of actuaries, or certification as you call it.

I would promulgate a standard of funding, for example that would contemplate the funding of normal cost on a current basis, each layer of supplemental cost over a 30-year period, and experience deficiencies over a 5-year period. I would require a certification from an accredited actuary that the assumptions made and funding policy actually being pursued by the employer are in conformity with the articulated standards. The actuary would be putting his professional reputation and integrity on the line; if he abuses the trust, appropriate sanction could be applied, including loss of accreditation.

I believe most plans are well funded today and are getting adequate actuarial advice; but this is such an important matter that I believe it should be made a matter of mandate.

Finally, on the plan termination insurance, I have indicated there are two issues:

One, do we need it?

Second, is it feasible?

I do not know at the moment whether we need it. You probably ought to wait on this phase of the legislation to see the results of the study being made by the Treasury and the Department of Labor. There is no question that plans do fail and people do lose some benefits; and that is always regrettable.

The only question is whether losses are being sustained on a large-enough scale to justify the administrative bureaucracy that would have to be set up to operate a program of plan termination insurance. I personally am prepared to accept such a program if the data show that there is a need for it.

As to its technical feasibility, I think it is feasible. I know many people disagree, but I have given a good deal of thought to this and have concluded that a system could be made to work. While your bill is rather sketchy on some of the technical details, it would appear that you have incorporated the essential characteristics that would be needed, particularly the obligation of a continuing employer to make good on any funding delinquencies and also to reimburse the plan termination organization for any benefits paid in respect of his plan, to the extent it would not encroach unduly upon his surplus.

The proposed premium of two-tenths of 1 percent would seem to be realistic, although no one can demonstrate conclusively at the present time what the proper rate should be. The rate would have to be adjusted from time to time to reflect actual experience.

Mr. Chairman, that concludes my remarks. I would be happy to answer any questions you might have.

The CHAIRMAN. Of the proposals brought to us from the administration by the Secretary, the rule of 50, without funding, leaves me a little breathless.

It seems to me that this is preserving just the system we have now of good promise, but hazardous performance.

Mr. MCGILL. I believe in funding. I not only believe in it, I think it ought to be required. A very comprehensive study of funding carried by the pension research council a few years ago suggested that the level of funding was very high. Virtually all the plans in the

survey were being funded in accordance with the benchmarks of adequacy postulated by the investigators, Messrs. Griffin and Trowbridge. Nevertheless, funding is such an important consideration, it should not be left to the option of the employer. There must be some objective standards. The standards that you are proposing would not be burdensome. In fact, I do not think they are strict enough.

The CHAIRMAN. But for a meaningful program, you just have to have, it seems to me, a marriage here with vesting of funding——

Mr. MCGILL. That is right. Vesting without funding means very little.

The CHAIRMAN. That is really the way it seems to me. I was rather surprised that there was no provision at all for mandatory funding under the administration's proposal.

Mr. MCGILL. The problem all along has been that of determining how to enforce the mandated standards. There is also the opposition of the actuarial profession. Actuaries as a body have felt that mandatory standards of funding would lead to promulgation of assumptions by some administrative official and they are dead opposed to that. I think they have reason to be. But I would promulgate the standard, set up a system for accrediting actuaries, and then rely upon the integrity and professional expertise of the actuaries to certify—under oath if necessary—that the plans under their surveillance are being funded in accordance with standards laid down in the law.

I do not think you would have any problem.

The CHAIRMAN. I do not believe there is an absence of actuarial talent for guidance on private pension plans, but despite all the actuarial talent in the world, application of its principles are unavailable when plants merge, or a plant closes and there is termination of the pension fund. I just see almost a total absence in studies of this phenomenon. How many private pension plans are in this country? About 40,000. From our sampling the evidence we have is that there is no orderly respected insurance program for terminations.

Mr. MCGILL. There is not. I am sure that practically all plans are meeting their normal costs currently. They have that obligation under Treasury regulations. The problem is how to deal with initial unfunded accrued liability and supplemental costs created by retroactive benefit increases. The goal of 100 percent funding is simply a goal. It is not one that can easily be achieved because of continued increases or liberalization of the plan creating additional supplemental costs which then would have to be funded over a 30- or 40-year period.

So if any plan fails or terminates, there is likely to be some deficiency in the amount of assets compared to the accrued liability. It is almost inevitable. That is why you have included plan termination insurance.

The CHAIRMAN. Do you find many plans that are content to contribute to the fund on an annual basis only enough to pay current costs?

Mr. MCGILL. No one really knows, Mr. Chairman.

The CHAIRMAN. What would you think of a plan that was proceeding under that limited head of steam?

Mr. MCGILL. What do you mean? A plan that is paying only the benefits that are due or normal cost?

The CHAIRMAN. Yes.

Mr. McGILL. Pay-as-you-go financing is unsatisfactory.

The CHAIRMAN. It is not adequate financing and funding of the pension plan; is it?

Mr. McGILL. In my opinion, it does not provide adequate security for participants in the pension plan to operate on a pay-as-you-go basis, if that is what you are referring to. If the plan sponsor is a very large corporation and it continues in existence, there is no question about employees getting their benefits. But if the firm were to go out of business—and some large ones do from time to time—there would be no security——

The CHAIRMAN. They are not going to terminate. Some I am thinking of, their activity in life will go on long after we are gone; but in the flux and evolution of antitrust laws, they might change character considerably. In certain events, with a change under the law, there could be a wipeout of benefits.

Mr. McGILL. I have written a whole book on that subject called "Fulfilling Pension Expectations."

I firmly believe that the real security behind the pension problems are dollars segregated for that purpose. I think most employers feel the same way. I think most of them are following a very responsible policy of funding their pension obligations. Some are not.

Your legislation would force all to follow a reasonable standard. I take it that you do plan to outlaw "pay-as-you-go" plans. You did not say so specifically, but I gather that is the intent.

I doubt that there are more than a few hundred basic plans in this country being financed on a pay-as-you-go basis, but many supplemental plans are financed in that manner. In my view, it would be a progressive step not to permit the operation of pay-as-you-go plans.

The CHAIRMAN. Nobody has talked about the investment practices; under the fiduciary section of our bill there are different kinds of prudent man tests.

What do you think of the new prudent man test in our bill?

Mr. McGILL. I feel less qualified to speak in these areas. I would say three things: I endorse the principle of meaningful disclosure. Second, I subscribe to the proposition that any person who handles funds of the pension plan should act solely in the interests of participants and beneficiaries and, in general, comport himself in accordance with the accepted standards of fiduciary conduct. I also support the notion of a Federal standard of fiduciary conduct for persons administering pension and welfare funds.

My experience has been too limited in the investment area to have any meaningful opinion, but as far as I am concerned, I see no problems there.

I would support your legislation. Yet, I have heard others say it would impose an intolerable burden on persons connected with private pension plans and with the investment of the funds, and I would simply say that I am sure you will be hearing some of those people——

The CHAIRMAN. From what discipline in this area did this come from, lawyers or trust officer?

Mr. McGILL. Lawyers and trust officers; yes. Those are the people you should hear——

The CHAIRMAN. You have discussed this with them?

Mr. MCGILL. Not in connection with this testimony.

The CHAIRMAN. There is the new language, "the fiduciary shall discharge his duties with respect to the fund," and so on, "under the circumstances then prevailing that a prudent man, acting in a like capacity and familiar with such matters, would use in the conduct of enterprise of a like character and with like aims."

Mr. MCGILL. That seems acceptable to me.

The CHAIRMAN. Where has this particular test ever been applied and tested in courts of law, do you know?

Mr. MCGILL. I do not know that it has. That is one of the concerns, of course.

The STAFF. Every State has common law——

The CHAIRMAN. This is not common law.

Let us pursue this a little further.

I was honored and most fortunate to be invited up to a gathering in New York hosted by one of the great insurance companies of our country; and there we heard a description of a pension plan where part of its investment was in not just retirement housing, but housing with ancillary aspects, such as summer vacation use.

I just wondered if this definition would permit the plan administrator to go into such an investment in housing, for example, good retirement housing, maybe with a clinic and rehabilitation center.

Mr. CUMMINGS. If I could, I could give you some background as to what the concerns were that developed this language.

As you correctly said, the common law notion was simply a prudent man.

The CHAIRMAN. And for his own account.

Mr. CUMMINGS. For his own account.

The CHAIRMAN. That is very dangerous, I would think.

Mr. CUMMINGS. The problem we had to face was this was an industry in which you had a lot of people who were professionals and extremely experienced, and then you had some people who were trustees who had never been a trustee before or never invested any money before or knew anything about it; and what we were concerned about was the possibility that a man could plead his own inexperience and incompetence as a defense, so that we said the care under the circumstances then prevailing, that a prudent man, acting in like capacity, and familiar with such matters, would use in order to prevent a man who had no experience, no knowledge, and no confidence, to say, given the kind of idiot I am, I was very prudent; and we did not want that to be the defense, that kind of defense.

I would think that Professor McGill, being familiar with the professional corporate trustees, I would think that those people who had expressed some concern about this standard probably ought to like it simply because it would kind of get the amateurs out of the business.

What would your reaction be to that?

Mr. MCGILL. I think it would have that effect.

The CHAIRMAN. Either that or run up a double account here; the amateur who happened to be placed in the trustee position would then have to hire a professional——

Mr. GORDON. Or have to obtain sizable malpractice insurance.

The CHAIRMAN. Is there such insurance?

Mr. MCGILL. No. The National Foundation of Health and Pension Plans has been trying to develop a suitable policy with Lloyds of London, or an American company, to insure trustees of jointly administered trusts against their incompetence and bad judgment; but they have not been able to obtain a policy that meets all the risks involved.

You will hear from many experts on this particular language. It does not bother me, but it may bother others.

The CHAIRMAN. This other factor, though, has been brought to us and will be brought to us again, the nature of investment that releases a benefit in addition to a check in the mail.

Some call it the social benefit plus the——

Mr. MCGILL. It is a very interesting development.

The CHAIRMAN. It is French.

Mr. MCGILL. Yes.

The CHAIRMAN. It is broader than I am familiar with.

One of their vacation retirement places is in Corsica. I have observed it and I know of it. We have got it in a film that describes very accurately the full dimension of a way of life in retirement for the people who happen to be the beneficiaries under that particular pension plan.

Mr. MCGILL. Yes. I know something of it. It is a very interesting development. I think you should probably go over and inspect it.

The CHAIRMAN. I agree, I have inspected the city housing, but I have not been to the other part.

Anything else for the record at this point?

Mr. Cummings?

Mr. CUMMINGS. Professor McGill, you are in favor of licensing actuaries, but not of regulating their actuarial standards; is that correct?

Mr. MCGILL. There is a difference. I said I do not favor governmental specifications of actuarial assumptions.

Mr. CUMMINGS. It is a fact, is it not, that the accounting profession would probably best be the closest analogy, is licensed as CPA's, and further their accounting board does promulgate accounting standards which have vitality of what is called "generally accepted accounting principles"?

Mr. MCGILL. Yes, sir.

Mr. CUMMINGS. Would you not think in addition to merely licensing that some generally accepted actuarial principles ought to be afloat somewhere?

Mr. MCGILL. For several years, the Society of Actuaries has had a committee of pension practitioners trying to develop such a set of principle, and not been able to complete the task thus far. There should be a set of generally accepted actuarial principles in the pension sector.

Mr. CUMMINGS. Neither of us are actuaries. If we wanted to put out a shingle tomorrow and said, the McGill Actuaries——

Mr. MCGILL. I do not think it should be that way.

Mr. CUMMINGS. If you want to set up actuarial assumptions that everybody is going to die at age 64, you can bet your bottom dollar your funds will be solvent and there is nothing in the law to prevent that.

Mr. MCGILL. That is right.

Mr. CUMMINGS. You said employees should not be permitted to withdraw their money; in essence, as I recall, your exact words were: "You have to protect the worker from his own weakness or his own lack of foresight."

Mr. MCGILL. That is right.

Mr. CUMMINGS. You also said when you were talking about vesting that with regard to the average worker in his twenties, maybe early thirties, it was very, very difficult to get him to worry about a pension.

Mr. MCGILL. That is right.

Mr. CUMMINGS. Do you not think we ought to protect him from his own weakness just as well and make him accrue pensions at that point in lieu of some other form of income just because he lacks the foresight?

Mr. MCGILL. I subscribe to the general principle of forced savings, but I think he has got a long time ahead of him; and, actually, the compensation of what he will earn later in life will accrue pensions at a more rapid rate. So I do not think it is necessary to start at age 21. I agree with you that in theory there is no reason why every employer should not make some contribution toward an employee's old-age economic security.

Mr. CUMMINGS. I will ask a question on this hypothesis.

You said he would be earning at a higher rate later?

Mr. MCGILL. Yes.

Mr. CUMMINGS. If a worker starts at 30 and works until he retires at 65 in the same job, he is going to vest under any of these bills.

Mr. MCGILL. Yes.

Mr. CUMMINGS. The worker who gets the benefit from the rule of 50, the fellow working along on a nice, attractive job and suddenly in his late forties or fifties loses that job and has to go find another one, when he finds that other one, typically, the job he is finding is going to pay him less; is that not a fact?

Mr. MCGILL. I do not know. I would think there is that possibility.

Mr. CUMMINGS. If that is a possibility, then the employment in which he is vesting under the rule of 50 may well be the least remunerative employment, and therefore, probably even on a vesting schedule as quick as the rule of 50, at that age would generate a lower pension than it would on his earlier and higher wages.

Mr. MCGILL. I think you are talking about people who would not have vested in some other plan and would be seeking employment around 50 and would be completely dependent at that period of time——

Mr. CUMMINGS. Exactly. That is just the fellow who the Secretary of Labor was talking about in his testimony.

Mr. MCGILL. Unfortunately I did not hear his testimony and cannot comment on it.

Mr. CUMMINGS. I take it you like the hypothesis that when the fellow, if he has to find another job at the age of 50, would already have earned a couple of pieces of pensions partially vested?

Mr. McGILL. Yes; I do.

Mr. CUMMINGS. That is less likely under the rule of 50.

Mr. McGILL. Not necessarily; for any entry age above 30 he will achieve a vested status much more rapidly under the rule of 50 than under your bill.

Mr. CUMMINGS. I think you ought to look at the chart. I am not talking about your pure 100-percent rule of 50. The administration bill, first of all, excludes all service between the ages of 20 and 30 and excludes the first 3 years, regardless of when you are hired. So if you are hired at 30——

Mr. McGILL. I would concede right off that there is going to be a period of time, a period of service, that will not be recognized for benefit purposes under the rule of 50. However, I am not arguing for the Treasury rule of 50. My rule of 50 is a different one. I would not exclude that service before 30.

Mr. CUMMINGS. If you were hired at the age of 30, under the rule of 50, as I read it in the bill, the first vesting you would get would be at the age of 45, when you would be 80-percent vested in 12 years of service, which is to say 15 years later, which is to say if you had worked 14 years beginning at the age of 30, and lost your job for any reason, you would get nothing.

Mr. McGILL. That is under the Treasury——

Mr. CUMMINGS. That is under the Treasury bill.

Mr. McGILL. I was espousing the concept of a standard that would recognize both service and age and would exclude perhaps no more than 3 years of service and would provide for full vesting when the required number of points are accumulated. That is the type of vesting standard I would like to see. That is not the same thing as the Treasury rule of 50.

Mr. GORDON. I want to ask one question on the "locking in," because I agree it is a very important issue. And, as you know, there has been a lot of discussion on both sides.

Would you not agree with me that if we were going to put in a requirement that employee contributions be "locked in," that is, cannot be withdrawn, that it is absolutely indispensable that the employee be given a tax deduction for that contribution?

Mr. McGILL. Not necessarily. I favor a tax deduction for employee contributions up to some reasonable limit. I do not believe that it would necessarily follow that he would have to get a tax deduction before his contributions should be "locked in."

Mr. GORDON. Do you not think it would be unfair that the employer gets a tax deduction for his contribution to the pension plan, and under present law, the employee does not get a tax deduction for his, perhaps equal, contribution to the pension plan, and now, on top of that, you are going to lock him in so he cannot get that money back except at age 65.

Is it not almost indispensable to make that scheme work, that there must be a tax deduction for that employee's contribution in the interest of tax equity?

Mr. McGILL. It is true that in some of the countries that lock them in there is deductibility of employee contributions. In my own mind, I have not associated—I have not felt that they had to be linked.

The CHAIRMAN. What is the business accounting—having had a tax deduction at the time, it is withholding on the employer's part and withdrawal by the employee—what is tax accounting for the company at that point?

Mr. MCGILL. The company cannot recover its contributions until it has satisfied all obligations under the plan.

Mr. GORDON. Withdrawing the employee's contribution results in forfeiture of the employer's contribution, even if vested.

The CHAIRMAN. It relieves the employer of some kind of burden. I wonder if there is any accounting for that relief. He has taken and——

Mr. MCGILL. It simply reduces the future contributions of the employer and any future tax deductions. The employer does not gain anything taxwise from forfeiture of employee money. It reduces the overall financial burden on the employer.

The CHAIRMAN. That is right.

The employer has had the advantage earlier.

Mr. MCGILL. No question about it.

Mr. GORDON. There are plans which are contributory, quite a few, in which the employee contributions are required as a condition of employment.

Mr. MCGILL. You are right.

Mr. GORDON. He is required as a condition of employment to contribute, and, on top of that, in order to protect him, as you say, against his shortsightedness, you lock him in, but he still has to pay tax on that money which he cannot touch.

It seems to me if you are going to go down that road—and I do not disagree with it—I think it is the road to follow—that there has to be some kind of equitable tax treatment for that employee.

Mr. MCGILL. I would like to see that, personally.

The CHAIRMAN. Point well established.

(The prepared statement of Mr. McGill follows:)

Testimony Presented before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare Concerning S.3598, Retirement Income Security for Employees Act of 1972

By

Dan M. McGill
Ecker Professor of Life Insurance
University of Pennsylvania
Philadelphia, Pa.

June 20, 1972

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My name is Dan M. McGill. I am Chairman of the Insurance Department of the Wharton School of the University of Pennsylvania, where I hold the Frederick H. Ecker Professorship of Life Insurance. For the last twenty years I have devoted most of my academic research to private pension plans, with the primary objective of enhancing their equitable character and strengthening their financial structure. In the process I have written four books on the subject of pensions, all dealing directly with the issues now being considered by this Subcommittee. Two of the books, Guaranty Fund for Private Pension Obligations and Preservation of Pension Benefit Rights are especially relevant to your deliberations. An earlier book, published in 1962, and entitled Fulfilling Pension Expectations, capped off an extensive inquiry into the security behind benefit expectations that produced a total of five books. As Chairman and Research Director of the Pension Research Council of the Wharton School, I have been responsible for the publication of fifteen books on the subject, including one now in press dealing with Retirement Systems for Public Employees.

I am appearing today at the request of the Subcommittee staff on very short notice and with insufficient time to deal adequately with the many complex issues embodied in the proposed legislation. I am appearing here as an individual speaking for no organization. I emphasize that I do not purport to speak for the Pension Research Council, the members of which hold divergent views on many issues confronting the private pension institution today. I know that several members of the Council do not share some of the views that I will express before this body.

Overall View of Private Pension Movement

Before addressing myself to the major issues in the proposed legislation, I should like to state that I am a strong advocate of the private pension institution and believe that it has made impressive progress during the last thirty years with

only minimum federal and state regulation. Private pension plans now cover about one-half of the private non-agricultural work force and have accumulated more than $140 billion in assets to meet the benefit obligations accruing under the plans. Almost five million retired workers are receiving $8 billion a year in benefits from the plans. A Pension Research Council study of the funding practices of a large, diversified sample of private pension plans indicated that as a group the plans were extremely well-funded, many having more assets than their accrued benefit liabilities. The same study showed that 81 percent of the accrued benefits in the sample plans, measured in terms of their associated actuarial liabilities, had already vested. Other studies, including those of the Bankers Trust Company, have shown a strong trend toward more liberal vesting. Virtually all plans today vest benefits prior to normal retirement age and the great majority vest them with no more than fifteen years of credited service.

Thus, I do not share the views of those who believe that private pension plans are a "cruel hoax" perpetrated on an unsuspecting labor force. I believe that without further legislation or regulation the great bulk of pension plans would continue to be operated in a responsible manner and would meet the benefit promises that they have actually made. Unfortunately, the promises have not always been clearly communicated to the participants, leading to pension expectations that may not be fulfilled. A case in point is failure to indicate the circumstances under which the expected benefits would not be paid. Despite the generally healthy condition of the private pension institution, I believe that there are a sufficient number of soft spots in the structure that some additional legislation is needed. The proposed legislation addresses itself to the major areas of potential strengthening but not always in a manner to which I can subscribe.

Scope of Proposed Legislation

The proposed legislation would not apply to any plans administered by the Federal Government or by the government of any state or a political subdivision thereof. Unless there are constitutional barriers to Federal regulation of retirement systems for state and local government employees, I would strongly urge that such plans be brought within the scope of any legislation that might be enacted. There is a general consensus among knowledgeable persons that retirement systems for public employees are much more in need of regulation than the plans of private employers. As a group, public employee retirement systems are inadequately funded, poorly designed, and subject to unsound political manipulation. The vesting provisions of many such plans are far less liberal than those of private plans and those being proposed in this legislation. It would be a constructive step to force plans for public employees to conform to the same vesting and funding standards made applicable to plans of private employees.

The proposed legislation would exclude plans with no more than twenty-five employees. This exclusion was probably intended to conform the legislation to the Federal Welfare and Pension Plans Disclosure Act. If legislation is to be enacted, it should be made applicable to all plans that lend themselves to administrative supervision. While it would greatly add to the supervisory burden, I would suggest that the Act be made applicable to plans covering more than ten employees.

Vesting

The arguments in favor of early vesting are not as overwhelming as some advocates would have you believe. There are some perfectly respectable arguments in favor of restricting retirement benefits under a pension plan to long-service employees and even to those who remain with the employer until retirement. Within

the limits of any given level of contributions to a pension plan, vesting prior to retirement is in competition with other desirable features that might be incorporated in the plan, including a lower retirement age, reduced discounts for early retirement, widows' benefits, disability benefits, and even the basic level of benefits at normal retirement. To provide for vesting at any point in time short of actual retirement is to favor, to the extent of the cost involved, the interests of terminating employees over those who remain with the employer until retirement or the beneficiaries of those who die before or after retirement. The prescription by law of a minimum vesting standard would encroach upon the essentially unfettered right of management and labor to decide how the available plan resources should be allocated among the various plan participants and among the various benefit features that could be embodied in a plan. It would arbitrarily set a higher priority on one type of benefit than on others that might reasonably be provided and, in effect would, with respect to retirement benefits, place a higher priority on the interests of younger, short-service employees than on those of older, longer service employees.

In my mind, however, the arguments in favor of early vesting outweigh those against it. Moreover, I have now come to the conclusion that early vesting should be mandated through legislation or regulation. I think that mandatory vesting can be justified on any one of three grounds: (1) equity, (2) difficulty of communicating to plan participants the consequences of nonvesting, and (3) the social role of private pensions. To me the latter argument is especially compelling. It seems anomalous to many people that <u>private</u> pension plans should be expected to meet a <u>public</u> need. However, examination of pension plan developments in Canada, the United Kingdom, and Western Europe provides ample evidence as to the complementary nature of public and private pension plans and to the public roles assigned to private pension plans in many of the countries. In fact, in some countries it is difficult to distinguish sharply between public and

private plans. In all countries there is a demonstrable relationship between the level of benefits provided under the national old-age insurance program and the scope and adequacy of benefits available under privately established plans. If benefits under the national program are relatively low, private plans will and do play a prominent role and provide relatively liberal benefits. On the other hand, if the benefits under the national program are generous, private pension plans will be less important and provide smaller benefits. If the national old-age insurance program of the United States, which provides substantially universal coverage of all gainfully employed persons and complete portability of benefit credits, is not to preempt the function of providing old-age economic security, private pension plans must expand the scope of their coverage and preserve a greater proportion of the currently accruing benefits.

In the concluding chapter of my book Preservation of Pension Benefit Rights I set out what I regard to be the guiding principles for a program of mandated vesting. These guidelines can serve as a convenient framework for my comments concerning the vesting section of the proposed bill (Title II, Part A).

Scope

The first principle is that the legislation should have the broadest possible scope, consistent with administrative feasibility and other regulatory objectives. It should apply not only to corporate and union plans but also to plans of state and local governments. It should apply to both funded plans and those financed on a pay-as-you-go basis. Finally it should apply to collectively bargained, multiemployer plans as well as to single employer plans.

The proposed legislation conforms closely to this guiding principle. If I have read the bill correctly, it would cover all the groups that I suggest except plans of state and local governments.

Requirements for Vesting

The second principle is that up to a specified age the mandated standard for vesting should recognize both age and service. A standard based on service alone could require an individual to serve repeated qualifying periods even when job changes occur late in life. On the other hand, qualification on the basis of age alone can be too liberal unless the age is set rather high, in which event it might not adequately protect the interests of the younger employees. Various combinations of age and service could be satisfactory but an especially appealing approach is one that uses the so-called point system. Under this approach an individual's accrued benefits would vest whenever any combination of credited service and attained age equals a specified number, such as 45, 50, or 55. Such an approach tends to give priority in the vesting process to the benefits of those closest to retirement, the group most vulnerable to adverse economic developments. This is so since the older the participant, the shorter the period of service required. The vesting process is accelerated for all employees since both increasing age and service operate to reduce the remaining period of service needed to achieve a vested status.

I happen to favor the Rule of 50, with a probationary period of three years and benefits vesting in full upon satisfaction of the rule. (A variable probationary period, such as three years under age thirty, two years for ages thirty through forty-four, and one year for ages forty-five and over might be preferable to a flat three-year period.) Under this standard the benefits of any individual entering the plan at age thirty or above would vest in full within a maximum period of ten years. With each increase of one year in the entry age of the participants, the required period of service would be reduced by six months. Individuals entering the plan below age thirty would have to offer more than ten years of service, but they could expect to have many years of credited service ahead of

them. An entrant as young as twenty would have to accumulate only fifteen years of credited service to meet the vesting requirement. In any event, a nonvested termination of a young employee is not a matter of serious consequence since his benefit accruals would tend to be small and he would have ample opportunity in the years ahead to earn vested benefit credits in other plans or to make alternate arrangements for his old-age financial needs. For individuals entering the plan at ages younger than thirty the cost of vesting on the Rule of 50 standard would be less than that of the standard proposed in S.3598.

It follows from the foregoing comments that I would not favor the vesting standard proposed in S.3598. It is based entirely on service and proposes a probationary period of six months after age twenty-one. That, in my judgment, is entirely too short. While the grading feature would soften the cost impact and prevent an abrupt change in status from fully nonvested to fully vested, it would introduce administrative complications that might outweigh the advantages associated with it. Thus far, management and labor have evidenced a strong disinclination to using graded vesting.

Service to be Recognized

The third principle is that the legislated vesting standard should recognize all credited service whether rendered prior or subsequent to enactment of the legislation. Otherwise an entire generation of workers would have to retire (or otherwise pass from the scene) before all vested participants would have the whole of their benefits preserved. This is both unreasonable and from a cost standpoint unnecessary. In a pension plan with a representative age, service, and sex distribution and moderate turnover, the long-run cost of adopting Rule of 50 vesting (as compared to no vesting prior to retirement) with full recognition of service rendered prior thereto, would be on the order of 1 percent of covered payroll.

Thus, it seems unfortunate that the proposed legislation would recognize only service rendered after the effective date of the law. Apart from the merits of the case, this decision led the legislative draftsmen to propose the cumbersome and unnecessary option of dividing the pension plan and its associated trust into two components--the "continuing plan" and the "new plan." At the very least, the legislation should require recognition of all credited service, both pre-enactment and past-enactment, toward satisfaction of the vesting conditions, with only past-enactment benefits being mandatorily vested. That was the compromise approach adopted in Canada when vesting at age forty-five after 10 years of service was mandated.

In order to permit an orderly adjustment to the incremental cost of a mandated vesting standard, the effective date of the provision should be set three years after date of enactment of the law. Employees should be given an opportunity to adjust wage rates to reflect the higher cost of liberalized vesting, whatever it might turn out to be for a particular firm.

Limitation on Benefits to be Mandatorily Vested

The fourth principle is that there should be a limit on the amount of monthly pension income that would have to vest in accordance with the terms of the minimum standard. If social utility is to be the basic rationale for mandatory vesting, the amount of benefits preserved for any given individual should relate in rough fashion to the public interest in that individual. Presumably, the primary public concern is that the individual have enough old-age income, including that from Social Security, that he will not become a charge on society. This suggests that the mandatory standard should preserve only enough benefits to assure a modest standard of living during the retirement years. The limit might be expressed in terms of a specific dollar amount, for each year of service or as a composite benefit irrespective of the years of service, or as a specified percentage of compensation for each year of service.

Under the proposed legislation, there would be no limit on the amount of accrued benefits preserved. This is not a serious oversight but it would make sense to limit the reach of the mandatory vesting provision.

Prohibition Against Cash Withdrawals

The fifth principle is that there should be a complete prohibition against cash withdrawals from a pension plan by a participant after his benefits have vested, except under special circumstances. The prohibition would be aimed primarily at the withdrawal of employee contributions upon termination of service, which under present practices usually results in the loss of all pension benefits, including those attributable to employer contributions. When given the opportunity, employees will almost invariably withdraw their contributions, even though it means the sacrifice of future benefits whose actuarial value may be many times greater than the cash refund. When the whole question of benefit preservation is left to private, voluntary decisions, there may be justification for giving terminating employees the option of taking cash or deferred pension benefits. However, when the issue is no longer a private matter and employers are forced to preserve the benefits associated with their contributions, it is illogical and inconsistent to permit the employees to liquidate the benefits financed through their own contributions.

Cash withdrawals at the time of retirement are part of the same general issue, except that the values involved relate to both employee and employer contributions. The basic question is whether an employee upon reaching retirement will be required to take his accumulated benefit credits in the form of monthly income payable for life or whether he will be permitted to take all or some proportion of the actuarial value of his pension in a lump sum. If the purpose of a pension plan--and mandatory vesting legislation--is to assure a retiring employee a reasonably adequate income throughout his remaining lifetime, it is self-evident that the cash option should not be permitted, except where the

actuarial value of the pension is too small to justify monthly installments or too large to require full payment as a mandatory annuity.

The proposed legislation is silent on this issue. It is a subject dealt with in the pension regulatory laws of Canada, the United Kingdom, and most countries of Western Europe. The general practice is to prohibit cash withdrawals altogether or to limit the proportion of the pension actuarial value that may be drawn down in cash. There should, of course, be no restrictions on the withdrawal of funds in employee accounts under profit-sharing plans.

Reporting of Benefit Accruals

The sixth guiding principle is that each plan participant is entitled to be informed annually as to the status of his benefit accruals. The plan administrator should be required to render once a year an individual accounting to each participant that would inform him as to the amount of pension benefits credited to date; the amounts of benefits that have vested or, alternatively, the conditions that must be fulfilled before benefits will become payable; and the extent to which the benefits have been funded or purchased from a life insurance company.

Individuals leaving a plan with vested benefits should be given a certificate that states in unequivocal terms the dollar amount of benefits vested, the date or age at which the benefits will become payable, the basic annuity form under which they will be payable, any optional annuity forms available, and the procedure to be followed in applying for benefits at the proper time.

I was gratified to note that the proposed bill would require the plan administrator to furnish each terminating vested participant a certificate setting forth the benefits to which he is entitled and other pertinent information. This procedure is absolutely crucial to the protection of the terminating participant's benefit rights and should take priority over annual reports to all plan participants. The latter, however, are essential if plan participants are not to fully understand their rights under the plan and nurture unrealistic and

unjustified expectations.

Mechanisms for Preserving Benefits

The seventh principle is that a mandatory vesting law should recognize only two methods of preserving vested benefit rights: the deferred claim approach and the purchase of annuities from life insurance companies. Both of these methods are in general use in this country and abroad and have proved adequate to the task.

Benefits could also be preserved through transfer of the credits and the associated assets to a successor plan. This method is widely used in the public sector of various countries, usually as part of a general reciprocity arrangement among governmental units. It is one of the authorized methods of preserving benefits in the private sector under the mandatory vesting laws of several Western European countries, and the major Canadian provinces. It can also be used in the United Kingdom as part of the procedure for "contracting out" to occupational pension schemes benefits provided under the graduated component of the national old-age insurance program.

Despite this widespread official recognition, the method is rarely used in the private sector, other than in connection with reciprocity agreements among multiemployer plans. The method is afflicted with too many technical problems, mainly of an actuarial nature, to be universally feasible. To function on a broad scale, the method would have to be bulwarked by an official set of rules and regulations pertaining to transfer values and the crediting of benefits. This feature alone would discourage use of the method while expanding the bureaucracy needed to administer it.

The transfer method is authorized in Title III of S.3598 which deals with a voluntary portability program for vested pensions. This section is the weakest part of the proposed bill and in my opinion should be deleted in its entirety. The proposed scheme would be extremely complex and could lead to the accumulation of vast sums of pension monies in the portability fund administered

by the Secretary of Labor. More important, it would not accomplish any purpose that could not be more simply achieved in some other manner. The deferred claim approach is a perfectly satisfactory method of preserving vested benefits, especially if strengthened by the establishment of funding standards and a program of plan termination insurance. In any event, vested benefits could always be preserved through the purchase of deferred annuities from a qualified life insurer, a technique that is conceptually identical to the transfer of funds to the portability fund. As a matter of fact, the proposed bill contemplates that the Secretary of Labor would purchase annuities from qualified life insurers for those retiring employees whose benefit credits were not transferred to a successor plan or plans. The voluntary portability program may have been visualized as a method of enabling vested benefits of terminated employees to increase in dollar value over the years but as described the program would not achieve that purpose. It could be accomplished if the actuarial value of the vested benefits were to be applied to the purchase of a participating deferred annuity or a variable annuity from a life insurance company. The thinking on this whole matter would be greatly clarified if all persons involved would recognize that portability which has great emotional and political appeal, is not a concept separate and apart from vesting. It is simply one method of implementing a vesting provision--and not a very effective one at that if the actuarial value of the vested benefits is not transferred to a professional risk bearer.

Fixing of Vested Benefit Amount at Termination of Employment

The eighth and final principle is that the vested benefits of a terminating participant should be fixed in amount at point of termination. From an administrative point of view, it is highly desirable that the terminating employee's benefit entitlement be expressed in a definite sum of money payable at a specified age and under specified conditions. This is especially important in connection

with final average salary formulas and other benefit formulations that could otherwise create uncertainty and controversy as to the amount of benefit that would ultimately be payable.

An important corollary of this principle is that the employer or plan sponsor would be under no legal obligation to adjust the vested benefits of terminated employees in recognition of developments that have occurred subsequent to their departure, except where the basic benefit formula contemplates periodic adjustments. The practical effect of this posture is that the benefits that will become payable to a terminated vested participant in respect of a particular period of service will tend to be smaller than they would have been had he remained in the plan until retirement. In the latter circumstance, the benefit credits would have been enlarged by growth of the earnings base (if a final average salary formula is used) and retroactive benefit liberalizations.

In proposing that each terminating participant be given a certificate setting out the amount of his vested benefits, S.3598 implicitly embraces the concept of freezing vested benefits at the point of termination. However, in proposing a voluntary portability program, the bill seems to be groping for a mechanism that would permit the vested benefits to grow over time. As stated above, the proposed program would not accomplish that result. Even if a successor employer should accept a transfer of vested benefits from the plan of an earlier employer, there is no reason to believe that he would make benefit increases applicable to a period of service rendered for another employer. In all likelihood, the transferred benefits would remain frozen at their value at time of transfer, and the new participant would be treated like any other participant with respect to benefits accruing in the future.

Funding

Every pension plan should have the long-run goal of accumulating a dollar of assets for every dollar of actuarial liability for accrued benefits. That

standard of financial soundness is not incorporated in existing law. Thus, I am pleased that S.3598 moves in the direction of establishing more rigorous standards of funding. In my opinion, however, the proposal does not go far enough in the direction of financial integrity.

The basic standard articulated in S.3598 contemplates the funding of normal cost (called normal service costs in the bill) currently, the initial unfunded liability within forty years, and any experience deficiency within five years. The Secretary of Labor would be authorized to prescribe alternative funding requirements for fixed-contribution multiemployer plans, taking into account the particular circumstances affecting the plan or the industry, but he could not require funding of the plans' obligations over a shorter period than forty years.

There is general agreement that normal costs must be funded currently if a plan is to aspire to any semblance of actuarial soundness. There is also widespread sentiment (but not universal agreement) that the initial unfunded liability (and other forms of supplemental cost) should eventually be funded, but the period over which the supplemental cost should be funded is a matter of subjective opinion. I happen to feel that forty years is too long, despite the fact that the Accounting Principles Board of the American Institute of Certified Public Accountants endorsed forty years as the maximum period over which supplemental cost should be amortized for cost accounting purposes. I believe a more reasonable period would be thirty years and I urge the Subcommittee to consider such a standard. I believe that the same standard should also be applicable to fixed-contribution multiemployer plans. Many of these plans operate on the basis of funding only normal cost and interest on the unfunded accrued liability and would resist being forced to undertake amortization of the unfunded liability over any meaningful specified period. It is true, of course, that these plans have some peculiar operating characteristics that pose special problems, including intergenerational equity among the covered employees. Nevertheless, it seems to me

that participants in those plans are entitled to have their benefits funded on the same basis as employees in single employer plans (and to have their benefit accruals protected by the same minimum vesting standards as are applicable to other plans). The guidelines set out in paragraphs (2) and (3) of Sec. 217(d) are so vague as to be meaningless.

The stipulation that an experience deficiency be funded within five years is an important counterbalance to unsound actuarial assumptions and should be retained in the final version of the bill.

If a minimum funding standard is to be imposed, it follows that upon termination of a plan the employer should be expected to make good on any delinquent contributions. Sec. 211(b) places such an obligation on the employer and, if the plan is contributory, on the employees. The latter provision is questionable since under a contributory plan the employer is responsible for deducting the necessary employee contributions from the payroll. If he fails to do so, the burden should fall upon him. In any event, it would be impracticable, if not impossible, to collect delinquent contributions from terminated employees.

Sec. 211(a) sets forth the priorities that should be observed in applying the assets of a terminated plan. Under the proposal, beneficiaries of deceased participants would have priorities equal to those of the employees on whose service the benefits are based. This is a matter of judgment, of course, but I would place beneficiaries who are currently receiving benefits in the same priority class as retired participants.

I applaud the provisions of the bill pertaining to the establishment of standards and qualifications for persons performing actuarial services for registered pension plans. This step is long overdue, and I would respectfully suggest membership in the American Academy of Actuaries as one of the ways of qualifying under Sec. 101(b)(1).

I would hope that the Secretary of Labor would not be given authority at

this time to prescribe actuarial assumptions for the determination of the sums to be contributed to registered pension plans. I would prefer an arrangement under which the actuary for a plan would be required to attest to the appropriateness of the actuarial assumptions and to certify that the funding policy being followed is in conformity with the minimum standards set forth in the law. If his assumptions are unduly liberal (or optimistic) an experience deficiency would develop and would have to be corrected within five years. Other information in the actuarial report would reveal whether the funding contributions are being made on schedule. The nature of the actuarial process is such that great reliance must be placed on the personal integrity and professional competence of the actuary, which makes it imperative that some system of official accreditation be developed. Of course, if a program of plan termination insurance were to be established, the Secretary of Labor or other administrator would have to specify the mortality and interest assumptions to be used in calculating the actuarial liability for vested benefits.

The proposed bill would require an actuarial report only at five-year intervals. I would think that triennial reports would be preferable. I would also recommend that the report include a statement of the accrued liability calculated on a termination-of-plan basis. A comparison of this sum with the market value of the plan assets on the date of valuation, broken down as to the various priority groups, would show how the plan participants would fare if the plan should be terminated on or about that date.

It would appear that pay-as-you-go plans could not be registered under the proposed legislation and hence could not be legally maintained after enactment of the legislation. If the bill is intended to outlaw such plans, there should be an explicit statement to that effect.

Plan Termination Insurance

Plan termination insurance raises two fundamental questions: (1) whether it is

needed and (2) whether it is technically feasible.

Many pension plans have already terminated and many other ones will terminate in the future. The most comprehensive survey of plan terminations is that carried out by the Bureau of Labor Statistics in cooperation with the Internal Revenue Service. The study encompassed the years 1955-65. During that period, there were 4,259 pension plan terminations, 30 percent of which were due to mergers. Almost half of the terminations involved plans in effect for five years or less, and two-thirds of the terminating plans covered fewer than twenty-five employees. An average of 20,000 employees per year were affected by terminations, about one-tenth of 1 percent of the number exposed to loss. In many cases the participants suffered no loss of benefits and when there were losses they were frequently less than total.

The Labor and Treasury Departments are currently making another study of plan terminations under a Congressional mandate. The results should be available within the next year. It would seem wise to await the results of this study before setting up a complicated and possibly irreversible system of pension benefits insurance. If the new study, which promises to be more precise than the earlier one, shows the same pattern of termination and losses, one might question whether the proposed program is necessary and whether it would cover many of the losses that are being sustained.

As to the technical feasibility of plan termination insurance, I concluded in my treatise Guaranty Fund for Private Pension Obligations that such a scheme is feasible if certain safeguards are built into it. Title IV of the proposed bill contains many of the safeguards that I considered essential to a sound system. I am particularly pleased that it contains the concept that a solvent employer would be expected to reimburse the pension benefit insurance fund for a portion of the losses incurred by the fund in respect of the employer's terminated plan. The obligation of the employer would be determined by the ratio of the

terminated plan's unfunded vested liabilities to the employer's net worth. One serious flaw in the proposal is that the insurance would cover only benefits that accrue after enactment of the bill and only those that do not vest after a lesser period than that prescribed in the Act. Unfortunately many of the technical issues that would be involved in a system of plan termination insurance are not reflected in the present formulation of Title IV. Thus, one cannot arrive at a definitive judgment as to the desirability and feasibility of this particular proposal.

Disclosure and Fiduciary Standards

I endorse the principle of meaningful disclosure and especially support the amendment to the UPPDA which would require the plan administrator to provide each participant with an understandable explanation of his rights and obligations under the plan and the circumstances that may disqualify him from receiving benefits. The reporting of information concerning vested and nonvested terminations would fill a void that has seriously hampered research in this area. However, the mass of information that would have to be reported to the Secretary of Labor appears formidable, and I wonder if it would not be appropriate to have the entire matter carefully reviewed by a diversified group of experts. The objective of such a review would be to design the reporting form in such a way as to reveal the maximum amount of meaningful data with the least burden on the plan administrators and their technical advisers.

I subscribe to the proposition that any person who handles funds of a pension plan should act solely in the interests of participants and beneficiaries and in general comport himself in accordance with the accepted standards of fiduciary conduct. I also support the notion of a federal standard of fiduciary conduct for persons administering pension and welfare funds. There are some who feel that the specific provisions of this bill would impose an intolerable burden on plan administrators and others who handle or invest pension monies. Their views should be carefully considered before final action is taken on the legislation.

The CHAIRMAN. Thank you very much. I look forward to your publications.

We will reconvene at 10 o'clock tomorrow morning.

(Whereupon, at 1 p.m., the hearing in the above-entitled matter was recessed, to reconvene tomorrow, Wednesday, June 21, 1972, at 10 a.m.)

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT, 1972

WEDNESDAY, JUNE 21, 1972

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

The subcommittee met, pursuant to notice, at 10 a.m. in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee) presiding.

Present: Senators Williams, Javits, and Taft.

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

The CHAIRMAN. The Subcommittee on Labor, hearings on S. 3598, and other legislation relating to pension legislation will come to order.

We are honored this morning to begin our hearing with the Honorable Congresswoman Martha W. Griffiths.

We appreciate your being here and coming over to help us.

STATEMENT OF CONGRESSWOMAN MARTHA W. GRIFFITHS, FROM THE 17TH DISTRICT OF THE STATE OF MICHIGAN

Mrs. GRIFFITHS. I am grateful for the work you have done in the field of pension reform. You have done a wonderful job. Reform is most certainly needed. In 1966 the Joint Economic Committee's Subcommittee on Fiscal Policy, of which I am the chairman, held hearings on the operation of private pension plans. At those hearings I was shocked to learn that very few employees who were purportedly covered under private pension plans were ever going to draw pensions. I was also appalled at the laxity with which the word "funding" was interpreted. During those hearings I checked within Federal agencies and within offices of State attorneys general, to find out how these plans were controlled. My impression was that there is practically no supervision.

An essential of pension legislation is that it set minimum standards of vesting. Under a plan without vesting, an employee can be fired the day before or the year before he retires and receive no pension. This is happening now in this country. Even if a plan gives vested rights, the conditions under which those rights vest may be so restrictive as to be unfair. In my judgment, the vesting standards set by the Williams-Javits bill are reasonable and very much needed.

But are they enough? Since pension funds are likely targets for raids, workers need special protection upon merger.

While I was holding the hearing an interesting case came to my personal attention. A large eastern firm bought a small Ohio firm. It also bought the pension fund, which was worth several million dollars, which the eastern company proceeded to commingle with its own pension fund. The U.S. Attorney General ordered the purchasing firm to divest itself of the Ohio concern because the purchase violated the antitrust laws. The eastern firm complied but it kept the pension fund. I believe this particular situation has been taken care of in the law. But even so, in this day of large sales, with the attendant commingling of funds between companies, workers' interests in a pension fund should, in my judgment, attach to that fund upon merger. Workers' pension rights should vest automatically upon merger, whether the purchasing company has a pension plan, or regardless of the length of time the worker has worked, or whether or not he continues to be employed by the purchaser.

No matter how "vested" an employee's pension interest may be, it is worthless if funds are not available to pay the pension benefits when the employee retires. But we cannot impose standards of funding until we have a reliable definition of funding.

A pension plan is considered to be "fully funded" at a particular time if its assets are actuarially determined to be sufficient to pay all pension benefits earned up to that time. But an actuary's decision that a plan is fully funded—or, if not fully funded, that it will become so by contributing a certain amount—is merely a guess. It is a prediction based on assumptions about mortality, interest, employee turnover, disability, retirement, salary changes, administrative expenses, and other "inscrutables."

S. 3598 authorizes the Secretary of Labor to set "reasonable limitations on actuarial assumptions" and to define actuarial terms. But this does not insure the development of a precise definition of funding. Nor does it require that actuarial assumptions strictly reflect a company's past experience. And S. 3598 only requires that a pension plan be reviewed by an actuary once every 5 years. A lot can happen in 5 years.

Overfunding may not be as serious a problem as underfunding; but it is a problem. Just as underfunding hurts the employee whose pension cannot be paid, overfunding hurts the taxpayer. A pension plan in existence for many years certainly can be checked to determine whether or not the funding is realistic. Thus, a plan in effect for many years, which annually pays little more than the interest on the fund in benefits, but continues to set aside large amounts might, in my opinion, be asked to reduce the annual contributions to the fund.

Even if we had a precise definition of funding, who would be checking to see that it was observed? No one is reading the reports that pension plans already submit. My personal opinion is that private pension plans should be supervised by the Internal Revenue Service, but I question whether the Ways and Means Committee will ever take over this project. Therefore, I approve your decision to place the responsibility for enforcement with the Department of Labor.

But the Labor Department should be required, not merely invited, to insure that pension plans comply with the law—including compliance with a precise definition of funding. Also, the Internal Revenue Service should be required to conduct sufficient investigation to insure that

pension plans comply with the tax law. These plans should not be permitted to continue to set aside large sums of tax free money, when in fact they are not needed. In addition, Labor and IRS should be required to fully cooperate with each other in their respective enforcement endeavors.

An elderly gentleman came into my office one day and told me that he was a member of a pension plan in Pennsylvania, which had been completely funded for some years; that the accountant had notified the Labor Department, yet money continued to be set aside. There were 50 members in the union and the top benefit was $50. The accountant had notified the Labor Department the plan was funded when there was a little more than $1 million in the fund. I checked the plan. He was correct, except when I checked, as I recall, there was something like $3 million in the fund. Yet amounts were still being added.

Employer contributions are nondeductible now to the extent that they exceed 10 percent of the unfunded liability. But laws mean nothing if they are not enforced. When the Labor Department received the accountant's statement that the plan was completely funded, Labor should have notified Internal Revenue. In my judgment, the setting aside of $1 million should not have been permitted, let alone $3 million.

S. 3598 would establish a mandatory insurance program to insure employees against losses of vested benefits caused by plan termination. I trust that this program would be financed solely with assesments and premiums paid by pension plans, not with funds appropriated by Congress. (Title IV, sec. 406(c) of the bill refers to "appropriations provided as capital to the fund" and sec. 406(d) also refers to "appropriated fund," but I have been informed that these references are editorial errors.) Through the favorable tax treatment accorded private pension plans, the taxpayer pays for pension benefits once. The taxpayer should not have to pay a second time through contributions of general revenues to the insurance fund. I trust that you put in sufficient safeguards so that you will make it impossible or unlikely that any small organized group could raid the insurance fund.

I congratulate you, also, on the investment disclosure provisions for the fiduciary. It is obvious to me that these funds have taken on lives of their own and that each passing day makes it more difficult to enact a control over them. As I investigated some of the plans, I became extremely interested in the investment policies and the effect of those policies upon the market. I asked Chase Manhattan to testify. They refused. And while in a criminal case you certainly could not comment on the failure of the defendant to take the stand, I thought their failure was rather significant.

In conclusion, I would like to thank you again for your contribution to pension legislation. Now is the time for pension reform.

The CHAIRMAN. Thank you very much. Your attention in your statement to funding is particularly appreciated. Yesterday we had the Secretary of Labor here who described the administration's pension plan, which is very liberal in terms of vesting but nonexistent in terms of funding, which came as quite a shock to me. You give proper attention to funding, as a companion to vesting, and that is fine.

Mrs. GRIFFITHS. It is being used to overfund. If all you have to have is a guess, and a guess is never checked against anything, you

can pile up any amount of money. In it there is no control over how the money is used and there has not really been.

It really is a great tax-free gimmick. While we are reforming tax laws, we ought to reform that. But I think your bill will take care of it. I hope you particularly see to it that on mergers you protect the employee and the fund also.

The CHAIRMAN. The administration's program in addition to the rule of 50 vesting provisions, extends the Keogh Act. Would you care to comment on that?

Mrs. GRIFFITHS. Personally I think the people who are getting really the roughest deal of all in pension programs are the self-employed. They have never been given a proper opportunity at all. I am acutely aware of this, because my own husband is a lawyer, and when I look at the pension plan in which I personally am involved and look at what he would have to save out of his own income to match the pension program I am involved in, it is of course an astronomical sum for him. Therefore, I feel that a plan for those who are privately employed should match at least the plan for Federal employees or for corporate employees. Why should not they have the same rates? Why are they being taxed, first, in the consumer goods they buy to pay for a pension plan for an auto worker, while they themselves have no such rates at all? All the original H.R. 10, the Keogh bill, was totally inadequate. I might say I was happy to say so then. It just is not fair.

I do not know that I think the administration plan is too great. But at least it helps the situation. It gives them some small chance. But the self-employed should have some pension rates. They should be able to set aside free money for their protection.

The CHAIRMAN. The bill, introduced by most of the members of this committee, and I believe you have also introduced it, does have the provisions in sections 101(b)(1), where the Secretary is authorized to prescribe rules and regulations establishing standards for actuaries.

Mrs. GRIFFITHS. That is right. But you should require that they be compelled to look back at past experience. One of the plans that came before us was more than 30 years old and at that time they had never paid out the interest on the principal. At the end of 30 years, you do not know what you are going to be meeting in a pension problem.

The CHAIRMAN. I think that perhaps is really broad language, empowering the Secretary to prescribe rules and regulations on actuarial assumptions.

Mrs. GRIFFITHS. The only problem is they do not do what they are supposed to do. How can you excuse a Secretary of Labor from the fact that a plan is marked "funded." The accountant says this plan is funded. There are only 50 members. And the top amount they are ever going to draw is $50 a month, a million dollars has been piled up, and they let them continue until they have gotten $3 million in the fund, and they are still adding to it. What were they doing? What was the Secretary of Labor doing? Why does he not stop it? Why does he not report it to IRS? This I think they should do. I personally have the feeling they do not even look at the plans. I do not think they look at the reports. I do not know what they are doing.

Mr. CHAIRMAN. Under present law, I would tend to agree that a lot of information reaches them, but they do not reach the information.

Mrs. GRIFFITHS. That is right.

Mr. CHAIRMAN. Thank you very much.

Mrs. GRIFFITHS. Thank you.

Mr. CHAIRMAN. Our next witness is Congressman Henry P. Smith III, from the 40th District of New York. Congressman Smith, we are grateful for all of this attention from the House of Representatives this morning.

STATEMENT OF HON. HENRY P. SMITH III, A REPRESENTATIVE IN CONGRESS FROM THE 40TH DISTRICT OF THE STATE OF NEW YORK

Mr. SMITH. Mr. Chairman, I thank you and your associates for your courtesy in permitting me to add my support to the Williams-Javits Retirement Income Security for Employees Act of 1972. My sponsorship of compatible pension reform legislation in the House, known as H.R. 15080, is recognition of my appreciation of the comprehensive study which your committee has given this important matter over a period of many months.

In my judgment, S. 3598 and H.R. 15080, finally offer the necessary legislative implementation of the recommendations of the nonpartisan Kennedy Committee on Private Pension Reform. In establishing that committee to conduct an objective study of private pensions in the United States, President John F. Kennedy stated, "it is time for a reappraisal governing these programs." The committee report was submitted in 1965. We have, at long last, in 1972, the opportunity to achieve by legislation the reappraisal and improvement that President Kennedy recognized as essential to the continued growth and stability of private pensions.

This legislation is something which is owed to the working men and women of this great country, the "worker's pension bill of rights." As we discuss this need, many continue to suffer under the injustices of our present system. Only recently did I receive in my office an appeal for assistance from a constituent who after 32 years of loyal service was being denied his pension, an earned right which he had richly deserved. He attempted to rectify his situation by law but stated that "two lawyers have counciled (sic) me and felt they were powerless to assist me because of the present laws." I assert here today, that is our role to establish that power of assistance, a role that does not presently exist.

The Williams-Javits bill of the Senate and the Smith bill of the House seek to remedy and prevent such "glaring inequities" and fill the vacuum that presently exists with regard to minimum standards of protection. These bills address themselves to the very issues to which pension reform legislation must be directed:

1. Graded vesting,
2. Guaranteed funding,
3. Termination insurance,
4. Voluntary portability,
5. Disclosure and fiduciary standards.

Time is of the essence in this matter. We must not sell ourselves short in our quest to improve the system. Enactment of a stopgap measure similar to many of the other pending legislative proposals would be tragic. Such action would amount to little more than putting our finger in the leaking dike of deficiencies in our private pension system. The essential and imperative need for the comprehensive leg-

islation incorporated in S. 3598 and H.R. 15080 must be met by this session of Congress.

I thank you for allowing me to appear before you this morning.

The CHAIRMAN. Thank you very much, Congressman Smith. Yesterday we had the Secretary of Labor here and obviously he did not support the legislation. The administration has its own hurry-up program, the rule of 50, with another aspect I just discussed with Mrs. Griffiths, dealing with the selfemployed. He did say in answer to some of the questions, that in his judgment, the provision for voluntary programs of portability would not work. He cited the experience in Canada, I believe it was, where the employer has no way to attract workers to his business; instead, he makes it easier for workers to leave his business and go elsewhere. If they have a portable pension benefit, it might suggest to them that they would be more free to leave. However, Senator Javits quite accurately put it the other way around, the company that does have this incentive might be more attractive to qualified employees.

Mr. SMITH. I think that is a very interesting point, Senator, and I think probably the history of private pension plans would show that the Secretary's point of view was perhaps the original point of view as companies instituted a pension plan that other companies did not have in order to attract workers, and then the nonportability features would tend to keep them. Of course I think now as private pension plans have come more and more into being industrywide, that perhaps yours and Senator Javits' philosophical point of view is noteworthy and that now the feature of portability might very well attract workers, as you suggest. I think this is a philosophical argument to some extent, and I think it is a good one and one that experience will have to bear out, but I would suspect that perhaps the feature of portability would attract workers, as compared to a plan that did not have it.

The CHAIRMAN. We do not know what experience will show, but the facts are that the failure to have any portability at all has created grievous hardships for so many, many workers. Some have to move and cannot stay rooted in one job in one place.

Mr. SMITH. Created hardships and also created apparently a certain amount of immobility in the labor force.

The CHAIRMAN. We certainly appreciate your testimony, your help in this, and the work you are doing in the House.

Mr. SMITH. Thank you, Senator.

The CHAIRMAN. We are honored now to have Manuel Cohen, who has been before another committee as Chairman of the SEC so many, many times. We are glad to welcome you here in the ranks of labor.

STATEMENT OF MANUEL F. COHEN, FORMER CHAIRMAN OF SECURITIES AND EXCHANGE COMMISSION

Mr. COHEN. By coincidence I had the privilege of testifying before Mrs. Griffiths on this very subject in 1970.

At any rate I am honored by this opportunity to appear before you and testify at these hearings on the Retirement Income Security for Employees Act of 1972. I do not claim to be an expert on the economic consequences of changes in Federal policies and regulation concerning private pension funds. However, I have had a long standing interest in private pensions having had the privilege to serve on a presidential

committee which made recommendations in this area and having maintained a strong interest in pension funds as an investment vehicle during my tenure at the Securities and Exchange Commission.

As all of you know, I do claim some experience in the realm of investor protection. That brings me to the first and perhaps the most important point that I can make to this subcommittee. Pension plans represent an investment medium. Interests in a private pension plan fall within the definition of a security under the Securities Act of 1933, and most private pension plans would be subject to regulation under the Investment Company Act of 1940 but for a specific exemption from that statute.

In many respects, pension plans and mutual funds have features in common. Pension funds, like mutual funds, involve contractual rights between an individual investor or employee and an investment expert who is supposed to manage the commingled investment of many persons to the economic advantage of all. Congress, as part of the New Deal, subjected the contractual rights involved in mutual funds to stringent regulation under the Investment Company Act of 1940. And in 1970, Congress, I should interpolate, under the aegis of the chairman today, in the face of new abuses, tightened the regulation of investment companies. With this background of Federal regulation of the essentially contractual rights of an investor in a mutual fund in mind, let me analyze some of the important similarities and differences between a mutual fund purchaser and a corporate employee who participates in a pension plan. First, both investor and employee are investing money which they have earned. There is no gratuity involved. Realistically, the employee is simply putting into a fund for his future use that which he would otherwise get in his paycheck. And the employer finds it to be in his interest to contribute to that fund and to do so under circumstances which will stimulate contributions by his employees. Both the investor and the employee—and the employer—place their confidence and trust in an administrator who is in a position to exercise expert judgment concerning the management of their funds. Unlike the mutual fund investor, however, the employee makes a continuing investment in his fund.

Unlike the mutual fund investor, the employee's investment is usually mandatory. It comes with the job—that is, where it exists. Even where voluntary, the economics of such plans attract the contributions of employees. Unlike the mutual fund investor who can demand the return of his investment at any time, the employee must leave his job under certain specified conditions before he has a right to the return of his investment and of his interest in the contributions of his employer made for his benefit.

In the fact of this comparison, it is very difficult for me to understand why the employee who has more at stake, and less control, than the mutual fund investor is entitled to any less protection from the Federal Government. It would seem to me that the converse should be true. Because he has more at stake and less control, he is entitled to more protection.

The comparison between mutual funds and employee pension plans can provide yet another valuable insight into the need for effective Federal legislation. Both represent huge concentrations of economic power in our society. For example, during 1971 the four leading

groups of institutional investors, private noninsured pension funds, open end investment companies, life insurance companies, and property and liability insurance companies, made gross purchases of $53.6 billion in common stock. Of these purchases, $21.6 billion were made by open end investment companies while $21.7 billion were made by pension funds. Thus pension funds purchased more common stock than mutual funds. More significantly, the net purchases of open end investment companies—that is, gross purchases minus gross sales—amounted to only $380 million while the net purchases of pension funds were $8.9 billion.

Again, it is difficult to understand why the disclosure and fiduciary responsibilities imposed upon pension fund managers would be any less rigorous than those imposed upon mutual fund managers.

I have drawn these comparisons for the subcommittee in an effort to rebut what has been one of the primary arguments against pension plan regulation and reform—that these rights are essentially contractual in nature. Of course the rights are essentially contractual in nature, and this contractual basis provides flexibility and room for initiative which, I am certain, no Member of Congress wants to eliminate. It is a great tribute to American labor and American business that, in cooperation, they have been able to develop pension plans that have provided a measure of economic security to over 30 million Americans. However, there are abuses in the management of pension plans which undermine the security that employees expect from their participation in corporate pension plans. While the burden of these abuses falls primarily upon employees, it is also borne by the Government and the taxpayers of this country who, in the end, are going to have to make up through social security, medicaid and welfare programs the deficiencies which exist in pension plans. Both the need and the precedent for Federal protection are readily apparent.

Let me address myself to the more urgent problems. The first is fragmentary regulation. As the studies so diligently undertaken by this subcommittee have so convincingly demonstrated, the Federal authority and responsibility now dispersed among nine different Federal agencies, under at least as many different statutes, must be pulled together and coordinated.

The obvious place for most of the Federal authority and responsibility is in the Labor Department under the auspices of the Secretary of Labor.

The most important problems, of course, relate to the very purpose of pension plans—protection for the employee. Protection and greater uniformity need to be developed in seven major areas, eligibility, vesting, funding, termination, insurance, portability, and enforceability. There is little advantage to the employer or to the society in requiring employees to undergo an excessive eligibility period prior to participation in a pension plan. A reasonable eligibility period may be appropriate to prevent undue administrative expense to the employer and other participants from the employee who quits during a short probationary period. An excessive period, however, tends too often to defeat the purpose of pension plans. The 6-month provision of the Retirement Income Security for Employees Act seems to me to strike the right balance. However, I question the need to establish a 21-year-old age requirement as a minimum condition of eligibility, particularly

in view of the recent emphasis on encouraging young men and women to shorten or curtail the college experience and the constitutional amendment permitting 18-year-old citizens to vote. I would think it is in the interest of the Nation, to encourage employers to start young people on the road toward stability of employment by offering retirement security as early as possible.

Vesting is one of the two most critical aspects of pension plan security. The other is funding. In view of the fast pace of corporate and economic change in our society, the constant need to retrain and relocate employees and economic readjustments following our disengagement in Vietnam, it seems to me to be essential to have a program under which an employee is entitled to a vested right in retirement security at an early stage in his or her employment.

Early vesting will not lead to instability of employment. I gather I am in disagreement with the Secretary of Labor but I prepared these remarks before I learned his. In my view, early vesting with prospects for increases in the benefits earned will serve to encourage continued employment where vesting is early and continuous. Early vesting will, however, also ensure that the employee who is required to change employers or even industries by the disruptions and dislocations in our economy will have a fair opportunity to build retirement security through a number of productive jobs as well as through lifelong employment with the same company. Mobility has become a way of life in our society and our pension plans must be made to take account of it and to provide for protection in spite of it.

Vesting provisions must also be nondiscriminatory. It is hard enough for the 50-year-old man to retrain or shift employment when he is laidoff for reasons beyond his control. The so-called "Rule of 50" which has been widely suggested as a vesting mechanism viciously discriminates against such an individual. Since a new employer will have to fund vested benefits for a 50-year-old employee almost immediately, an employer understandably is reluctant to hire him. I believe that the vesting mechanism of the Retirement Income Security for Employees Act overcomes these problems. Whether 10-percent rights vest at the end of 5 years and increase at the rate of 10 percent a year thereafter or 30-percent rights vest at the end of 8 years and increase at the rate of 10 percent a year thereafter is a matter to be resolved on the basis of careful economic analysis. I claim no expertise as to these issues. It may be that such an analysis will demonstrate that the vested rights accrued are substantially more valuable in terms of monthly retirement income if 30-percent vesting occurs in 8 years. In any event, the concept of early "deferred graded vesting" seems to me to be most promising approach in achieving nondiscriminatory mobility protection from our private pension plans.

Vested rights are, however, an empty promise without funding. If money does not stand behind vested rights, the right becomes a right to a lawsuit against a judgment-proof defendant. Federal law must require employers to provide the money to keep the promises that they make to their employees.

Again I return to the securities investment analogy. Federal law does not permit the oil well salesman to sell interests in a thousand wells when, in fact, he has only a hundred. That is fraud. Similarly, to promise your employee that he will have a vested right in a retirement

income without providing the money to fund that promise is simply a more sophisticated fraud. I support the funding provisions of the Retirement Income Security for Employees Act.

The members of this subcommittee—in particular the chairman—are surely acquainted with the problems of take-overs, mergers, acquisitions, spin-offs, and other forms of corporate reorganization. These corporate activities have an impact upon employees and particularly upon their vested pension rights. Not infrequently, a corporate reorganization leads to a shift in control of the pension plans, and the new managers may not have any incentive to keep the promises made by the old managers. In such a situation, an employee with 30 years experience on the job and 100-percent vested pension rights can lose all of his retirement security because of events far beyond his control.

This problem must be solved in two ways. First, upon termination of a pension plan, the assets should be distributed to the participants and beneficiaries according to some rational plan of distribution. Retirees should have the highest priority, participants with vested rights the next highest priority, and other participants should take the remainder. In many cases, however, there are unfunded liabilities which means that some retirees or participants with vested rights will lose those rights. We must safeguard against this contigency with insurance. Any program of effective pension reform must be accompanied by insurance against the risk that a plan will terminate with unfunded liabilities.

The increasing requirements of mobility in our society require some kind of pension plan portability. Some system must be established so that the employees who acquire vested rights in one job may transport those rights with them when they move to new jobs. This is a difficult problem because all plans are not alike, and it is difficult to translate rights in one plan into rights in another. I believe that the authors of the Retirement Income Security for Employees Act have developed an ingenious and workable device to encourage portability. I support the concept of a voluntary portability program fund. Administration of this fund will provide useful data and experience through which Congress, at a later date, can analyze the effectiveness of this experiment and devise further procedures to ensure complete portability for pension rights. Portability is not alien to our pension plan horizon. Social security is a portable plan. Even in the private sector, the TIAA, Teachers Insurance Annuity Association, and an affiliated organization presently provides portability for college professors and other employees of universities. I do not think that that has really encouraged instability of employment. I think that apart from an interest in a plan, most employees have an interest in the job, they also have an interest in job advancements and those are all perhaps equally important considerations.

Finally, I must state the obvious—that no system of providing employee protection will succeed in accomplishing that objective unless it is enforceable. I think the subcommittee's study has adequately demonstrated that the existing provisions for the enforcement of pension benefits by employees are inadequate. State court remedies simply have not done the job. Each employee who participates in a pension plan should have the right to sue in both Federal

and State courts to enforce the promises which his employer has made. He should also be able to enforce the fiduciary standards which I will discuss next.

The vast accumulation of assets in the hands of pension plan administrators necessitates that there be appropriate safeguards to insure that that economic power is not used either for the individual benefit of an administrator or in such a manner that it subjects those assets to undue risk or disrupts the securities markets and our national economy. The potential for abuses cannot be overestimated.

Pension funds with assets in excess of $150 billion at the end of 1971, of which approximately $87 billion are represented by common stock, are the largest class of institutional investors. I should note that at that year end, the numbers I cited represented a growth of approximately 10 percent.

I received by chance this morning the current issue of the Pension and Welfare News publication, and I have drawn some figures from it which may be relevant here.

As I understand it, over $287 billion in assets are held by all types of pension funds at the end of 1971. This includes private insured and uninsured and various types of government retirement and pension funds. Private funds aggregated $152 billion approximately and the public funds equaled $135½ billion. Private insured pension reserves are estimated at $45 billion at stated value.

More than half the growth in this particular area, that is the insured area, in 1971 took place in the fast-growing separate account area. Indeed, it increased from $4.9 billion in the end of 1970 to $7.2 billion at the end of 1971.

Now, these pension funds are also the largest source of new money coming into the securities market. This source of new funds, plus the shift of pension plans into common stock from 16 percent of their assets in 1950 to 62 percent in 1970, and some tendency on the part of pension fund managements to follow the trend of mutual funds toward a higher rate of turnover clearly demonstrates their actual and potential impact on the securities markets. Moreover, there is a distressing indication that some pension fund managements have been caught up in the "performance fad." While quick capital gains appreciation may have its place among certain investors, I seriously question whether the trend toward high performance is suitable for investors who, by the nature of their investment, can be interested only in long-term economic security and who, in so many instances, are unaware of the risks to which their future security may be subjected.

Finding curbs for these actual and potential abuses is not an easy task. My experience with the securities laws has taught me that specific prohibitions in the investment community are often circumvented by the seemingly endless ingenuity of the unscrupulous. Therefore, the problem must be approach by setting a general standard of conduct and by enforcing that standard, in the first instance, through full and searching disclosure. The general standard to which I refer is the trust relationship. All persons associated with the management of pension funds must be viewed as fiduciaries. They must be held to fiduciary standards. Federal law should create this fiduciary relationship as a Federal rule by declaring that all of the assets of pension

funds are held in trust for the benefit of the participants and beneficiaries of the pension plans. This would be nothing more radical than legal recognition of what is supposed to be the fact. This declaration of trust would outlaw many manipulative schemes simply because they are not in the interest of the beneficiaries and participants.

The fiduciary relationship can in most instances be enforced simply through searching and continuing disclosure concerning the plan and the financial position and transactions undertaken by the fiduciaries who control pension funds.

I should add I was pleased to see in the bill before you that the draft of this particular bill went beyond the mere statement of fiduciary obligations and added certain prohibitions and restrictions upon the managers of these funds. I applaud that effort. Coming back to disclosure, disclosure must, however, be uniform so that the numbers disclosed have meaning. Only with uniformity in disclosure will employees be able to compare the effectiveness of the management of their fund with the effectiveness of those who manage other funds and competing investment opportunities. Uniformity can, in my opinion, best be accomplished by an annual audit conducted by independent public accountants. The existence of good accounting in the securities community has greatly enhanced the protection now afforded to investors and has, to a large degree, made effective Government regulation possible. Similar requirements as to pension plans are essential. In this context, however, accounting is useless if a careful check on the actuarial assumptions underlying the accounting techniques is not also made. Consequently, an effective system of regulation must include not only an accounting audit made by an independent accountant, but an actuarial audit made by an independent actuary, although the latter need not necessarily be made annually.

A good plan with good eligibility, funding, vesting, termination, insurance, portability and enforcement provisions administered under a trust relationship with accounting and actuarial supervision will provide immeasureable security to individual employees. It will also provide the basis upon which full disclosure can be made to such employees so that they may understand their pension plan, understand the conditions under which they may receive benefits and understand the circumstances under which they may be deprived of benefits. As in the securities laws, the responsibility needs to be placed upon the fiduciary to insure that this information is conveyed to the plan participants and their beneficiaries.

Every new employee should get a prospectus for his plan. And, since once he has bought or invested, he cannot sell, he should at least be kept informed of the plan's status and funding. Thus a provision should be made for periodic reports to all participants. The Federal administrators should have sufficient authority and adequate personnel—as an old bureaucrat I must emphasize the adequate personnel part of this thing—to enforce the relevant provisions of law for the benefit of participants and beneficiaries, the persons usually least able to fend for themselves.

Fiduciary requirements and full disclosure will also reduce the risk that pension plans are administered in a manner detrimental to the orderly operation of the securities markets. A further protection may be provided through a limitation on the percentage of plan assets that

can be invested in the employer's securities. Such a provision would reduce the risk of stock market manipulation in an area where it is likely to occur. It will also help to diffuse the new money coming into our securities markets through rapidly growing pension plans and, at the same time, provide greater diversification and reduction of investment risk to employees or their survivors. What that percentage should be is a judgment. I recommend that here today the subcommittee adopt a 5- or 10-percent limitation on the amount of fund assets which can be invested in the stock of a plan's employer and his subsidiaries, affiliates and controlling persons.

Two years ago when I testified before Mrs. Griffiths, I recommended 10 percent, but there have been many changes in the pension plan area and in our securities markets, grown more rapidly, larger, more penetrating.I thought now I would suggest possibly a 5-percent limitation. Nineteen-seventy was the year for investment company reform, and I should say again under the aegis of the chairman here today the Congress enacted many improvements in the Investment Company Act of 1940. Our chairman today also assisted the Commission by sponsoring and supporting the bill for an institutional investor study. That study has been completed and it contains many interesting facts, conclusions, which I think may be relevant to the consideration by this subcommittee of the bill before it. As the chairman and Senator Javits have said, 1972 is the year for pension plan reform. I support the subcommittee in that endeavor. This subcommittee has already laid the groundwork in its fine pension plan studies. We will all be be well served when that work ends in productive legislation which will preserve the flexibility and ingenuity that American business and labor brought to the field of retirement security and, at the same time, insure that further efforts are directed toward providing greater protection and flexibility in future pension plans.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

That is a magnificent statement and profound and helpful, and I am sure it will be with us for the duration of our deliberations on this legislation.

Mr. COHEN. Can I put a plug in for the Keogh plans too? That is where my bias will show.

The CHAIRMAN. Plans for the self-employed are not part of our bill. They are part of administration's bill, however, and I would appreciate your comment on that.

Mr. COHEN. I have an interest in that plan. Unfortunately I do not have too many years left, but during those few years it would help considerably if those provisions were made more generous for the self-employed.

The CHAIRMAN. You mean existing provisions or expanded provisions to cover people who are not a part of it now?

Mr. COHEN. I mean both.

The CHAIRMAN. Just briefly for our record. Who is covered now under the Keogh Act?

Mr. COHEN. Largely self-employed persons. I am not an expert on the Keogh bill. I have had a little bit to do with it from the point of view of the securities side, but what I had in mind, frankly, was that the opportunity for the self-employed to increase the amount

which may be put aside under those plans should receive some consideration. I would agree, however, with Mrs. Griffiths when she stated earlier this morning that probably the first order of priority and probably the greatest need lies in the area with which the bill before you deals.

The CHAIRMAN. I want to turn to Senator Taft who cosponsored this bill. Before I do, I have said in a very broad and general way that it impresses me that pension fund assets today represent the largest reservoir of virtually unregulated savings in this country. Yet there is no national fiduciary standard that applies to pension funds.

Mr. COHEN. Of course the Welfare and Pension Plan Act as originally enacted, which had no teeth whatsoever, and subsequently was amended, reflects governmental effort to deal with this problem. As you have suggested and the others have suggested, the present situation is woefully inadequate. It is true the pension plans are significant in the securities market today—they bring more money to the markets each year. They will ultimately as they have to a substantial extent until now, serve our national policy. These funds properly safeguarded may also serve to fuel the engine for our continued industrial growth.

It is necessary, however, that the rights of all parties be properly recognized and protected. I think the bill before you goes a very long way toward dealing with those problems. I refer to the Institutional Investor Study, which was authorized by the Congress a few years ago, because that study deals with many of the problems that we have spoken to here today but from the point of view of the securities market. The report demonstrates quite clearly, as does each succeeding release of information from the Commission, that this is the fastest growing and probably the most important area of new money and new interests in our securities markets. It is interesting to me that the growth is larger in the private sector than in the public area, although I do not mean to suggest that improvements may not be necessary in the public sector.

What interests me is that it is done under our democratic ethic. The plans are arrived at by agreement between business and labor and the funds are not used solely to fuel the engine of government. Of course, some of it is. But that those funds are somehow translated to the other side of the equation, as I suggested a few minutes ago, to assist in the continued growth of our economy by providing funds for industrial and commercial expansion.

The CHAIRMAN. This leads us into an inquiry of what oversight there is today. What oversight, in your judgment, should there be of the investment policies of this massive reservoir of pension funds? What is the SEC's authority now in terms of analysis of policy?

Mr. COHEN. As I indicated earlier, an interest in the pension plan is a security. It is by definition a security under the Securities Act. Its sale is, however, exempt under certain circumstances from registration under that statute. In 1970, the Congress amended those provisions. A pension plan is by definition an investment company and therefore would be subject to the provisions of the Investment Company Act, were it not again for a special exemption. That exemption was first written into the statute in 1940. That problem was revisited by the Congress in 1970. At the time, however, I do not believe the Congress had before it the benefit of the study which it authorized and had

the U.S. Government pay for, now completed by the SEC, which deals with all institutional investors. That is the reason I suggested that that report may be of interest to the members of this committee.

I think the chairman is quite correct in saying that the pension plan situation really is an aspect of a larger concern that this Congress has demonstrated. The pension plans tend to deal with employees. I referred to mutual funds as dealing with the interest of investors in those funds. I might say, if Senator Taft will forgive me, that his father was one of the principal architects of the Investment Company Act of 1940. He expressed considerable interest in the development of that statute, and without his assistance that statute probably would not have come into existence. I have likened the two statutes only because essenially we are dealing with investors under both. Investors in funds are of relatively modest means. I do not mean to say that mutual fund investors are quite the same as employees, but they are of relatively modest means. Mutual funds have fulfilled a very important need in our economy. Mutual funds have provided substantial sums of money which also have fueled the engine of our industrial machine. Yet, mutual funds have had substantial protection since 1940 which pension plan employees have not had.

Coming more specifically to your question, I think under State law many pension plan administrators and those involved in their control, management and otherwise, may be considered to have some sort of fiduciary responsibility. It is a very uneven situation there, as I recall the law.

Even if you did have a uniform situation at the State level, the very reason that Congress adopted Federal legislation in the securities area is the same reason why you need it in the pension plan area. A particular State cannot effectively deal with pension plans of a company that is a multistate company, or indeed a multinational company.

There are also problems of various kinds at State levels with respect to mutual funds. At any rate, it is well accepted today that legislation at the Federal scheme was necessary. It began in 1933 and the Congress is keeping a continuous vigil over that situation, and should, because it deals with a very important part of our economy.

I believe, therefore, that the points you make do have a very great relationship; there should be some revisiting of the relationships between these two important vehicles and their effects on the markets. I think with the adoption of this bill and additional authority and responsibility vested in the Commission—and perhaps it may ask for more, I suspect it may ask for more in the area of disclosure—that the Government will be able to achieve a comprehensive view of this phenomenon in terms not only of the protection of the investors, but also the protection of the society which includes the protection of the securities markets and the employer.

The CHAIRMAN. Thank you. We will include in the record following your testimony the applicable parts of the institutional investors study that relates to pension funds.

Senator TAFT. Thank you, Mr. Cohen, for a very cogent statement. I regret I was not here for all of it. I have had a chance to skim through the part I missed anyway. Specifically I would like to ask just a few questions. You mentioned having an actuarial audit made by an independent actuary. Is this done today in any degree?

Mr. COHEN. Yes, I believe it is done, but not to as great a degree, as perhaps it should be, in my view. I have made a pitch here for independent auditing. I think that is well accepted. But the auditor must rely on certain actuarial estimates.

It seems to me the reason for an independent audit is the very same reason why one should have an independent actuary.

Senator TAFT. What I was aiming at was the question of whether there is a body or recognized group of actuaries who would meet a particular standard. There are some in various associations, I know. But by and large standards are not as identifiable as in the case of certified public accountants.

Mr. COHEN. This is a good point, Senator Taft. I hope you will forgive me. This is the first time I have appeared before you. I always make a speech when I answer a question.

Senator TAFT. I interrupt very easily.

Mr. COHEN. The situation with respect to an independent actuary, the point you make, is very well taken. It is not quite the same, although I do have some recollection of the situation as it occurred before the Federal Securities Act came into being. At that time, if you will forgive me a bit of history, there was before the Congress a suggestion that the U.S. Government should have an army of its own auditors who would go out and audit the books and records of all companies which would sell securities or have their securities listed on the stock exchange.

A representative of the accountants' profession came in and said, one, that could never be, you could not hire enough good accountants to do the job.

Forgetting for the moment the personal point there involved, they suggested that the better approach—I agree with it and it has worked very well as I will explain—the better approach would be insistence in Federal law on certification by an independent accountant. That would build the ranks of the independent accountants, and if the Commission supported that body it would build their sense of independence. There were and still are problems in the area of accounting, as indeed there are problems in the area of law and elsewhere, but it is fair to say that the ranks of independent public accounts today are far greater. They live by much higher standards and they have developed better, albeit needing some change, by which auditing is conducted and financial statements presented. I think the same thing would occur in the actuarial field. There are independent actuaries today. Banks use them for various purposes. They insist upon actuaries.

Senator TAFT. By independent, you mean not only independent of pension fund trustees, but also independent of anybody selling policies or investment——

Mr. COHEN. I do mean that. I mean truly independent in every sense of the term.

Senator TAFT. You feel there are a sufficient number available to take on this kind of burden?

Mr. COHEN. I think there are. Maybe some of those that are not independent may become independent.

Senator TAFT. Are there licensing procedures that are involved as in the case of CPA's?

Mr. COHEN. I am not aware of that. I do believe there is at least one important association of actuaries. I do think that they have made efforts to improve their professional qualifications, and the standards and ethics by which they carry on their chosen profession. I think that actually, as I think upon it now, and I am sorry I did not think of it myself, that your suggestion holds promise a great deal of good, not only in this area but in possibly other areas if, by virtue of this bill, there will be a greater promotion of the concept of an independent actuary and a greater number of people who will practice that profession in that way.

Senator TAFT. Thank you very much. Moving on to one or two other questions. You say you recommend the subcommittee adopt 5- or 10-percent limit on the amount of fund assets which could be invested in the stock of the employer. Why any?

Mr. COHEN. That is a good point. I was in this Government for a long time. For good or ill, I learned a little bit of compromise. I think your question is a good one. Perhaps——

Senator TAFT. You mean you might have to settle for grandfather clauses because you have already got a situation——

Mr. COHEN (continuing). In all fairness perhaps I can bring some other arguments on the side of permitting some limited investment in the company. I think that perhaps if this bill is passed and if the information to be provided to employees is provided, the employees may learn a lot more than they now know about their own company by virtue of the fact that the chosen administrator, who will have a fiduciary responsibility to them, will have to examine very closely into the operations of that company, and sometimes that may have additional benefits.

So that investment of 5 or 10 percent would not trouble me, but obviously if you eliminated it entirely, you eliminate any possibility of abuse.

Senator TAFT. Do you feel we ought to put a specific limitation on the type of investments involved, say a maximum of 60 percent in common stocks or something of that sort? Limitations on the amount of real estate or anything of that sort?

Mr. COHEN. No. I do not have a firm opinion on that. I think if fiduciary standards are enacted, if other restrictions contained in the bill are enacted and perhaps strengthened—they may be strengthened some way by reference; for example, to section 17 of the Investment Company Act, although I think an attempt has been made to reach some of those areas—I believe those responsibilities will create a situation within which the administrator can use his best judgment, at different periods in the development of our economy, to determine which form of investment best suits the needs of the program participants.

There is one thing that you and I know we have lived with for some time and, in any growing economy, I suppose we will continue to live with it to some extent—inflation. It is suggested, and I do not know any strong arguments against it, that common stock provides a hedge against inflation. But I do agree with your basic point. There must be a real balance between the types of securities that such a plan, which looks to long-term growth and its ability to meet a promise. The concept of investment for such a security interest has a special signifi-

cance—different say—from the objectives of a mutual fund manager, who has specific objectives that his particular clients want, where he is using discretionary income really. That is a fancy word, Mr. Taft, but I think it describes best what I mean.

Any voluntary investment outside the pension fund, is using discretionary income or it should be. Presumably, you have taken care of your life insurance and your savings and you have taken care of your retirement. Here we are not dealing with discretionary income, we are dealing in most cases with the only source of future protection, and therefore the rule should be stricter. To come back to your specific question, I am not sure that Congress should lay down an ironclad rule, but it should surround fiduciary as well as it can with obligation and responsibility.

Senator TAFT. The other area that I am a little confused on from your testimony, I am not sure we can go into it at any great length this morning, but this idea of setting up Federal remedies and maybe a new body of Federal trust law or Federal law bothers me somewhat. I do not know whether we are preempting the field insofar as existing State trust laws are concerned or whether there is really any need for providing remedies in Federal court in this kind of situation.

The remedes in State courts, generally in trust cases, have been pretty adequate, I felt.

Mr. COHEN. Senator Taft, forgive me again. These are the very points your father made around 1939 and 1940 when the Investment Company Act was passed. They are points that deserve careful consideration. The facts of life are, however, that the situation in the States is very uneven, that although under State law some plans may be considered to be such as to provide—require fiduciary responsibilities under State law, they really have not been enforced.

I was a member of a Presidential Committee and many such instances were brought to our attention. We heard from State administrators, State officials who indicated in their opinion they were unable to cope with all the problems. Now that problem came up in 1940 for congressional consideration, and as you will recall the Investment Company Act came about because there were gross abuses. Yet the same general trust law that exists today existed at State level then. But it was inadequate to the task. I think the problem is no longer a local problem in the pension area.

The State law situation was a good thing when you had local industry operating within a community or State or county. Today we are dealing with multistate corporations and multinational corporations. I really do not believe that the States are geared to enforce, even when they have good law in that particular State——

Senator TAFT. But some law relating to fiduciary relationship has to be enforced. Can we write in a Federal statute, an adequate definition of the responsibilities of fiduciary?

What I am asking you is, do we try to establish by common law principles a set body of Federal fiduciary law? The Federal courts are in effect applying State law, insofar as general fiduciary relationship is involved.

Mr. COHEN. In the investment company area, in 1940 the statute contained provisions which set up fiduciary responsibility. It was referred to in terms of breach of trust. But it was a Federal breach or trust. The courts developed this. Of course they had reference to State law and reference to English law, wherever you could gather together the strains of development of trust law. In 1970 this problem was reconsidered by the Congress and the situation was strengthened in the area of Federal fiduciary obligations.

I would agree that it would be difficult—I certainly would not recommend it. I think it probably would be a mistake for the Congress to attempt to specify fiduciary responsibility. I am talking about a general standard.

Senator TAFT. Thank you very much. I have completed my line of questioning.

The CHAIRMAN. Very good line of questioning.

Thank you very much.

(Information supplied for the record by Mr. Cohen follows:)

INSTITUTIONAL INVESTORS STUDY

Chapter VIII

PENSION—BENEFIT PLANS, FOUNDATIONS, AND EDUCATIONAL ENDOWMENTS

Chapter VIII considers certain institutional portfolio groups which are among the major clients of the institutional investment managers covered in the preceding chapters. In addition, the chapter examines self-managed portfolios and their investment departments as institutional managers. The portfolio groups examined include noninsured corporate and multiemployer pension-benefit plans, State and local government retirement systems, educational endowments, and private foundations. Insured accounts are examined in chapter VI.

The Study concentrated its data collection and analytical efforts for this chapter upon samples of each portfolio type chosen to maximize coverage of assets while minimizing the number of individual respondents. The largest members of each portfolio group, then, are the subjects of this chapter.

Noninsured corporate pension-benefit plans is a category consisting primarily of pension plans and profitsharing plans and to a much lesser extent savings and thrift plans and stock and bond purchase plans. An element common to the members of the category is that benefits in some form are received at or after retirement, or other termination of employment. The principal difference between pension plans and profit-sharing plans lies in the nature of the employer's contributions. In the typical pension plan, employer contributions are made periodically at such times and in such amounts as are determined actuarially to be adequate to provide the benefits conferred by the plan as they become payable. In the case of the typical profit-sharing plan, by contrast, the employer contributes amounts out of profits from time to time and the plan contains a formula permitting calculation of the employee's interests in the fund and the benefits to be paid to participants who qualify.

Both types of plans may provide for employee as well as employer contributions; occasionally, employee contributions may be required. In a fairly high percentage of the larger plans, about 50 percent, employees may, prior to retirement, acquire vested rights to receive benefits at or after retirement; in others, continued service until retirement will be a condition precedent to the receipt of benefits. Some plans may provide death benefits to named beneficiaries of participants. Some may provide disability benefits.

To an increasing extent pension plans may provide for variable benefits with the amount of benefit based either on the investment results of a fund or separate account, or upon some general index such as the cost-of-living index. These kinds of benefits stem from efforts to offset the effects of inflation on fixed-dollar benefits provided in the older, traditional plans.

If a pension-benefit plan is funded through the medium of a trust, the trust is entitled to tax exemption under the Internal Revenue

Code provided that certain qualifying standards are met. In general, to qualify, the plan which is the subject of the trust must be in writing, must not discriminate in favor of certain classes of employees, must cover certain percentages of employees, must provide for the vesting of benefits upon termination of the plan, and must be used solely to benefit employees or their beneficiaries. If a plan qualifies, contributions to the trust by the employer will be deductible by the employer, contributions as well as the income and capital gains of the trust will not be taxed to the trust, and beneficiaries will not be taxed until benefits are received, sometimes at the more favorable capital gains rates. By far the greater number of pension-benefit plans do seek and attain qualified status; all of the plans in the Study's samples were qualified.

Beyond the qualification provisions of the tax law, another important part of the legal environment of pension-benefit plans is the Federal Welfare and Pension Plans Disclosure Act. In general, it requires plans covering more than 25 employees to file a descriptive statement with the Department of Labor as well as an annual report supplying information on the financial status and the investments of the plan. The plan's administrator is required to deliver upon request in writing to participants or beneficiaries a copy of the description of the plan and "an adequate summary of the latest anual report." In addition, copies of the description of the plan and the latest annual report are to be made available for inspection by participants or beneficiaries "in the principal office of the plan."

Recent sessions of the Congress have seen a number of bills introduced which would upgrade the quality of the reports required by the Act. A listing of securities by issue showing both current value and aggregate cost would be required under one bill. In addition, some of the bills would establish stricter standards of fiduciary responsibility on the part of persons who administer plans, provide for minimum vesting and funding standards, insurance, and portability of benefits from one employer to another.

During the period of time covered by the study and up to the passage of the Investment Company Amendments Act of 1970,[1] the Federal securities laws also were of major importance for pension-benefit plans. Amendments contained in the Investment Company Amendments Act have the effect of reducing substantially the impact of the securities laws on these plans.

Although interests of participants in plans meet the definition of "security" under the Securities Act of 1933, prior to passage of the Investment Company Amendments Act, the Commission generally did not require plans to register under the Securities Act. If, however, amounts exceeding employer contributions were invested in the securities of the employer, registration was required. This position has, in effect, been codified by the Act. Former section 3(c)(13) of the Investment Company Act of 1940 exempted from that Act trusts funding qualified plans; however, separate accounts maintained by insurance companies funding qualified plans were not similarly exempted. In this area, the Commission required registration under both the Securities Act and the Investment Company Act except to the extent exemptions were made available by rules 3c–3 and 6e–1 under the Investment Company Act and rule 156 under the Securities Act.

[1] Public Law No. 91–547 (Dec. 14, 1970).

The Investment Company Amendments Act exempts interests or participation in trusts and insurance company separate accounts funding qualified plans from the registration provisions of the Securities Act and the Securities Exchange Act of 1934 and from the registration and regulatory provisions of the Investment Company Act with two exceptions. Interests or participation in trusts and separate accounts funding H.R. 10 plans must be registered under the Securities Act, and interests or participations in single trusts or separate accounts funding the plans of a single employer under which an amount in excess of the employer's contribution is allocated to the purchase of securities of the employer must be registered under the Securities Act. For these purposes, securities of affiliated companies are considered securities of the employer, but interests or participations in trusts or separate accounts themselves are excluded from the class of employer's securities.[2]

In addition to the Federal laws and regulations discussed above, pension-benefit plans and their trusts also are subject to State laws in regard to such matters as responsibilities of trustees and investment of assets.

Multiemployer pension-benefit plans generally are subject to all of the above legal provisions and must in addition comply with the provisions of the Taft-Hartley Act regarding joint union-employer boards of trustees for pension and welfare funds. State and local government retirement systems are expressly exempted from the Welfare and Pension Plans Disclosure Act and, except to the extent that nongovernmental agencies enter the picture, from most provisions of the securities acts. For these systems, the major factors in the legal environment are local and State laws establising and regulating the individual system. Because these systems are already tax exempt as State agencies or instrumentalities, qualification under the Internal Revenue Code is far less important than for private employers' plans, although some State and local systems do qualify.

Both educational endowments and foundations, the other major portfolio types examined in this chapter, generally are tax exempt under the Internal Revenue Code, provided that they do not engage in prohibited transactions as set forth in section 503(c). The Tax Reform Act of 1969, which was not in effect during the period covered by the study's data collection, imposes a tax on foundations.

One striking aspect of these institutional portfolios is their large size and concentration. In the area of corporate pension-benefit plans, for example, the combined plans in the Study's sample for the firm having the greatest amount of pension-benefit plan assets, contained over $5.6 billion in total assets or about 5.5 percent of the estimated total assets of all corporate plans. The plans of the nine firms having the largest pension-benefit plan assets had $24.7 billion, about 24 percent of the assets of all corporate plans. In terms of common stock holdings, the comparable figures were for one firm's plans, the largest in terms of common stock holdings—$2.4 billion—and for the nine largest firms' plans, $16 billion.

Similar figures are observed for State and local government retirement systems. The largest system in terms of total assets within the

[2] See sec. B.8.c of this chapter for a more complete discussion of the Investment Company Amendments Act.

Study's sample held $3.8 billion, or about 7.8 percent of the assets of all systems, while the largest 11 held $20.1 billion or about 41 percent of the assets of all systems. The largest system in terms of common stock holdings held $.4 billion, about 8.7 percent of all systems' holdings of common stock, and the top 11 held $2.5 billion, about 55 percent of all systems' holdings.

There was an observed tendency among all the portfolio groups studied, including educational endowments and foundations, to seek diversity of management; in the area of corporate pension-benefit plans, however, bank management predominated. Indeed, four banks managed 37 percent of all noninsured accounts covered by the study. Self-management and investment adviser management in particular appeared to be increasing. Within the bank managed plans, there was also a tendency to split the plan among more than one manager. This chapter did not develop data on insured plans. However, chapter VI discusses competition by insurance companies for the management of employee-benefit funds.

Those ultimately responsible for the disposition of the assets of portfolios within the groups studied evidenced to some extent an interest in the investment return of their accounts. This was less evident among the State and local government retirement systems as a whole; a substantial number of these systems, however, are severely restricted in terms of their ability to invest in equity securities. Among those systems having substantial equity investments, the same interest in investment results, as evidenced by frequent measurement of the account's return and use of outside agents for evaluation was observed.

The fact that many portfolios within these groups have changed or added new managers within the past five years also is evidence of an interest in and a desire for increased investment return.

With the notable exception of foundations, all portfolio groups observed experienced growth over the period from yearend 1964 to yearend 1969 in terms of both common stock holdings and total assets, with common stock growing faster than total assets for all groups (foundations declined less in terms of common stocks than total assets). These figures reflect growth attributable to both new contributions and investment return. The fastest growing group in terms of common stock was State and local government retirement systems which grew 266.4 percent over the five year period, from $763.5 million to $2.797 billion. Next was multiemployer pension-benefit plans with a growth rate of 94.5 percent over the five year period. Corporate plans' stock increased at a 53.6 percent rate, while educational endowments grew at a more modest 27.7 percent over the period. The leader in terms of total asset growth was multiemployer plans with 64.6 percent, followed by State and local government plans with 61.4 percent, corporate plans with 31.2 percent and endowments with 19.4 percent from the yearend 1964 to yearend 1969. Foundations in the sample declined 7.3 percent in total assets and 7.0 percent in the magnitude of their common stock portfolios over the period.

Another consistent pattern across these portfolio groups over the five year observation period was a growth in common stock turnover and activity rates. Corporate plans went from an annual common stock turnover rate of 7.5 percent in 1965 to a rate of 17.2 percent in 1969, with the largest jump (from 8.2 to 13.3 percent) occurring between 1966 and 1967. State and local government retirement systems

went from 3.0 percent in 1965 to 11.7 percent in 1969 with the largest jump (4.2 to 11.7 percent) occurring between 1968 and 1969. Multiemployer plans went from 5.1 percent in 1965 to 8.7 percent in 1968 and jumped to 14.4 percent during 1969. Educational endowments started at 7.1 percent in 1965 and went to 20.2 percent in 1969. The biggest jump for endowments was from 7.8 percent in 1967 to 19.1 percent during 1968. Foundations started at 3.6 percent in 1965 and rose fairly gradually to 5.2 percent during 1969.[3]

All types of portfolios held by far the majority of their common stock assets in New York Stock Exchange listed securities. State and local government systems were the most NYSE-oriented, holding 96.8 percent of their stock in these securities. This should be compared with the ratio of the market value of NYSE-listed equities to the market value of available equities of about 75 percent. Foundations, the group which held the smallest percentage of NYSE-listed stock, 77.3 percent, were still slightly above this rate.

There were few observed differences between portfolio accounts of the same type across different types of managers. For all groups except foundations, investment adviser managed accounts had the highest turnover rates, followed by bank managed and self-managed accounts. Again, except for foundations, investment adviser managed accounts had the lowest percentage of common stock held in NYSE-listed securities. For corporate and multiemployer pension-benefit plans and foundations, investment adviser managed accounts had the highest percentages of total assets in common stock and were a close second in endowment accounts to bank managed. Among State and local government retirement systems, however, self-managed accounts had the highest ratio of common stock to total assets.

Analyses were performed to measure the effect of various account characteristics on the common stock turnover rate for corporate plans. Other factors being equal, accounts having higher fee rates and accounts managed by investment advisers tended to have higher turnover rates, while older accounts and accounts holding greater numbers of issues tended to have lower turnover rates.

Similar analyses were performed to test the effect of various account characteristics on the fee rates charged corporate plans' accounts. These analyses show that the value of assets in the account is the major factor in the fee rate with larger accounts having substantially lower fee rates. Older accounts, accounts holding greater numbers of issues, accounts with higher turnover rates and accounts managed by investment advisers tend to have higher fee rates.

Self-management of portfolio assets was examined in some detail. There were not enough multiemployer plans in the sample to permit meaningful comparisons. Within and among the other portfolio types, however, it is possible to make some comparisons.

The investment departments of all internally managed portfolios reported that the "Fundamental" approach followed by the "Economic Outlook" approach dominated the departments' approach to securities evaluation. Few reported attaching much weight to the "Technical" approach.

When the importance of outside sources of information was in-

[3] These figures all are dollar-weighted averages; in the case of foundations, however, they do not include several large foundations which did no trading.

quired into, again, there was a high degree of consistency across self-managed portfolio groups. All but State and local government systems reported heavy reliance upon financial statements of issuers, with second place going to information received from broker-dealers for commission dollars. Direct contact with issuers was generally last in importance. Foundations' departments, while favoring financial statements of issuers first, preferred direct contact over information from broker-dealers. State and local government systems' departments favored advice from investment advisers over financial statements or other forms of direct information.

Most departments which manage more than one account had some awareness of potential conflicts among accounts when it came to buying or selling programs or when only a limited number of attractive securities are available. Few, however, had well-defined policies regarding how to resolve such potential conflicts.

For the most part internal management was chosen, where it was not required by law or the governing instruments of the portfolio, in the belief that it would be more economical. While there do appear to be consistent differences between self-managed accounts and other accounts, the data reported in this chapter do not permit firm conclusions as to the relative benefit afforded by the choice.

Recent legislative activity in the areas covered by this section of the study focus their attention on retirement plans. At present these plans are subject to a bewildering array of legal requirements and prohibitions at both the Federal and State levels. Securities laws, tax laws, the Federal disclosure statute, State trust or insurance law, labor law for union-employer administered trusts and the State statutes establishing public systems all apply in varying degrees. Despite the multiplicity of applicable laws and regulations and the costs associated with their compliance and administration, calls for more comprehensive Federal legislation during recent sessions of the Congress evidence concern on the part of their sponsors that existing regulatory schemes lack the consistency needed to insure the further growth and extension of pension coverage on the one hand, while providing acceptable degrees of security regarding anticipated benefits on the other, at acceptable cost to plan sponsors, beneficiaries and the public.

Any attempt to meet these goals must face the problem that efforts to increase the security of benefits will increase costs and may, to some extent, deter employers from establishing retirement plans or increasing the dollar amount of benefits under existing plans. The solution may lie in judgment that security of anticipated benefits outweighs the loss of potential increases in benefit levels that may never be realized by many participants.

The recent call of the President's Task Force on the Aging for the establishment of a Federal Pension Commission was rooted in part in the belief that "the rights of 40 million Americans who are covered by a pension plan are equally as vital as the more substantially protected rights of the 20 million American shareholders." This same theme has been sounded in recent legislative efforts which seek mandatory vesting, fuller funding and reinsurance of pension programs, as well as the provision of information to ultimate beneficiaries that more closely approximates that given to savers through other investment media.

Full exploration of these approaches may be anticipated in the near future.

The CHAIRMAN. Our next witness is Mr. John Cookenbach, executive vice president, and secretary of the First Pennsylvania Banking and Trust Co., speaking for the American Banking Association's Trust Division.

STATEMENT OF JOHN M. COOKENBACH, EXECUTIVE VICE PRESIDENT AND SECRETARY OF THE FIRST PENNSYLVANIA BANKING & TRUST CO., PHILADELPHIA, PA., AND PRESIDENT OF THE AMERICAN BANKERS ASSOCIATION'S TRUST DIVISION, ACCOMPANIED BY WILLIAM F. LACKMAN, SENIOR PENSION ADVISER, MORGAN GUARANTY TRUST CO., NEW YORK CITY, CHAIRMAN OF THE COMMITTEE ON EMPLOYEES TRUSTS OF THE ASSOCIATION; JEAN M. LINDBERG, SENIOR VICE PRESIDENT, THE CHASE MANHATTAN BANK, NEW YORK CITY, A MEMBER OF THE COMMITTEE ON EMPLOYEES TRUSTS; AND ROBERT L. BEVAN, ASSISTANT FEDERAL LEGISLATIVE COUNSEL OF THE ASSOCIATION

Mr. COOKENBACH. Mr. Chairman, members of the subcommittee:

My name is John M. Cookenbach. I am executive vice president and secretary of the First Pennsylvania Banking and Trust Co., Philadelphia, and president of the Trust Division of the American Bankers Association. I am accompanied by William F. Lackman, Senior Pension Advisor, Morgan Guaranty Trust Co., New York City, who is chairman of the Committee on Employees Trusts of the Association; Mr. Jean M. Lindberg, Senior Vice President, the Chase Manhattan Bank, New York City, who is a member of the Committee on Employees Trusts; and Robert L. Bevan, assistant Federal legislative counsel of the association.

I brought these gentlemen with me because they are in pension work on a day-to-day basis, and they are in a better position to answer your questions. We have submitted for the record a full statement which we would like to have in the record.

I will summarize this morning what was submitted.

We appreciate very much the opportunity of appearing before the subcommittee to present the association's comments on S. 3598 which deals with subjects of great importance to employees, employers, and the public generally.

The American Bankers Association has a membership of 13,000 banks and trust companies which constitute about 96 percent of the commercial banks in the country. Approximately 3,500 of these banks exercise trust powers and are members of the trust division. The banks in this country hold as trustees approximately $100 billion of assets in connection with more than 120,000 employee benefit accounts. Members of the association maintain employee benefit plans for their employees who number approximately 1 million. Consequently, the association has a vital interest in all legislation affecting employee benefit funds.

In spite of the criticism made of the private pension system, we believe that it has done a remarkably good job. This is true even though the major growth in the size of these funds has taken place in the relatively short space of 30 years. If we may be permitted to say so, we think the banks have had an outstanding record in the handling of the funds entrusted to them.

The reason for this record of accomplishment is that banks have acted as trustees for well over 100 years, during which time they have accumulated vast knowledge and experience in managing property and funds belonging to others. It seems to us that many of the problems which have been brought to the attention of the Congress stem from the fact that the persons entrusted with employee benefit funds often have not been qualified to act as fiduciaries. In addition, they have not always been financially responsible and, thus, able to discharge any liability arising from any improper acts they might perform. Banks, of course, have large capital funds which are available to discharge any personal liability they might incur. If some way could be found to assure that fiduciaries are qualified and financially responsible, the need for legislation such as you have under consideration would not be so great, and the result might be more satisfactory.

The primary interest of the association is in the area of fiduciary standards, which is covered by title V of S. 3598, and we offer the following comments on this title.

The association supports the establishment of fiduciary standards which apply not only to all trustees of employee benefit funds but also to anyone who handles or controls employee benefit funds. All such persons should be included in the term "fiduciary."

The restated version of the prudent-man rule in the bill provides not only a meaningful investment standard for fiduciaries of employee benefit funds but also a sound standard for the handling of such funds outside the investment area.

Banks have been keenly aware of the existence of potential conflicts of interest in handling trust accounts and have taken steps to avoid any actions which would be favorable to the bank and detrimental to the interest of trust funds and their beneficiaries. From a policy standpoint, the proscriptions contained in the conflict-of-interest provisions of the bill are generally suitable, although some may question the need to prohibit entirely sale and leaseback transactions with the employer. We have prepared a supplemental statement that suggests changes in language which would clarify the meaning of these provisions, and I request that it be made a part of the record.

The association also supports the provisions of the bill which provide for greater disclosure of information to participants and beneficiaries, and which require administrators to have their accounts audited.

Our member banks are supervised by various government agencies. National banks are subject to supervision by the Comptroller of the Currency; State banks by State banking agencies; banks which are members of the Federal Reserve System by the Federal Reserve Board; and insured banks by the Federal Deposit Insurance Corporation. All these agencies make unannounced comprehensive examinations of banks, including the activities of their trust departments. Therefore, we urge that the use of the facilities of these supervisory agencies be required in administering the provisions of the act rather than leaving it to discretion.

Turning to another point, we suggest that the membership of the Advisory Council be revised to provide for more equal representation of management and labor. The apparent assumption of S. 3598 that the five representatives from the fields of insurance, corporate trusts, actuarial counseling, investment counseling, and the accounting field will represent the views of management is not necessarily valid.

Finally, Mr. Chairman, we have a number of suggestions of a technical nature which we have included in the supplemental statement to which I have referred.

I would now like to discuss briefly the statute of limitations provision of title VI. As written, it would make civil liabilities open ended and would establish an unwarranted burden on fiduciaries. In accounting for the many thousands of transactions, it is possible that some vital information may not be disclosed by a fiduciary through inadvertence. In such cases, if there has not been fraud, the fiduciary should be protected by a meaningful statute of limitations. We recommend for your consideration the provision contained in the Trust Indenture Act of 1939. It provides that no action may be maintained unless brought within 1 year after the discovery of the act constituting the cause of action and within 3 years after such cause of action accrued.

Having discussed fiduciary standards, I would now like to turn to title I.

The bill would establish within the Department of Labor an office to be known as the Office of Pension and Welfare Plan Administration, which would be headed by an Assistant Secretary of Labor appointed by the President, by and with the advice and consent of the Senate. It provides that the new Office is to take over the functions, books, records, and personnel of the Office of Labor Management and Welfare Pension Reports. It does not seem appropriate to transfer to the new Office that portion of the functions, books, and personnel of the present Office of Labor Management and Welfare Pension Reports which deals with the Labor-Management Reporting and Disclosure Act, generally known as the Landrum-Griffin Act, which governs the administration of labor unions. No provision is made in the bill to transfer to the Office the employee benefit functions of other Government agencies in spite of frequent references to problems resulting from the proliferation of agencies having jurisdiction over employee benefit funds.

The bill would give the Secretary of Labor many discretionary powers and considerable authority to enforce the provisions of the act. The association is strongly opposed to the granting of regulatory powers to the Secretary of Labor and urges that if such powers are to be granted, they should be granted to the Secretary of the Treasury or to a separate agency as provided in S. 2 introduced by Senator Javits. It is clear that a broader viewpoint is required in the administration of comprehensive pension legislation than can be expected of any governmental agency such as the Labor Department which has been established to protect the interests of only one particular group.

The Secretary of the Treasury already has under his jurisdiction two offices which are involved in the supervision of employee benefit plans and funds—the Internal Revenue Service and the Comptroller of the Currency. If for some reason a separate office cannot be established in the Treasury Department in which the powers and duties of varous Government agencies with regard to employee benefit funds could be concentrated, the size and importance of these funds certainly warrant the establishment of a separate agency.

Turning now to part B, it appears to us that all employees covered by private plans should be covered by the provisions of the act. Thus we can see no reason for exempting from titles II, III, and IV of the act plans having fewer than 25 participants.

The association endorses the concept of vesting normal retirement benefits after completion of a reasonable combination of age and service. We regard the rule of 50 which is contained in S. 3012 as a reasonable approach. That rule has the advantage of vesting benefits more quickly for persons hired at older ages and provides vesting for a larger percentage of participants age 45 and over.

It has been argued that the rule of 50 would deter the hiring of older persons. We do not agree that the rule would have this effect. Under Secretary of the Treasury Edwin S. Cohen told the House Ways and Means Committee on May 8, 1972, that the discounted single-premium cost of providing $100 of retirement income for a worker age 55 is $570 if no vesting is provided, and $585 if the rule of 50 is applicable. The increased cost of approximately 2.5 percent is, in our opinion, not large enough to serve as a further deterrent to the already existing deterrent of high pension costs for older persons.

The association considers the eligibility requirement of S. 3598 too stringent. Until age 30, many employers experience high turnover. It is suggested that a requirement of no greater than 3 years of service and the attainment of age 30 would be more reasonable.

The bill provides that the years of service required for vesting need not be continuous except that 3 of the 8 years required to qualify for the 30-percent vested right must be continuous. It is suggested that any such provision should apply only prospectively and that the period of the break should be limited to layoffs of less than 2 years. The principle of vesting should be applied in such a way as not to encourage job-jumping.

Many plans already have vesting provisions which differ from the one in S. 3598. In some cases vesting would be more liberal at certain ages and less liberal at other ages than the bill requires. It is suggested that consideration be given to stating in the bill alternate formulas which would be acceptable.

The association agrees that plans should be funded on a reasonable basis to assure the adequacy of funds to pay pension benefits as they become due. The present rules of the Internal Revenue Service do not provide sufficient flexibility to encourage faster funding. For this reason we suggested to the House Ways and Means Committee on May 9, 1972, when testifying on H.R. 12272 that employers be permitted to make additional deductible contributions on account of past service in excess of 10 percent of the original unfunded cost to the extent that such contributions in previous years were less than 10 percent.

With regard to S. 3598, we have concern that what is intended to be a minimum requirement for funding will become the standard and that the result will be to slow the rate of funding even in existing plans. The bill provides that the plan must set forth the funding obligation of the employer. Therefore, it may be expected that many employers will not state any greater obligation in their plans than the required minimum. The requirement for equal payments on account of the initial unfunded liability and any experience deficiency seems to preclude any faster rate of funding voluntarily and certainly discourages it. In addition, the Secretary is given the authority to defer the application of the vesting and funding provisions of the act for as long as 3 years and to grant variances from the funding requirements for periods of 5 consecutive years.

82-079 O—72—pt. 1——17

A funding provision should be stated as a required minimum. It seems that the principles adopted by the accounting principles board of the American Institute of Certified Public Accountants in their opinion No. 8 would serve as adequate protection in the area of funding.

Section 211 of the bill dealing with the discontinuance of plans is not clear in a number of respects which we set out in our full statement.

Mr. Chairman, because of pressures involved in filing our full statement, we neglected to comment on one point which we discussed before the House Labor Committee and the House Ways and Means Committee.

It seems to us that previous testimony presented to the Congress indicates a need for requiring the vesting of benefits when the services of employees are involuntarily terminated because the company sells or shuts down a plant or operation. In such cases, it appears there have been instances where funds already set aside to provide retirement benefits for the employees of the plant or operation which has been sold or shut down, and for which the employer has been allowed a tax deduction are in excess of the amounts required to provide benefits for the employees of the plant or operation who have retired or have left the service of the employer with vested rights.

The Internal Revenue Code provides that upon the complete termination of a plan all rights of employees must be nonforfeitable and that no money can be returned to the employer until all liabilities to the employees under the plan have been satisfied. It is not clear, however, that there must be the same vesting of benefits when employment is terminated as the result of the sale or shutdown of a plant or operation and the plan is continued for the remaining employees. It would seem that the Internal Revenue Code should clearly provide that such an event should be considered as a partial termination of the plan as to the affected employees.

To return now to section 211, there is considerable question whether it is legally possible to provide by statute a rule applicable to present participants and beneficiaries for the distribution of the assets of a fund upon its termination which differs from the provisions of the present plan. Section 215 of the bill allowing a plan to be divided also raises a number of unanswered questions which we discuss in our full statement.

The establishment of a portability program even on a voluntary basis would create a number of complex problems to which answers have not been found.

There are many differences in the types of plans and benefits maintained by different employers. The actuarial assumptions used vary considerably. The reserves accumulated under an employer's plan are based on all the benefits provided for in the plan, but when an employee terminates employment with a vested right, he will be entitled at normal retirement age only to a normal retirement benefit. This means that only a portion of the reserves which might be considered to have been set aside to provide the employee's benefits will be transferred when he terminates employment. As a result, there will be numerous questions and disagreements concerning the amount of reserves to be transferred and their status with the transferee. Among

other difficulties that have to be considered is the impact on the status of remaining participants when a vested benefit is transferred out of a fund that is not fully funded.

Further, trustees of every participating plan would find it necessary to keep a larger portion of the fund invested in liquid securities in order to meet the requirements for the transfer of lumpsum amounts when employees terminate service. This requirement would reduce the investment return on the funds, which in turn would increase the employer's cost in maintaining the plan.

For these and many other reasons we feel strongly that a further intensive study would have to be made of the need for such a program and of the legal and technical difficulties that must be overcome before such a program could be established.

Turning now to plan termination insurance, all such proposals put forth to date including the one in this bill have failed to recognize or meet many of the problems inherent in operating such a program.

The problems include the probability of encouraging the adoption of plans providing overly large benefits without regard to whether the employer is financially able to make the necessary contributions over a period of time; the discouraging of faster funding of plans because of the availability of the insurance; the absence of any meaningful cost data that would provide a long-range projection of probable premiums; and the absence of a relationship between the insured risk and the premium.

No provision is made in the bill for establishing underwriting rules designed to assure appropriate plan provisions, financial capability of the employer to maintain the plan, and proper handling of the funds. Employers are permitted to determine the amount of benefits to be provided and the actuarial assumptions to be used (possibly within limitations fixed by the Secretary). They may determine the rate of funding the initial unfunded liability within a 40-year period and the manner in which the fund to be invested. Without underwriting rules, the insurance program might well impose an unreasonable burden on employers following more conservative practices.

Even if an insurance scheme could be designed which would take care of these problems, we believe the administrative burden would be great, and the additional cost to employers would be substantially higher, not only because of the insurance cost but also because of the restrictions on actuarial assumptions and on investments which would entail larger contributions.

It should be noted that the amount of the insurance payable is fixed at the difference between the realized value of the plan's assets and the amount of vested liabilities under the plan. This means that the insurance would guarantee the investment results—a liability which could be considerable if a plan is terminated during a period of depressed investment markets. Until your subcommittee makes further in-depth studies of the problems involved, it would be dangerous to proceed with the establishment of such an insurance scheme.

Because of the relatively short time since the introduction of S. 3598, there are a number of technical points which we have not had the time to research and comment on in this statement.

The interim report of your subcommittee contains a recommendation that further studies should be given to such matters as cost factors and

the extent and impact of plan terminations. The interim report also comments that full utilization has not been made of the data obtained from the P–1 survey. Until these studies are completed, legislation in areas other than fiduciary standards should not be enacted.

The mere fact that after 5 years of intensive study there are still so many open questions is a clear indication of the complexity of the problems and the care with which legislation must be developed.

As we said in the beginning of our statement, we share the subcommittee's vital interest in the protection and orderly development of the private system. We stand ready to meet with and work closely with the members of the subcommittee and its staff.

We thank you, Mr. Chairman and members of the subcommittee, for giving us the opportunity of discussing this bill with you.

The CHAIRMAN. Thank you very much. We appreciate your statement, we also appreciate that final offer. We are aware of the relatively limited time that you had to consider the bill as introduced, and it is complex. The only other bill that was given any attention in the first days' hearings on legislation was the administration's bill.

Do you care to comment on that?

Mr. LACKMAN. We have endorsed the principle in the administration bill that the self-employed should be given a larger amount as a tax deduction in order to better enable them to provide for their own retirement and for their employees. We also endorse the idea of giving individuals a tax deduction for contributions to individual plans whether or not their employers have a plan under which they are covered, because in some cases the employees may not have an adequate coverage under the employer's plan.

As we have said, we think the rule of 50 is a reasonable approach to vesting. We are not wedded to that particular rule but we feel that any vesting rule should be a combination of age and service rather than just service alone.

The CHAIRMAN. I am not sure I understood the import of your statement on the rule of age 30 and period of service.

Mr. COOKENBACH. We were referring to eligibility.

Mr. LACKMAN. There is a lot of turnover in the group under age 30. There is a lot of recordkeeping involved to make actuarial calculations and, in the case of contributory plans, to return the employees' contributions when they terminate employment. It seemed to us that 21 is too early an age at which to require eligibility. Their compensation generally is lower. Their turnover occurs after relatively short periods of time. And when we have the 8-year provision of S. 3598, many of these younger employees would never reach the 30-percent vesting.

The CHAIRMAN. The major deficiency that we saw in the administration's program is that there is no funding provision at all. As bankers, how does this square with your conservative view of any program that vests the right but does not establish the fund to——

Mr. LINDBERG. As bankers and as people who have been vitally concerned in developing these plans and having them operate on a sound basis, we are 100 percent in favor of sound funding programs. Where we have a problem is in the setting down of some rather strenuous rules, which might inhibit or retard people from establishing plans because they might be taking on rather rigid funding requirements for the future as compared to the flexible approach permitted at the present time. The Treasury rules today require some form of mini-

mum funding standard in order for a plan to be considered an ongoing actuarially solvent plan. As you know, this means that current costs must be met, and at least interest must be funded on accrued liability. We know that most corporations go far beyond this. Most pension plans are far better funded than that voluntarily. In many cases even under negotiated plans the stipulations for funding past service go even beyond the elements in your bill. Most of them will have 30-year funding as a negotiated requirement.

I think what we are concerned about is, if you set up a standard——

The CHAIRMAN. Who makes that requirement of more stringent funding?

Mr. LINDBERG. Under certain labor contracts——

The CHAIRMAN. Private negotiation?

Mr. LINDBERG. Yes. In setting up benefits, there will be subagreements such as the autoworkers have, that accrued liability be funded over a period of not greater than 30 years. This is not uncommon. But I think our problem is that when one sets up a standard that is not functionally a minimum, that standard might well become the norm. As we point out in our statement, we are concerned that the standards in S. 3598, which is certainly better than interest only on accrued liability, is not as much as what most corporations now do, even though some corporations for one reason or another depart from such funding on occasion. We think if you want to set up 40-year funding as a minimum, instead of interest only, you should clearly permit the minimum to be surpassed on a cumulative basis. We think that would be more appropriate. My concern is the way this bill is drawn right now.

The CHAIRMAN. We were addressing ourselves to the administration's bill, and lack of provisions of funding. How does that strike you?

Mr. LINDBERG. I think they were relying on Internal Revenue Code's requirements.

The CHAIRMAN. You find wholly inadequate——

Mr. LINDBERG. I do not say inadequate. I generally like to see most people go beyond that.

The CHAIRMAN. As far as requirements under the law that the Treasury oversees are concerned, do you find the funding requirements inadequate?

Mr. LINDBERG. I cannot say they are inadequate——

The CHAIRMAN. I thought this was funding of interest only which is an absolute demand?

Mr. LINDBERG. Funding interest only is a minimum requirement.

The CHAIRMAN. Is that the only absolute demand?

Mr. LINDBERG. That is.

The CHAIRMAN. That is what I just said.

Mr. LINDBERG. But one should consider that in a unilaterally established plan, the granting of past service benefits is something voluntary on the part of the employer. He is taking on that liability voluntarily. In many cases we have found that, had there been a stringent requirement for funding past service, many employers would have been reluctant to grant past service benefits.

The CHAIRMAN. I thought you said these are negotiated.

Mr. LINDBERG. There is a difference. In negotiated plans, there are some that set up a stipulated requirement for funding past service.

In unilateral plans, this does not exist. In a unilateral plan where past service benefits are granted, generally as I say, voluntarily by the employer, by so doing, he has established certain benefit expectations and hopes and expects to fund them. Now the requirement of the Treasury Department is that you must, as a minimum, not let that accrued liability get any greater than it was at the installation of the plan, and one way to meet that is to fund interest only on that amount. Most employers go beyond that.

But that is the minimum stipulation at the present time. The Accounting Principles Board goes beyond that from the standpoint of a sound approach to discharging your vested liabilities. We are saying that we think that the voluntary approach taken by the Principles Board seems to be working well. This is such a complicated situation that, there alone, the Accounting Board studied funding requirements for a considerable length of time and issued a rather lengthy and comprehensive paper on the one subject alone. We, therefore, think that this is sufficiently complex that it cannot be handled in a matter of a couple of paragraphs and left to some broad regulation.

We are all for funding and we are all for even a minimum standard of funding, but we do not want to see a standard set up that becomes a maximum standard without flexibility.

The CHAIRMAN. We were liberal in terms of the length of time permitted for funding. I get the feeling that you fear that this rather relaxed demand would become the norm rather than stimulate a more accelerated——

Mr. LINDBERG. It might become a norm.

The CHAIRMAN. How do we deal with that?

Mr. LINDBERG. Partially through other factors in the bill, such as the requirement that it must be stipulated in the plan what the funding liability of the employer will be. It must be set forth initially, and paid every year in equal installments. There is no flexibility to depart from this in bad years without going to the Secretary of Labor and getting a variance. This coupled with the insurance feature, might lead an employer to say he will proceed on 40-year funding and if anything happens the insurance will buy it out. The bill should prescibe a minimum permit funding above that or a cumulative basis, and under certain circumstances allow an employer to put in less than a 40-year funding amount.

Forty-year funding is roughly 4 percent of accrued liability each year. And so this is what it would amount to over a period of years, 4 percent of initial liability.

Normally, employers will pay more than that, and less as years go by on an accumulated basis.

The CHAIRMAN. Some of these questions get a little involved for this particular approach of the hearing process. I will come back to your last offer that if we need further amplification of some of the points you raised, which are necessary to these deliberations, we would like to return to you.

Mr. COOKENBACH. Be very happy to.

Senator TAFT. I do not have any questions at this time. I will study this report carefully and avail myself of the same privilege, if I might.

(The prepared statement and attachment of Mr. Cookenbach follows:)

STATEMENT BY JOHN M. COOKENBACH,
PRESIDENT, TRUST DIVISION, THE AMERICAN BANKERS ASSOCIATION
ON S. 3598, BEFORE THE SUBCOMMITTEE
ON LABOR OF THE SENATE COMMITTEE ON LABOR
AND PUBLIC WELFARE ON JUNE 21, 1972

Mr. Chairman and Members of the Subcommittee:

My name is John M. Cookenbach. I am Executive Vice President and Secretary of The First Pennsylvania Banking and Trust Company, Philadelphia, and President of the Trust Division of The American Bankers Association. I am accompanied by William F. Lackman, Senior Pension Advisor, Morgan Guaranty Trust Company, New York City, who is Chairman of the Committee on Employees Trusts of the Association; Jean M. Lindberg, Senior Vice President, The Chase Manhattan Bank, New York City, who is a member of the Committee on Employees Trusts; and Robert L. Bevan, Assistant Federal Legislative Counsel of the Association.

We appreciate the opportunity of appearing before the Subcommittee to present the Association's comment on S. 3598 which deals with subjects of great importance to employees, employers, and the public generally.

The American Bankers Association has a membership of 13,000 banks and trust companies which constitute about 96 per cent of the commercial banks in the country. Approximately 3,500 of these banks exercise trust powers and are members of the Trust Division. The banks in this country hold as trustees approximately $100 billion of assets in connection with more than 120,000 employee benefit accounts. Members of the Association maintain employee benefit plans for their employees who number approximately one million. Consequently, the Association has a vital interest in all legislation affecting employee benefit funds.

In spite of the criticisms made of the private pension system, we believe that it has done a remarkably good job. This is true even though the major

growth in the size of these funds has taken place in the relatively short space of 30 years. If we may be permitted to say so, we think the banks have had an outstanding record in the handling of the funds entrusted to them.

The reason for this record of accomplishment is that banks have acted as trustees for well over 100 years, during which time they have accumulated vast knowledge and experience in managing property and funds belonging to others. It seems to us that many of the problems which have been brought to the attention of the Congress stem from the fact that the persons entrusted with employee benefit funds often have not been qualified to act as fiduciaries. In addition, they have not always been financially responsible and, thus, able to discharge any liability arising from any improper acts they might perform. Banks, of course, have large capital funds which are available to discharge any personal liability they might incur. If some way could be found to assure that fiduciaries are qualified and financially responsible, the need for legislation such as you have under consideration would not be so great and the result might be more satisfactory.

TITLE V - DISCLOSURE AND FIDUCIARY STANDARDS

The primary interest of the Association is in the area of fiduciary standards, which is covered by Title V of S. 3598, and we offer the following comments on this Title.

The Association supports the establishment of fiduciary standards which apply not only to all trustees of employee benefit funds but also to anyone who handles or controls employee benefit funds. All such persons should be included in the term "fiduciary."

The restated version of the prudent-man rule in the bill provides not only a meaningful investment standard for fiduciaries of employee benefit funds but also a sound standard for the handling of such funds outside the investment area.

Banks have been keenly aware of the existence of potential conflicts of interest in handling trust accounts and have taken steps to avoid any actions which would be favorable to the bank and detrimental to the interest of trust funds and their beneficiaries. From a policy standpoint, the proscriptions contained in the conflict-of-interest provisions of the bill are generally suitable, although some may question the need to prohibit entirely sale and lease-back transactions with the employer. We have prepared a supplemental statement that suggests changes in language which would clarify the meaning of these provisions, and I request that it be made a part of the record.

The Association also supports the provisions of the bill which provide for greater disclosure of information to participants and beneficiaries, and which require administrators to have their accounts audited.

Our member banks are supervised by various government agencies. National banks are subject to supervision by the Comptroller of the Currency; state banks by state banking agencies; banks which are members of the Federal Reserve System by the Federal Reserve Board; and insured banks by the Federal Deposit Insurance Corporation. All these agencies make unannounced comprehensive examinations of banks, including the activities of their trust departments. Therefore, we urge that the use of the facilities of these supervisory agencies be required in administering the provisions of the Act rather than leaving it to discretion.

The bill provides that there be filed with the annual reports submitted under the Welfare and Pension Plans Disclosure Act certificates in the name of and on behalf of the plan, the administrator, and any employer or employee organization participating in the establishment of the plan, designating the Secretary of Labor as agent for service of process in any action arising under the Welfare and Pension Plans Disclosure Act or this Act. Having in mind

the large number of persons who might have to execute such certificates, we suggest that the filings be required only when there are changes which suggest the need for new filings.

Turning to another point, we suggest that the membership of the Advisory Council be revised to provide for more equal representation of management and labor. The present Disclosure Act provides for 13 members made up as follows: four (4) from labor, two (2) from management, one (1) from the insurance field, one (1) from the corporate trust field, and two (2) from other interested groups, all appointed by the Secretary of Labor from among persons recommended by organizations in the respective groups, and three (3) representatives of the general public appointed by the Secretary. S. 3598 provides for seven (7) representatives of labor organizations, two (2) representatives of management, one (1) representative each from the fields of insurance, corporate trusts, actuarial counseling, investment counseling, and the accounting field, and five (5) representatives from the general public. Apparently, it is assumed that the five (5) representatives from the fields of insurance, corporate trusts, actuarial counseling, investment counseling, and the accounting field will represent the views of management so that they with the two (2) representatives of management will equal the number of representatives of labor organizations. This assumption is not necessarily valid. As an example, representatives of the five (5) interested groups perform services for many funds in whose administration labor organizations are involved. Accordingly, it is suggested that the membership of the Council consist of five (5) representatives of labor organizations, five (5) representatives of management, one (1) representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, and the accounting field, and four (4) representatives from the general public.

Finally, Mr. Chairman, we have a number of suggestions of a technical nature which we have included in the supplemental statement to which I have referred.

TITLE VI - ENFORCEMENT

I would now like to discuss briefly the enforcement provisions of Title VI. These provisions are in addition to the enforcement provisions in the Welfare and Pension Plans Disclosure Act. The bill provides that any action, suit, or proceeding based upon a violation of the Act or the Welfare and Pension Plans Disclosure Act must be commenced within five (5) years after the plaintiff has notice of the acts or events forming the basis of the claim. This would make civil liabilities open-ended and would establish an unwarranted burden on fiduciaries. In accounting for the many thousands of transactions, it is possible that some vital information may not be disclosed by a fiduciary through inadvertence. In such cases, if there has not been fraud, the fiduciary should be protected by a meaningful statute of limitations. We recommend for your consideration the provision contained in the Trust Indenture Act of 1939. It provides that no action may be maintained unless brought within one year after the discovery of the act constituting the cause of action and within three years after such cause of action accrued.

TITLE I - ORGANIZATION

PART A - Organizational Structure

Having discussed fiduciary standards and enforcement, I would now like to turn to Title I.

The bill would establish within the Department of Labor an office to be known as the Office of Pension and Welfare Plan Administration, which would be headed by an Assistant Secretary of Labor appointed by the President,

by and with the advice and consent of the Senate. The bill provides that the Assistant Secretary of Labor, under the supervision of the Secretary, is to exercise such power and authority as may be delegated to him by the Secretary for the administration and enforcement of this Act. It further provides that the new Office is to take over the functions, books, records, and personnel of the Office of Labor Management and Welfare Pension Reports.

It does not seem appropriate to transfer to the new Office that portion of the functions, books, and personnel of the present Office of Labor Management and Welfare Pension Reports which deals with the Labor-Management Reporting and Disclosure Act, generally known as the Landrum-Griffin Act. The Landrum-Griffin Act governs the administration of labor unions. Originally, the administration of that Act was handled by a separate group within the Labor Department, but it was merged with the administration of the Welfare and Pension Plans Disclosure Act approximately 10 years ago. The matters involved in these two Acts are only partially similar. We see no reason for transferring the administration of the Landrum-Griffin Act to the new Office. On the other hand, no provision is made in the bill to transfer to the Office the employee benefit functions of other government agencies in spite of frequent references to problems resulting from the proliferation of agencies having jurisdiction over employee benefit funds.

The bill would give the Secretary of Labor many discretionary powers and considerable authority to enforce the provisions of the Act. These powers include such important matters as the determination of persons qualified as actuaries, the placing of limitations on actuarial assumptions, the right to determine what disposition shall be made of unclaimed benefits, the determination of when there has been a substantial amendment or termination of a plan, the granting of deferrals and variances in the application of the vesting and funding provisions, the right to order or approve the termination of plans,

the issuance of rules and regulations concerning the voluntary portability and termination insurance programs, and the authority to bring actions against fiduciaries for violation of the Act and for their removal.

The Association is strongly opposed to the granting of regulatory powers to the Secretary of Labor and urges that if such powers are to be granted, they should be granted to the Secretary of the Treasury or to a separate agency as provided in S. 2 introduced by Senator Javits.

The purpose of the Department of Labor as stated in Title 29, Section 551, of the United States Code is "to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment." The supervision and regulation of employee benefit plans and funds provided for in this bill go beyond these purposes. The administration of the Act also involves the consideration of the ability of industries and companies to bear the cost of the requirements laid down by statute and by the implementing rules and regulations both as to plan provisions and administrative requirements; the effect on the tax structure of the requirements of the Act and the administrative decisions under it; the interrelationship with bank, insurance, and other governmental supervisory agencies; and the effect of contributions and their investment on the economy of the country. It is clear that a broader viewpoint is required than can be expected of any governmental agency which has been established to protect the interests of only one particular group.

The Secretary of the Treasury already has under his jurisdiction two offices which are involved in the supervision of employee benefit plans and funds - the Internal Revenue Service which administers the provisions of the Internal Revenue Code dealing with these plans, and the Comptroller of the Currency who, as part of his supervision of national banks, examines the activities of trust departments and gives special attention to the manner in which they handle employee benefit funds.

There is much to be said - pro and con - for the establishment of a separate agency. Certainly, if for some reason a separate office cannot be established in the Treasury Department in which the powers and duties of various government agencies with regard to employee benefit funds could be concentrated, the size and importance of these funds warrant the establishment of a separate agency.

PART B - Coverage, Exemptions, and Registration

Turning now to Part B, the language of its various sections does not state clearly what plans are covered by the Act and what plans must be registered. It appears to us that all employees covered by private plans should be covered by the provisions of the Act. Thus, we can see no reason for exempting from Titles II, III, and IV of the Act plans having fewer than 25 participants.

With regard to the registration provision, it is suggested that the Act permit the filing of applications within six months after the issuance of final regulations rather than within six months after the effective date of the Act.

TITLE II - VESTING AND FUNDING REQUIREMENTS

PART A - Vesting Requirements

The Association endorses the concept of vesting normal retirement benefits after completion of a reasonable combination of age and service. We regard the rule of 50 which is contained in S. 3012 as a reasonable approach. That rule has the advantage of vesting benefits more quickly for persons hired at older ages and provides vesting for a larger percentage of participants age 45 and over.

It has been argued that the rule of 50 would deter the hiring of older persons. We do not agree that the rule would have this effect. Assistant

Secretary of the Treasury Edwin S. Cohen told the House Ways and Means Committee on May 8, 1972, that the discounted single-premium cost of providing $100 of retirement income for a worker age 55 is $570 if no vesting is provided, and $585 if the rule of 50 is applicable. The increased cost of approximately 2.5 per cent is, in our opinion, not large enough to serve as a further deterrent to the already existing deterrent of high pension costs for older persons.

The Association considers the requirement that employees must be eligible to participate in employee benefit plans after the completion of six (6) months of service and age 21 to be too stringent a requirement. Until age 30, many employers experience high turnover. The additional record keeping and administrative cost under the eligibility rule in the bill is materially higher than it needs to be, particularly in contributory plans where employees' contributions must be returned when an employee terminates service. Employees who leave at the younger ages generally will not have had a long enough period of service to qualify for a vested right in any event. It is suggested that a requirement of no greater than three (3) years of service and the attainment of age 30 would be more reasonable.

The bill provides that the years of service required for vesting need not be continuous except that three of the eight years required to qualify for the 30 per cent vested right must be continuous. Although the reason for this provision obviously is to avoid penalizing an employee who voluntarily or involuntarily has a break in service, it is suggested that any such provision should apply only prospectively and that the period of the break should be limited to layoffs of less than two (2) years. To do otherwise would require an enormous amount of record keeping. There are bound to be many disagreements between employers and employees concerning the periods of service rendered if long periods of time are involved. This is particularly true in those cases where companies have offices and plants in many locations throughout the country

and records are not maintained on a centralized basis. We believe the principle of vesting should be applied in such a way as not to encourage job-jumping, and we would prefer to see a requirement that the service counted for vesting be continuous.

The bill does not specify, as we think it should, whether employees covered by contributory plans may withdraw their contributions when they terminate employment and, if so, whether the benefits attributable to the employer's contributions must still be vested as required by the bill.

Many plans already have vesting provisions which differ from the one in S. 3598. In some cases vesting would be more liberal at certain ages and less liberal at other ages than the bill requires. There may be a legal question whether existing rights can be taken away if employers are required to amend their plans to comply with the bill. It is suggested that consideration be given to stating in the bill alternate formulae which would be acceptable.

PART B - Funding

Funding Requirements

The Association agrees that plans should be funded on a reasonable basis to assure the adequacy of funds to pay pension benefits as they become due. The present rules of the Internal Revenue Service do not provide sufficient flexibility to encourage faster funding in those years when employers are better able financially to make larger contributions either to make up deficiencies in earlier years' contributions or to anticipate future years' contributions. For this reason we suggested to the House Ways and Means Committee on May 9, 1972, when testifying on H.R. 12272 that employers be permitted to make additional deductible contributions on account of past service in excess of 10 per cent of the original unfunded cost to the extent that such contributions in previous years were less than 10 per cent.

With regard to S. 3598, we have concern that what is intended to be a minimum requirement for funding will become the standard and that the result will be to slow the rate of funding even in existing plans. The bill provides that the plan must set forth the obligation of the employer to contribute the normal service costs of the plan and special payments of equal amounts to amortize the initial unfunded liability on the effective date of the Act or the date of the establishment of the plan over a term not exceeding 40 years and to fund any experience deficiency in equal annual amounts over a term not exceeding five years. Inasmuch as the plan must set forth the employer's obligation to make the specified payments, it may be expected that many employers will not state any greater obligation in their plans. The requirement for equal payments on account of the initial unfunded liability and any experience deficiency seems to preclude any faster rate of funding voluntarily and certainly discourages it. In those cases where the unfunded liability has already been partially funded, the provision that the unfunded liability as of the effective date of the Act may be funded over a period not exceeding 40 years from the effective date of the Act encourages a slower rate of funding of the remaining unfunded liability. In addition, the Secretary is given the authority to defer the application of the vesting and funding provisions of the Act for as long as three years and to grant variances from the funding requirements for periods of five consecutive years.

Collectively these provisions permit the lengthening of the funding period without regard to the adequacy of the funding to meet the liabilities of the plan for vested benefits, placing greater reliance on the plan termination insurance provisions of the bill. A funding provision should, rather, be stated as a required minimum.

It seems that the principles adopted by the Accounting Principles Board of the American Institute of Certified Public Accountants in their

Opinion No. 8 would serve as adequate protection in the area of funding.

PART B - Funding

Discontinuance of Plans

Section 211 of the bill dealing with the discontinuance of plans is not clear. In view of the introductory language, it is unclear whether the preferences prescribed in discharging the obligations of a plan for vested benefits are also applicable to distributions to other participants in a plan who become entitled to vested benefits pursuant to the requirements of the Internal Revenue Code when a plan is terminated. Also there is no provision stating whether employees' contributions have a preference in the order of distribution.

The bill provides that the interests of all participants in a profit sharing-retirement plan shall vest upon termination of the plan, but no similar provision is included for pension plans even though this is required by the Internal Revenue Code.

The Secretary of Labor is given the authority to determine when there has been a substantial termination of a pension or profit sharing-retirement plan without any guidelines. A provision of this importance should be clearly stated in the bill in order that employers may include suitable provisions in their plans to establish the rights of participants and beneficiaries and be able to apprise them of their rights.

There is considerable question whether it is legally possible to provide by statute a rule applicable to present participants and beneficiaries for the distribution of the assets of a fund upon its termination which differs from the provisions of the plan.

PART C - Optional Election to Divide Pension Plan

While the heading refers only to pension plans, it is assumed that

Section 215 of the bill applies to profit sharing plans as well.

This provision obviously is intended to provide some flexibility in meeting the vesting requirements of the bill. It is quite likely that employers would avail themselves of this provision only if they wanted to treat differently the employees covered by the new plan. If this is so, older employees might prefer to be covered by the continuing plan, with the result that the new plan would cover initially a younger group than would be covered by the continuing plan. This raises a question concerning the requirement that the contributions to the new plan must be at a rate not less than contributions to the continuing plan. To provide under the new plan the same rate of benefits as in the continuing plan, even with the vesting required in the new plan, probably would not require as large a rate of contributions under the new plan. The question, therefore, arises whether the employer would be forced to provide greater benefits under the new plan. There is also the question whether, if circumstances warranted, the continuing plan could be amended in any respect such as the improvement of benefits after the employees had elected to remain covered under it.

PART D - Variances

Deferred Applicability

We have already referred to the fact that the right of the Secretary to defer the application of the vesting or funding requirements of the Act for a period not to exceed a total of three (3) years, might have the effect of slowing the rate of funding. It is possible that this deferral might also result in a ruling by the Internal Revenue Service that its funding requirements have not been met. Such a ruling would affect the tax qualification of the plan.

PART D - Variances

Variances From Funding Requirements

Section 217 of the bill grants the Secretary broad powers to waive annual contributions for as long as five (5) consecutive years provided that such waiver will not adversely affect the interests of participants or beneficiaries of the plan and will not impair the capability of the Pension Benefit Insurance Fund to equitably underwrite vested benefit losses. This provision also relies on the plan termination insurance provisions of the bill to provide for vested benefits if the deficiency funding payments are not made. Here again it is a question whether the deferral granted by the Secretary might result in a ruling by the Internal Revenue Service that the plan had failed to meet its requirements for funding.

TITLE III - VOLUNTARY PORTABILITY PROGRAM FOR VESTED PENSIONS

The establishment of a portability program even on a voluntary basis would create a number of complex problems as to which answers have not been found.

There are many differences in the types of plans and benefits maintained by different employers. The actuarial assumptions used vary considerably. The reserves accumulated under an employer's plan are based on all the benefits provided for in the plan, but when an employee terminates employment with a vested right, he will be entitled at normal retirement age only to a normal retirement benefit. This means that only a portion of the reserves which might be considered to have been set aside to provide the employee's benefits will be transferred when he terminates employment. As a result, there will be numerous questions and disagreements concerning the amount of reserves to be transferred and their status with the transferee. Among other difficulties that have to be considered is the impact on the status of remaining

participants when a vested benefit is transferred out of a fund that is not fully funded.

Further, trustees of every participating plan would find it necessary to keep a larger portion of the fund invested in liquid securities in order to meet the requirements for the transfer of lump-sum amounts when employees terminate service. This requirement would reduce the investment return on the funds, which in turn would increase the employer's cost in maintaining the plan.

For these and many other reasons we feel strongly that a further intensive study would have to be made of the need and of the legal and technical difficulties that must be overcome before such a program could be established.

TITLE IV - PLAN TERMINATION INSURANCE

Turning now to plan termination insurance, all such proposals put forth to date including the one in this bill have failed to recognize or meet many of the problems inherent in operating such a program.

The problems include the probability of encouraging the adoption of plans providing overly large benefits without regard to whether the employer is financially able to make the necessary contributions over a period of time; the discouraging of faster funding of plans because of the availability of the insurance; the absence of any meaningful cost data that would provide a long-range projection of probable premiums; and the absence of a relationship between the insured risk and the premium.

It appears to us to be highly questionable whether the proposed scheme is a workable one. It has been suggested that this type of insurance is similar to the insurance provided for bank accounts by the Federal Deposit Insurance Corporation. However, there is a big difference between the two situations. The Federal Deposit Insurance covers existing dollar deposits and provides assurance for the protection of those deposits through the establishment of administrative requirements and periodic examinations to determine that banks are

following safe procedures. In the case of pension plan termination insurance, there is no provision for establishing underwriting rules designed to assure appropriate plan provisions, financial capability of the employer to maintain the plan, and proper handling of the funds. Employers are permitted to determine the amount of benefits to be provided and the actuarial assumptions to be used (possibly within limitations fixed by the Secretary). They may determine the rate of funding the initial unfunded liability within a 40-year period and the manner in which the fund is to be invested. Without such underwriting rules the insurance program might well impose an unreasonable burden on employers following more conservative practices.

Even if an insurance scheme could be designed which would take care of these problems, we believe the administrative burden would be great, and the additional cost to employers would be substantially higher, not only because of the insurance cost but also because of the restrictions on actuarial assumptions and on investments which would entail larger contributions.

There is no assurance that the cost of the insurance even on the basis set forth in the bill would not be considerably larger than the rate fixed for the first three years. Again, the mere fact that the rate is lower than the funding requirement may encourage employers to fund more slowly.

It should be noted that the amount of the insurance payable is fixed at the difference between the realized value of the plan's assets and the amount of vested liabilities under the plan. This means that the insurance would guarantee the investment results - a liability which could be considerable if a plan is terminated during a period of depressed investment markets. It also should be noted that it is not clear whether market values or cost values are to be used in computing the unfunded vested liability on which the premiums are based. Until your Subcommittee makes further in-depth studies of the problems involved, it would be dangerous to proceed with the establishment of such an insurance scheme.

GENERAL COMMENTS

Because of the relatively short time since the introduction of S. 3598, there are a number of technical points which we have not had the time to research and comment on in this statement. In view of the many questions which still exist, we have grave doubts whether legislation along the lines of this bill should be enacted at this time.

The interim report of your Subcommittee contains a recommendation that further studies should be given to such matters as the cost factors affecting employers and others and the degree to which the recommendations in the report might inflict excessive administrative and other burdens on particular plans, or types of plans, or industries. The interim report further states that concomitant with the Administration's proposed study by the Secretaries of Treasury and Labor of the extent and impact of plan terminations, it is desirable that legislative inquiries be made with the same objective, placing special emphasis on the impact on employees. The interim report also comments that full utilization has not been made of the data obtained from the P-1 survey. Until these studies are completed, legislation in areas other than fiduciary standards should not be enacted.

The mere fact that after five (5) years of intensive study there are still so many open questions is a clear indication of the complexity of the problems and the care with which legislation must be developed.

As we said in the beginning of our statement, we share the Subcommittee's vital interest in the protection and orderly development of the private pension system. We stand ready to meet with and work closely with the members of the Subcommittee and its staff.

We thank you, Mr. Chairman and members of the Subcommittee, for giving us the opportunity of discussing this bill with you.

SUPPLEMENTAL STATEMENT

WITH REGARD TO TITLE V OF S. 3598

ATTACHED TO

STATEMENT BY JOHN M. COOKENBACH REPRESENTING THE AMERICAN BANKERS ASSOCIATION SUBMITTED TO THE SUBCOMMITTEE ON LABOR OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE ON JUNE 21, 1972.

Suggestions of a Technical Nature Concerning Title V of S. 3598

Section 501

This section requires that there be filed with each annual report submitted under the Welfare and Pension Plans Disclosure Act a certificate or certificates in the name of and on behalf of the plan, the administrator and any employer or employee organization participating in the establishment of the plan, designating the Secretary as agent for service of process on the persons and entities executing such certificate or certificates in any action arising under the Welfare and Pension Plans Disclosure Act or this Act.

In many cases there are a large number of individuals who come within the definition of "administrator" and many plans have as participants a large number of employers. In such cases, many signatures would be required in connection with the annual filings. It is suggested that the certificates be deemed effective until replaced by new certificates and that new filings be required only when there is a necessity for a new filing.

Section 502

1. In line 22 page 50, the reference to "section 14" is in error.

2. In line 4 page 51, change the period to a comma and add the following:

> "or (C) if the price of the security or other investment is not quoted by persons independent of the issuer, at a price determined by a fiduciary of the fund to be the fair value of the security."

Explanation:

Not all securities are regularly traded; other types of investments, such as real estate, mortgages, leasebacks and oil payments are not quoted. In these cases the fiduciary must determine and be able to justify the fair value in whatever way is appropriate for the type of investment involved.

3. Delete lines 16 and 17 page 51 except the words "for purposes."

Explanation:

The requirements of the Act must be included in the provisions of the plan to clearly define the rights of the employees. If reliance were to be placed on the requirements of the Act, the employees could not determine from reading the plans what service is included in the term "covered service."

4. In line 25 page 51 delete the word "benefit" the second time it appears and insert the words "the normal retirement benefit deemed to have accrued as of a date prior to normal retirement age."

5. Change (C) in line 8 page 52 to (D) and insert the following new subsection (C):

"(C) in the case of pension plans which provide a fixed dollar benefit, the dollar amount accrued on the basis of the service rendered by the participant; or"

Explanation:

There are many fixed-contribution multi-employer plans and plans which provide payments of fixed dollar amounts.

6. In lines 22 and 23 page 52 delete the words "pursuant to rule or regulation under this Act." and substitute the following:

"by a fiduciary of the fund."

Explanation:

There can be a number of different ways to value investment assets, all of which may be acceptable for use in preparing valuations for statement purposes. Even where there are current market quotations the "market value" of a particular asset -- that is the amount which can be realized from the sale of the asset held -- cannot be determined definitely until the asset is offered for sale and bids have been obtained. The Secretary would have great difficulty in issuing rules or regulations specifying the procedures to be followed in

valuing the many various types of investments held, including such things as mortgages, leasebacks, real estate and oil payments.

7. Beginning in line 14 page 53 substitute the following for subsection (13):

> "(13) The term 'party in interest' means as to an employee benefit plan or fund any person who is an administrator, officer, fiduciary, custodian or counsel of the plan or fund, or an employee of the plan or fund, or a person providing benefit plan services to the plan, or an employer any of whose employees are covered by the plan or any person controlling, controlled by, or under common control with, such employer or officer or employee or agent of such employer or such person, or an employee organization having members covered by the plan, or an officer or employee or agent of an employee organization having members covered by the plan, or a relative, partner or joint venturer of any of the above described persons."

Explanation:

While the definition of "party in interest" presently includes "trustee," where the investment management responsibilities have been delegated to another, that other is a "fiduciary" as defined in the Act, but not a "trustee." He should be treated as a fiduciary and included in the definition of "party in interest." A "trustee" is a "fiduciary." As presently defined, the term "party in interest" applies to any person affiliated with "any" employee benefit plan. The suggested revised language would make it clear that the term applies only to persons who are affiliated with the plan

in connection with which the term is used; it also applies the term to persons affiliated with the fund.

Section 503

1. In addition to the rights granted to employees covered by plans having not more than 25 participants (lines 11/16 page 54) such employees should also be covered by the other provisions of the Retirement Income Security for Employees Act, particularly the disclosure, vesting and funding provisions.

Section 506

1. In line 23 page 56, the reference to section 14 is in error.

2. In line 23 page 58 delete the colon and the balance of the subsection through line 7 page 59 and add the following after the word "year":

"the aggregate cost and aggregate value of each security and other investment, by type or category and by issuer, identifying each investment in securities or properties of any person known to be a party in interest;"

Explanation:

Subsection (B) appears to have been included to lessen the burden of reporting. It is doubtful that this is the result. The $100,000 figure is too small to give any relief in large funds; the word "value" is not clear as to whether it refers to cost or market value; and eliminating these investments from existing listings, in some instances, may be as burdensome as submitting the complete list. With this change there would be a complete disclosure of the assets of the fund.

3. Delete subsections (3) and (4) beginning in line 8 page 59 and substitute the following:

"(3) a schedule showing the aggregate amount, by type or category of investment, of all purchases,

sales, redemptions, and exchanges of securities and other investments made during the reporting period showing, as to each investment with or without respect to securities issued by any person known to be a party in interest, the issuer, the type and class of the investment, the quantity involved in the transaction, the purchase price and in the case of a sale redemption, or exchange, the net proceeds (including a description and the value of any consideration other than money) and the net gain or loss, identifying each transaction with respect to securities issued by any person known to be a party in interest and in those cases showing the expenses or commissions paid in connection with the transaction;

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

Explanation:

Same as under 2 above.

4. In line 24 page 60 delete the comma and the word "or" and

add the following after the word "interest":

"other than loans which are referred to in section 15(c)(5), or"

Explanation:

The excluded loans are those available to all participants or beneficiaries on a non-discriminatory basis and are secured by the interest of the participant or beneficiary in the fund.

5. In line 15 page 62 before the word "made" insert the following:

"other than loans authorized by section 15 (c)(5)"

Explanation:

The explanation in item 4 above applies here.

6. It is suggested that banks be permitted to comply with subsection (8) beginning in line 20 page 62 by filing with the Secretary a copy of the annual report of the common or collective trust fund for each fiscal year of the fund and permitting the administrator of each pension or profit-sharing-retirement plan having an interest in the common or collective trust fund to refer in his annual report filed with the Secretary to the latest report of the common or collective trust fund filed by the bank. This will materially reduce the number of reports filed with the Secretary because some banks maintain as many as 8 common or collective trust funds and many pension and profit-sharing-retirement funds hold participations in each fund.

Because of the large number of participating pension and profit-sharing-retirement funds, it would be practically impossible to report any party in interest transactions in the common or collective trust fund report. In any event, any one participating fund would have only a small interest in any party in interest transaction in the common or collective trust fund. The Secretary would always be in a position to make an investigation if he had reason to believe there had been violations of the Act by the trustee of the common or collective trust fund.

7. The Secretary should not be given the broad authority granted in subsection (8), line 18 page 65. The Act itself should specify the information required to be given to avoid the possibility of placing an unnecessary burden on administrators of plans.

Section 508

It is suggested that the membership of the Advisory Council should consist of five (5) persons representing labor organizations, five (5) representing management, one (1) each from the fields of insurance, corporate trusts, actuarial counseling, investment counseling and the accounting field, and four (4) persons representing the general public. The present make-up of the Council and the revised make-up provided in the bill appear to assume that the representatives from the various fields interested in pension and profit sharing plans will have views similar to the representatives of management. This is not necessarily so inasmuch as they sometimes perform services for funds in the administration of which labor organizations are involved. A better balance will be obtained if there is an equal number of representatives of labor organizations and of management.

Section 509

1. In lines 24 and 25 page 70 delete the words "duly executed trust agreement" and substitute the words "written document."

Explanation:

When funding is handled through insurance or annuity contracts there is no need for a trust agreement. Requiring a trust agreement would unnecessarily complicate the set-up. The objective of the fiduciary standards section of the Act will be met because the insurance company is included in the definition of "fiduciary" when separate accounts are involved and the insurance company is liable for the payment of benefits when a separate account is not involved.

2. Delete lines 9 and 10 page 71 and substitute the following:

"(A) for the exclusive benefit of the participants and their beneficiaries and for defraying the reasonable expenses of administering the plan;"

Explanation:

The suggested language will be consistent with the language in lines 4 and 5 page 71 and will conform to the language of the Internal Revenue Code, the meaning of which has been clear for almost thirty (30) years.

3. In line 18 page 71 delete the words "this Act" and insert the following language after the word "with":

"the specific prohibitions listed in subsection (b)(2)"

Explanation:

It should be possible to specify the types of investments which may be made. This is particularly important if an employer wishes to prohibit one or more types of investments or, in the case of certain profit sharing plans and in thrift and savings plans which give employees the right to have their accounts invested in one or more funds -- such as a fixed income fund, a diversified fund, a diversified common stock fund and a company stock fund -- the employer must be able to specify the types of investments to be made in each of the funds. In acting pursuant to such specific authorizations, the trustee would be required to comply with the provisions of sections 15(b)(1)(A) and 15(b)(1)(B).

4. Subsection (2) and its various subsections beginning in line 3 page 72 should be revised to read as follows:

"(2) Except as permitted hereunder, subsequent to the date of enactment of this subsection, a fiduciary shall not knowingly--"

Explanation:

The phrase "subsequent to the date of enactment of this subsection" has

been added to make the prohibitions in this section applicable prospectively only.(See items 7 and 12 below.)In addition, as presently drafted, a fiduciary must know he is dealing with a party in interest only under subsections (A), (B), (F), (G), and (H). The inclusion of "knowingly" in the preamble makes the knowledge of the fiduciary relevant for all subsections. Accordingly, the words "known to be" should be omitted from all subsections under section 15(b)(2), and are omitted in the following subsections.

"(A) lease or sell property of the fund to any person who is a party in interest of the fund;"

Explanation:

The words "of the fund" are added after party in interest in this subsection to make it clear that the party in interest must be of the fund in question and not just of any fund. "Party in interest" is a defined term that, as defined, applies to any person affiliated with "any" employee benefit plan.

"(B) rent or purchase on behalf of the fund any property that is property of a party in interest of the fund;"

Explanation:

The word "rent" is more appropriate to use with the word "purchase" in this subsection than "lease," which is used in (A) with the word "sell." The words "of the fund" are added for the same reason as set forth under (A).

Delete subsection (C).

Explanation:

If a fiduciary is included in the definition of a party in interest, this subsection is not needed because subsections (A) and (B) will cover any possible transaction with the fund in which a fiduciary could engage for his own account. Note that if this subsection is omitted, the subsequent subsections must be re-lettered.

82-079 O - 72 pt. 1 - 19

Delete subsection (D) and restate the subsection as follows:

"(C) act, either in his individual or any other capacity, on behalf of a party adverse to the fund or to the interests of its participants or beneficiaries in connection with any transaction involving the fund;"

Explanation:

The language in the present subsection (D) is so vague and general that it might be interpreted to prohibit a fiduciary from acting as trustee of a pension fund and also in one or more other normal business capacities involving some or all of the parties involved in the pension fund. For example, a bank fiduciary might be prohibited from serving as executor or trustee for a participant or beneficiary who is a regular client of the bank on the ground that the participant or beneficiary is a "party adverse to the fund" because he has a claim against the fund for his benefit. The subsection should prohibit a fiduciary from representing an adverse party only in any transaction involving the fund.

Delete subsection (E) and restate the subsection as follows:

"(D) accept for his own account or for the account of a party in interest of the fund from any source any bonus, commission or compensation for any act done by him in connection with the administration of the fund;"

Explanation:

The reason for the amendment is to delete the word "consideration" as being vague and uncertain. For example, the word "consideration" might be interpreted to include benefits which come to a fiduciary unsolicited as a normal consequence of an ordinary business transaction. Such a benefit might come about as follows: the trustee of A Corporation's pension fund, while negotiating a sale and lease-

back for the fund of a factory owned by B Corporation, so impressed B Corporation with its business acumen that B Corporation subsequently appoints the trustee as trustee of B Corporation's own pension fund. The proposed change ties the subsection directly into the common law rule which prohibits a bonus or commission in connection with a transaction involving a trust. The legislative history for the Act should set forth the above points. In addition, the words "or for the account of a party in interest of the fund" are added to broaden the class of persons who may not receive any bonus, commission or compensation.

Delete subsection (F) and restate the subsection as follows:

"(E) loan money or other assets of the fund to any person who is a party in interest of the fund;"

Explanation:

"of the fund" is added for the same reason as set forth under (A).

Delete subsection (G) and restate the subsection as follows:

"(F) furnish goods, services or facilities of the fund to any person who is a party in interest of the fund;"

Explanation:

The words "of the fund" are added after the word "facilities" to ensure that this subsection is not interpreted as prohibiting a fiduciary from furnishing goods, services or facilities which are not in any way connected with the fund to a party in interest. Thus, as revised, this subsection would not prohibit the trustee of ABC Corporation's pension trust from acting as trustee of a personal trust for the president of ABC Corporation or from providing commercial banking services, even a checking account, to the corporation or its officers. The words "of the fund" are added after "party in interest" for the same reason as set forth in (A).

Delete subsection (H) and restate the subsection as follows:

"(G) permit the transfer of any property of the fund to, or its use by, any person who is a party in interest of the fund; or"

Explanation:

The words "of the fund" are added for the same reason as set forth under (A).

Delete subsection (I).

Explanation:

The location of the indicia of ownership is not as important as it is that the fiduciary be within the jurisdiction of a United States District Court. He is responsible under section 15(b)(1) of the Disclosure Act for his acts in holding, depositing or investing in assets outside the United States. It would be a hardship in many cases and impossible in some to require the indicia of ownership to be kept in the jurisdiction of a United States District Court. The expense of shipping securities from or to a foreign country in connection with a purchase or sale would be heavy. The last two sentences of the subsection are replaced by the paragraph suggested in the next item.

Insert the following as a general paragraph applying to the whole of subsection (2):

"The Secretary, by rules and regulations or upon application of any fiduciary or party in interest, by order, shall provide for the exemption conditionally or unconditionally of any fiduciary or class of fiduciaries or transaction or class of transactions from all or part of the proscriptions contained in this subsection 15(b)(2) when the Secretary finds that to do so is consistent with the purposes of this Act and is in the interest of the fund or class of funds

and the participants and beneficiaries; provided, however, that any such exemption shall not relieve a fiduciary from any other applicable provisions of this Act."

Explanation:

The foregoing modification is suggested principally to cover classes of fiduciaries, transactions and funds, and to permit conditional exemptions.

5. Delete subsections (A) and (B) beginning in line 9 page 74 and continuing through line 11 page 76 and replace them with the following language and a new subsection (C) as follows:

"(A) purchasing on behalf of the fund any security which has been issued by an employer whose employees are participants in the plan under which the fund was established, or a corporation controlling, controlled by, or under common control with such employer: Provided, That the purchase of any security is for no more than adequate consideration in money or money's worth: Provided, That no such investment in such securities shall be made subsequent to the date of enactment of this Act if such investment, when added to such securities already held, exceeds 10 per centum of the fair market value of the assets of the fund: Provided further, That such securities otherwise meet the requirements of section 15(b). Notwithstanding the foregoing, such 10 per centum limitation and any requirements of section 15 (b)(1)(B) shall not apply to profit-sharing plans, stock bonus, thrift and savings, or other similiar plans which explicitly provide that some or all of the plan funds shall be invested in such securities, nor shall said

plans be deemed to be limited by any diversification rule as to the percentage of plan funds which may be invested in such securities. Profit-sharing, stock bonus, thrift and savings and other similar plans which are in existence on the date of enactment of this Act and which authorize investment in such securities but do not explicitly provide for such investments to be made shall be exempt from the 10 per centum limitation, the requirement that the securities meet the requirements of section 15(b)(1)(B) and any diversification rule as to the percentage of plan funds which may be invested in such securities until the expiration of one year from the date of enactment of this Act or the earlier amendment of the plan to require such investment;"

Explanation:

Inasmuch as profit-sharing, stock bonus, thrift and other similar plans are incentive type plans as contrasted with pension plans which are established to provide definite benefits to retired employees, investments in the employer's securities should be permitted without limit even though the securities might not otherwise meet the test of the prudent man rule provided the plan explicitly provides that some or all of the plan funds shall be so invested. Any investments in the employer's securities within the 10 per centum limitation should meet the test of the prudent man rule applicable to the other investments in the fund.

"(B) purchasing on behalf of the fund any security other than one described in (A) immediately above from, or selling on behalf of the fund any security which is acquired or held by the fund to, a person known to be a party in interest: Provided, (1) That

the security is registered under Section 12 of the Securities and Exchange Act of 1934, (ii) that no brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with such transaction, and (iii) that adequate consideration is paid;"

Explanation:

The proposed language is broader than that presently in the Act and would include securities of an issuer which has total assets exceeding $1,000,000 and 500 or more shareholders of record. The provision should not be limited only to securities listed and traded on an exchange in view of the growth of the over-the-counter market and the advent of NASDAQ. There should be some requirement that the price or value received is adequate.

"(C) participating in or withdrawing participation from, on behalf of the fund, any common, collective or commingled fund of which it is trustee and which is qualified under Section 401(a) and exempt from income tax under Section 501(a) of the Internal Revenue Code of 1954."

Explanation:

This provision should be added to eliminate the possibility that section 15 (b)(2)(D) - revised to (C) above - may be construed to prohibit participation in common or collective trust funds.

6. Delete subsection (5) beginning in line 12 page 76 and insert the following:

"(5) loaning money of the fund to participants or beneficiaries of a profit-sharing, stock bonus, savings or thrift or other similar plans under which the fund was established where such loans are

available to all participants or beneficiaries on a non-discriminatory basis not in excess of the interest of the participant or beneficiary in the fund and are made in accordance with specific provisions regarding such loans set forth in the plan; and"

Explanation:

The proposed language would limit the exception to the proscription in the revised section 15(b)(2)(E) to loans to participants or beneficiaries of profit-sharing, stock bonus, savings or thrift or other similar plans available to all participants or beneficiaries on a nondiscriminatory basis which do not exceed the amount of the interest of the participant or beneficiary in the fund. The Internal Revenue Service requires such loans to be repaid in a reasonable time. Inasmuch as the loans are limited to the amount of the interest of the participant or beneficiary, it should not be necessary that they otherwise meet the requirements of section 15(b).

7. Add the following subsection after line 4 page 77:

"(9) Complying with the terms of any lease of property of the fund to a party in interest, if such lease was in effect on the date of inactment of this subsection , or exercising any right, remedy or option under such a lease, or, with the approval of the Secretary, modifying the terms thereof in any respect including but not limited to providing for the financing of the erection of additional improvements on the leased premises, provided that any such action by the fiduciary otherwise meets the requirements of subsection 15(b)."

Explanation:

If Section 15(b)(2) is amended so that it applies prospectively only and if

subsection (j) on page 80 (the three-year disposition rule) is deleted, a fiduciary could clearly continue to hold after the effective date of the Act property subject to a lease to a party in interest which was in existence on the effective date of the Act and which would be prohibited under section 15(b)(2) if entered into subsequent to the effective date of the Act. Such property could be held after the effective date of the Act only as long as the retention of the investment continues to meet the test of the prudent man rule.

Nevertheless, the unique character of sale and leaseback transactions necessitates that fiduciaries be permitted in appropriate circumstances with the approval of the Secretary (1) to carry out existing provisions of a lease, such as an option or an extension; (2) to modify existing leases; and (3) to make additional investments in the property and in such instances to extend the lease provisions on appropriate terms.

8. In line 17 page 77 between the word "cofiduciary" and the word "to" add the words "from commiting a breach of a responsibility, obligation, or duty of a fiduciary or to compel such other cofiduciary" and delete all of the sentence following the word "breach" in line 17 page 77.

Explanation:

If the trust agreement requires all the trustees to agree in administering the trust and there is a disagreement, the trustees should seek instructions from a court of competent jurisdiction. Merely giving notice of an objection to the Secretary does not adequately protect the beneficiaries of the trust. If the trust agreement authorizes action to be taken by less than all the trustees, the provisions of section 15(f) with the suggested amendment would apply.

9. Delete all the sentence following the word "fiduciaries" in line 3 page 78 and add the following language in line 6 page 78:

"A fiduciary shall not be liable except for the proper performance of such duties as are specifically assigned to him under the plan or trust agreement and provided further that he shall not be liable for any action taken by him or omitted to be taken by him in good faith pursuant to the direction, instruction or approval of others if he is required to do so by the terms of the plan or trust agreement."

Explanation:

The prohibition against exculpatory provisions is too stringent; for example it might be construed to impose liability on an individual for the acts of others over which he has no control or for acting pursuant to directions that he is required by the terms of the trust agreement to follow.

10. Substitute the word "fiduciary" for the word "trustee" after the word "officer" in line 3 page 79.

Explanation:

A person should not be permitted to act as a fiduciary if he has committed any of the specified crimes. A trustee is a fiduciary and it is not necessary to refer specifically to "trustee."

11. Add the following at the end of line 7 page 80:

"For the purposes of this subsection, the term 'person' shall not include any bank, trust company or insurance carrier which is subject to Federal or State supervision."

Explanation:

The intent appears to be to exclude untrustworthy individuals from serving in a fiduciary or consulting capacity (See Report of House Education Committee H. Rep. 1867, 90th Congress, 2nd Session at p.9) and not a bank, financial institution or insurance company which is subject to Federal or State super-

vision.

12. Subsection (j) beginning in line 17 page 80 should be deleted.

Explanation:

The purpose and application of this provision is not clear. If it is intended to cover investments the retention of which would violate the prudent man rule, it is unnecessary and undesirable because fiduciaries should dispose of such investments within a reasonable time and three years may be too long or too short a period. If the fiduciary can reasonably dispose of such an investment prior to the expiration of three years from the date of the Act, he should be compelled to do so, and conversely, if the retention of such an investment beyond three years is prudent, the trustee should not be compelled to dispose of the investment within three years or obtain the consent of the Secretary for its further retention. If the investments with which subsection (j) is intended to deal are those expressly restricted by Section 15(b)(2), the transactions covered by those provisions are instantaneous in nature and not continuing, and once a lease, sale, loan, or other transaction under the provisions has been entered into, the retention of the investment should not and need not be restricted. The retention of the investment after the effective date of this Act would be subject to the provisions of section 15(b)(1)(B). It is suggested that Section 15(b)(2) be clarified to apply only to transactions entered into after the effective date of the Act.

The CHAIRMAN. Next is Professor Merton C. Bernstein, Ohio State University College of Law.

STATEMENT OF PROF. MERTON C. BERNSTEIN, OHIO STATE UNIVERSITY COLLEGE OF LAW

The CHAIRMAN. You have been here before.

Mr. BERNSTEIN. Yes, sir.

The CHAIRMAN. Not only at the table but up here at this table.

Mr. BERNSTEIN. Yes; 20 years ago it was my privilege to be the counsel to this subcommittee. It is nice to see the Senator from my home State as well.

Senator TAFT. I am pleased to welcome you here.

Mr. BERNSTEIN. I would like to congratulate this committee for the work it has been doing over the last several years. It has changed the entire pension dialog. A dozen years ago, when one raised the questions that are being discussed here today, one received either silence, no public attention, or denunciation as a wild-eyed radical.

COMMITTEE'S GOOD WORK

The committee has by its studies and by its work has advanced the cause of pension reform to the point of serious consideration. Five years ago the American Bankers Association had no affirmative proposals in this area. Nor did any other group that had a major role to play in this industry. The work of this committee over the last 2 years. a betted by staff members like Mike Gordon and Frank Cummings (I am not too familiar with Mr. Noto, but it is quite clear he has been working effectively), has changed the whole picture. However, I must say that if the proposals that are pending before this committee are the best can be enacted, then we will have only the mirage of pension reform and not its substance.

REFORM FORCES NOW IN BEING

I think that would be unfortunate, because I think the forces for real reform have come into being. I think that there is popular demand and popular support for far more than is offered in S. 3598. Perhaps one ought to look at it as openers whose demands will be made more stringent in the future. The chairman of this committee and Senator Javits have done splendid work in this committee and also on the Special Committee on Aging so ably directed by Bill Oriol, in making clear the plight of the elderly today. Projections that are made of the future improvement of social security and private pensions, projections that utilize very optimistic assumptions, show that the elderly in the 1980's will be no better off than they were in the 1960's, and that simply is not good enough.

I would like to suggest that the private pension industry is in a dilemma. It is in a dilemma that it has not solved and we saw an example of it in Mr. Lindberg's responses to Senator Williams' questions.

INDUSTRY DILEMMA: REFORM NEEDED, CANNOT BE LEGISLATED IT CLAIMS

On the one hand, it indicates that improvements are required in private pension plans. And on the other, it says, however, it is also technical, also difficult, also unknown, that really you cannot require us to do the job. I suggest that the burden is on the private pension industry to show that it can do the job expected of it. If it cannot give assurance that that job can be performed, then public subsidies that come to $3 billion a year of the taxpayers funds should not be continued. I think the kind of obfuscation we so frequently get from the private pension industry, that there are technical difficulties with doing what is suggested, indicates that perhaps private pension plans cannot do the job. The job the public expects it to do is to act as a reliable universal supplement to social security. But if it cannot perform that task, then the job can be done by a more ample social security system. For example, if you were to take, if the U.S. Government were to take, the $3 billion in foregone revenues, this is an annual figure, and apply that to social security, at a very rough guess that would make a 10-percent improvement in benefits, not an insignificant amount when added to what Congress is already prepared to do in that area. This is without tapping the enormous sums in reserves and annual contributions that go into the private pension system.

THE REFORMS NEEDED

The critical areas of need for pension reform are in vesting, portability, financing and fiduciary standards, without doubt. The vesting proposals of S. 3598, I suggest, are an improvement over the existing situation, but a very limited improvement. We know far too little about what small plans provide and we could use more information about what they do provide and how they are operating. But for most large plans in the single employer area, 10- or 15-year vesting are almost universal. And graded vesting is not much used. For the most part it is full vesting after 10 years or 15 years, often with an age requirement. Now the proposal of 30-percent vesting of a normal retirement benefit after 8 years of service actually means more than 9 years of service counting from today, because the bill permits a half-year eligibility period and it also would provide a 1-year deferral from the time of enactment, so that the difference between vesting which applies to about half the employees under large plans today and the bill proposal is miniscule, practically insignificant, particularly when you take into account that deferred graded vesting is not the common device used.

For the plans provide for vesting after 15 or more years, which cover about half the employees under vesting in single employer plans, the Javits-Williams-Taft bill, provides some improvement. But again, it is not very substantial.

The greatest impact of the vesting requirements of this measure would come in the area of multi-employer plans, which provide much less in the way of vesting and more frequently have exacting service requirements extending up to 20 to 25 years of service, sometimes with requirements of 10 years of service immediately preceding retirement.

This is where this bill, S. 3598 would have some bite. Unfortunately those plans which lack vesting are also those plans which have the thinnest funding, and so the deferral period made available in section 216 might well be added to the 9½ years, so that it runs up to about 12½ years as a requirement for vesting and then only graded vesting. I suggest that the area of need sets in much earlier than that.

Where there are layoffs and separations, it is the least senior employees who lose out on jobs. They need, more than those who stay behind, the protection of credits that they have achieved under a pension plan, because it is extremely common for people who lose pension coverage to suffer an economic demotion that is permanent. They tend to fall down into lower economic categories where pension coverage is decidedly less common. Thus, these workers are in special need of protection.

VESTING NEEDED IN "PARTIAL TERMINATION"

I suggest in my prepared statement that the committee and the sponsors of the bill have missed a bet. I was pleased that just a few minutes ago the American Bankers Association repeated a proposal (even though it was omitted from the Association's prepared statement) that was made by Mr. Lackland in 1970, that the law be changed so that when plants and units shut down, those occurrences will be treated as a partial plan termination.

Under section 401(a)7 of the Internal Revenue Code, when a plan terminates, all credits vest or are supposed to vest, quite apart from any provision of the plan itself, so that someone with 1 year of credit has a vested credit even though the plan itself may require 20 years or have no provision for vesting whatsoever. The code provision is not without its weaknesses, but that is the rule.

The Treasury regulations have attempted to apply that code provision to what are called partial terminations. Anyone who has had the pleasure of reading Treasury regulations know what a nightmare they are, and these are particularly intricate and difficult to figure out, and few know actually what the Internal Revenue Service does. But this is a very important area in which pension rights are lost. We have so many multi-installation companies, some with hundreds of units particularly in retail trade, and they are constantly opening and closing individual units.

If, as is common, the plan covers the entire company, the shutdown of the unit is not regarded by most companies as a plan termination for that unit and therefore the code provision is not made applicable. There have been some court cases on this, one of which arose in New Jersey, when McKesson and Robbins shut down some installation some years ago. Long-term employees lost all their benefits at that time because separated employees did not meet eligibility requests and the plans were not treated as terminated for that unit.

It is extremely important that those permanent shutdowns be treated as though they were partial plan terminations so that vesting with regard to the code would be applicable to them. You now have and have had since the 1970 testimony of the American Bankers Association, that prestigious endorsement for that improvement in the law. I urge it upon you very seriously as an area that needs considerable improvement.

BILL'S CLEARING HOUSE INADEQUATE

The pension clearinghouse which is proposed, I regret to say, is inadequate to the tasks assigned to it. A pension clearinghouse is very important for several basic reasons. In our highly mobile society not only do employees change jobs, but companies come and go. The fact that as provided by the bill, an employee from X corporation has a piece of paper saying he has a 10-year vested credit from the Y corporation, does not tell him what he has to know. What he has to know, 10, 20 years after he gets that piece of paper is what entity will pay off on that vested credit and where it is; and in what guise it exists, because in the kind of economy we have had with the fantastic waves of mergers and the growth of conglomerates, individual employers simply do not keep their identity and they frequently change their name. So merely providing a record at the time of separation to the employee of what vested right he has at that time is very often quite useless to him, particularly when given the recordkeeping habits of most of the American population.

I have suggested in my book in 1964 that the appropriate thing would be to have a pension credit registry operated by the Social Security Administration as part of its regular recordkeeping. It would be very inexpensive and easily handled.

Another reason that a clearinghouse is extremely important to make vesting mean something is that at present, even under plans with liberal vesting which at best means 10 years of service, the benefit is frozen as of the time of separation. What does that mean, say, to an employee at age 45 where he has a right to a credit that will become payable when he is 65? It means 20 years later he will be paid a benefit—if he lives—he will be paid a benefit that is prescribed as the plan existed 20 years before. He does not participate in any of the plan improvements for those years of service in which he has a vested credit. Those credits are subject to all of the erosion of inflation during that period of time and it does not participate in the growth of the economy, although the very same credits given to coemployees who stay on the job will undoubtedly have appreciated significantly in value. If you take the man who was separated in 1955 and he reaches normal retirement age in 1972, he would be stuck today with the benefit schedule of 1955. Benefits have appreciated. They are not too handsome today as this committee established in one of its committees. But in 1955, they were pathetic.

Now in order to make vested credits amount to something, they have to be able to anticipate economic growth, and only a pension clearinghouse which can take in the value of pension credits and invest them for that employee can do the job.

Another difficulty with vesting as it exists today is that it is unavailable for disability purposes. Now while disability occurs to only a small percentage of separated employees, it nonetheless is a very serious thing when it occurs. Disability provisions are becoming more common in pension plans.

The CHAIRMAN. I perhaps did not understand. Are you suggesting that the dollar amount of the right at separation from employment would stay the same under the proposal that is in this bill?

Mr. BERNSTEIN. Yes. I am suggesting that vesting means the right to the benefit as the plan exists at the time of separation.

The CHAIRMAN. That is, at that time it has a fixed dollar value?

Mr. BERNSTEIN. Yes, in fact the vesting provisions of your bill do not apply to money purchase plans. That is right. They only apply to fixed benefit plans, and let me say that the benefit at the time of separation is $2 a month per year of service and the employee has 10 years credit. So he is entitled to $20 a month, when he gets to normal retirement age. Now had he stayed on that job, he would participate in the improvement in benefits that accrue to other employees who serve those same 10 years. For example, in the auto worker plans, it has been common to give all improvements in benefits to every year of service, whether or not they are earned before or after improvement is made. In some plans it is otherwise. The improvements are prospective only. But they result from economic growth.

Vesting as it is now practiced freezes benefits as of the time of separation, and those benefits do not participate in the growth of the economy, to say nothing of the fact that they are subject to erosion when retirement age is reached.

To have a vested right, but to lose the benefit for disability purpose is a consequence of vesting as it now is practiced. Under a pension clearinghouse in which the credits would be banked for the employee, those benefits would and should be available for disability purposes. Further, as vesting operates today, it is available to the employee only if he survives to normal retirement age. I suggest that at the least that ought be early retirement age and also for a survivor's benefit.

THE NEED FOR SURVIVOR BENEFITS

Another area in which social security is badly in need of supplemention is in the area of survivor benefits. Survivor benefits under social security have been improved but they have been pegged for widows at 85 percent of the primary amount due a deceased employee, and that is really a quite inadequate amount given the average individual benefit of $130. This is an area in which private pension plans could and should do a great deal more than they do. But it happens to be an area in which they are even weaker than social security is.

By having a vested benefit which is contingent upon survival of the employee to normal retirement age, the survivor is left with nothing, and someone who loses the breadwinner prior to age 65 or 62 is in particular difficulty, particularly a widow who is not a young widow as defined by the Social Security Act and does not have minor children in her care.

A benefit that is active and alive in a pension clearinghouse as a credit to the separated employee would have a value and could be translated into a survivor annuity for the dependent.

BILL'S CLEARINGHOUSE WILL NOT WORK

The clearinghouse as it is proposed in the bill will not work. A voluntary clearinghouse will not work because the employer has a financial incentive to keep the money in the fund, rather than have it exit to the clearinghouse. The reason for this is technical. If you will bear with me, I will go through it.

The out-of-pocket costs of any benefit are determined by the rate of interest which it earns, so it is contribution, plus earnings, equal

benefit. The higher the rate of interest, the lower is the out-of-pocket expense.

Now in a vested credit situation, the contribution that an employer would have to make the clearinghouse under this bill would be determined by the assumed rate of interest of the plan. The assumed rate of interest is usually below the expected rate of actual interest. Therefore, the out-of-pocket contribution under this measure would be higher than the out-of-pocket costs of the employer of providing vested benefit if the money stays in the fund. Moreover, if earnings are better than assumed, the employer can use those earnings to help pay the benefits of other employees who stay in the plan.

There is not only no incentive to put the money into the clearinghouse on this voluntary basis, there is a definite affirmative incentive not to put the money in, and employers simply will not. They have no reason to do so, and it is not in the interest of the union to have them do so, because unions have not been as aggressive in the area of vesting, because they are serving the needs primarily of employees who stay behind. They are members. The ex-employee tends to be an ex-member and therefore in this practical world gets less solicitude.

Need for Expanding Coverage

Moreover, we have learned from experience with the social security program that the extent of coverage has a great deal to do with how many years of credit an employee earns and therefore what his eventual benefits will be.

The fact that no more than half of the private working force is covered by employment-based pension plans means that as employees move through their working life, they have less chance to earn credits than if plan coverage were more extensive.

The greatest need for coverage is for small companies. Small companies lack coverage because it is expensive for them to purchase it. They have to pay a lawyer, and an actuary, and others in order to install a plan. In most small companies, the executives simply do not have the time to acquaint themselves with the technicalities of the problem, so as to make a reasoned choice. So many of them simply let it go by. What they ought to have available is a national group plan operated by a national pension clearinghouse that is reliable and low-cost and operated on a money purchase basis so that it can take any level of contributions that a particular employer and a union want to make, so it is indeed adaptable to their needs across the whole gamut of idosyncrasies of companies.

This is an area of great importance, because unless pension coverage can be effectively extended, then private pensions will not do the job supplementation of social security that is so badly needed.

Cost of Vesting and Pension Savings to Employer Through Layoffs

Now I would also suggest that there have been a lot of crocodile tears unnecessarily shed about the cost of vesting. We hear only about what the cost of vesting will be in this bill and other proposals. We hear very little about the money that employers have recaptured over the last 2 or 3 years during what has been, in effect, a recession and in the

82-079 O - 72 pt. 1 - 20

cutbacks in defense spending. When employee separations exceed the rate that has been planned, as has been happening over the last 2 or 3 years, money becomes available to the pension plan for reuse.

I have been asking the House Labor Committee and the Special Committee on Aging for 2½ years now to go find out how much money is being recaptured because I suspect it runs to the tens of millions at least and more likely to the hundreds of millions. Those are funds that have been expended for pension purposes that become available for improving plans. Now in the special area of defense workers who have been heavily hit in this area the money is not recaptured or should not be by the employer, but it is recaptured or should be recaptured by the Federal Government under the renegotiation acts. This is money that has been expended by the United States for pension purposes. It is built into the cost of procurement.

Senator TAFT. You do not mean recaptured by employer, you mean recaptured by trustees?

Mr. BERNSTEIN. It is recaptured by the trustees, but under the code to go back to the wholly private situation, it cannot be applied to improvement of benefits, it can only be applied to reduction of contributions. If the contribution requirements are reduced, that redounds to the benefit of the employer.

Senator TAFT. How many instances do you know of that happening?

Mr. BERNSTEIN. In my book I have documented several, and I think if you were to take a census of plans, you would find it is very common, particularly over the last several years. I do a moderate amount of arbitrating, and I go into plants these days that are ghost cities, where there are 10, 15, 30 percent of the employees on layoff. In many such situations the recapture of pension funds often has been very substantial. I do not think it is an isolated instance by any means. But I think it is something that ought to be documented.

PROPOSAL FOR SEPARATED DEFENSE INDUSTRY EMPLOYEES

In the area of defense expenditures, I think it is possible to do some justice to separated employees. If indeed as I am quite sure is the case, in these heavy layoffs there have been generated very large actuarial returns, I would suggest that legislation would be appropriate to have the Government not recapture those funds. It has already been willing to expend those funds for pension purposes, and it is built into the cost and procurement documents, so that they are identifiable for pension purposes. I suggest legislation providing that those funds not be recovered in the renegotiation process, but should be devoted to providing vested benefits to employees who have been separated. Many of those employees are suffering that process of demotion that I earlier described. In fact, in the Republic layoffs of thousands of people several years ago at Long Island, it is documented that many of those people, the bulk of them ended up either unemployed or in service jobs which are notoriously not covered by pension plans.

Those people who are separated from defense production jobs are badly in need of protection of this sort and it can be given to them with funds that have already been appropriated for the purpose.

PLANS EXCLUDE WOMEN

A major weakness of private pension plans is and has been and continues to be the fact that they are not designed for women. At a time when women are constituting a larger and larger part of the work force, I think that situation really must be rectified. It is readily documented that for hundreds of thousands of families, the American standard of living depends upon having more than one wage earner in a family. The second wage earner is usually the wife. To say that a pension benefit should not attach to women's work is to be both unfair and unrealistic. When people approach retirement age and both husband and wife are working, their standard of living depends upon the income of both. To have a pension system which pays off primarily and almost exclusively to men is to force retired couples into an even more rapid demotion of their living standards than is implied by the difference between what the husband earns and what he gets.

On page 9 of my prepared statement I give some data on the median age of women in a few industries. If you would take a look, particularly at wholesale and retail trade, which is a heavy employer of women, you will see that even those above age 45, have little chance of achieving 8 years of service or nine and a half years; half of them were not doing so, and the great bulk of them would not be benefited by the vesting provisions of S. 3598.

BILL'S FIDUCIARY STANDARDS NOT ADEQUATE

S. 3598's fiduciary standards, I would suggest to the committee, are not really adequate. We lawyers have a tendency to think that if we have the right rule, it will solve the problem. We just promulgate the appropriate standards and hope people will act this way. The fact of the matter is, a great many of the abuses found by this committee, and some of it has not found, have been committed under present law where State fiduciary standards were applicable. The trick is, how do you make them apply?

Senator Taft indicated some interest in a complete ban on self-dealing and I think that is a minimal thing. It is not prudent to have an employee's retirement depend upon the success of the same enterprise for which he depends upon his current employment. All of us try to diversify our security arrangements if we possibly can, and it would seem inappropriate to have the employee hazard both his current employment and future income on the same enterprise. A ban on self-dealing would seem to be thoroughly appropriate.

THE PROBLEM OF APPARENTLY LOW FUND SAVINGS

I would like to call the committee's attention to the material on page 11 of my statement, and some material that was put in the Congressional Record in 1969 by Representative Wright Patman. It shows something I cannot explain but I think requires explanation. That is, very large pension funds apparently have earnings that are below that of savings accounts.

Why should that be true? What are they using the money for? One of the purported advantages of private pension plans is that it makes available to groups the opportunity to save together and to have expert investment of their funds to maximize their future income. Well, can that be reconciled with the rates of investment return listed on page 11? The Dow Chemical pension fund apparently in 1967, which was the year before the stock market got into so much difficulty, was 3.31 percent. One could have done better in California savings and loans. One could have done better in New York savings and loans than that.

The CHAIRMAN. Done better in Government?

Mr. BERNSTEIN. That is the ultimate insult, is it not? Now, that is not an isolated phenomenon, as documented by Representative Patman's data for 100 funds, 13 of which had an earnings rate of 3 percent or below, and two of which had an earnings rate below 2 percent.

Now I suggest that an explanation should be forthcoming for how this money is being used. It suggests strongly that pension fund reserves are very likely not in the proper hands; that it is simply asking too much of human beings to give to them $130 billion to play with as they please and expect that they will not use them for purposes other than for the beneficiaries. That $130 billion, if it exists—and I do not know that it does—if that $130 billion or $135 billion exists, it is employees' money. It ought to be put into the safest hands possible for the benefit of employees.

The use of it, the investment of it ought to be separated entirely from those who have prospectively adverse interests. I think that the approach suggested by Ralph Nader and endorsed by Senator McGovern has a great deal to recommend it, with an addition, and that is that the competitive funds totally separated from employers and unions that they contemplate, should not get into a merchandising scramble that would use up employees' funds. If the choices were made on, say, the basis that Government employees choose periodically between various health insurers without the expenditure of a lot of promotional funds, then I think we would have a really sound and dependable program.

Thank you very much for your time.

The CHAIRMAN. Thank you. I wish there were more time to inquire further. It has been a stimulating presentation, Professor. We are very grateful.

Senator Taft asked me to ask if he could put some further inquiries to you in writing.

Mr. BERNSTEIN. I would be pleased to respond.

The CHAIRMAN. And I am sure our staff would like to, too.

Mr. BERNSTEIN. I brought along some articles I would like to offer for inclusion in the record, if I may.

The CHAIRMAN. Thank you very much.

(The prepared statement and attachment of Mr. Bernstein follow:)

For Release
June 21, 1972

The Mirage of Pension Reform

Testimony of

Merton C. Bernstein *

before

The Subcommittee on Labor

United States Senate

June 21, 1972
(Scheduled to testify at 11:30 AM)

*Professor of Law, Ohio State University, author of The Future of Private Pensions (1964) and formerly Chairman, Advisory Committee on Research, Social Security Administration and Consultant to the U.S. Treasury and Department of Labor and Twentieth Century Fund. The opinions expressed are not to be attributed to any of these institutions at any time.

CONTENTS

Inadequacies of S. 3598 Summarized..... 1

The Plight of the Elderly..... 1

The Challenge to Pension Design..... 2

Vesting--Shortcomings of Proposals..... 3

Definition of Continuous Service..... 6

The Pension Clearing House--Indispensable to Employee Protection--Bill Limitations Crippling..... 6

Needed--Clearing House Plan for Small Companies..... 8

Misleading Claims about the Cost of Vesting..... 8

Women--The Losers in the Past--The Losers Still..... 9

Fiduciary Standards--Proposals Inadequate..... 9

Investments--In Whose Interests? The Sorry Record of Plan Performance.....10

S. 3598's Inadequate Financing Requirements.....12

S. 3598 Disappointing.....12

If the pension reform measures before this Committee are the best that can be enacted, then private pensions are beyond effective repair. Senators Javits, Williams and Hartke and Representatives Dingell, Dent, Griffith and Thompson have provided courageous leadership in this field--courageous because they have had little constituent or interest group support and considerable resistance. The measures before you, if enacted, would mean

-- inadequate vesting

-- inadequate protection for women as workers and widows

-- inadequate protection of employee interests against employer and union depradations

-- inadequate coverage

-- inadequate financing

in sum--inadequate pensions--and frequently none.

The Chairman of this Committee, Senator Williams and the Ranking Minority Member are to be congratulated for their pioneering and dramatic work in the field of pension reform. Sparked by able staff--notably Frank Cummings and Mike Gordon, whom I have seen in action for years*--they have prepared the stage for Congressional action. As Chairman of the Special Committee on Aging--ably abetted by Staff Director William Oriol--Senator Williams has built a solid record of the inadequacy of private pension plans to the stress of a dynamic--and sometimes faltering economy. Hearing chaired by Ms. Griffth, Mr. Dent and Mr. Thompson have built a comparable record in the Joint Economic Committee and the House.

Regrettably, the resulting proposals fall short of the needs of the aging--and, make no mistake--that's practically all of us.

The Plight of the Elderly

A substantial portion of the elderly are poor. But that is not the only tragedy of old age. Practically everyone but the wealthy suffer a substantial--and steady--decline in their living standards after retirement. Let me give you one homely example.

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* I simply am unacquainted with Mr. Noto.

Several years ago I served on an unpaid town board. We did a fair amount of work only because our secretary, a dynamic woman in her 70's provided initiative and direction. She had lived quite comfortably when her family was growing. In retirement she scrimped so much that she did not purchase a newspaper, although in her younger years she read at least two daily.

When we consider the inadequacy of retirement income, we are talking about the fate of the great bulk of the population.

Several years ago Dr. James Schulz made projections of the financial situation of the elderly in the 1980's. Many of his basic assumptions were entirely too optimistic. Thus his results understate the financial plight for the elderly. He projects that in the 1980's the elderly will be no better off than they were in the mid-1960's. (The Economic Status of the Retired Aged in 1980: Simulation Projections, Social Security Administration Research Report No. 24 (1968))

That is a national disgrace and a national tragedy. While the bulk of retirees of the 1960's, who experienced so much privation and uncertaintly in the 1930's and even '40s and '50s may be inured to poverty, near poverty and threadbare gentility, retirees who enjoyed relatively comfortable living standards and amenities retiring in the recent past and the future will not be so meekly quiscent. They will--and should--hold responsible current business management, current union leadership, the banking,insurance and investment community--and elected officials.

The Challenge to Pension Design

I suggest that if funds cannot be found to repair private pensions then we declare them a failure and discontinue them. At the very least, the $3 billion tax subsidy they enjoy should be discontinued. That subsidy consists of the taxes not collected on the earnings of pension reserves. If those reserves amount to $130 billion as claimed, the taxes lost to the Treasury amount to over $3 billion every year. As a result, all other taxpayers are taxed an additional $3 billion. The benefits of present pension arrangements flow disproportionately to the higher paid.

Each year all taxpayers put up an extra $3 billion so that those who are financially best off will have subsidized retirement savings.

The need is for pensions that cover all working people and that pay off to all working people. Otherwise old age--which sets in before 65 for half of our retirees--will continue to be the cast off years, the hollow years. If pensions can not do that job, if it simply is too expensive to reform private pensions to work in that way, then we should move to another system. That system happens to exist--it is called Social Security--which has never lost a penny to a dishonest trustee, which has never paid a kickback to a union or management official, which has never failed to pay off for lack of funding, which can readily be made to keep up with increases in cost of living, which pays off to widows and children and other dependents when a worker dies, retires or becomes disabled. In sum, it is dependable where private pensions are undependable. Its weakness is benefits that are too low. But there is no easier, no cheaper, no more dependable way to improve retirement income than through Social Security.

The vaunted flexibility and adaptability of private plans mostly mean that they are easily designed to favor some in-group over some out-group. And that means taking income from one group (those who are employed under a plan but don't get benefits) to another (those who get benefits--usually corporate insiders or very long term employees). Let us consider what is proposed.

Vesting--Shortcomings of Proposals

The Administration-proposed "rule of 50" not only falls short of need, it is bad news. Older workers--which may mean over 35--have a difficult enough time without presenting employers and prospective employers with higher pension costs than younger competitors. Despite protestations to the contrary, the rule of 50 would mean higher pension costs for older workers, especially but not exclusively those over 50. Pension costs for those employees already are higher; to increase the disadvantage of hiring older workers would be to aggravate an already serious problem.

In contrast, immediate or early vesting would reduce the disadvantage of hiring older employees.

The Williams-Javits proposal constitutes some improvement over existing plan provisions. Its principal impact would be upon multi-employer plans which tend to have no or very limited vesting and high requirements for continuous service--and low benefits. In low pay industries, some of these plans reputedly have thin funding; as a result, some may be candidates for deferred application of vesting requirements under §216. So that the vesting requirement for those now employed could be 8 years--plus one year until the effective date of title II--plus three years of deferral--or 12 years from enactment. And then the vestin would be for only 30% of the credits earned; only after 19 years would there be full vesting.

Under single employer plans, which cover about 80% of plan participants, most plans already have 10 or 15 year vesting, mostly full not graded vesting. S. 3598 offers only miniscule improvemen in this large sector. For those under 10 year vesting plans (covering about half those under single employer plans) the measure offers the net advantage of vesting at 9 years--for 30% of the value of the credits earned. Under those plans with 15 years vesting, S. 3598 offers somewhat more protection--from 40 to 90% of the credits earned. In both situations, vesting would be of comparatively little value except in unit shutdowns because a nine year employee would usually stay until 15 years of service. It is possible that under existing law unit shutdowns would result--and they should result--in 100% vesting of all credits. The Internal Revenue Code provides that when a plan termintats, all credits must vest. IRS regulations have sought to apply this principle to "partial terminations" although the plan continues in operation for other company installations. Little is known about what IRS actually has done to implement the rule.

The vesting proposal does a great deal less in unit shutdown situations than can and should be done under the existing law. But to eliminate uncertainties about the law, a reform statute should require 100% vesting of all credits when significant units of multi-unit enterprises shut down. Were they covered by

separate plans such vesting would be required. Moreover, the law should recognize the rights of employee separated in the declining days of a plan and treat his/her credits as if the plan had terminated when large scale separations began. In 1964, I urged such protections. In 1970, William Lackland, representing the American Bankers Association, suggested that protection in "partial termination" situations might be desirable. ("Private Welfare and Pension Plan Legislation", Hearings before the General Subcommittee on Labor of the House Committee on Education and Labor 789 at 795 (91st Cong., 1st and 2d Sess. (May 19, 1970)) His statement follows:

> A more pressing need for vesting has been suggested in situations where the service of employees is involuntarily terminated because a company sells or shuts down a plant or operation. As you know, the Internal Revenue Code provides that upon the complete discontinuance of a plan, all rights of employees must be nonforfeitable and that no money can be returned to an employer until all the liabilities of the plan have been satisfied.
>
> There is no such requirement in the code for full vesting when a plant or operating division of an employer is sold or shut down, although regulations of the Internal Revenue Service indicate that such an event should be considered a partial termination of the plan.
>
> To effectively protect the interests of employees in such cases, an amendment to the Internal Revenue Code may be needed to require employers to provide in their plans that the sale or shutdown of a plant or operation must be considered a partial termination of the plan with resulting vesting in employees. This can be done without necessarily requiring vesting under other circumstances.

The form of the amendment requires further consideration. But I think the Committee is missing a bet in not accepting this suggestion from the ABA--about the only affirmative one that comes to mind outside the area of fiduciary standards.

If the price of Senate passage is vesting provisions that provide so little advantage over the present situation, I would say that the cause of reform--real reform--is better served by waiting until the next Congress. This issue has just begun to come alive--thanks in considerable measure to the Committee chairman, ranking member and their staff. The next Congress will have even greater awareness of the needs in this area. Compromise is premature. Tomorrow's compromise should be very much better.

Definition of Continuous Service

The Committee has dramatized the misfortunes that can occur because of harsh plan rules on breaks in service. I believe that §202(e) requires authorization to the Secretary to prescribe limits upon what may constitute a break in service. Such authority is implied by §202(b)(1) but not followed through in 202(e).

The Pension Clearing House--Indispensable to Employee Protection--Bill Limitations Crippling

A Pension Clearing House is essential to effective employee savings under private plans. Without one control record of all vested pension credits an employee and his dependents simply may lose track of his entitlements.

Only with a clearing house will those credits be useful to a separated employee. It must be understood that a vested credit under present arrangement has three basic limitations--the benefit is frozen as of the time of separation; the employee must survive to normal retirement age--and survivors have no rights; the credits are unavailable for disability purposes. A vested credit in a Clearing House would grow in accordance with growth in the economy it would be available to pay benefits for survivors; it would be available to pay benefits in the event the separated employee became disabled.

Consider an employee separated at age 45 under a plan with a normal requirement age of 65. His vested credits would be frozen at benefit levels when he leaves the job--and subject to 20 years of erosion by inflation even before it reaches payment status. For the same years of service employees who stay on the job frequently receive increased benefits reflecting economic growth. Had this bill been in force in 1955 a 1972 retiree separated in that year would be stuck with benefit levels that are a fraction of today's--which are none too handsome.

Under a voluntary Clearing House the employer has no incentive to transfer the credit but has a powerful incentive not to do so. The reasons are technical--but very real.

For any unit of fixed benefit the cost is the benefit divided by the rate of interest. The lower the interest, the higher the out-of-pocket cost of the benefit. Actuaries tend to assume interest rates on reserves that are lower than the going and expected rate. As a result when an employee separates from a job, the cost of transferring the value of the vested benefit is higher than if the vested benefit is paid from the pension fund itself. As a result, employers will not voluntarily transfer the benefit. And by keeping the reserve for the vested benefit in its own fund, the employer can use that frozen reserve and make money on it to lower the cost of paying benefits to other employees. Such earnings make possible higher benefits--so a union will not seek to have transfers to a clearing house made. On the contrary, its effort to get better benefits for employees currently on the job will be enhanced by not making transfers.

A Voluntary Clearing House will not work.

Moveover, the proposed Clearing House, although authorized to operate its own pension fund, is limited in its investments as no other such fund is--it may invest only in bank and savings and loan accounts--with the limits in earnings that result. Moreover, in order to take advantage of FDIC insurance, the Clearing House would have to open thousands of accounts. It would fast run out of banks.

The Clearing House should be empowered to invest just as any trust fund may. Such a fund would constitute a yard stick for private fund performance--which would be very desirable as shall be shown shortly.

The transfer of credits from individual plan to individual plan while feasible, is awkward, potentially more costly than transfer into the Clearing House Fund, and subject to abuse by the receiving fund.

Needed--Clearing House Plan for Small Companies

The gap in plan coverage occurs mostly in small companies. They cannot afford the charges and time for plan installation. Many more could participate if they could buy into a reliable, low cost plan. The Clearing House should operate such a plan on a money purchase basis so that any level of contribution would be possible. The credits purchased would be immediately vested.

Enlarged coverage would produce--more persons eligible for benefits, higher benefits because more years of work would pay off and lower cost per year for any given level of benefits. All of these advantages flow from early vesting.

Misleading Claims about the Cost of Vesting

Great alarm has been expressed about the crippling cost of vesting. It is often greatly exaggerated. As noted, the more effective credits an employee accumulates, the lower is the cost of each unit. Moreover, the earlier a vested credit is earned and funded, the lower is the yearly cost for any given level of benefits--because of the double action of longer periods of earnings and earnings on earnings.

Beyond that during the last several years of recession and cutback in "defense" spending, tens of thousands of employees have been separated from plans without benefits. The higher than expected separation rate generates "actuarial gains" which are funds available for reuse for pension purposes. In other words, over the last several years pension plans have cost less than planned. Those savings should be deducted from the cost of vesting to compute the net cost of plan improvement.

In the case of government contractors, the actuarial gains should be recaptured by renegotiation. Inasmuch as the government already allocated these funds to defense employee pension purposes I urge that legislation be enacted to not recapture the funds but to apply them to confer vested credits upon defense employees already separated. The funds so devoted could become the nucleus of the Pension Clearing House pension reserves.

Women--The Losers in the Past--The Losers Still

Pension plan design now effectively excludes women both as potential pensioners and the surviving dependents of employees.

Typically women work for shorter periods of time than men, as the following tables show.

Median Years on Current Job

Age	All Persons	
	Men	Women
30-34	3.9	1.8
35-39	5.8	2.6
40-44	8.4	3.2
45-49	10.2	4.4
50-54	12.6	6.2
55-59	14.7	8.2
60-64	15.1	9.4

Median Years - Selected Occupations

	Men by Age		Women by Age	
	25-44	45 yrs over	24-44	45 yrs over
Manufacutring				
Durable Goods	4.5	14.3	2.4	8.3
Nondurable Goods	5.3	15.4	2.8	9.1
Wholesale & retail Trade	3.3	8.8	1.5	4.9
Operatives & kindred workers	3.8	12.8	2.1	7.7

Source: "Job Tenure" Monthly Labor Review 18-19 (September 1969).

These data demonstrate why such a small percentage of women now qualify for pension benefits. They also show that S. 3598 will do little to help them. In wholesale and retail trade where so many women work, the prospects for pension eligibility are negligible. In manufacturing, it is better, but still the bulk of women workers will lose out. Pension plans discriminate against women; S. 3598 does little to remedy that discrimination.

Widows make up the bulk of the aged poor. Social Security provides their main money income. It needs improvement. It needs supplementation. But this is an area in which private pensions are dreadfully weak. Conventional vesting will not help them. Vested Clearing House credits could.

Fiduciary Standards--Proposals Inadequate

The standards proposed are grossly inadequate to protect employee pension interests:

(1) The fiduciary standard is too lax--less exacting than the traditional trustee standard and than the standard prescribed by §501 of the Labor Management Reporting and Disclosure Act; the standard proposed--originating with the American Bankers Associati --permits general practice to govern; that is too rubbery and probably too low;

(2) It permits self-dealing (transactions between the fund and the employer) up to 10% of the fund, which can be an enormous amount. Such dealings should be completely banned. Employee pension interests should not depend upon the same enterprise as his/her job. The temptations are too great. It is easier and more effective to ban self-dealing than to attempt to cure dubious transactions after the fact;

(3) The Advisory Council--like that for the Welfare and Pension Plan Disclosure Act--would be dominated by representatives of interest groups--14 of 19. This is symptomatic of the private pension field today--it is dominated by institutional interests to the frequent exclusion of the employees. The professionals in the field--the banks, insurance companies, actuaries, consultants--regard their clients as the employers, and occasionally the unions if, as is infrequently the case, the union controls the fund. So, plans serve institutional interests first and employees only to the extent that the law requires not because people are bad but because competition for the business requires it. The only adequate remedy is--as Ralph Nader and Senator McGovern have proposed--is to remove employer and union control over pension funds. But their proposal requires an additional element--a ban on salesmen and advertising--otherwise employees will pay substantial amounts of their pension funds--as they do now--for the promotions of those who sell and administer plans.

Investments--In Whose Interests? The Sorry Record of Plan Performance

A major justification given for private pension plans is that experts can invest fund reserves advantageously for the beneficiaries.

But the recent record raises the question--for whose interests are the investments made? For example--Table II shows the rate of return for thirteen self-administered funds--all with assets of more than $200 million each. In 1967 (the only year for which the data were supplied) all but two had fund earnings under 5% and six had fund earnings under 4%.

INVESTMENT RATE[1] FOR VARIOUS PRIVATE PENSION PLANS AS COMPARED WITH AVERAGE INTEREST RATE OF OASDI TRUST FUNDS

Organization	Year	Total Assets (millions)	Investment rate[1] (%)
American Telephone & Telegraph Co.[2]	1967	$4,617	3.84
Bethlehem Steel Corp	1967	472	4.64
Boeing Co	1967	338	3.48
Canadian Pacfic Railway Co	1967	459	5.08
Central States Teamsters	1967	548	14.64
Chrysler Corp	1967	329	4.16
Dow Chemical Co	1967	254	3.31
Ford Motor Corp	1967	637	4.11
General Motors Corp	1967	1,300	4.77
International Ladies Garment Workers	1967	263	4.44
Republic Steel Corp	1967	243	4.75
Shell Oil Co	1967	472	4.08
Western Electric Co	1968	1,376	3.71
OASDI Trust Fund	1967	26,251	3.69
Do	1968	28,729	3.80

1. Investment receipts of year as percentage of average of assets at beginning and end of year.

2. Total experience of 22 separate funds of telephone operating companies.

Source: Pension and Welfare News, February through October 1969 (all funds having at least $200,000,000 of assets at end of period).

(From "Social Security and Welfare Proposals:, Hearings before the House Committee on Ways and Means, 250, 91st Cong. 1st Sess. 1969)

Another study of 100 plans for 1968 shows a similar pattern. All but a short-fingered handful had rates of return under 5%, most were in the 3.5-4.5% range and 17 plans earned under 3%. (Source: "New Approaches to the Housing Crisis, Speech of Hon. Wright Patman, December 22, 1969, Cong. Rec. (Daily ed.) pp. [11071-11084) (Copies attached for the Committee). The 3% and under group included these plans: Sears & Roebuck profit-sharing; United Mineworkers Welfare and Retirement Fund; A & P; Continental Oil; Dow Chemical; Crown Zellerbach; Douglas Aircraft; Detroit Edison; Burlington Industries; Boeing; Federated Department Stores; Eastman Kodak; General Mills (2%); Mountain States Tel. & Tel.; American Airlines (flight engineers--the almost champion with 1.9%); Standard Oil of N.J.--the champion with 1.4%; and Lockheed--2.5%.

These are not the shyster fly-by-night funds. These are among the giants.

82-079 O - 72 pt. 1 - 21

The question burning for an answer is: WHAT ARE THESE FUNDS DOING WITH THE MONEY? Whose interests are served by earnings under 3%? Whose interests lead to such sorry performances? These data could indicate that employee pension funds are not in the right hands. The bill would do nothing to remedy this sad performance.

S. 3598's Inadequate Financing Requirements

The requirement for funding over a period of 40 years is grossly inadequate. The most notorious funding failure--the Studebacker plan--occurred despite a contract requirement of 30 year funding. Throughout the automobile industry the UAW has gained 30 year funding by contract.

Most businesses are in business only a short time. In 1967 of the thousands of businesses that failed, 55.3% had been in operation fewer than 5 years; another 22.5% had been operating for 6-10 years. (Dun and Bradstreet, The Failure Record Through 1967, p. 3 (1968)) Most plans would begin sometime after a business begins. The funding required by S. 3598 would not be of much aid to most plans. And the attenuated reinsurance--which would not cover vested benefits more generous than those required by the measure §402(b)(2)--would not make up for the difference.

(The funding provision may also be technically deficient. §210(b) seems to prohibit funding more rapidly than would be accomplished by "equal" payments over 40 years. More rapid funding might require unequal payments. What seems intended is minimum equal installments for retiring unfunded liability over the specified period. More rapid funding by unequal payments not falling below the minimum should be made permissible.)

S. 3598 Disappointing

The Javits-Williams bill is terribly disappointing. It will not come close to doing the job needed. It is a shame that the great work that the principal sponsors and their associates have done would come to so little.

I urge you to stop thinking small, to stop placating the opponents of reform. There are tens of millions of supporters for

real pension reform. Their future depends upon it. They are the ones to be satisfied.

I regret having to say that the Javits-Williams bill provides a mirage of reform but not its substance.

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[From the Congressional Record—Extensions of Remarks, Dec. 29, 1969]

New Approaches to the Housing Crisis

Mr. Patman. Mr. Speaker, the Secretary of Housing and Urban Development, George Romney, has made clear his conviction that high-interest, tight-money conditions dominating the Nation's economy have produced an explosive situation in terms of the country's housing needs.

He has declared that it is now impossible for half of the Nation's population to afford a new home.

He has stated that the dimensions of the problem now translate into the need to create one new city of 250,000 people every month for the remainder of the century—360 such cities having a total population of 90 million people by the year 2000.

He has said that the recent increase in the annual rate of new housing starts from 1.3 million in August to 1.5 million units in September is a "temporary aberration" and that he expects the level to decline significantly in the months ahead. Other housing experts predict the rate of new housing starts will drop to 1 million or less by the end of this year or early in 1970. This is little more than one-third of the number of units annually required to meet the Nation's housing goal. Furthermore, the great majority of single-family dwellings now being constructed are in the $30,000 bracket and up. In other words, the low- and moderate-income families of the Nation have been priced out of the housing market.

TIGHT MONEY—HIGH INTEREST

Tight-money, high-interest conditions are all but crippling savings and loan associations which account for nearly half of all residential mortgages in the Nation. The flow of funds into these institutions is expected to be reduced by 44 percent during the first 10 months of the year, $2.9 billion so far this year as compared to $5.2 billion during the same period last year.

The situation is almost as severe for mutual savings banks which account for 16 percent of all residential mortgages and rank second as a source of home loans in the Nation. The flow of funds into mutual savings banks is down 37.4 percent and September was one of the lowest inflow months on record for these banks.

The situation with life insurance companies which provide 14 percent of all residential mortgage loans shows a reduction of $1 billion during the first 10 months of the year.

And commercial banks, which also supply 14 percent of all residential mortgages, had a reduction of over 50 percent in large certificates of deposits between December of 1968 and October this year, from $24.4 billion to $11.6 billion.

Tight money-high interest rate conditions have clearly produced an ever worsening drought in the flow of mortgage funds. Assets that ordinarily would be devoted to this field have been diverted to higher yielding, shorter term investments.

IMPENDING DISASTER

Mr. Speaker, this is a thumbnail sketch of impending disaster made ironic by the priority we continue to give other projects. If things continue as they are we will be housing middle income scientists on the moon long before we get around to the decent homes and suitable living environment Congress promised the American people last year. We will be financing luxurious, supersonic air transports for jet setters and corporate executives while the price of housing skyrockets because demand far exceeds the supply. We will continue to tabulate military costs overruns while the rate at which housing falls into the substandard category runs wild.

There is little satisfaction to be gained by stressing our technological superiority to both our allies and enemies when many of these same countries are doing a far better job of meeting the needs of their people. Last year, when housing starts were higher than is presently the case, the United States provided 7.69 units per 1,000 residents, but Sweden produced 13.43 units, Japan built 11.89, the Soviet Union provided 9.80, the Netherlands built 9.63, and France produced 8.23.

The Director of the Standards Policy Office of the Commerce Department, A. Allen Bates, asserts:

"Within a few years—perhaps a decade—it will probably be generally acknowledged internationally that the best housed inhabitants of any large country in the world are those of the USSR. The political impact of this situation will be profound. The United States will suffer devastating comparisons."

Under these circumstances it would be painfully embarrassing to claim that our capitalist, free enterprise system is the basis for the best of all possible worlds.

RELIANCE ON PRIVATE SECTOR

Secretary Romney, who launched a successful revolution in the Nation's massive auto industry by fathering and selling the compact car, and President Nixon who saw the world from the rose-colored halls of Wall Street, have placed their faith in the private sector to achieve a solution in our housing crisis. Secretary Romney is fond of saying that the greatest single market in the future of the Nation's economy is the housing market. His assessment is correct only if the private sector provides the financing for this market and so far it has dismally failed to do so. To this Secretary Romney replies that the private sector cannot be expected to meet necessary investment quotas in housing until a large puncture has been made in our inflationary bubble. So far the only thing that has been deflated in the housing industry, and there is little evidence of change in other segments of the economy despite the hopeful forecasts of the administration's economic wizards.

Among the things which are obviously needed is the channeling of large blocks of funds into housing from sources which until now have remained relatively untapped. Such action should take place immediately and not on some distant, unknown date when the United States has slipped from a sixth-place ranking in housing to 10th or 15th and our housing industry is too weak to climb out of its sick bed.

NEW APPROACHES

One of the largest investment possibilities that can and should be utilized is the assets of private pension funds which total more than $115 billion, providing a completely tax-exempt annual income of nearly $6 billion. The tax advantage given these pension programs now totals more than $3 billion a year.

Another equally important source is in the use of the assets of the Federal Reserve to purchase housing paper.

This bill opens the way to turn both of these possibilities into concrete action.

The growth of private pension fund assets, including those programs administered by insurance companies, has been nothing short of phenomenal. During the 9-year period 1960 to 1968 total assets rose from $52 to $115 billion, more than doubling, and the rate of future growth is expected to be even more spectacular. It is now estimated that by 1981 private pension fund assets will total more than $200 billion and will comprise one of the largest single investment forces in the Nation's economy.

This is especially true for the corporate empires of the Nation. The most outstanding feature of pension fund change during the 9-year period has been their collective gallop into common stock investments. In 1960 private, noninsured pension funds, with total assets of $33.1 billion, had $10.7 billion worth of common stock, a little more than a third of the value of all their assets. Today the value of their common stock investments amounts to more than $40.3 billion, more than half the value of their total assets.

No other aspect of private, noninsured pension fund investment have moved so dramatically. In fact all other types of investments are far below the $40 billion in common stock, the next closest being $26 billion in corporate bonds. Other investments occupy relatively minor positions, among them real estate loans and mortgages which in 1960 totaled $1.3 billion and now total about $3.9 billion.

Another aspect of the striking growth of private pension fund assets is the low rate of return their investments produce. A study of the 100 largest private pension funds, having assets totaling $33.1 billion, shows the rate of return on investments seldom exceeds 5 percent, and a large number of the plans have rates of return which do not exceed 4 percent.

GREAT POTENTIAL

Mr. Speaker, these facts clearly illustrate the potential of private pension plans to pump desperately needed resources into the housing market—primarily into the low and moderate income family housing market where the flow of mortgage funds has virtually evaporated and where the need is greatest. Accordingly, I am introducing a bill which establishes a formula by which private pension plans can be directed to make such investments in return for the tax advantages they now enjoy, amounting to more than half the earned income of these plans. In essence, the bill calls on the Secretary of Housing and Urban Development to

determine the investment required to meet the national housing goal of 600,000 low- and moderate-income units a year, assess how much of this investment can be expected to be made from sources which are now supporting this section of the housing market, and determine how much of an investment is required from the private pension plans to fill the gap.

The fact that pension programs now hold mortgages totaling $3.9 billion verifies beyond doubt that program administrators have found such purchases fit requirements for prudent and secure investments. The bill provides that investments ordered by the Secretary of Housing and Urban Development shall be in mortgages which are federally insured or guaranteed, thus removing all question of risk.

It also removes all doubt about providing an adequate return since mortgages insured by the Federal Housing Administration or guaranteed by the Veterans' Administration are now yielding 8 percent, almost twice as much as the rate of return for all but a few pension programs as indicated by the study of the top 100 plans. Moreover, it is fair to assume that although private pension plans have invested in mortgages, an extremely small portion of this investment is in homeownership loans for low- and moderate-income families. By emphasizing the purchase of mortgages in the particular category, pension plans would at once be making a high yield investment and performing an urgently needed social service backed by the full faith and credit of the United States. It may be argued that to divert funds from common stock purchases to mortgages will reduce the rate at which pension plan assets appreciate. To this I say that an absolutely safe mortgage investment paying 8½ to 10 percent interest means that a $20,000 mortgage with a 30-year term will provide interest payments totaling over $32,000 alone, or more than 1½ times the amount of the principal, an arrangement that seems more than adequate in view of the tax-free status of the multimillion-dollar investment portfolios.

For administrative purposes, my bill would authorize the Secretary of Housing and Urban Development to confine his directives concerning investment of assets to those pension plans which have assets valued at $4 million or more. This would take in most retirement programs.

FEDERAL RESERVE PURCHASES

Mr. Speaker, title II of my bill would open a second avenue leading to substantial new investments in housing mortgages. Title II would authorize and direct the Federal Reserve to buy and sell in the open market, or deal directly with the issuing agency, any obligation which is a direct obligation or fully guaranteed as to principal and interest of any agency of the United States. The bill makes it clear that it is the sense of Congress that the legislation shall be used to meet the national housing goals through the purchase and sale of residential mortgage paper by the Federal Reserve.

In 1966 Congress authorized the Federal Reserve to make such purchases but since then that agency has looked on this legislation as being permissive rather than a directive and has never utilized it despite the housing crisis that existed at the time of enactment and the housing crisis that is currently crippling our housing industry. In effect, the Federal Reserve has refused to comply with the will of Congress. It is ridiculous to think that Congress would grant the authority to make housing paper purchases without also assuming that Congress clearly meant that this authority should be exercised in a meaningful way.

In rationalizing its position, the Federal Reserve has insisted that its role is to deal with general monetary policies and that it does not work with specific segments of the economy. The fact of the matter is that the high-interest, tight-money policies of the Federal Reserve strike first, foremost, and almost exclusively at the housing market with the result that a large share of the responsibility for the Nation's massive housing problem rests with that agency.

The Federal Reserve's position has even been contradicted by its own studies. Describing the results of restrictive monetary policy, Federal Reserve Governor Dewey Daane said:

"We find a rise in mortgage rates and a reduction in the availability of market credit to borrowers—and hence . . . a relatively prompt and significant effect on housing starts."

One illustration of this situation came in 1966 when the Federal Reserve's policies took $8 billion worth of credit out of the economy and $7 billion of the total came out of housing alone.

HOUSING PRIORITIES

Mr. Speaker, the Government of this Nation must finally begin to look at housing needs as being on the same level of importance—the same level of necessity—as adequate food, clothing and medical care for the people of this Nation. This bill, applying as it does to the use of private pension fund assets and the assets of the Federal Reserve for the purchase of residential mortgages, especially mortgages for low and moderate income families, constitutes a long step in this direction. The thrust of the measure goes to the point that it is not enough to simply create housing programs which provide fully insured and guaranteed mortgages for purchase by the private sector to meet our housing goals. The bill provides a way to help make these programs fully responsive to the needs of the Nation and the intent of Congress during times of crisis in the housing industry.

Mr. Speaker, I include in the RECORD the text of the Mortgage Investment Act and data disclosing the assets and income of the 100 largest private, noninsured pension plans. Inspection of these figures graphically indicates the potential of these and other pension plan programs to help end our housing crisis.

H.R. 15402

A bill to amend the National Housing Act and the Federal Reserve Act to help meet the national housing goals, including the goals for low- and moderate-income families through the purchase of mortgages with private pension fund and Federal Reserve assets

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

TITLE I

PENSION FUND MORTGAGE INVESTMENTS

SEC. 101. Title V of the National Housing Act is amended by adding at the end thereof the following new section:

"INVESTMENT IN LOW- AND MODERATE-INCOME HOUSING MORTGAGES BY PRIVATE PENSION FUNDS

"SEC. 524. (a) (1) The Congress finds that housing starts in the United States have dropped to an alarming level due largely to the inflationary, high-interest-tight-money condition of the economy. This shortage of mortgage money on reasonable terms is felt most severely by the Nation's low- and moderate-income families—a group whose housing needs have reached a crisis stage because adequate funds on reasonable terms are not available for mortgage investments of this type. Moreover, it is impossible to realistically hope for fulfillment of the national housing goals of six million new and rehabilitated units in ten years for low- and moderate-income families, as set forth in the Housing Act of 1949 and reaffirmed in the Housing Act of 1968, unless action is taken to supply additional amounts of mortgage funds on reasonable terms for this purpose.

"(2) The Congress finds that the additional resources required to meet the national housing goals for low- and moderate-income families are available in the form of moneys in private pension funds. It further finds that only a small portion of these funds are presently invested in mortgages and that a larger share of these assets can and should be devoted to investments in mortgages to supply decent housing for low- and moderate-income families without risk or the sacrifice of an adequate return.

"(3) It is the purpose of this section and the policy of the Congress to encourage investment of private pension fund assets in federally insured or guaranteed low- and moderate-income mortgages in amounts that will assure meeting the national housing goals as they apply to this segment of the Nation's population."

SEC. 102. As used in this section—

(1) the term "Secretary", unless otherwise specified, means the Secretary of Housing and Urban Development;

(2) the terms "low- and moderate-income housing" and "low- and moderate-income families" shall have the meaning given them by the Secretary and the Secretary of Agriculture in establishing the criteria by which families qualify for occupancy of dwellings supplied under the low- and moderate-income rental and homeownership programs contained in the National Housing Act and title V of the Housing Act of 1949;

(3) the term "federally insured or guaranteed mortgage" means any mortgage, or the securities backed by any mortgage, which is insured or guaranteed under the National Housing Act or title V of the Housing Act of 1949 for low- and moderate-income families; and

(4) the term "private pension fund" means a pension plan to which section 401 (a) of the Internal Revenue Code of 1954 applies; except that it shall also include such additional organizations and entities as the Secretary, after consultation with the Secretary of the Treasury, determines should be subject to this section in order to assure that the purpose of this section will be achieved.

SEC. 103. As soon as possible after the date of the enactment of this section the Secretary, after consulting with the Secretary of Agriculture, shall determine—

(1) the total investment required to meet the national housing goals for low- and moderate-income families in both urban and rural America during the next thirty-six months;

(2) the total amount, projected on the basis of rehabilitated and new housing starts for low- and moderate-income families occurring during the previous twelve months, that can be expected to be invested in low- and moderate-income family housing during the next thirty-six months:

(3) the difference between what can be expected to be invested and what is required to be invested to meet the national housing goals for low- and moderate-income families during the next thirty-six months;

(4) the total combined assets of any or all private pension funds; and

(5) the portion of the combined assets of private pension funds which would be required to be invested in federally insured or guaranteed mortgages on low- and moderate-income housing in both urban and rural areas to assure that the national housing goals for low- and moderate-income families are met during the next thirty-six months.

SEC. 104 (1) The Secretary, after conferring with the Secretary of the Treasury, shall notify the administrators of all private pension funds having assets appropriate for mortgage investment that during a period of time specified by the Secretary they are required to invest in federally insured or guaranteed mortgages on low- and moderate-income housing such amount from their pension fund assets as will be required to assure meeting the national housing goals for low- and moderate-income housing as determined by the Secretary for the thirty-six month period involved under subsection 102(5).

(2) The Secretary, bearing administrative problems in mind, shall determine which private pension funds shall be required to make such investments and the amount of the investment to be required by each.

SEC. 105. Upon fulfilling the obligations specified by subsections 103 and 104 the Secretary shall, after conferring with the Secretary of the Treasury and the Secretary of Agriculture, and using the same methods as those prescribed in such subsections, determine the total investment of private pension funds assets required to assure meeting the national housing goals as they apply to low- and moderate-income housing for each successive twelve-month period and shall notify the administrators of all private pension funds having assets appropriate for mortgage investment of the amount of such assets they are required to invest in federally insured or guaranteed mortgages on such housing during each such twelve-month period as designated by the Secretary.

SEC. 106. (1) If the actual investments in federally insured or guaranteed mortgages on low- and moderate-income housing held by a private pension fund in any taxable year beginning after the date of enactment of this section are less than the amount of investments in such mortages required of such fund for such year under section 104 or 105 there is hereby imposed on such fund's failure to make and hold the required investments a tax equal to 100 per centum of the amount by which the actual investments are less than the required investments. Such tax shall be paid by the private pension fund, and shall be assessed and collected, under regulations prescribed by the Secretary of the Treasury or his delegate. In the manner provided in subtitle F of the Internal Revenue Code of 1954 with respect to taxes imposed by subtitle D or such Code.

(2) A private pension fund shall not be subject to the tax imposed by this subsection for any taxable year if the fair market value of its assets at the beginning of such year does not exceed $4,000,000.

TITLE II

FEDERAL RESERVE MORTGAGE PURCHASES

SEC. 201. (a) Paragraph (2) of section 14(b) of the Federal Reserve Act (12 U.S.C. 355) is amended to read as follows:

"(2) Under the direction and regulations of the Federal Open Market Committee, to buy and sell in the open market, or to deal directly with the issuing agency in the purchase nad sale of, any obligation which is a direct obligation of, or fully guaranteed as to principal and interest by, any agency of the United States."

(b) It is the sense of the Congress that the authority conferred by paragraph (2) of section 14(b) of such Act be used to assist the Nation in meeting the housing goals contained in the Housing and Urban Development Act of 1968.

Shell Oil Co., Shell Pipeline Corp., Asiatic Petroleum Corp., Asiatic Petroleum Co. (Tex.), Ltd., New York, N.Y., Dec. 31, 1968

Contributions:	
Employer	$26,105,376
Employee	28,053,699
Investments:	
Common stock	219,937,001
Federal obligations	954,120
Foreign government obligations	27,053,205
Non-Government obligations	376,301,421
Total assets	634,477,084
Receipts from investments:[1]	
Interest	17,235,643
Dividends	6,408,469
Total	23,644,112
Sale of assets:	
Cost	125,167,530
Cash	126,485,068
Net gain	1,317,538
Total income for year	24,961,650
Tax bill that would apply if income was not tax exempt	12,813,475

[1] Rate of Return, 3.6 percent.

Radio Corp. of America, New York, N.Y., Dec. 31, 1968

Contributions:	
Employer	$17,294,183
Employee	12,199,347
Investments:	
Stock:	
Preferred	1,553,591
Common	178,182,260
Non-Government obligations	75,653,559
Real estate loans and mortgages	16,042,397
Unsecured notes	14,118,000
Real estate leasebacks	$14,387,315
Total assets	332,979,124
Receipts from investments: [1]	
Interest	6,104,869
Dividends	5,426,821
Total	11,531,690
Sale of assets	
Cost	140,979,086
Cash	140,350,572
Net loss	628,514
Total income for year	10,903,176
Tax bill that would apply if income was not tax exempt	5,756,876

[1] Rate of return, 3.3 percent.

Employees savings and profit-sharing plan, Sears, Roebuck & Co., Chicago, Ill.

Contributions:	
Employer	$85,251,948
Employee	67,548,247
Investments:	
Bank deposits and savings and loan shares at interest	1,369,877
Stock:	
Preferred	7,362,041
Common	2,357,057,421
Non-Government obligations	4,441,499
Real state loans and mortgages	10,118,979
Secured loans	1,450,000
Unsecured notes	135,893,573
Total assets	2,543,295,196
Receipts from investments:[1]	
Interest	4,822,608
Dividends	49,685,554
Total	54,508,162
Sale of Assets	
Cost	45,192,186
Cash	61,993,422
Net gain	16,801,236
Total income for year	71,309,398
Tax bill that would apply if income was not tax exempt	32,980,618

[1] Rate of return, 2.1 percent.

Savings-stock purchase program for salaried employees in the United States, General Motors Corp., Detroit, Mich., Dec. 31, 1968

Contributions:	
Employer	$46,445,805
Employee	103,232,792
Investments:	
Common stock	578,310,314
Federal obligations	234,413,964
Total assets	822,649,361
Receipts from investments:[1]	
Interest	2,585,025
Dividends	28,573,119
Total receipts from investments	31,163,144
Tax bill that would apply if income was not tax exempt	16,454,140

[1] Rate of return; 3.8 percent.

Supplemental pension plan for employees 50 years or older earning over $15,000, Sears, Roebuck & Co., Chicago, Ill., Dec. 31, 1968

Employer contributions	$11,552,100
Investments:	
Stock:	
Preferred	2,465,616
Common	90,713,943
Federal obligations	1,497,500
Foreign government obligations	5,801,372
Non-Government obligation	35,262,057
Real estate loans and mortgages	1,001,725
Total assets	138,491,551
Receipts from investments: [1]	
Interest	2,310,390
Dividends	2,384,397
Rents	2,975
Total	4,697,763
Sale of assets	
Cost	75,008,700
Cash	77,487,142
Net gain	2,478,442
Total income for year	7,176,210
Tax bill that would apply if income was not tax exempt	3,100,031

[1] Rate of return, 2.9 percent.

Pension plan, Republic Steel Corp., Cleveland, Ohio

Employer contributions	$31,620,700
Investments:	
Stock:	
Preferred	9,553,100
Common	82,685,553
Federal obligations	1,895,575
Foreign government obligations	12,177,975
Non-Government obligations	143,398,719
Secured loans	11,783,042
Total assets	278,233,909
Receipts from investments: [1]	
Interest	7,779,233
Dividends	4,534,919
Total	12,314,152
Sale of Assets	
Cost	72,447,633
Cash	79,995,910
Net gain	7,548,277
Total income for year	19,862,429
Tax bill that would apply if income was not tax exempt	8,388,941

[1] Rate of return, 4.3 percent.

Shell Pension plan, All Employees, Shell Oil Co., Shell Pipeline Corp., Asiatic Petroleum Corp., Asiatic Petroleum Co. (Texas) Ltd., Dec. 31, 1968

Employer contributions	$21,688,888
Investments:	
Stock:	
Preferred	2,025,421
Common	168,269,818
Federal obligations	9,460,885
Foreign government obligations	21,314,150
Non-Government obligations	264,338,212
Real estate loans and mortgages	5,466,094

Shell Pension plan, All Employees, Shell Oil Co., Shell Pipeline Corp., Asiatic Petroleum Corp., Asiatic Petroleum Co. (Texas) Ltd., Dec. 31, 1968—Continued

Real estate operations	$5,256,063
Total assets	488,256,539
Receipts from investment: [1]	
Interest	13,395,265
Dividends	5,441,172
Rents	425,062
Total	19,261,499
Sale of assets	
Cost	92,677,783
Cash	89,066,930
Net loss	3,610,853
Total income for year	15,650,646
Tax bill that would apply if income was not tax exempt	8,263,541

[1] Rate of return, 3.9 percent.

The Savings Banks Retirement System, New York, N.Y., Sept. 30, 1968

Contributions:	
Employer	$6,298,355
Employee	319,519
Investments:	
Stock	
Preferred	269,350
Common	10,917,934
Federal obligations	1,362,047
Foreign government obligations	697,343
Non-Government obligations	16,332,464
Real estate loans and mortgages	85,821,626
Other real estate	40,904
Total assets	117,366,411
Receipts from investments: [1]	
Interest	5,385,328
Dividends	257,782
Total	5,692,185
Sale of assets:	
Cost	3,826,131
Cash	3,891,669
Net gain	65,538
Total income for year	5,757,723
Tax bill that would apply if income was not tax exempt	3,021,857

[1] Rate of return, 4.3 percent.

Disability benefits and death benefits, Southern Bell Telephone & Telegraph Co., Atlanta, Ga., Dec. 31, 1968

Employer contributions	$32,955,835
Investments:	
Common stock	78,756,473
Federal obligations	98,972
State and municipal obligations	309,792
Foreign government obligations	75,819
Non-Government obligations	140,941,163
Real estate loans and mortgages	13,298,494
Other real estate	2,009,000
Total assets	239,487,539
Receipts from investments: [1]	
Interest	10,583,905
Dividends	2,359,766

[1] Rate of return, 5.4 percent.

Disability benefits and death benefits, Southern Bell Telephone & Telegraph Co., Atlanta, Ga., Dec. 31, 1968—Continued

Rents	$79,760
Total	13,023,432
Sales of assets:	
Cost	71,124,603
Cash	67,536,779
Net loss	3,587,824
Total income for year	7,435,608
Tax bill that would apply if income was not tax exempt	3,926,001

Stock plan for employees (all employees), Standard Oil Co. of California, San Francisco, Calif., Dec. 31, 1968.

Contributions:	
Employer	$11,681,000
Employee	6,585,000
Investments: Common stock	188,424,000
Total assets	188,424,000
Receipts from investments: [1]	
Dividends	9,838,000
Total receipts from dividends	9,838,000
Tax bill would apply if income was not tax exempt	$5,194,464

[1] Rate of return, 4.8 percent.

Annuity Plan—(All Employees), Standard Oil Co. of California, Dec. 31, 1967

Contributions:	
Employer	$7,700,000
Employees	4,627,000
Investments:	
Bank deposits and savings and loan shares at interest	937,217
Stock:	
Preferred	1,386,423
Common	223,959,663
Federal obligations	70,140
Non-Government obligations	77,655,715
Commingled trusts—GEB trust special purpose funds	50,357,713
Real estate loans and mortgages	15,089,850
Real estate operations	2,793,559
Total assets	374,310,231
Receipts from investments: [1]	
Interest	3,957,669
Dividends	6,755,541
Rents	234,068
GEB special purpose fund	2,665,866
Total	13,613,146
Sale of assets:	
Book value	109,832,325
Cash	122,589,611
Net gain	12,757,286
Total income for year	26,370,432
Tax bill that would apply if income was not tax exempt	10,377,062

[1] Rate of return, 3.5 percent.

Pension, disability benefits, death benefits (all employees), Southwestern Bell Telephone Co., St. Louis, Mo., Dec. 31, 1968

Employers contributions	$36,768,175
Investments:	
Stock:	
Preferred	1,014,650
Common	141,493,083

Pension, disability benefits, death benefits (all employees), Southwestern Bell Telephone Co., St. Louis, Mo., Dec. 31, 1968—Continued

Federal obligations	$2,615,159
Non-Government obligations	295,018,900
Real estate loans and mortgages	16,309,977
Unsecured notes	4,808,074
Other real estate	5,000
Total assets	468,066,926
Receipts from investments: [1]	
Interest	13,708,952
Dividends	4,113,575
Total	17,822,527
Sale of assets:	
Cost	204,887,579
Amount received	206,494,074
Net gain	1,606,495
Total income for year	19,429,022
Tax bill that would apply if income was not tax exempt	9,811,917

[1] Rate of return, 3.6 percent.

Pension, disability and death benefits (all employees), New York Telephone Co., New York, N.Y., Dec. 31, 1968

Employer contributions	$58,722,197
Investments:	
Stock:	
Preferred	6,416,664
Common	183,326,004
Federal obligations	3,012,624
Foreign government obligations	9,375,854
Non-Government obligations	498,092,599
Real estate loans and mortgages	9,730,459
Unsecured notes	16,639,870
Total assets	$733,646,236
Receipts from investments: [1]	
Interest	22,834,497
Dividends	4,545,088
Total	27,379,585
Sale of assets:	
Cost	173,371,899
Amount received	170,496,871
Net loss	2,875,028
Total income for year	24,504,557
Tax bill that would apply if income was not tax exempt	12,938,406

[1] Rate of return, 3.7 percent.

Pension, disability, and death benefits—(all employees), New Jersey Bell Telephone Co., Dec. 31, 1968

Employer contributions	$17,989,969
Investments:	
Stock:	
Preferred	1,554,379
Common	52,925,940
Federal obligations	2,567,428
Non-Government obligations	163,029,780
Real estate loans and mortgages	3,093,323
Unsecured notes	6,000,000
Total assets	231,252,855

Pension, disability, and death benefits—(all employees), New Jersey Bell Telephone Co., Dec. 31, 1968—Continued

Receipts from investments: [1]	
Interest	$7,050,852
Dividends	1,435,289
Total	8,486,141
Sale of assets:	
Cost	68,432,731
Amount received	69,013,248
Net gain	580,517
Total income for year	9,066,658
Tax bill that would apply if income was not tax exempt	4,557,922

[1] Rate of return, 3.5 percent.

Retirement plan for salaried employees, Johns Manville Corp., New York, N.Y., Dec. 31, 1968

Contributions:	
Employer	$1,141,582
Employee	2,658,321
Investments:	
Stock:	
Preferred	945,016
Common	61,769,718
Foreign government obligations	442,215
Non-Government obligations	22,187,627
Morgan Guaranty commingled funds—stocks and bonds	7,535,411
Real estate loans and mortgages	9,379,465
Morgan Guaranty commingled fund mortgages	10,290,550
Unsecured notes	3,174,000
Real estate operated—leasebacks	6,139,098
Total assets	122,437,657
Receipts from investments: [1]	
Interest	3,063,707
Dividends	2,451,047
Rents	685,896
Total	6,200,650
Sale of assets:	
Cost	58,615,927
Cash	58,557,350
Net loss	58,577
Total income for year	6,142,073
Tax bill that would apply if income was not tax exempt	3,243,014

[1] Rate of return, 4.9 percent.

UMWA welfare and retirement fund (hourly rated employees), United Mine Workers of America, Washington, D.C., June 30, 1968

Employer contributions	$163,089,691
Investments:	
Bank deposits and savings and loan shares at interest	50,000,000
Common stock	44,188,818
State and municipal obligations	15,236,717
Unsecured notes	125,000
Total assets	180,109,406
Receipts from investments: [1]	
Interest	2,466,000
Dividends	2,201,882
Total receipts from investments	4,667,682

[1] Rate of return, 2.9 percent.

UMWA welfare and retirement fund (hourly rated employees), United Mine Workers of America, Washington, D.C., June 30, 1968—Continued

Estimated contribution due but unpaid	$5,681,511
Tax bill that would apply if income was not tax exempt	2,464,641

Central States, southeast and southwest areas pension fund (all employees), Central States Drivers Council (Teamsters), Chicago, Ill., Jan. 31, 1969

Employer contributions	$118,347,395
Investments:	
Bank deposits and savings and loan shares at interest	9,400,000
Stock:	
Preferred	2,526,908
Common	22,069,920
Federal obligations	1,960,292
Non-Government obligations	39,486,450
Real estate loans and mortgages	461,264,348
Secured loans	34,990
Real estate operated	18,503,863
Other real estate	42,855,296
Total assets	628,026,886
Receipts from investments: [1]	
Interest	19,642,411
Dividends	814,505
Rents	700,350
Amortized loans and mortgages	55,124,965
Total	76,282,233
Sale of assets:	
Cost	4,928,148
Cash	5,379,527
Net gain	451,379
Total income for year	76,733,612
Tax bill that would apply if income was not tax exempt	40,389,863

[1] Rate of return, 12.1 percent.

Dun & Bradstreet, Inc., New York, N.Y.

Employer contributions	$2,002,296
Investments:	
Group trust equity and fixed income funds:	
Preferred stock	375,964
Common stock	41,180,104
Foreign government obligations	1,735,252
Non-Government obligations	27,603,502
Common trusts	385,456
Real estate loans and mortgages	1,202,934
Unsecured notes	7,450,000
Total assets	80,574,490
Receipts from investments: [1]	
Earnings distribution by group trust	1,354,137
Capital gains distributed by group trust	4,034,507
Interest	1,366,635
Dividends	1,280,759
Total	8,036,038
Sale of assets:	
Cost	49,197,697
Amount received	55,450,261
Net gain	6,252,564
Total income for year	14,288,602
Tax bill that would apply if income was not tax exempt	4,584,575

[1] Rate of return, 10.0 percent.

The Great Atlantic & Pacific Tea Co., Inc., New York, N.Y.

Employer contributions	$6,310,000
Investments:	
Stock:	
Preferred	918,540
Common	156,372,239
Non-Government obligations	46,424,492
Real estate loans and mortgages	5,464,374
Total assets	212,134,357
Receipts from investments: [1]	
Interest	2,961,289
Dividends	3,490,541
Total	6,451,830
Sale of assets: Gain	3,183,972
Total income for year	9,635,802
Tax bill that would apply if income was not tax exempt	4,202,559

[1] Rate of return, 2.8 percent.

Firestone Tire & Rubber Co., Akron, Ohio, Oct. 31, 1968

Contributions:	
Employer	$1,083,597
Employee	532,428
Investments:	
Stock:	
Preferred	2,108,034
Common	81,577,725
Federal obligations	5,079,826
Foreign government obligations	2,775,610
Non-government obligations	75,540,570
Real estate operations	5,437,881
Total assets	174,760,023
Receipts from investments: [1]	
Interest	4,055,794
Dividends	2,691,244
Rents	436,991
Total	7,184,031
Sale of assets:	
Cost	71,792,955
Cash	73,185,407
Net gain	1,392,451
Total income for year	8,576,482
Tax bill that would apply if income was not tax exempt	4,141,288

[1] Rate of return, 4.0 percent.

Continental Oil Co., Houston, Tex., Dec. 31, 1968

Contributions:	
Employer	$3,563,530
Employee	3,873,203
Investments:	
Preferred stock	74,626,369
Non-Government obligations	33,206,917
Real estate loans and mortgages	38,671,791
Total assets	147,927,179
Receipts from investments: [1]	
Interest	3,254,037
Dividends	2,670,108
Rents	1,099,626
Total	7,023,771
Sale of assets:	
Book value	42,088,156

[1] Rate of return, 4.8%.

Continental Oil Co., Houston, Tex., Dec. 31, 1968—Continued

Sale of assets—Continued	
Amount received	$44,910,235
Net gain	2,822,079
Net gain for year	9,845,850
Tax bill that would apply if income was not tax exempt	3,814,070
Employer contribution	$12,000,000
Investments:	
Stock:	
Preferred	4,811,000
Common	189,735,000
Non-Government obligations	28,503,000
Real estate loans and mortgages	10,223,000
Total assets	261,937,000
Receipts from investment:[1]	
Interest	2,775,000
Dividends	5,077,000
Total	7,852,000
Net gain from sale of assets	36,575,000
Net gain for year	44,427,000
Tax bill that would apply if income was not tax exempt	13,289,606

[1] Rate of return, 2.7%.

Illinois Bell Telephone Co., Chicago, Ill., Dec. 31, 1968

Employer contributions	$31,174,855
Investments:	
Stock:	
Preferred	1,751,181
Common	154,604,012
Foreign government obligations	448,166
Non-government obligations	211,732,193
Real estate loans and mortgages	10,959,503
Unsecured notes	6,839,581
Total assets	389,030,283
Receipts from investment:	
Interest	10,333,359
Dividends	3,396,278
Total	13,730,278
Sale of assets:	
Cost	199,094,282
Cash	194,223,063
Net loss	4,871,219
Total gain for year	8,859,059
Tax bill that would apply if income was not tax exempt	4,677,583

[1] Rate of return, 3.3 percent.

Gulf Oil Corp., Pittsburgh, Pa., Dec. 31, 1968

Contributions:	
Employer	$981,680
Employee	5,099,054
Investments:	
Stock:	
Preferred	1,337,990
Common	78,941,871
Foreign government obligations	575,470
Non-Government obligations	53,911,690
Real estate loans and mortgages	17,521,849
Total assets	$150,699,765

Gulf Oil Corp., Pittsburgh, Pa., Dec. 31, 1968—Continued

Receipts from investments: [1]	
Interest	$3,171,480
Dividends	2,838,729
Rents	370,647
Total	6,380,857
Sale of assets:	
Cost	35,479,010
Cash	39,643,876
Net gain	4,164,865
Total gain for year	10,545,722
Tax bill that would apply if income was not tax exempt	4,410,308

[1] Rate of return, 3.8 percent.

Gulf Oil Co. (annuities and benefits plan), Pittsburgh, Pa., Dec. 31, 1968

Employer contributions	$14,395,551
Investments:	
Stock:	
Preferred	4,549,840
Common	150,757,197
Non-Government obligations	110,868,757
Real estate loans and mortgages	18,571,934
Total assets	314,822,268
Receipts from investments [1]	12,543,926
Sale of assets:	
Cost	90,566,504
Cash	103,929,041
Net gain	13,362,537
Total gain for year	25,906,463
Tax bill that would apply if income was not tax exempt	9,963,826

[1] Rate of return, 3.8 percent.

General Motors Corp. (Savings stock purchase program for salaried employees), Detroit, Mich., Dec. 31, 1968

Contributions:	
Employer	$46,445,805
Employee	108,232,792
Investments:	
Stock: Common, preferred	578,310,314
Federal obligations	234,413,964
Total assets	822,649,361
Receipts from investments: [1]	
Interest	2,585,425
Dividends	28,578,119
Total	31,163,144
Sale of assets:	
Cost	36,054,764
Cash	36,054,764
Net gain	0
Total gain for year	31,163,144
Tax bill that would apply if income was not tax exempt	16,454,140

[1] Rate of return, 3.8 percent.

General Motors Corporation hourly rate employees pension plan), Detroit, Mich., Dec. 31, 1968

Employer contributions	$174,000,000
Investments:	
Bank deposits and savings and loan shares	985,256

General Motors Corporation (hourly rate employees pension plan), Detroit, Mich., Dec. 31, 1968—Continued

Stock:	
Preferred	$7,735,685
Common	654,259,181
Federal obligations	18,153,745
Foreign government obligations	4,648,057
Non-Government obligations	346,426,511
Comingled Trust, Morgan Guaranty	1,500,962
Bonds	6,060,585
Comingled real property	36,401,544
Real estate loans and mortgages	115,708,531
Unsecured notes	39,751,311
Real estate operations	53,518,906
Gas and oil mineral royalties	11,395,813
Total assets	1,300,333,313
Receipts from investments: [1]	
Interest	25,601,178
Dividends	25,724,959
Rents	4,873,492
Oil and gas mineral royalties	1,798,188
Total	57,997,817
Sale of assets:	
Cost	346,347,710
Cash	385,903,275
Net gain	39,555,565
Total gain for year	97,553,382
Tax bill that would apply if income was not tax exempt	40,511,738

[1] Rate of return, 4.4 percent.

Air Canada (pension trust fund—all employees), Montreal, Canada, Dec. 31, 1968

Contributions:	
Employer	$5,847,277
Employee	6,685,832
Investments:	
Stock—common	31,279,339
Federal obligations	12,232,487
Provincial obligations	25,332,460
Non-Government obligations	9,372,824
Mutual funds	3,343,029
Mortgages	50,605,981
Real estate operations	1,542,550
Short-term loans	11,519,628
Total assets	147,338,151
Receipts from investments: [1]	
Interest	5,884,058
Dividends	896,405
Total	6,780,463
Sale of assets:	
Cost	16,123,529
Cash	19,041,936
Net gain	2,918,407
Total income for year	9,698,870
Tax bill that would apply if income was not tax exempt	4,309,685

[1] Rate of return, 4.1 percent.

Pension, disability, and death benefit plan (all employees), Western Electric Co., Inc., New York, N.Y., December 31, 1968

Employer contributions	$104,234,000
Investments:	
Stock:	
Preferred	10,992,844
Common	473,793,599

Pension, disability, and death benefit plan (all employees), Western Electric Co., Inc., New York, N.Y., December 31, 1968—Con.

Investments—Continued	
Federal obligations	$2,219,610
Non-Government obligations	791,770,107
Real estate loans and mortgages	40,419,748
Unsecured notes	46,018,423
Total assets	1,375,579,009
Receipts from investments: [1]	
Interest	38,232,309
Dividends	10,758,630
Total	48,990,939
Sale of assets:	
Cost	359,649,191
Amount received	353,811,964
Net loss	5,837,227
Total income for year	43,153,712
Tax bill that would apply if income was not tax exempt	22,785,159

[1] Rate of return, 3.5%.

Pension Plan (hourly paid and nonexempt salaried employees eligible to a bargaining unit), The Youngstown Sheet & Tube Co., Youngstown, Ohio, Dec. 31, 1968

Employer contributions	$7,365,688
Investments:	
Stock	
Preferred	3,668,161
Common	79,829,672
Foreign government obligations	1,754,219
Non-Government obligations	22,442,339
GEB trust—Special purpose funds	5,745,196
Real estate loans and mortgages	3,408,199
Real estate operations	1,111,952
Total assets	118,818,923
Receipts from investments: [1]	
Interest	1,755,733
Dividends	1,950,553
Rents	93,319
Other	17,572
Total	3,817,278
Sale of assets:	
Cost	57,119,757
Cash	62,909,821
Net gain	5,790,064
Total income for year	9,607,342
Tax bill that would apply if income was not tax exempt	3,463,038

Employees Savings Plan, Texaco, Inc., New York, N.Y., Dec. 31, 1968

Contributions:	
Employer	36,785,703
Employee	13,571,406
Investments:	
Common stock	157,676,012
Federal obligations	10,036,187
Total assets	169,868,312
Receipts from investments: [1]	
Interest	178,749
Dividends	8,321,155
Total	8,499,904

[1] Rate of return, 4 percent.

Employee Savings Plan, Texaco, Inc., New York, N.Y., Dec. 31, 1968—Continued

Sale of assets:	
Cost	$6,398,180
Cash	8,175,475
Net gain	1,777,295
Total income for year	10,277,199
Tax bill that would apply if income was not tax exempt	4,932,272

Westinghouse Electric Corp. (pension plan), Pittsburgh, Pa., Dec. 31, 1968

Contributions:	
Employer	$25,119,760
Employee	5,942,664
Investments:	
Beneficial interest in common trust (99.4 percent)	653,659,376
Stock:	
Preferred	1,668,074
Common	369,133,321
Foreign government obligations	4,868,537
Non-Government obligations	145,510,898
Common trust—Continental Illinois National Bank	186,928
Real estate loans and mortgages	69,072,535
Unsecured notes	33,622,000
Real estate operations	27,600,118
Total assets	657,615,073
Receipts from investments: [1]	
Interest	13,803,615
Dividends	11,519,067
Retained Income in Common Trust	3,103
Total	25,330,785
Sale of assets:	
Cost	180,824,919
Amount received	204,864,325
Net gain	24,039,406
Total income for year	49,370,191
Tal bill that would apply if income was not tax exempt	19,384,505

[1] Rate of return, 3.8 percent.

Noncontributory pension plan (all employees), Dec. 31, 1969

Employer contributions	$27,000,000
Investments:	
Stock:	
Preferred	189,703
Common	109,882,177
Federal obligations	2,255,216
Foreign government obligations	2,991,167
Nongovernment obligations	44,570,580
Real estate loans and mortgages	9,589,203
Total assets	170,513,838
Receipts from investments: [1]	
Interest	2,497,139
Dividends	4,054,723
Accrued income (on sale)	5,596
Total	6,557,458
Sale of assets:	
Cost	38,604,115
Cash	47,688,205
Net gain	9,024,150
Total income for year	15,581,608

[1] Rate of return, 3.5 percent.

Noncontributory pension plan (all employees), Dec. 31, 1969—Continued

Tax bill that would apply if income was not tax exempt	$5,718,374

Swift & Co., (pension trust, all employees), Chicago, Ill., Dec. 31, 1968

Employer contributions	$6,272,765
Investment:	
Stock	
Preferred	6,455,139
Common	75,440,506
Federal obligations	4,935,828
Foreign government obligations	2,157,063
Non-Government obligations	127,617,732
Total assets	219,971,693
Receipts from investments: [1]	
Interest	5,993,656
Dividends	5,335,075
Total	11,328,731
Sale of assets:	
Cost	57,425,774
Cash	69,541,023
Net gain	12,115,249
Total income for year	23,443,980
Tax bill that would apply if income was not tax exempt	9,010,381

[1] Rate of return, 5 percent.

Contributory Participants in Retirement Plan, Standard Oil Co., and participating subsidiary companies, Dec. 31, 1968

Contributions:	
Employer	$12,691,244
Employee	21,181,403
Investments:	
Common stock	177,298,565
Federal obligations	13,245,627
Total assets (due withdrawing participants)	191,219,796
Receipts from investments: [1]	
Interest	184,024
Dividends	9,171,184
Total	9,355,208
Sale of assets:	
Cost	9,953,263
Cash	12,262,936
Net gain	2,309,673
Total income for year	11,664,881
Tax bill that would apply if income was not tax exempt	5,516,967

[1] Rate of return, 4.7 percent.

Savings and security program (all employees), General Electric Co., New York, N.Y., Dec. 31, 1967

Contributions:	
Employer	$37,300,011
Employee	81,909,066
Investments:	
Common stock	242,905,358
Federal obligations	141,236,584
Non-Government obligations	2,436,300
Investment Trust: GE, S&S program mutual fund	19,202,611
Total assets	420,900,900

Savings and security program (all employees), General Electric Co., New York, N.Y., Dec. 31, 1967—Continued

Receipts from investments: [1]	
Interest	$127,916
Dividends	5,855,214
Total	5,983,214
Sale of assets:	
Cost	28,059,457
Cash	28,262,902
Net gain	203,445
Total income for year	6,186,575
Tax bill that would apply if income was not tax exempt	3,209,997

[1] Rate of return, 1.2 percent.

Retirement plan, salaried employees, Aluminum Co. of America, Pittsburgh, Pa., Dec. 31, 1968

Employer contributions	$9,800,000
Investments:	
Stock:	
Preferred	6,948,962
Common	86,082,904
Foreign government obligations	523,861
Non-Government obligations	58,472,131
Real estate loans and mortgages	13,876,400
Unsecured notes	1,972,000
Total assets	169,976,090
Receipts from investments: [1]	
Interest	3,687,721
Dividends	3,139,030
Total	6,826,751
Sales of assets:	
Cost	43,467,659
Cash	49,687,827
Net gain	6,220,168
Total income for year	13,046,919
Tax bill that would apply if income was not tax exempt	5,159,566

[1] Rate of return, 3.6 percent.

Employees retirement plans (hourly rate employees, salaried employees), Aluminum Co. of America, Pittsburgh, Pa., Dec. 31, 1968

Investments:	
Stock:	
Preferred	$4,136,326
Common	75,859,723
Foreign government obligations	481,110
Non-Government obligations	49,031,791
Real estate loans and mortgages	12,547,918
Unsecured notes	2,498,000
Total assets	146,482,097
Receipts from investments: [1]	
Interest	3,219,530
Dividends	2,469,519
Total	5,689,049
Sale of assets:	
Cost	41,266,674
Cash	45,741,744
Net gain	4,475,070
Total income for year	10,164,119
Tax bill that would apply if income was not tax exempt	4,122,584

[1] Rate of return, 3.4 percent.

Pension and profit-sharing plan (all employees), Dow Chemical Co., Midland, Mich., Dec. 31, 1968

Employer contribution	$11,828,272
Investment:	
Stock:	
Preferred	948,522
Common	100,857,745
Foreign government obligations	752,677
Non-Government obligations	31,392,390
Commingled trust, Morgan Guaranty bond fund	6,725,532
Mortgages:	
Special situations	3,907,282
Real property	19,430,010
Real estate loans and mortgages	15,825,285
Secured notes	49,456
Unsecured notes	7,402,000
Other real estate	4,854,419
Total assets	272,187,098
Receipts from investments: [1]	
Interest	3,901,240
Dividends	3,874,124
Rents	411,651
Total	8,187,017
Sale of assets:	
Cost	68,767,326
Cash	72,895,114
Net gain	4,127,788
Total income for year	12,314,805
Tax bill that would apply if income was not tax exempt	5,354,691

[1] Rate of return, 2.9 percent.

Standard Oil Co. (Indiana), Chicago, Ill., Dec. 31, 1968

Contributions:	
Employer	$13,104,903
Employee	12,038,882
Investments:	
Stock	
Preferred	2,412,191
Common	387,840,355
Non-Government obligations	16,334,028
Real estate loans and mortgages, including lease backs	7,712,546
Unsecured Notes	54,213,425
Total assets	477,741,907
Receipts from investments:	
Interest	2,980,873
Dividends	12,125,532
Rents	97,355
Oil royalty and oil payment	189,856
Total	15,393,616
Sale of assets:	
Cost	441,689,733
Cash	458,284,712
Net gain	16,594,979
Total income for year	31,988,595
Tax bill that would apply if income was not tax exempt	12,276,573

Crown Zellerbach Corp., San Francisco, Calif.

Contributions:	
Employer	$3,573,328
Employee	1,057,882
Investments:	
Preferred stock	1,077,296
Common stock	68,195,225
Foreign government obligations	2,752,570
Non-government obligations	28,722,593
Commingled Trust, Bankers Trust Co. and GEB trust	5,758,820

Crown Zellerbach Corp., San Francisco, Calif.—Continued

Investments—Continued	
Real estate loans and mortgages	$4,855,810
Total assets	117,881,252
Receipts from investments: [1]	
Dividends	3,779,863
Transfer from Boatmen's National Bank, St. Louis, Mo.	19,812
Total receipts from investments	3,799,695
Sale of assets:	
Book value	40,844,471
Cash	37,042,987
Net loss	3,801,484
Net loss from investments	1,789

[1] Rate of return, 2.6 percent.

Douglas Aircraft Co., Santa Monica, Calif.

Employer contributions	$24,468,875
Investments:	
Stock:	
Preferred	174,820
Common	75,142,485
Federal obligations	30,000
Non-Government obligations	55,757,650
Commingled trust (general employee benefit trust)	4,374,782
Real estate loans and mortgages	4,171,229
Total assets	163,529,356
Receipts from investments: [1]	
Interest	3,039,266
Dividends	1,316,181
Royalty income	14,644
Total receipts from investments	4,370,091
Sale of assets:	
Book value	38,454,127
Cash	36,471,192
Net loss	1,982,935
Net gain for year	2,387,156
Tax bill that would apply if income was not tax exempt	1,260,418

[1] Rate of return, 2.5 percent.

Detroit Edison Co., Detroit, Mich.

Contributions: Employer	$4,954,712
Investments:	
Bank deposits at interest or shares in savings and loans	100,000
Stock:	
Preferred	3,395,940
Common	65,909,931
Foreign government obligations	376,472
Non-Government obligations	48,210,528
Real estate loans and mortgages	8,430,562
Total assets	134,682,618
Receipts from investments: [1]	
Interest	2,209,595
Dividends	2,553,054
Rents	25,425
Total receipts from investments [2]	4,788,075
Tax bill that would apply if income was not tax exempt	2,521,803

[1] Rate of returns, 3.0 percent.
[2] Net gain from sale of assets not available.

Burlington Industries, Inc., Greensboro, N.C.

Employer contributions	$5,771,618
Investments:	
Stock:	
Preferred	829,400
Common	112,517,638
Non-Government obligations	9,026,138
Real estate and mortage loans	249,713
Total assets	130,828,324
Receipts from investments:[1]	
Interest	462,572
Dividends	3,298,354
Total receipts from investments	3,761,025
Sale of assets:	
Book value	8,727,514
Cash	8,886,943
Net gain	159,429
Net gain for year	3,920,454
Tax bill that would apply if income was not tax exempt	2,025,678

[1] Rate of returns, 2.3 percent.

The Boeing Co., Seattle, Wash.

Employer contributions	$43,752,777
Investments:	
Stock:	
Preferred	8,589,607
Common	191,135,059
Federal obligations	693,750
Foreign government obligations	13,196,894
Non-Government obligations	108,023,677
Real estate loans and mortgages	15,112,125
Total assets	338,379,275
Receipts from investments:[1]	
Interest	6,466,794
Dividends	4,037,233
Rents	91,085
Investments	51,492
Total receipts from investments	10,646,604
Sale of assets:	
Cost	85,902,560
Amount received	88,659,296
Net gain	2,756,736
Total gain for year	13,403,340
Tax bill that would apply if income was not tax exempt	6,310,590

[1] Rate of return, 3.0 percent.

Federated Department Stores, Cincinnati, Ohio

Contributions:	
Employer	$7,518,267
Employee	5,144,335
Investments:	
Common stock	104,926,913
Federal obligations	35,543,681
Non-Government obligations	1,175,000
Total assets	150,048,134
Receipts from investments:[1]	
Interest	1,636,959
Dividends	2,640,178
Total	4,277,137

[1] Rate of return, 2.7 percent.

Federated Department Stores, Cincinnati, Ohio—Continued

Sale of assets:	
Cost	$2,688,555
Amount received	2,688,031
Net loss	524
Total gain for year	4,276,613
Tax bill that would apply if income was not tax exempt	2,258,051

Eastman Kodak Co., Rochester, N.Y., Dec. 31, 1966

Contributions:	
Employer	$47,398,793
Employee	6,643,786
Investments:	
Bank deposits and shares in savings and loans	22,000
Stock:	
Preferred	1,146,000
Common	118,738,000
Non-Government obligations	3,650,000
Unsecured notes	4,930,000
Total assets	128,838,000
Receipts from investments:[1]	
Interest	246,000
Dividends	3,276,000
Total receipts from investments	3,522,000
Sale of assets:	
Cost	37,574,000
Amount received	37,731,000
Total gain	157,000
Total gain for year	3,679,000
Tax bill that would apply if income was not tax exempt	1,898,866

[1] Rate of return, 2.3 percent.

Ford Motor Co., Dearborn, Mich., Dec. 31, 1968

Contributions:	
Employer	$51,198,776
Employee	15,914,555
Investments:	
Stock:	
Preferred	5,355,433
Common	374,219,994
Foreign government obligations	5,298,020
Non-government obligations	177,226,270
Common trusts, Morgan Guarantee Trust Co. comingled funds	80,300,990
1st National Bank of Boston comingled pension	1,749,989
Real estate loans and mortgages	30,000,450
Unsecured notes	12,207,000
Other real estate	32,287,186
Total assets	729,652,111
Receipts from investments:[1]	
Interest	12,094,733
Dividends	12,486,450
Rents	1,616,056
Other	4,748,000
Total receipts from investments	30,945,240
Sale of assets:	
Cost	232,263,100
Amount received	245,293,457
Net gain	13,030,357
Total gain for year	43,975,597
Tax bill that would apply if income was not tax exempt	19,596,676

[1] Rate of return, 4.1 percent.

National Electric Contractors Association, Inc., Washington, D.C., Dec. 31, 1968

Employer contributions	$19,985,169
Investments:	
Bank deposits and shares in savings and loans	20,700,000
Stock: Common	13,921,344
Federal obligations	3,337,650
Non-Government obligations	12,313,000
Real estate loans and mortgages	106,605,729
Secured notes	895,650
Real estate operations	11,862,190
Total assets	173,670,081
Receipts from investments:[1]	
Interest	7,421,046
Dividends	449,042
Rents	456,390
Total receipts from investments	8,326,478
Sale of assets:	
Cost	130,760
Amount received	230,031
Net gain	99,271
Total gain for year	8,425,749
Tax bill that would apply if income was not tax exempt	4,421,197

[1] Rate of return, 4.6 percent.

First National City Bank, New York, N.Y., Dec. 31, 1968

Employer contributions	$12,390,721
Investments:	
Common stock	100,473,516
Federal obligations	4,813,334
Foreign government obligations	1,777,535
Non-Government obligations	29,572,210
Real estate loans and mortgages	7,038,681
Unsecured notes	2,305,000
Other real estate	1,857,659
Total assets	149,196,319
Receipts from investments:[1]	
Interest	5,246,227
Accured interest	708,586
Total	5,954,814
Sale of assets:	
Book value	43,549,273
Cash	40,984,555
Net loss	2,564,718
Net gain for year	3,390,096
Tax bill that would apply if income was not tax exempt	1,789,970

[1] Rate of return, 3.4 percent.

The First National Bank of Chicago, Chicago, Ill., Dec. 31, 1968

Contributions:	
Employer	$1,538,231
Employee	611,415
Investments:	
Stock:	
Preferred	1,864,004
Common	53,213,898
Federal obligations	10,850,864
Non-Government obligations	44,851,550
Real estate and mortgage loans	10,039,456
Other real estate	4,389,880
Total assets	128,690,813

The First National Bank of Chicago, Chicago, Ill., Dec. 31, 1968—Continued

Receipts from investments: [1]	
Interest	$3,447,134
Dividends	3,796,320
Rents	461,082
Commissions, fees, oil & gas income	403,573
Total	8,108,119
Sale of assets:	
Cost	27,059,642
Amount received	33,635,264
Net gain	6,575,622
Total gain for year	14,683,741
Tax bill that would apply if income was not tax exempt	5,924,991

[1] Return of return, 6.3 percent.

Ford Motor Co. (Salaried Employees)

Contributions:	
Employer	$21,775,600
Employee	53,020,905
Investments:	
Common stock	366,146,253
Federal obligations	9,163,922
Total assets	385,995,077
Receipts from investments: [1]	
Interest	443
Dividends	18,467,423
Total	18,467,866
Tax bill that would apply if income was not tax exempt	9,751,033

[1] Rate of return, 4.7 percent.

General Electric Co., New York, N.Y., Dec. 31, 1967,

Contributions:	
Employer	$55,667,488
Employee	14,697,607
Investments:	
Bank deposits and shares in savings and loans	10,000,000
Common stock	604,921,608
Foreign government obligations	7,639,213
Non-government obligations	424,140,812
Real estate loans and mortgages	189,447,318
Real estate operations	-223,389,153
Total assets	1,524,125,852
Receipts from investments: [1]	
Interest	27,199,210
Dividends	30,352,122
Rents	13,884,038
Total	71,435,370
Sale of assets:	
Sale of assets:	
Cost	-171,797,308
Cash	173,729,417
Net gain	1,932,109
Total gain for year	73,367,479
Tax bill that would apply if income was not tax exempt	38,200,902

[1] Rate of return, 4.7 percent.

General Mills, Inc., Minneapolis, Minn., Oct. 31, 1968

Investments:	
Stock:	
Preferred	$1,745,101
Common	110,582,062
Federal obligations	13,069,432
Foreign government obligations	21,461,648
Total assets	149,545,450
Receipts from investments: [1]	
Interest	858,320
Dividends	2,180,486
Total	3,038,806
Sales of assets:	
Cost	172,200,054
Cash	195,349,048
Net gain	23,148,994
Total gain for year	26,187,800
Tax bill that would apply if income was not tax exempt	7,391,737

[1] Rate of return, 2.0 percent.

Ford Motor Co. (UAW retirement plan), Dearborn, Mich., Dec. 31, 1968

Employer contributions	$90,325,000
Investments:	
Stock	
Preferred	7,697,768
Common	461,441,801
Federal obligations	1,430,654
Non-Government obligations	100,733,060
Commingled trust, Morgan Guaranty	7,947,698
1st National Bank of Boston	1,749,989
Real estate loans and mortgages	86,648,563
Unsecured notes	16,504,997
Other real estate	23,300,815
Total assets	737,250,442
Receipts from investments: [1]	
Interest	12,763,376
Dividends	13,981,271
Rents	1,124,516
Oil royalties and commingled funds	112,914
Total	27,982,078
Sale of assets:	
Cost	353,886,324
Cash	393,105,900
Net gain	39,219,576
Total gain for year	67,201,654
Tax bill that would apply if income was not tax exempt	24,579,431

[1] Rate of return, 3.7 percent.

The Chase Manhattan Bank, New York, N.Y. (thrift incentive plan), Dec. 31, 1968

Contributions:	
Employer	$11,788,089
Employee	3,526,128
Investments:	
Bank deposit and savings and loan shares	266,325
Stock:	
Preferred	411,250
Common	87,902,001
Federal obligations	2,361,260
Foreign government obligations	333,938

The Chase Manhattan Bank, New York, N.Y. (thrift incentive plan), Dec. 31, 1968—Con.

Investments—Continued	
Non-Government obligations	$20,876,390
Unsecured notes	18,255,090
Total assets	134,150,776
Receipts from investments: [1]	
Interest	1,667,293
Dividends	1,764,704
Total	3,431,997
Sales of assets:	
Cost	60,627,402
Cash received	74,813,295
Net gain	5,185,893
Total gain for year	8,617,890
Tax bill that would apply if income was tax exempt	3,108,567

[1] Rate of return, 2.2 percent.

Chase Manahattan Bank (retirement and family benefit plan), Dec. 31, 1968

Employer contributions	$5,469,815
Investments:	
Bank deposits and savings and loan shares	43,344
Stock:	
Preferred	295
Common	83,577,864
Federal obligations	985,985
Foreign government obligations	5,993,959
Non-Government obligations	22,903,472
Real estate loans and mortgages	16,320,095
Unsecured notes	3,348,400
Other real estate	6,177,832
Total assets	144,055,764
Receipts from investments: [1]	
Interest	2,753,034
Dividends	2,457,001
Other	407,180
Total	5,617,215
Sale of assets:	
Cost	29,195,589
Cash	32,108,448
Net gain	2,912,859
Total gain for year	8,530,074
Tax bill that would apply if income was not tax exempt	3,694,103

[1] Rate of return, 3.5 percent.

Canadian Pacific Railway Co., Montreal, Canada, Dec. 31, 1968

Contributions:	
Employer	$8,224,931
Employee	8,889,739
Investments:	
Stock:	
Preferred	5,738,864
Common	124,576,178
Federal obligations	47,309,760
State and municipal obligations	210,583,525
Non-Government obligations	85,735,751
Total assets	490,309,684

Canadian Pacific Railway Co., Montreal, Canada, Dec. 31, 1968—Continued

Receipts from investments:[1]	
Interest	$19,316,102
Dividends	5,218,287
Total	24,534,389
Net gain on sale of assets	2,603,434
Total gain for year	27,137,823
Net income that would apply if income was not tax exempt	13,605,015

[1] Rate of return, 5 percent.

Chrysler Corp. (UAW pension plan), Dec. 31, 1968

Employer contributions	$76,381,911
Investments:	
Stock:	
Preferred	2,803,178
Common	187,134,631
Federal obligations	5,145,167
Foreign government obligations	4,125,659
Nongovernment obligations	168,714,687
Commingled trusts, Morgan guaranty	2,230,843
Real estate loans and mortgages	10,358,399
Total assets	385,953,014
Receipts from investments:	
Interest	9,001,608
Dividends	5,500,978
Total	14,502,586
Sale of assets:	
Cost	227,668,603
Cash	243,753,728
Net gain	16,085,125
Total gain for year	30,587,711
Tax bill that would apply if income was not tax exempt	11,678,646

[1] Rate of return, 3.6 percent.

Commonwealth Edison Co., Chicago, Ill., Dec. 31, 1968

Employer contribution	$10,242,500
Investments:	
Stock:	
Preferred	2,659,791
Common	80,649,653
Federal obligations	9,413,280
Foreign government obligations	9,894,181
Non-Government obligations	115,489,556
Real state loans and mortgages	2,119,282
Other real estate	1,659,739
Total assets	228,449,621
Receipts from investments:[1]	
Interest	6,419,740
Dividends	2,287,431
Rents	231,871
Total	8,939,042
Sale of assets:	
Cost	89,013,861
Cash	90,947,818
Net gain	1,933,957
Total gain for year	10,872,999
Tax bill that would apply if income was not tax exempt	5,203,303

[1] Rate of return, 3.5 percent.

National Maritime Union of America, AFL–CIO (NMU Pension Trust, All Employees), Dec. 31, 1968

Employer contributions	$45,039,295
Investments:	
Bank deposits and savings and loan shares at interest	1,983,661
Stock:	
Preferred	2,405,966
Common	72,767,540
Federal obligations	9,396,795
Non-Government obligations	53,452,847
Real estate loans and mortgages	8,954,638
Operated real estate	450,675
Total assets	161,761,105
Receipts from investments:[1]	
Interest	3,993,001
Dividends	1,786,930
Total	5,779,932
Sale of assets:	
Cost	51,386,495
Cash	53,547,256
Net gain	2,160,761
Total income for year	7,940,693
Tax bill that would apply if income was not tax exempt	3,591,994

[1] Rate of return, 3.1 percent.

Eli Lilly & Co. and participating subsidiaries (retirement plan, all employees), Dec. 31, 1968

Contributions:	
Employer	7,183,497
Employee	78,797
Investments:	
Common stock	65,922,904
Foreign government obligations	500,000
Non-Government obligations	30,699,533
Real estate loans and mortgages	9,052,592
Secured notes	1,758,114
Operated real estate	6,593,560
Total assets	117,216,651
Receipts from investments:[1]	
Interest	2,141,524
Dividends	2,129,224
Rents	700,524
Other	16,131
Total	4,987,403
Net gain, sale of assets	3,131,864
Total income for year	8,119,267
Tax bill that would apply if income was not tax exempt	3,416,314

[1] Rate of return, 3.4 percent.

International Business Machines Corp. (Retirement plan, all employees), Dec. 31, 1968

Employer contribution	$60,016,000
Investments:	
Bank deposits and savings and loan shares at interest	1,252
Stock:	
Preferred	2,036,812
Common	260,667,066
Federal obligations	11,681
Non-Government obligations	112,021,107
GEB equity and investment fund, Bankers Trust	46,410,867
Commingled fund (bond, mortgages, equities), Morgan Guaranty	36,294,410

International Business Machines Corp. (Retirement plan, all employees), Dec. 31, 1968—Continued

Investments—Continued	
Commingled fund (Equities), First National City	$500,000
E B special situation fund (equities), Bank of America	99,999
Real estate loans and mortgages	36,149,745
Unsecured notes	17,731,559
Operated real estate	2,711,574
Other real estate	6,669,508
Total assets	556,516,693
Receipts from investments:[1]	
Interest	10,975,372
Dividends	10,098,535
Rents	186,082
Total	21,259,990
Sale of assets:	
Book value	187,530,101
Cash	187,893,832
Net gain	363,731
Total income for year	21,623,721
Tax bill that would apply if income was not tax exempt	11,316,206

[1] Rate of return, 3.8 percent.

Noncontributory retirement plan (all employees except those covered by special union), International Harvester Co., Chicago, Ill., Dec. 31, 1968

Employer contribution	$36,442,717
Investments:	
Stock:	
Preferred	4,035,476
Common	169,734,269
Federal obligations	591,547
Non-Government obligations	72,612,613
Real estate loans and mortgages	3,356,873
Other real estate	7,574,734
Total assets	270,745,803
Receipts from investments:[1]	
Interest	4,198,680
Dividends	4,404,500
Rents	667,777
Retained income received, etc.	70,640
Total	9,341,687
Sales of assets:	
Cost	99,829,093
Cash	104,105,426
Net gain	4,276,333
Total income for year	13,618,020
Tax bill that would apply if income was not tax exempt	5,039,318

[1] Rate of return, 3.3 percent.

Pension, disability and death benefits (all employees), Michigan Bell Telephone Co., Dec. 31, 1968

Employer contributions	$17,195,388
Investments:	
Stock:	
Preferred	663,317
Common	62,491,057
Federal obligations	9,916,168
Non-Government obligations	137,711,398
Real estate loans and mortgages	5,175,110
Total assets	217,778,647

Pension, disability and death benefits (all employees), Michigan Bell Telephone Co., Dec. 31, 1968—Continued

Receipts from investments: [1]	
Interest	$6,185,210
Dividends	1,697,377
Total	7,882,587
Sale of assets:	
Cost	55,506,276
Cash	55,776,217
Net gain	269,941
Total income for year	8,152,528
Tax bill that would apply if income was not tax exempt	4,229,490

[1] Rate of return, 3.2 percent.

Employee savings plan (all employees), Mobil Oil Corp., New York, N.Y., Dec. 31, 1967

Contributions:	
Employer	$9,660,067
Employee	11,807,897
Investments:	
Common stock	148,098,015
Federal obligations	30,942,225
Trustees coequity fund	6,681,119
Trustees balance fund	781,712
Total assets	190,717,474
Receipts from investments: [1]	
Dividends	8,908,266
Sale of assets:	
Cost	13,157,002
Cash	15,635,977
Net gain	2,478,975
Total income for year	11,387,241
Tax bill that would apply if income was not tax exempt	5,323,307

[1] Rate of return, 4.2 percent.

Employees savings and profit-sharing plan (all employees with 1 year or more of service), Motorola, Inc., and domestic subsidies, Franklin Park, Ill., Dec. 31, 1968

Contributions:	
Employer	$9,967,171
Employee	5,219,967
Investments:	
Stock:	
Preferred	655,681
Common	59,703,644
Federal obligations	17,336,881
Non-Government obligations	37,152,810
Real estate loans and mortgages	415,000
Secured notes	3,667,686
Total assets	129,859,912
Receipts from investments: [1]	
Interest	2,947,627
Dividends	1,331,226
Rents	28,000
Total	4,305,853
Sale of assets:	
Cost	22,100,614
Cash	22,858,887
Net gain	758,273
Total income for year	5,064,126
Tax bill that would apply if income was not tax exempt	2,463,058

[1] Rate of return, 3.1 percent.

Pension, disability, and death benefits (all employees), Mountain States Telephone & Telegraph Co., Denver, Colo., Dec. 31, 1967

Employer contributions	$14,856,236
Investments:	
Bank deposits and savings and loan shares at interest	242,903
Common stock	44,203,505
Federal obligations	233,815
Non-Government obligations	108,837,488
Real estate loans and mortgages	8,127,183
Unsecured notes	849,000
Other real estate	360,000
Total assets	164,305,571
Receipts from investments: [1]	
Interest	4,953,662
Dividends	1,034,696
Other	9,257
Total	5,997,615
Sale of assets:	
Cost	26,379,883
Amount received	25,732,559
Net loss	647,324
Total income for year	5,250,291
Tax bill that would apply if income was not tax exempt	3,328,571

[1] Rate of return, 3.0 percent.

Retirement plan (all employees), International Paper Co., New York, N.Y., Dec. 31, 1968

Contributions:	
Employer	$8,554,628
Employee	3,884,532
Investments:	
Stock:	
Preferred	6,452,956
Common	136,005,656
Non-Government obligations	82,967,681
Total assets	229,303,496
Receipts from investments: [1]	
Interest	4,019,787
Dividends	3,948,898
Total	7,968,685
Sale of assets:	
Cost	74,238,390
Cash	80,696,033
Net gain	5,847,643
Total gain for year	13,816,328
Tax bill that would apply if income was not tax exempt	5,668,375

[1] Rate of return, 3.1 percent.

Aluminum Co. of America, Pittsburgh, Pa. (held by Mellon National Bank & Trust Co.)

Investments:	
Securities	$108,503,893
Stocks:	
Preferred	11,035,288
Common	161,942,627
Total	173,027,915
Demand notes	4,470,001
Mortgages	19,543,906

Aluminum Co. of America, Pittsburgh, Pa. (held by Mellon National Bank & Trust Co.)—Continued

Investments—Continued	
Real estate	$6,880,412
Total	30,694,319
Total investments	312,431,127
Total assets in hands of trustees	312,698,656
Total assets	316,453,187
Income from investments [1]	12,425,678
Plus sales gain	4,475,152
Total gain for year	16,900,830
Tax bill that would apply if income was not tax exempt	7,679,545

[1] Rate of return, 3.8 percent.

Bethlehem Steel Corp. and Subsidiary companies, Bethelem, Pa.

Employer contribution	$27,777,576
Investments:	
Stock:	
Preferred	11,000,955
Common	329,556,618
Federal obligations	34,056,382
Non-Government obligations	124,152,108
Total assets	509,536,937
Receipts from investments: [1]	
Interest	7,006,023
Dividends	14,669,943
Total	21,675,966
Sales of assets:	
Cash	221,714,066
Cost	201,953,039
Net gain	19,761,027
Total gain for year	41,436,993
Tax bill that would apply if income was not tax exempt	16,385,166

[1] Rate of return, 4.1 percent.

Entitlement benefit plan for flight engineers American Airlines, Inc., New York, N.Y.

Investments:	
Deposit administration contract with John Hancock Mutual Life Insurance Co., balance on deposit	$29,096,214
Held by Morgan Guaranty trusts:	
Preferred stock	468,750
Common stock	78,305,312
Non-Government obligations	21,296,552
Morgan Guaranty commingled trusts:	
SSI bonds	4,385,362
Real property	18,091,127
Equities	5,240,939
	27,717,428
Real estate loans and mortgages	9,265,184
Total assets	137,217,906

Entitlement benefit plan for flight engineers American Airlines, Inc., New York, N.Y.—Con.

Receipts from investments: [1]	
Interest	$2,462,200
Dividends	3,157,077
Rents	570,607
Total	6,189,884
Tax bill that would apply if income was not tax exempt	3,268,258

[1] Rate of return, 4.4 percent.

The American electric power system retirement plan, American Electric Power Service Corp., New York, N.Y.

Contributions:	
Employer	$4,217,747
Employee	2,942,871
	6,160,618
Investments:	
Stocks:	
Preferred	2,468,178
Common	70,493,549
Bonds, debentures:	
Federal	2,319,461
Foreign government obligations	3,775,351
Non-Government obligations	42,353,816
Total	48,448,628
Real estate loans and mortgages	2,869,351
Real estate operated	1,346,889
Total assets	128,741,836
Receipts from investments [1]	5,586,339
Sale of assets:	
Cash	11,814,913
Cost	11,787,004
Net gain	27,909
Total gain for year	5,614,248
Tax bill that would apply if income was not tax exempt	2,956,563

[1] Rate of return, 3.9 percent.

American Airlines, Inc. (flight engineers), New York, N.Y. (held by Republic National Bank)

Investments:	
Stock:	
Preferred	$224,450
Common	14,547,905
Obligations:	
Federal	2,475,545
State and municipal	533,646
Non-Government obligations	7,287,787
Commingled trust, special equity fund	549,908
Total assets	26,882,153
Receipts from investments: [1]	
Interest	260,202
Dividends	238,972
Total	499,174
Sale of assets:	
Book value	20,224,472
Amount received	21,170,270
Net gain	945,798
Total gain for year	1,444,972
Tax bill that would apply if income was not tax exempt	560,012

[1] Rate of return, 1.9 percent.

Salaried employees pension plan, Armour & Co., Chicago, Ill.

Contributions:	
Employer	$5,500,000
Employee	2,647,445
Investments:	
Stock:	
Preferred	5,190,512
Common	80,458,709
Bonds and debentures:	
Federal	1,050,606
Foreign government	3,162,930
Non-Government obligations	56,500,863
Real estate loans and mortgages	843,782
Loans and notes receivable	1,884,112
Real estate operations	3,708,813
Total assets	155,244,224
Receipts from investments: [1]	
Interest	3,165,205
Dividends	2,875,933
Rents	169,845
Total receipts	6,210,983
Tax bill that would apply if income was not tax exempt	3,279,399

[1] Rate of return, 3.9 percent.

Plan for employees' pensions, disability benefits, death benefits, Bell Telephone Co. of Pennsylvania, Philadelphia, Pa.

Employer contributions	$23,510,034
Investments:	
Commingled	90,439,240
Federal obligations	775,221
Non-Government obligations	184,329,106
Real estate loans and mortgages	12,580,626
Total assets	293,420,017
Receipts from investments: [1]	
Interest	8,484,708
Dividends	1,887,716
Rents	68,246
Total receipts from investments	10,440,670
Sale of assets:	
Cost	54,312,762
Cash	51,828,621
Loss from sale of assets	2,484,141
Total gain for year	7,956,529
Tax bill that would apply if income was not tax exempt	4,201,047

[1] Rate of return, 3.4 percent.

Atlantic Richfield Co., Philadelphia, Pa.

Contributions:	
Employer	$6,708,980
Employee	5,210,437
Investments:	
Pacific Mutual Life Insurance Co. Deposit Administration Contract	9,575,416
Equitable Life Insurance Society and U.S. Deposit Administration contract	13,870
Stock:	
Preferred	2,015,904
Common	149,362,000
Government obligations	6,000,723
Foreign government obligations	3,764,644
Non-Government obligations	116,565,806
Total assets	290,217,710

Atlantic Richfield Co., Philadelphia, Pa.—Continued

Receipts from investments: [1]	
Interest	$7,027,273
Dividends	3,492,596
Total	10,519,869
Sale of assets:	
Cash	103,069,554
Cost	98,069,684
Gain	5,199,870
Total gain for year	15,719,739
Tax bill that would apply if income was not tax exempt	6,854,457

[1] Rate of return, 3.3 percent.

American Telephone & Telegraph Co., New York, N.Y.

Contributions: Employer	$28,875,197
Investments:	
Stock:	
Preferred	327,886
Common	128,514,405
Government obligations	1,996,528
Non-Government obligations	174,221,095
Real estate loans and mortgages	10,830,223
Total assets [2]	333,118,837
Receipts frfom investments: [1]	
Interest	9,204,214
Dividends	2,746,153
Commitment fees	270
Total receipts from investments	11,950,637
Tax bill that would apply if income was not tax exempt	6,309,936

[1] Rate of return, 3.3 percent.
[2] Negligible loss indicated on sales of assets.

Chrysler thrift stock ownership program, Chrysler Corp., Detroit, Mich.

Contributions:	
Employer	$9,143,293
Employee	22,307,516
Investments:	
Common stock	84,583,058
Federal obligations	44,299,145
Total assets	129,468,821
Receipts from investments: [1]	
Interest	16,465
Dividends	4,561,497
Total receipts from investments [2]	4,577,962
Tax bill that would apply if income was not tax exempt	2,417,163

[1] Rate of return, 3.3 percent.
[2] No sales reported.

Consolidated Edison Co. of New York, Inc., New York, N.Y.

Employer contributions	$20,148,786
Investments:	
Stock:	
Preferred	1,879,316
Common	58,172,380
Government obligations	5,550,000
Non-Government obligations	24,165,207
Commingled benefit fund	21,927,734
Real estate loans and mortgages	5,540,213
Total assets	118,061,842
Receipts from investments: [1]	
Interest	2,531,274
Dividends	1,920,906

[1] Rate of return, 3.4 percent.
[2] Net gain from sales not reported.

Consolidated Edison Co. of New York, Inc., New York, N.Y.—Continued

Receipts from investments: [1]—Continued	
Rents	$227,483
Other	61,179
Total receipts from investments [1]	4,740,840
Tax bill that would apply if income was not tax exempt	2,503,163

Pension, disability, death benefits (all employees), Northwestern Bell Telephone Co., Omaha, Nebr., Dec. 31, 1968

Employer contributions	$15,203,280
Investments:	
Stock:	
Preferred	290,905
Common	56,243,460
Nongovernment obligations	112,822,445
Real estate loans and mortgages	8,550,231
Unsecured notes	1,838,000
Other real estate	1,605,958
Total assets	183,091,197
Receipts from investments: [1]	
Interest	5,236,374
Dividends	1,180,205
Rents	42,560
Commitment fee	3,043
Total	6,512,134
Sale of assets:	
Cost	36,240,088
Amount received	34,624,016
Net loss	1,616,072
Total income for year	4,896,112
Tax bill that would apply if income were not tax exempt	2,585,147

[1] Rate of return, 3.3 percent.

Retirement plan for salary and weekly payroll employees, North American Rockwell Corp., El Segundo, Calif., Sept. 30, 1968

Employer contributions	$53,139,076
Investments:	
Stock:	
Preferred	13,267,850
Common	153,938,717
Federal obligations	1,729,993
Non-Government obligations	179,057,348
Morgan Guaranty Commingled Fund special situation bonds	3,884,601
Morgan Guaranty Commingled Fund mortgages-real property	7,459,456
Morgan Guaranty Commingled Fund special situation equities	999,595
Continental Illinois Mortgage Fund	1,964,930
Real estate loans and mortgages	32,275,400
Secured notes	4,601,041
Operated real estate	22,542,404
Total assets	424,614,267
Receipts from investments: [1]	
Interest	12,230,392
Dividends	4,620,871
Rents	1,297,977
Commitment fees	10,820
Total	18,210,061

[1] Rate of return, 4.2 percent.

Retirement plan for salary and weekly payroll employees, North American Rockwell Corp., El Segundo, Calif., Sept. 30, 1968—Con.

Sale of assets:	
Cost	$228,272,593
Cash	229,758,111
Net gain	1,485,518
Total income for year	19,695,579
Tax bill that would apply if income was not tax exempt	9,936,291

Pension, disability, and death benefits (all employees), Pacific Northwest Bell Telephone Co., Dec. 31, 1968

Employer contributions	$11,867,436
Investments:	
Stock:	
Preferred	45,113
Common	43,732,690
Federal obligations	986,297
Foreign government obligations	5,118,612
Non-Government obligations	87,733,338
Real estate loans and mortgages	3,853,830
Unsecured notes	775,000
Operated real estate	1,565,409
Total assets	145,409,734
Receipts from investments: [1]	
Interest	4,415,147
Dividends	903,042
Rents	68,656
Total	5,386,845
Sale of assets:	
Cost	45,416,711
Amount received	45,921,285
Net gain	504,574
Total income for year	5,891,419
Tax bill that would apply if income was not tax exempt	2,970,379

[1] Return of return, 3.4 percent.

Profit-sharing trust plan for salaried employees, the Proctor & Gamble Co., Cincinnati, Ohio, June 30, 1968

Employer contributions	$14,416,024
Investments:	
Common stock	153,826,009
Unsecured notes	644,558
Total assets	172,983,333
Receipts from investments: [1]	
Interest	298,164
Dividends	7,407,926
Total receipts from investments	7,706,090
Tax bill that would apply if income was not tax exempt	4,068,815

[1] Rate of return, 4.1 percent.

Plan for supplemental pensions (all employees), Penn Central Co., Philadelphia, Pa., Dec. 31, 1968

Contributions:	
Employer	$1,156,190
Employee	679,875
Investments:	
Bank deposits and savings and loan shares at interest	1,270,142
Stock:	
Preferred	15,377,541
Common	127,870,307

Plan for supplemental pensions (all employees), Penn Central Co., Philadelphia, Pa., Dec. 31, 1968—Continued

Investments—Continued	
Nongovernment obligations	$70,490,689
Real estate loans and mortgages	11,147,669
Secured notes	23,940,265
Unsecured notes	2,365,079
Total assets	252,619,653
Receipts from investments: [1]	
Interest	5,803,818
Dividends	5,493,392
Total	11,297,211
Sale of assets:	
Cost	50,332,187
Cash	57,765,925
Net gain	7,383,738
Total income for year	18,680,949
Tax bill that would apply if income was not tax exempt	7,810,861

[1] Rate of return, 4.4 percent.

Service annuity plan (all employees), Philadelphia Electric Co., Philadelphia, Pa., Dec. 31, 1968

Employer contributions	$5,840,418
Investments:	
Stock:	
Preferred	6,830,475
Common	52,131,069
Federal obligations	3,838,640
Foreign government obligations	1,904,093
Nongovernment obligations	58,286,254
Total assets	123,891,067
Receipts from investments: [1]	
Interest	2,940,436
Dividends	3,292,301
Total	6,232,738
Received from sale of assets	2,770,906
Tax bill that would apply if income was not tax exempt	3,983,611

[1] Rate of return, 4.9 percent.

Benefit program (all employees), Standard Oil Co. of New Jersey, New York, N. Y., Dec. 31, 1968

Contributions:	
Employer	$47,085,162
Employee	25,324,587
Investments:	
Federal obligations	66,568,000
Non-Government obligations	36,169,000
Secured notes	50,415,000
Stock held for certain participants	338,726,000
Total assets	494,015,000
Receipts from investments: [1] Interest	7,518,000
Tax bill that would apply if income was not tax exempt	3,969,504

[1] Rate of return, 1.4 percent.

Pension benefits (all employees), United States Steel Corp., New York, N.Y., Dec. 31, 1967

Contributions:	
Employer	$47,018,767
Employee	6,140,612

Pension benefits (all employees), United States Steel Corp., New York, N.Y., Dec. 31, 1967—Continued

Investments:	
Stock:	
Preferred	$9,785,335
Common	793,132,885
Federal obligations	107,649,100
Non-Government obligations	600,457,182
Oil, gas, and other payments and royalties	22,575,890
Real estate loans and mortgages	13,636,618
Other real estate	192,840,334
Total assets	1,890,043,604
Receipts from investments: [1]	
Intercst	39,363,929
Dividends	41,508,300
Rents	14,850,534
Mortgages, oil, gas and other payments and royalties	7,294,084
Total	103,016,847
Sale of assets:	
Cost	172,245,208
Cash	184,948,270
Net gain	12,703,062
Total income for year	115,719,909
Tax bill that would apply if income was not tax exempt	57,568,660

[1] Rate of return, 5.4 percent.

Employee savings plan, contributory participants in retirement plan, Standard Oil Co. and participating subsidiary companies, Chicago, Ill., Dec. 31, 1968

Contributions:	
Employer	$12,691,247
Employee	21,181,403
Investments:	
Common stock	177,298,565
Federal obligations	12,245,627
Total assets	191,219,796
Receipts from investments: [1]	
Interest	184,024
Dividends	9,171,184
Total	9,355,208
Sale of assets:	
Cost	9,953,263
Cash	12,262,936
Net gain	2,309,673
Total income for year	11,664,881
Tax bill that would apply if income was not tax exempt	5,516,967

[1] Rate of return, 4.7 percent.

Pension, disability, and death benefits (all employees), New England Telephone & Telegraph Co., Boston, Mass., Dec. 31, 1968

Employer contributions	$25,851,809
Investments:	
Bank deposits and savings and loan shares at interest	392,367
Stock:	
Preferred	252,579
Common	82,109,022
Federal obligations	1,287,103
Non-Government obligations	203,517,266
Real estate loans and mortgages	16,369,537
Unsecured notes	4,435,000
Total assets	310,784,610

Pension, disability, and death benefit (all employees), New England Telephone & Telegraph Co., Boston, Mass., Dec. 31, 1968—Continued

Receipts from investments: [1]	
Interest	$9,434,182
Dividends	1,934,403
Total	11,368,403
Sale of assets:	
Cost	52,524,547
Amount received	52,331,222
Net loss	193,325
Total income for year	11,175,260
Tax bill that would apply if income was not tax exempt	5,900,537

[1] Rate of return, 3.5 percent.

Pension, disability, and death benefits (all employees), the Ohio Bell Telephone Co., Cleveland, Ohio, Dec. 31, 1968

Employer contributions	$15,532,979
Investments:	
Stock:	
Preferred	1,016,310
Common	53,889,160
Federal obligations	4,674,285
Non-Government obligations	126,222,517
Total assets	187,655,212
Receipts from investments: [1]	
Interest	5,546,630
Dividends	1,812,304
Total	7,358,934
Sale of assets:	
Cost	24,474,216
Amount received	24,383,124
Net loss	91,092
Total income for year	7,267,842
Tax bill that would apply if income was not tax exempt	3,837,420

[1] Rate of return, 3.7 percent.

Pension, disability, and death benefits, The Pacific Telephone & Telegraph Co., San Francisco, Calif., Dec. 31, 1968

Employer contributions	$53,853,040
Investments:	
Common stock	203,447,304
Non-Government obligations	355,414,021
Real estate loans and mortgages	25,492,719
Unsecured notes	3,514,000
Other real estate	4,020,000
Total assets	596,590,358
Receipts from investments: [1]	
Interest	16,435,415
Dividends	4,007,418
Rents	230,225
Total	20,673,059
Sale of assets:	
Cost	110,702,396
Amount received	106,242,752
Net loss	4,459,644
Total income for year	16,213,415
Tax bill that would apply if income was not tax exempt	8,560,663

[1] Rate of return, 3.4 percent.

Retirement plan, (hourly rate employees), Olin Mathieson Chemical Corp., New York, N.Y., Dec. 31, 1968

Employer contributions	$6,513,364
Investments:	
Stock	
Preferred	1,659,371
Common	82,105,270
Foreign government obligations	1,200,000
Non-Government obligations	35,338,039
Comingled Trusts:	
Morgan Guaranty - Mortgage	6,600,790
Morgan Guaranty-Bonds	6,600,790
Collect Employee Benefit Fund from St. Louis Union—Fund P	4,166,613
St. Louis Union—Fund G	3,381,656
Real Estate Loans and Mortgages	8,344,352
Unsecured Notes	7,114,419
Other Real Estate	8,817,344
Total assets	160,408,450
Receipts from investments: [1]	
Interest	3,191,734
Dividends	3,145,697
Rents	811,053
Commitment fee	1,487
Total	7,059,972
Sale of assets:	
Cost	75,435,631
Amount received	79,456,896
Net Gain	4,021,265
Total income for year	11,081,237
Tax bill that would apply if income was not tax exempt	4,732,981

[1] Rate of return, 4.4 percent.

Hourly rate employees pension plan, General Motors Corp., Detroit, Mich., Dec. 31, 1968

Employer contributions	$190,000,000
Investments:	
Bank deposits and savings and loan shares at interest	522,496
Stock:	
Preferred	23,406,704
Common	732,272,341
Federal obligations	18,971,395
Foreign government obligations	5,699,057
Non-Governmental obligations	372,558,674
Co-mingled trust (Morgan Guaranty)	63,442,396
Real estate loans and Mortgages	114,138,654
Unsecured notes	56,596,634
Oil, gas and mineral royalties	10,692,726
Total assets	1,458,222,250
Receipts from investments: [1]	
Interest	30,321,282
Dividends	27,194,939
Rents	5,244,248
Oil, gas, mineral royalties	1,473,785
Total	64,234,254
Sale of assets:	
Cash	480,772,058
Cost	454,026,076
Net gain	26,745,982
Total income for year	90,980,236
Tax bill that would apply if income was not tax exempt	40,602,181

[1] Rate of return, 4.4 percent.

Member pension plan. International Brotherhood of Electrical Workers, Washington, D.C., June 30, 1968

Employee contributions	$34,719,908
Investments:	
Bank deposits and savings and loan shares at interest	19,450,000
Stock:	
Preferred	1,210,316
Common	21,404,926
Federal obligations	1,987,530
Foreign government obligations	3,084,168
Non-Government obligations	16,088,412
Real estate loans and mortgages	73,734,693
Secured loans	2,652,240
Other real estate	9,606,230
Rental equipment	172,254
Total assets	151,440,986
Receipts from investments: [1]	
Interest	5,484,786
Dividends	1,317,009
Rents	743,256
Gain on bonds, prepayment fees, commitment fees	119,876
Total receipts from investments	7,665,021
Tax bill that would apply if income was not tax exempt	4,047,131

[1] Rate of return, 4.6 percent.

Retirement program for salaried employees, General Motors Corp., Detroit, Mich.

Contributions:	
Employer:	
Part I	47,200,000
Part II	24,577,323
Employees	35,554,226
Investments:	
Bank deposits and savings and loan shares at interest	407,716
Stock:	
Preferred	6,041,408
Common	439,837,472
Federal obligations	9,775,592
Foreign government obligations	2,135,575
Non-Government obligations	230,895,438
fund equities	1,075,898
Morgan Guaranty comingled	
Morgan Guaranty comingled fund bonds, Morgan Guaranty comingled fund mortgages	3,872,177
Real property	23,515,403
Real estate loans and mortgages	77,984,532
Unsecured notes	18,129,202
Real estate operated	36,282,644
Oil, gas, mineral royalties	9,721,537
Total assets	864,033,760
Receipts from investments: [1]	
Interest	16,819,069
Dividends	18,346,970
Rents	3,407,812
Oil, gas, and mineral royalties	1,470,285
Total	40,044,285
Sale of assets:	
Cost	207,988,254
Cash	237,847,872
Net gain	29,859,618
Total income for year	69,903,903
Tax bill that would apply if income was not tax exempt	28,608,286

[1] Rate of return, 4.6 percent.

Board of Trustees, ILGWU National Retirement Fund, New York, N.Y., Dec. 31, 1968

Employer contributions	$41,874,690
Investments:	
Bank deposits and savings and loan shares at interest	800,000
Federal obligations	58,201,792
State and municipal obligations	2,137,366
Foreign government obligations	974,647
Non-Government obligations	156,353,822
Real estate loans and mortgages	55,230,298
Total assets	277,963,229
Receipts from Investments: [1]	
Interest	12,183,989
Sale of assets:	
Cost	41,900,912
Cash	41,942,130
Net gain	41,318
Total income for year	12,230,307
Tax bill that would apply if income was not tax exempt	6,446,025

[1] Rate of return, 4.3 percent.

Retirement annuity plan (all employees), Mobil Oil Corp., Dec. 31, 1968

Contributions:	
Employer	$7,920,921
Employee	6,484,336
Investments:	
Stock:	
Preferred	113,337
Common	226,629
Federal obligations	3,647,026
Non-Government obligations	12,163,720
Common trusts	1,095,224
Metropolitan GAC	5,489,322
Total assets	250,151,674
Receipts from investments: [1]	
Interest	718,916
Dividends	6,404,748
Total	7,123,664
Sale of assets:	
Cost	177,632,985
Cash	180,629,723
Net gain	3,006,738
Total income for year	10,130,402
Tax bill that would apply if income was not tax exempt	4,412,978

[1] Rate of return, 2.8 percent.

Income plan for certain salaried employees, Lockheed Aircraft Corp., Burbank, Calif., Dec. 24, 1967

Employer contribution	$36,550,479
Investments:	
Stock:	
Preferred	7,352,754
Common	109,593,393
Non-Government obligations	90,511,290
Real estate loans and mortgages	16,840,408
Secured notes	4,993,403
Other real estate	10,994,434
Total assets	241,963,552
Receipts from investments: [1]	
Interest	5,526,986
Dividends	2,822,703
Rents	846,378
Commitment fees	4,000
Total	9,200,358

[1] Rate of return, 3.7 percent.

Income plan for certain salaried employees, Lockeed Aircraft Corp., Burbank, Calif., Dec. 24, 1967—Continued

Sale of assets:	
Cost	$103,430,808
Cash	106,227,483
Net gain	2,796,615
Total income for year	11,996,973
Tax bill that would apply if income was not tax exempt	5,556,942

Salaried employees pension plan, Monsanto Co., St. Louis, Mo., Dec. 31, 1968

Contributions:	
Employer	$17,939,964
Employee	2,431,195
Investments:	
Stock:	
Preferred	4,265,483
Common	104,665,988
Federal obligations	2,307,589
Foreign government obligations	4,835,233
Non-Government obligations	17,185,572
Commingled trusts	14,120,473
Real estate loans and mortgages	2,016,552
Other secured loans and notes	591,916
Unsecured notes	3,153,876
Recognized, unrealized appreciation from variable trusts	8,593,271
Total assets	163,000,027
Receipts from investments: [1]	
Net accrued income, 67–68–103,054	
Interest	2,037,415
Dividends	2,503,338
Rents	19,458
Common trust income distribution	190,814
Total	4,653,971
Sale of assets:	
Cost	83,047,804
Cash	90,010,668
Net gain	1,962,864
Total income for year	6,615,835
Tax bill that would apply if income was not tax exempt	2,947,484

[1] Rate of return, 2.5 percent.

August 29, 1966

Before the Annual Meeting of the
American Risk and Insurance Association

THE FUTURE OF PRIVATE PENSION PLANS
(OR UNSAFE AT ANY AGE)

by

Merton C. Bernstein*

The overwhelming majority of the nation's elderly live in dreadful financial need; Social Security--the mainstay of most--remains inadequate; individual savings are and probably will be little help. Private pension plans could play a major role in raising living standards of this group, but plans, as presently designed, fail and will continue to fail to meet the retirement needs of our rapidly growing elderly population.[1]

This is not to deny that the growth and design of private plans over the last quarter century has been phenomenal. But, despite the constant rejoinder to critics that if just left alone retirees would come home wagging their benefits behind them, the improvements have not kept pace with needs. I suggest that as private plans come under more intense and widespread scrutiny--as they will--dissatisfaction will grow. The comparative lack of criticism until the recent past has lulled the pension industry into the feeling that no great demand

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* Professor of Law, Ohio State University, whose book, The Future of Private Pensions, received the ARIA's Elizur Wright Award in 1965.

1. This article does not undertake to provide the data to demonstrate all points of its multi-part thesis; hopefully, the book does that.

for change exists. This overlooks a signal fact of our national life, that much reform legislation comes like a clap of thunder immediately after a flash of public indignation--sometimes from an apparently unclouded sky. Automobile safety legislation is but the most recent example--all the more remarkable because no interest group was pressing for change. In 1960 organized labor felt the comparatively sudden lash of public-political disfavor. The 1957 McClellan hearings, which uncovered only a handful of proven shenanigans but lots of suspicious situations, led to the 1959 Kennedy-Ives bill passed by the Senate and the far tougher Landrum-Griffin Act of 1960. One could multiply examples. In every case the group whose product or conduct was under attack replied that the hanky-panky was slight and that private efforts and the passage of time would heal the sores proven or suspected. But Congress opted not for the passage of time but the passage of laws. When welfare and pension disclosure bills were under consideration it was to little avail that pension industry spokesmen chanted "There ain't no flies on us, there may be flies on some of you guys [the welfare plans] but there ain't no flies on us." Flies or not, tens of thousands of pension plans were sprayed with what was supposed to be DDT--the Reporting and Disclosure Act; although it turned out to be mostly distilled water, it's been a nuisance of value primarily as a source of information about plans in general rather than skullduggery in particular. Of course, the deficiencies of private health insurance set the stage for Medicare. Note well that health insurance coverage was far more extensive among the elderly than private pension coverage.

Whether or not the pension plans launched in the 1940's and 1950's were adequate (and I doubt that), they are not adequate today. Yet

the design--for all the important and ingenious improvements--remains essentially the same.

The bulk of employees--roughly 85% of those under plans--must qualify for benefits by long service with one employer. In general, 10 years is the minimum requirement for either a retirement benefit or a vested benefit, and roughly half the employees under vesting provisions must have 15 years of service. Typically, eligibility for disability or early retirement benefits are more exacting. Multi-employer plans require longer service for participating employees and usually provisions for vesting, disability or early retirement are less liberal or totally absent.

Some 25 million employees are said to be under plans--a total which has remained much the same for the last several years. No one with any experience in this field expects a majority of present plan participants to achieve benefit eligibility. Under some assumptions, the rate could be below 25 per cent.[2/] The recent Joint Economic

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2. A very eminent actuary wrote taking issue with my conclusion that less than 50 per cent of participants would qualify; he said, "Well, if you take as typical plans providing for vesting at age fifty with fifteen years of service and were to substitute a five-year vesting provision without any age condition, this would only increase benefit costs twenty per cent." So, he concluded, what Bernstein says is wildly inflated. Only twenty per cent of benefits are being lost because it is not common to have five-year vesting provisions.

I wrote back and said, "I agree with what you say, that your conclusions differ from mine." Mine is a much more conservative estimate. Under your estimate eighty per cent of those under plans would lose

(continued next page)

Committee hearings add additional examples to the estimates already extant; the low rate of achievement is shared by even extensive multi-employer plans.

Various justifications have been put forward for such a pattern. Pension plans are a reward for long term loyal employees for whom the employer is "responsible." Plans also are supposed to enable employers to replace those who become undesirable employees because of age; therefore, primarily those who reach retirement age while in that one company's employ should qualify. Pensions as a preventive of costly employee turnover must, it is argued, disqualify those who resist their allures.

I suggest that none of these is a satisfactory justification for the expected low percentages of pension eligibility, especially in the face of large scale involuntary job loss. Even less can these "reasons" justify the preferential tax treatment of qualified plans--estimated to cost the taxpayers about $3 billion in revenue a

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(2. continued)

benefits--would lose all the credits they have under common current provisions."

The quite obvious reason is that those separated without benefits with fewer than 15 year's service but more than 5 year's service would have decidedly shorter service than those who now achieve benefit eligibility, mostly by reaching normal or early retirement age. As average service of retirees would be between 20 and 25 years (or perhaps more) and those with more than 5 but fewer than 15 year's service would average little more than 5 year's, the benefit losses of 4 or 5 persons would equal the benefits of one retiree. Indeed, as under many plans the later years typically result in higher benefits, the ratio for losers to winners would be even higher.

year.[3/] That's a great deal to pay for benefits which will be enjoyed by a decided minority of the employed.

Employees leave jobs for a wide variety of reasons--many of them quite good. Mobility of labor--like that of capital--gives our economic system a rare degree of flexibility and adaptability to change. Whatever the reasons, job changing--at all ages and career stages--is a fact of American economic life. Unless plan design accommodates to it, benefit eligibility will continue to be deficient and comparatively few years of work will result in effective pension savings. Contrary to the common image, job changing is not confined to younger employees. Many of the victims of the forces of change--defense shifts, changing technology, patterns of serving overseas markets, tastes, population profile and distribution--are older employees. Also, the common belief that one who loses out under one plan when young will find a safe haven in another pension-covered job when he is ready to settle down to his life-time job often does not fit the observed facts. Many of the hundreds of thousands who lost--or leave--jobs when they are past forty, never find that job or pension coverage. One reason is that many job losses stem from company failures and plant and departmental shutdowns and shifts of both successful and unsuccessful enterprises.

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3. Testimony of Assistant Secretary of Treasury Surrey in Hearings on Private Pension Plans by the Subcommittee on Fiscal Policy of the Joint Economic Committee 89th Cong., 2d Sess. (May 16, 1966) (not yet printed), and The Future of Private Pensions (New York: Free Press, 1964) pp. 198-99, which make the point that it is tax free earnings on pension funds that provide the "subsidy."

Some additional knowledge has been gleaned about the extent and character of large scale employee separations. A study[4] of mass permanent layoffs (defined as involving more than 100 employees) shows that in a recent two year period (July 1963-June 1965), some 525 establishments separated 187,000 employees. (The study did not attempt to ascertain the extent of non-reporting.) Note that this does not include the more common layoffs of indefinite duration, from which so many employees do not return either because the employer does not call them back or they have moved and do not get notice of recall or they have become employed elsewhere. More than half(295) of the employing units involved shutdown which affect employees of all ages; the cliche that turnover is primarily confined to young employees simply does not hold up. These companies did not go out of business; 117 such units relocated, while other units of the same companies continued to operate. Not unexpectedly, such layoffs were heavily concentrated in manufacturing, especially in defense related industry (the last accounting for almost half the total of employees laid off). While blue collar workers were heavily affected, some white collar and professional workers were caught as well.

Since shutdowns do not necessarily result in plan termination and vesting, large groups of employees can lose substantial amounts of pension credits[4a] while the plan experiences higher than expected gains from separations, thereby reducing the employer's future contributions. Of course, the semi-mobilization of the last year has scrambled many eggs anew. Our World War II and Korean experiences warn us that large

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4. Robert F. Smith, "The Impact of Mass Layoff, July 1963-June 1965," Proceedings of the Annual Meeting, Industrial Relations Research Association (1965), p. 204.

4a. Alternatively, there is the problem of vesting but insufficient funds as in Studebaker. Omission of this topic from this paper only

 (continued next page)

numbers of workers are lured into new jobs by higher pay. That's the way our free labor market is supposed to work; mobile workers go where the demand is strongest as measured by compensation. We also know that most such new jobs will be short-lived. Many of them, especially those in defense-related manufacturing, are pension-covered jobs; indeed, pension coverage is quite concentrated in the work so readily affected by defense production and services (e.g., shipping). Moreover pressure to avoid inflationary wage increases causes heavier than usual emphasis upon fringes, particularly pensions. So, we are going through again what we went through in the two prior war periods, expansion and, now, improvement of plans (with predictably higher than normal employer contributions) although large numbers of those now classed as participants will have nothing to show for having been under the plans. The funds will go to employers, in effect, by enabling them to reduce future contributions (or to raise benefits at lower cost) or they may be recaptured, in part at least, by renegotiation. In any event, masses of employees from whose wages the contributions were subtracted will not benefit in retirement income.

Such patterns of disrupted employment adversely affect both pension eligibility and benefit amounts, which so frequently vary in accordance with length of service.

Purported Improvements

Many reply to the critical analysis of my book with the assertions that much of my data derives from the 1940's and 1950's when so many forces of change were loose--particularly two wars. However, "normalcy" is never with us. Today we have another war and the other forces of change move more rapidly than ever.

(4a. continued)
testifies to its complexity and importance--brief treatment will not suffice.

And, the pooh-poohers go on, "Plans have been young." They say: "You saw the acne and gauntness of adolescence, but note how mature plans are filling out in vesting and survivorship provisions, and benefits are putting on weight; the family is growing at a marvelous rate, before long most jobs that can be will be covered by one of these plumper, clear-skinned plans."

Let's take a look at the purported progress.

Vesting and Multi-Employer Plans

The standard litany of the business-as-usual pension advocate is that a new-born plan concentrates a large portion of its skimpy resources upon benefits for those who will retire early in the plan. Generally speaking that is an accurate description and the proper priority. As it matures, a plan is supposed to add vesting, which becomes more and more liberal, i.e., the conditions are easier to satisfy and will lead to a larger percentage of employees actually qualifying.

My book was among the first to point out that vesting provisions are more widespread than had been assumed, if consideration is limited to single employer plans. The problem, I continue to suggest, is not how pervasive vesting is but what good the formulas in common use will do.

The most liberal formulas in general use require ten years of service; the most liberal general improvement of the last several years has been the elimination of an age requirement formerly required in addition to the years of service. Both developments have been pioneered by the United Auto Workers. A lot of ground must be covered before the UAW formula comes into general use. Contrary to the formerly widely held view, an age requirement superimposed upon a length of service condition, can make achievement of vesting

significantly more difficult. About half the plans with vesting require 15 years of service and a very large proportion of 10, 15 and higher service conditions are yoked with an age requirement (some so high as to be early retirement provisions).

Perhaps most importantly, the great bulk of those who could qualify for vesting will not--because they will qualify for normal or early retirement instead, except for those caught in mass separations; and some of these involve large groups of fairly short service employees as in the Kaiser Auto shutdown of the early 50's. The great area of need--if vesting is to render real aid--is in vesting for short service of as little as 3 or 2 years. Indeed, the goal should be immediate vesting--or very close to it.

Yet the Cabinet Committee Report offers the worst possible of two worlds. On the one hand it advocates compulsory vesting for all plans, thereby eliminating their adaptability to varying conditions and raising hackles on a massive scale; but those hackles are raised in vain, because the level of vesting called for--50% at 15 years, progressing to 100% after 20 years of service--would benefit an infinitesimal minority. Of course, it would "establish the principle" and "open the door." But starting at such a level, progress toward meaningful vesting would take a very long time. The proposal seems unpromising because it will be difficult to legislate and, if enacted, of marginal value for the foreseeable future.

Some resistance might be eliminated if multi-employer plans were treated separately with vesting <u>required</u> only if predicted failures to qualify--based upon actual samples--exceeded a specified percentage of employees and requirements of continuous service were liberalized.

For single employer plans, the Cabinet Committee, or some other significant public or private group--might declare that any plan in existence more than 10 years should/ordinarily provide for 10 years vesting, with 5 year vesting after 15 years and even more liberal vesting thereafter. (The figures are illustrative only; the conditions might well be more liberal.) Non-mandatory bench marks might be more effective than mandatory ones; once stated, bargaining committee would begin to press for them--just as they started demanding earlier retirement after the UAW "won" that change in 1964 (more about that shortly).

But vesting will not come unless large groups demand it. Some opinion evidence exists that younger workers are becoming more interested in greater assurance of pension eligibility. Unions have been somewhat less than eager in pressing for pension improvements, preferring other more immediate improvements (some quite dubious like "earlier" retirement). Unions as institutions understandably have some difficulty in seeing the importance of benefits for those who will be ex-members in preference to gains for those who remain in the fold. Only if employees, incited perhaps by insurgent union groups or a more widespread realization of the present unreliability of plans, press their organizations will union demands for really liberal vesting emerge.

Professor Melone has written a thoughtful analysis of vesting problems.[5/] But he believes that employers lack motivation to liberalize vesting in the absence of strong union pressure because they

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5. Joseph J. Melone "Implications of Vested Benefits in Private Pension Plans," Journal of Risk and Insurance XXXII (1965), p. 559.

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do not see any advantage to them. The argument that Social Security will take over more of the retirement income field if liberal vesting does not proliferate carries little force with employers, he argues, because they do not strongly prefer the private to the public plan and they do not believe that they can affect their relative roles by their private decisions. But many employers do prefer the private to the public system because (1) they get "credit" for the former, subjectively from the employees and in wage-setting and bargaining; (2) many employers can participate advantageously in the private plans; and (3) they enjoy a degree of control over private funds. Moreover, the Melone arguments overlook the dynamics of pension plan change. Only a few large employers need adopt a provision for it to be launched toward near-universal adoption. Large employers well might see advantages in large scale liberal vesting--for example, offsetting severance pay and bringing new employees to them with vested (and funded) credits thereby relieving them of the sole burden of providing a fairly decent retirement benefit.

The problem of benefit achievement under multi-employer plans might be separately considered. Arguably they provide a measure of vesting. But as the Joint Economic Committee hearings show, they do not thereby assure that a high percentage of participants will achieve benefits.

Benchmarks for vesting, separate vesting treatment for multi-employer plans and other alternatives to the Cabinet Committee Report should be studied and proposals made. Once the storm of indignation breaks, it will be too late to concoct new schemes.

Pension Coverage--The Present, The Potential, The Projections

Dan Holland's analysis of the coverage provided by private plans, (almost 50% of the non-agricultural, non-government payroll), echoed in the Cabinet Committee Report, overstates the situation because, among other things, it compares coverage to jobs--a more static quantity, whereas several million more people move in and out of these jobs each year.

Moreover, he eliminates almost 14,000,000 people as "clearly" not appropriately within the area of potential pension coverage; most of those excluded are young people and part-time workers. But I suggest that he is quite wrong to exclude them. If young people could accumulate pension credits--however small--they would be extremely valuable, producing benefits at lower contribution cost. Moreover, for those who will be seriously disabled early in working life, such early credits are absolutely crucial to a decent benefit. As to part-time workers, some are students, to whom the same reasoning applies. Perhaps more importantly, part-time workers are second wage earners in a family--usually wives--upon whom a family's standard of living so often depends. Indeed, these supplementary earnings provide for many the difference between what we regard as the American standard of living and want. If that standard is not to be unduly impaired after retirement a substitute for those supplementary incomes must also be found. Typically wives' OASDI benefits exceed those they earn in their own right, hence their former earnings provide no such supplement via Social Security. It is far from "clear" that part-time workers should be excluded from what is considered the proper area of pension coverage. On the contrary with the fast and steady growth in work by women in the 40's and 50's, income substitutes for their earnings will become steadily more urgent.

Projections of pension coverage by the Cabinet Committee start with a 1963 base of 23.5 million and predict[6] that in 1970 private plans will cover about 34 million employees and 42.7 million in 1980, excluding annuitants. To this must be added 5.5 million projected annuitants in 1970 and 8.3 million in 1980 (as compared with 2.4 million in 1963). (Of course, a sizable additional group of those presently at work will reach beneficiary status and then die before 1970 and 1980.) The retirees will necessarily come for the most part from those now under plans. To account for these additional 19 million plan participants and 4 million retirees, plan coverage will have had to add some 23 million or about double present coverage by 1980. The average annual net increase of plan coverage would therefore have to be about 1.4 million. Indeed the projections call for larger increases in the next few years and a slower rate of growth later.

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6. These projections derive from the NBER studies under Roger Murray's direction and executed by Dan Holland. As noted later, the NBER study made several projections based upon differing assumptions. For some inexplicable reason the Cabinet study produced only one projection as if coverage were not subject to innumerable unpredictable contingencies, not the least of which are legislation to tighten up on plans or to encourage them, new devices for plan coverage, evolving unemployment patterns, emphasis of defense production or disarmament, etc.

Practically all of the additional pension participants will come from the establishment of new plans[7] because employment in the area of heaviest plan coverage today is either static, (as in manufacturing) or declining (as in mining). Moreover, the employment outlook in some areas, e.g. textiles, hardly seems encouraging.

While the numbers of plans approved set new records (enthusiastically hailed by such a staid publication as EBPR), the numbers of new plan participants falls far short of the projected pace of expansion. So in each of 1964 and 1965, IRS newly approved pension plans covered roughly 700,000 new employees--at best. If deferred profit-sharing plans are included, the totals of new participants increases to about one million in 1965. Social Security estimates put the pension coverage advance at 800,000 in 1964.[8] No employee data are available for the numbers of employees who had been under the plans that terminated (e.g. Studebaker shut down in 1963 and the plan terminated in 1964) or the numbers of employees involved in shutdowns of units under plans that continued in operation. Yet the projection calls for no less than 1.4 million new employees in these years--indeed more because plotted plan growth was to be heavier in the earlier years of the projection and taper off toward the end.

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7. One study of a significantly large group of plans reports that in 1959 these 93 plans had 5.3 million non-retired participants and in 1964 their coverage had inched up to 5.4 million. Joseph Krislov, "A Study of Pension Funding," Monthly Labor Review, Vol. 89 (1966) p. 638, n. 1.

8. Alfred M. Skolnick, "Ten Years of Employee Benefit Plans," Social Security Bulletin, Vol. 29 (April 1966) p. 3 at p. 6, Table 1.

I suggest that even the modest projected expansion of coverage from roughly 50% of the non-agricultural, non-government employment to 65% in 1980 may be unduly sanguine. The projections, although most conscientiously done, are based upon assumptions that are necessarily impressionistic, as Professor Holland recognized. Moreover, on some of the alternative assumptions he made in his underlying studies, the projected growth would be very substantially below those used in the Cabinet Committee Report. Contrary to the Report's prediction, pension coverage may have expanded in recent years less rapidly than the labor force and non-farm private employment have. Coverage may be less extensive now than it was a few years ago as a percentage of such employment. If, as the Cabinet report and the Holland analysis assume, the rate of expansion of coverage slows down between now and 1980, the proportion of employees covered well may be less by 1980 than today

Benefits

Controversy over coverage and eligibility has obscured another vital area in which private plans now are weak. The benefits of those who qualify, even when added to typically larger Social Security payments, will not save most retirees from serious reduction in their standard of living, with many below the BLS modest-but-adequate 1959 budget level, which I regard as blushingly modest and decidedly inadequate to comfort and independence.[9] While lower paid workers will

9. The most comprehensive and up-to-date analysis of benefits probably is Ronald J. Staats, "Normal Benefits Under Private Pension Plans," Monthly Labor Review, Vol. 88 (July 1965) p. 856. Unfortunately it suffers seriously from the usual BLS defect of computing sample benefits using only the future service portion of the benefit formula.

achieve a higher percentage of their pre-retirement earnings, even among those fortunate enough to attain benefit status, the overwhelming likelihood is that--under present arrangements--most pension beneficiaries will replace less than half their pre-retirement earnings or be under the BLS budget.

Those who do not escape the latter fate require credited service of more than 25 years and high levels of earnings; even such length of service will, on the average, produce well under 50 per cent of an individual's former earnings. Of course, the portion of family earnings replaced is even less, since there seldom is a substitute for a working wife's former wages.

We can conclude that benefits per year of service are low. Just as importantly, many years of work do not count toward benefits, so that the total benefits are just that much more modest. That is why a method must be found to preserve practically all credited pension service and to translate it into benefits.

This is all the more crucial for disability benefits; for the disabled necessarily have fewer years of credited service--if they can qualify at all.

Widows--already skimping along on miniscule OASDI benefits--often are excluded from meaningful pension plan help because joint and survivor options are so infrequently exercised. Their design, often requiring election before retirement, hardly is conducive to election; and the low level of benefits discourage the further voluntary reduction in the retiree's benefits required by the election.

Earlier Retirement

In the summer of 1964 retirement before age 65 without actuarial reduction of the normal benefit (what I call "earlier retirement")

looked like the wave of the future. A dubious means of creating job openings, the device assures lower public and private plan benefits.[10] Although many UAW members flocked to earlier retirement, apparently few steelworkers have.[11] The momentum may have gone out of the drive. When employment anxiety returns among pension-covered workers, this expensive device, let us hope, will be hard to revive.

In the case of the UAW, employers pay some skilled workers both retirement benefits and regular wages. Surely, there are more pressing demands upon pension funds.

A Projection of the Future Contribution of Private Pensions

I recommend to your earnest consideration a study entitled, "The Future Economic Circumstances of the Aged"[12] which employed simulation techniques on a computer to project the amounts and distribution of Social Security, private pension and private asset income for the aged in 1980. Dr. Schulz used the Cabinet Report pension projections

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10. A fairly detailed critique may be found in Bernstein, "The Arguments Against Early Retirement," Industrial Relations, Vol. 4 (May 1965) p. 29.

11. "Retirement Response: Few Steelworkers Take Opportunity to Get Pensions Early," Wall Street Journal, July 15, 1966, 6:4.

12. By Professor James H. Schulz of the University of New Hampshire, to appear in the summer issue of Yale Economic Essays. The article is based on Dr. Schulz's dissertation in economics, "The Future Economic Circumstances of the Aged: A Simulation Projection of Aged Pension Income and Asset Distributions - 1980." (1966).

(critically discussed above) and many other assumptions which I regard as unduly biased in favor of pension eligibility[13] achievement and benefit levels.[14] Even still, his conclusions are not encouraging.[15] In quite brief summary, his analysis showed that the present dismal pattern of mass penury among the elderly would be somewhat improved by 1980, but that private plans would make only a slight contribution

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13. For example, he assumed that all individuals reaching retirement age under a plan were eligible for benefits. Probably more serious was the assumption that all job changes by an individual in a multi-employer plan resulted in a move to another job under the same plan. The projections of the Western Conference of Teamsters, described in the recent hearings conducted by the Joint Economic Committee, show such an assumption to be much too optimistic. It seems especially inapplicable to work which is arduous, dangerous or disagreeable. For example, in longshoring a less than total disability can lead out of the industry.

14. Dr. Schulz used BLS data which, as I point out, often seriously overstate benefits by using only the future service part of the benefit formula. Building on that erroneous base, he also assumed that benefit levels will follow the past trend of benefit improvements, which is at least debatable.

15. He also assumes that Social Security benefits will improve by reflecting rising wage levels, assumed to be 4% a year as in recent times.

to the improvement. The major progress forecast derived from larger asset holdings; this assumption in turn stems largely from the expectation that home ownership will expand and equities increase; and he projects larger financial asset holdings. But both assumptions--as he concedes--are quite debatable, especially that concerning home ownership. In my book I suggest that the larger percentage of home ownership in 1960 by couples over 75 as compared with the 60-64 age group might reflect the vestiges of farm home ownership, which is diminishing.

Even with the assumed improvement in holdings and income, the projected financial situation of the elderly based upon a modest but adequate budget reflecting the changed living standards of 1980 would be only slightly improved.

As he points out, using the current Social Security poverty index ($2,460 and $1,745 for a non-farm couple and individual respectively) about half of the retired couples and two-thirds of the single individuals dwelled in 1962 at the poverty level. Of course, many more hovered just above it, some 70% were below the dreary standard of the 1959 BLS Budget ($3,000 for a couple). Assuming modest increases in output and prices, the 1980 poverty levels would be $3,500 and $2,500 (for couples and single individuals, respectively) and the Retired Couple Budget $4,200. The couples would be in about the same relative condition as in 1962; individuals would be somewhat better off, but primarily because of assumed larger savings, a matter of some doubt. Income compared with then current general living standards surely is the appropriate test. Progress in real benefits will stem from greater productivity and higher living standards. In 1980 pension performance will be measured in terms of the living standards then, not in terms

of our present levels. If the elderly are comparatively little better off than today, the projected progress seems insufficient.

Changes obviously are in order.

A Clearing House: Facilitating Vesting and Small Group Coverage

The basic defects of private pension plans are that their coverage is not sufficiently extensive to supplement Social Security benefits (the principal gaps are among small employers), only a minority of plan participants will actually achieve benefits, benefits are too low--often because too few years of work result in benefits, and widows' benefits are practically non-existent.

If private plans are to play a major role for more than a minority of workers, they must cover more employees and something close to immediate vesting will have to become common. The vesting need not be full--employers could still make it more advantageous for employees to stay than to leave. And some new broad multi-employer plan is needed to provide coverage for employees in small companies, who are hard to cover, not least because such firms are relatively short-lived.

A national pension clearing house could provide the small group coverage and also pick up the transfer value of the vested benefits existing employees carry with them, rather than to leave the funds for such benefits in cold storage in the old plan where they seldom participate in plan improvements made possible by an expanding economy. Moreover, such credits could be cumulated for disability benefit purposes, as they now are not. The clearing house also could act as the mechanism for transfering values between plans which provide for granting and accepting such amounts. It could not only develop a

Pension Funds in an age of Discontinuity

by Julian Gumperz

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Pension Funds in an age of Discontinuity

By JULIAN GUMPERZ

This article is concerned primarily with private uninsured (and trusteed) pension and retirement plans — whether the trustees are appointed by single corporate employers, or by groups of employers who contribute to a common fund from which the claims of all their employees are met, or by management and union jointly, or by unions which administer plans financed by employers in particular industries or trades. It is peripherally concerned with such other kinds of pension programs as insured plans, those for civil servants (of federal, state and local governments) and for career military personnel; quasi-public pension programs, e.g., the Railroad Retirement Plan, and plans benefitting teachers and other personnel of nongovernmental and nonprofit organizations. Falling outside its purview — though the issues here discussed touch them too — are the U. S. Old Age, Survivors and Disability Insurance (OASDI) system, pension funds set up by self-employed persons, owners of Subchapter 15 corporations and professional service corporations, as also saving funds, profit sharing funds and similar funds.

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THE most crucial problem faced by pension plans is the achievement and maintenance of rates of asset accumulation that can match the build-up of liabilities the funds will have to meet in the late 1970's and beyond. It is the thesis of this article that this problem is not being effectively handled by the U. S. private pension system, because the assumptions on which the plans are based contain fundamental mistakes. These mistakes and their consequences will begin to become manifest before the end of this decade. In the first half of this century the private pension system was still in a sufficiently early stage of development that such consequences, however painful to those immediately concerned, would not have had much social importance. Now that the system involves more than half of industrially employed labor and channels hundreds of billions of dollars into investment, its inability to perform as required could have shattering impact on our society.

Let us first examine the growth of pension fund assets. The first of the tables on the following page indicates the process of accumulation in major pension programs. The assets accumulated by private pension funds were, in 1969, about one-fourth as large as the total assets of all non-financial corporations in the United States.

Between 1950 and 1960, the average annual rate of accumulation for private uninsured funds was 17.9 per cent; for insured funds, 12.8 per cent, and for government-administered pension plans, 11.0 per cent. From 1960 through 1969, the rates were 11.4 per cent, 8.4 per cent, and 9.3 per cent respectively. Were the rates exhibited during the 1960's to persist through the 1970's, uninsured private funds would have assets of $149.6 billion by 1975 and $257.9 billion by 1980; insured private funds, $58.4 billion and $85.7 billion; and government-administered funds, $120.3 billion and $185.2 billion. Since pension fund assets have been growing more rapidly than the totality of industrially employed capital, they would—should this disproportion endure—represent by 1980 still more than one-fourth of the total.

Impressive though they are and will be, the question with which this article is concerned is whether such accumulations—or any reasonably likely accumulation of assets—will suffice to meet the accumulating liabilities. It must be emphasized that the pension system's liabilities cannot be met by liquidating the system's assets. Particular funds may be liquidated; but large sectors of the total population of funds, let alone all of them, cannot be. The aggregates involved are simply too large for that. The questions therefore are: Is it probable that the sum of contributions to pension funds, plus returns on assets, will be adequate to meet the

ASSETS OF MAJOR PENSION AND RETIREMENT PROGRAMS IN THE UNITED STATES

(000,000 Omitted)

Year	Private Retirement Plans			Government-Administered Retirement Plans			
	Noninsured	Insured	Total	Railroad Retirement	Federal Civilian Employees	State and Local Employees	Total
1950	$ 6,500	$ 5,600	$ 12,100	$2,553	$ 4,343	$ 5,154	$12,050
1960	33,100	18,850	51,950	3,740	10,790	19,707	34,237
1961	37,500	20,250	57,750	3,725	11,811	22,100	37,636
1962	41,900	21,625	63,525	3,709	12,866	24,450	41,025
1963	46,600	23,300	69,900	3,792	14,069	27,100	44,961
1964	51,900	25,250	77,150	3,850	15,309	30,200	49,359
1965	58,100	27,325	85,425	3,946	16,516	33,600	54,062
1966	64,500	29,425	93,925	4,074	17,619	37,100	58,793
1967	71,800	32,000	103,800	4,236	18,799	41,300	64,335
1968	80,500	34,975	115,475	4,245	20,224	45,800	70,269
1969	87,200*	39,000*	126,200*	4,300*	20,800*	52,000*	77,100*

*Estimated

BENEFITS PAID UNDER MAJOR PENSION AND RETIREMENT PROGRAMS IN THE UNITED STATES

(000,000 Omitted)

Year	Private Retirement Plans			Government-Administered Retirement Plans			
	Noninsured	Insured	Total	Railroad Retirement	Federal Civilian Employees	State and Local Employees	Total
1950	$ 290	$ 80	$ 370	$ 254	$ 178	$ 274	$ 706
1960	1,360	390	1,750	626	709	940	2,275
1961	1,510	450	1,960	650	788	1,045	2,483
1962	1,740	510	2,250	675	867	1,125	2,667
1963	1,890	570	2,460	694	995	1,260	2,949
1964	2,120	640	2,760	711	1,096	1,400	3,207
1965	2,460	720	3,180	726	1,193	1,545	3,464
1966	2,870	810	3,680	748	1,482	1,730	3,960
1967	3,240	910	4,150	818	1,634	1,958	4,410
1968	3,640	1,030	4,670	923	1,784	2,195	4,902
1969	4,580*	1,070*	5,650*	1,000*	1,526*	2,185*	4,700*

*Estimated

Note: These data are as of various dates during the year, since the fiscal years of the plans are not necessarily the same. Trends from year to year are not affected. The amount of benefits paid does not include amounts paid as lump-sums, or periodic amounts payable to survivors or dependents of deceased workers or beneficiaries, except in a few instances, and the total amount so included is estimated to be relatively small.

Sources: Railroad Retirement Board, Social Security Administration, other administrative agencies, the Institute of Life Insurance, and Martin E. Segal, Inc.

liabilities that pension funds will be incurring over the next decade or so? Or is it more likely that, at a certain time not too far distant, inpayments to the system will begin to lag behind current contractual obligations for outpayments from it? Instead of being a net accumulator of assets, and therefore contributor of capital to U. S. industry, will it become a withdrawer and consumer of capital? And what might the consequences be?

There are no figures that bear meaningfully on these questions. What figures there are provide only superficial, and often misleading, indications of where pension plans are going and what lies in store for them. ("The peculiar difficulty in judging the conditions of a pension plan is that its assets may be growing even as it is becoming more and more insolvent actuarially, and the reason is that the full measure of its outgo may take many years to develop."—William F. Marples—*Actuarial Aspects of Pension Security*—Richard D. Irwin—1965.)

Whether or not a particular fund is developing in a manner that will enable it to meet its liabilities depends on the changing interplay of a great many highly variable influences:

Eligibility standards for participation in a given pension plan and for participation in its benefits—the two do not coincide—and their changes over time.

The number of years of employment required for vesting of benefits, (making rights to them inalienable).

The benefit formula employed -- whether based on length of service alone, or on salary alone (average salary or final salary), or on some combination of service and salary, or complicated by other considerations, e.g., fluctuations of returns on fund assets.

The extent to which past service credits are provided.

The influence of unions in determining benefit levels, eligibility standards, etc.

The rates of growth, or decline, in work forces and variations in such rates.

Wage and salary scales and the way they are modified over time.

Age distribution and redistribution of work forces.

Hiring practices, including the existence and stringency of age, sex, and health barriers to employment.

Worker mortality rates, as affected by occupation, sex, socio-economic class, geographic locations, etc., and how they change in the period between inaugurating a plan and its full funding, and between the periods before and after the vesting of individual benefits.

Benefits, if any, paid to surviving dependents of covered employees.

Benefits, if any, payable for disability.

Disability rates, and other circumstances that may force personnel into early retirement (and qualification for pension benefits) and the depth and frequency of such circumstances.

Labor turnover rates and their fluctuations. (This will depend not only on the state of the economy, and of the given company, over time, but on such matters as the value that workers tend to attach to security as compared to opportunity for more lucrative or more interesting employment.)

The funding period, whether ten years or twenty, thirty, forty or longer, or indefinite.

The amounts, as required by the funding period and other actuarial assumptions, that the employer contributes annually to the plan, and changes in the amounts (because of changes in the assumptions, inability to contribute or other reasons).

The interest, dividends, and other income received on fund assets, and the fluctuations in such income.

Capital gains, or losses, on sale of fund assets and their incidence over time.

The difference between the sum of income and net capital gains (or losses) and that assumed by a fund's actuaries. (Because of high interest rates, such differences are generally quite high today and therefore favorable to pension funds.)

Many other influences, and the complications, subtleties, differences and changes in all of them.

The forces determining asset growth are most likely to balance those determining liabilities growth among plans insured by strong and experienced insurance companies — *provided* that adequate premiums are paid. Adequacy may mean (for reasons we shall soon explore) steeply higher premiums over the years. For some *uninsured* funds, the chances are good that a balance between growth of liabilities and of ability to meet them can be maintained. But for most uninsured funds, such chances are poor. They will be unable fully to meet their obligations; or they will do so only at great, perhaps strangulating, cost to employers (and, in publicly held companies, to shareholders).

This position appears to conflict with the findings of certain experts on pension funds. For example, in *Status of Funding under Private Pension Plans* (a study for the Pension Research Council of the University of Pennsylvania's Wharton School of Finance and Commerce, published by Richard D. Irwin, Inc. in 1969) the authors, Frank L. Griffin, Jr. and Charles L. Trowbridge, conclude that "A high degree of benefit security*

*By "benefit security", Griffin and Trowbridge meant ability of a plan to meet its liabilities. This they determined on the basis of the premiums that certain insurance companies would charge for accepting stated liabilities for immediate and deferred pension benefits. "The authors then constructed a set of actuarial assumptions which have no other significance than the fact that they can be shown to produce results in the middle of the range established by the life insurance company rates referred to above." They tried, in effect, to reconstruct the insurance companies actuarial assumptions. Obviously, they beg the question of the validity of such assumptions.

had been achieved by the year 1966 by a vast majority of plans included in the study. . . . The study furnishes impressive evidence that sound programs of financing have been the rule".

Some specialists have criticized the method of sampling employed and the nature of the sample studied. But much more important is the consideration that Griffin and Trowbridge, and most other experts on pension funds, tend to assume the continuity of trend among the various influences determining the growth of liabilities and of the assets for meeting them. This assumption is, in our opinion, quite unwarranted.

The Assumption of Continuity

We are moving into an "Age of Discontinuity" in which most of the trends determining the balance of pension fund assets and liabilities will be deflected and broken. We will confine ourselves in this section to the most important discontinuities on the liability side. Later, we shall consider the most significant of the discontinuities affecting asset accumulation.

It should be noted, to start with, that the actuaries who design pension plans periodically re-examine their assumptions, that they may revise them drastically and that they may recommend major changes in funding practices that may be called for. Our argument is that actuaries, like all specialists, tend to assume continuity. It is the only basis for quantified prediction of, and specific provision for, the future. When a discontinuity occurs, it is used in conjunction with previous events in that series to construct a new trend line, *which is then assumed to continue into the future*. Unless an actuary does so, he cannot make the specific projections required for planning. The consequences of discontinuity cannot be predicted. The expert with the task of predicting therefore assumes discontinuity away. Even when an actuary faces reality and postulates the discontinuities he foresees, the pension trustees who engage his services are not likely to go along. "In many cases full discussion of his assumptions is not possible, since the client will need a long period of gradual assimilation of principles before he becomes fully aware of all the implications. In general, an actuary tends to choose a standard method which appeals to him and to utilize cost determinants appropriate to both the method and the client's actual or estimated experience." (Marples, *op. cit.*) When the *in*appropriateness of the "cost determinants" and the "standard method" employed is forcibly brought home to the client, he may find it financially impossible to make the appropriate funding adjustments. Reality is most likely to intrude in hard times, when profits are down, or turn into deficits, and the employer is accordingly least able to increase his contributions to pension funds; and when, concurrently, employees are forced into early retirement and into demanding the pension benefits due them, which implies an accelerated meeting of fund liabilities.

Let us now consider the two main sources of discontinuity in the influences determining pension liabilities: (1) the extent of participation in pension *benefits*, and (2) the level of benefits to participants.

We emphasize "benefits." Close to half of those employed in industry are already covered by pension plans, whether insured or uninsured, as compared to only about 25 per cent twenty years ago. More to the point, in most companies maintaining pension plans, the great majority of employees are today included. For such companies, there is not, accordingly, much more room for growth in the proportion of employees participating in pension plans. (In companies with rapidly expanding work forces, the absolute number of participants may rise steeply; but because most of their workers tend to be young, their troubles, if any, in meeting liabilities are usually long postponed.)

But, while no radical deflection is to be expected in the number of participants in plans, there could well be a radical change in the degree of participation in benefits. Because of high turnover rates, especially among young workers and among the unskilled and semi-skilled of all ages, substantially fewer than half of all participants in pension plans will actually receive benefits — under present arrangements. Contributions made for them are not being translated into vested benefits. Such contributions are accordingly transferable to those for whom benefits are vested; and the employer can, therefore, afford to make lesser contributions on their behalf than he would have to, were there fuller vesting.

But there are strong pressures from the unions and from the government for earlier vesting of benefits. Legislation now pending in Congress calls for mandatory vesting, after an interval shorter than most pension plans now stipulate, of the pension rights of individual employees. Some of the bills that have recently been introduced also provide for "portability" of vested pension rights. This would permit an employee covered by a pension plan to transfer his claims (and to build upon them) from one place of employment to another, no matter how frequently he may change jobs during his working life. It is not likely that legislation requiring portability will be enacted in the foreseeable future. But passage within the next few years of some measure that would mandate fuller and earlier vesting seems highly probable.

From between ten and twenty years after joining a plan (which is usually some years after joining a company), the average waiting period for full or partial vesting may well fall below ten years, or even five. A shortened waiting period will have the effect of greatly

expanding the number of participants in the benefits provided by the average pension plan, both directly and indirectly—the latter by strengthening the incentive to remain with a company so as to share in the benefits. A workman who must look ahead fifteen or twenty years to the time when he will have acquired an equity interest, as it were, in his job will have little incentive, for that reason, to stay with that job. His attitude could be very different if he had only a five-year waiting period.

More important than the number of participants in benefits is the amount of benefits to which they can lay valid claims.

Actuaries have, of course, factored in the inflationary trend of wage rates and the increase in benefit payments that this implies. What they have not reckoned with, however, are the possibilities of deviation from trend. Obviously, wage inflation may either accelerate or decelerate over the next decade. Less obviously, the inflation of liabilities for pension benefits can depart widely from the pattern of wage inflation.

One influence making for such a departure is the shift of society's emphasis from guaranteeing of subsistence income to all of its members to guaranteeing that living standards attained during a person's most productive years can, by and large, be maintained during his years of retirement (as also during illness and other periods of sharply reduced productivity).

The social security system instituted in the 1930's was the first important step in this direction. The negative income tax and provision for automatic cost-of-living adjustments in social security benefits are among the steps now contemplated. Other developments, though still spotty, are hastening our progress along this road. Thus, in New York City and many other municipalities, persons on welfare have won the right of continuing to occupy middle-class apartments, subscribe to telephone service and purchase a great variety of goods beyond those necessary for subsistence. This means, of course, the right to receive welfare payments that will enable them to do all of this.

For pension plans, the change in the climate of opinion has meant that the basis for determining benefit payments is shifting from average compensation to final compensation, and then from 40 per cent or less of final compensation to 60 per cent or more—in a situation in which the overwhelming majority of all employees earn very substantially more at the end of their careers than they earned on average over the entire course of their working lives. (For the average person who started working at age 20 in 1925 and is ending his career this year, at age 65, final compensation is more than ten times initial compensation and more than double his average over the years. Factors in the advance include compensation for gains in productivity, which have averaged two to three per cent annually in recent decades, inflationary wage increases beyond those justified by productivity gains, which have added another one to two per cent annually during the 1960's, and the higher salary scales provided for upgraded skills and promotions.)

Tending to ease the demands in prospect for pension funds are enlargements of social security benefits and the disposition to tie pension plans to that system—so that the greater the benefits the employee receives under social security, the less the private pension plan will have to pay him. This will mitigate the effect of all the influences contributing to sharply rising future demands upon pension funds; but its force will be comparatively minor.*

A more remote threat to the solvency of private pension plans, but one building up rapidly, is the tendency for claims to income to be divorced from past or present contributions to production and even from a claimant's potential to contribute in the future (so repaying society's advance to him). In other words, claims upon society are being dissociated from what one has given, is giving or is capable of giving, to it.

We see this tendency manifested in the demands by spokesmen for blacks and other "disadvantaged" minorities—demands to which society is increasingly responsive—for access to schooling, jobs, ways of life, that they do *not* merit by the ordinary standards of qualification for these advantages and that are being demanded in disregard or explicit defiance of such standards.

We see it too in the speculative epidemic that we have just gone through, involving not some thousands of persons, as in the past, but many millions. These millions were seduced by the notion that they could become rich, not by working or at least by acting on rational calculation, but simply by impulsive gambling, by being "in the game", however little they might know about how to play it.

Underlying this tendency is the growing inclination to question the legitimacy of the work ethic on which all modern economies are based. The militant minorities who demand what they haven't earned, the educated dropouts who are opting out of a system predicated on ever higher levels of production and consumption, of "getting and spending", are the most conspicuous surface aspects of a deep transformation of society's value system. More and more people, not only hippies and "New Leftists" and militant blacks but a great many others, insist that they be treated not as means (and be, therefore, compensated in accordance with their effi-

*There is also the consideration that contributions to the social security system, by both employers and employees, are fast approaching the outer limits of tolerability. Hence the extent to which that system will be able to satisfy the aspirations of participants is limited.

82-079 O - 72 pt. 1 - 24

ciency as means) but as ends. They want to share in "affluence" because of their needs and their aspirations as human beings, not because of what they have contributed or might contribute to creating that affluence. Whether they incline, with the educated dropouts, to dismiss the affluence as essentially worthless, or with the militant minorities, to demanding their share of it, whatever its worth, they all tend to agree that our vaunted affluence is already enough or too much; that there is no great need to produce more of it; no valid reason therefore to judge or reward a person on the basis of what part of it he does or can produce.

The "knowledge economy" that is now evolving requires that more and more people qualify, by knowledge, skill and motivation, to serve it. But a declining proportion even of those acquiring the requisite knowledge and skill are motivated to accept being harnessed to the economy. (A decade ago, a large majority of Ivy League College graduates were prepared, indeed eager, to go into industry. Now only a small minority cares to do so.) This is one harbinger of crisis in the economy.

The subtle but profound change in the value system that is now occurring will eventually mean that pension plans will be put under pressure to raise benefit payments for persons long retired, beyond all proportion to their earnings while working. This pressure may be especially great for those categories of employees that, because of unjust discrimination, real or fancied, were denied the opportunity to develop their earnings potential, and thus to qualify for larger retirement benefits. There will be pressure, too, to provide benefits for retired workers who, for whatever reason, never participated in their employers' pension system. Before the end of this decade, such pressures will probably become strong enough to command response.

Many pension plans are already providing cost-of-living adjustments to long-retired workers. Such adjustments will be liberalized. Many pension plans are already progressive—that is, the lower the average or final earnings, the higher the ratio applied in calculating benefit rates. Plans will probably become more steeply progressive.

The consequence of the change in the climate of opinion and in the underlying value system, and of the pressures emanating from them, will be the raising of claims upon pension funds, and upon the economy as a whole, to levels well beyond their respective capacities to meet these claims. This will contribute to *radical* inflation, a concept which we must explain.

What is not generally understood is that the inflation we have been undergoing, especially since 1965, has had two main components. The first is the expression of the desire for enhanced standards of living, which gets translated into higher wages and other compensation and then into higher prices. The second component is an override on the first. It occurs when claims upon society begin to exceed its capacity to supply. It reflects the breakdown of confidence in the ability of society to fulfill these claims, to honor commitments to fulfill them, because of recognition (only in part made explicit) that society is simply incapable of discharging the totality of these commitments concurrently. It derives from inability to understand the limits of the human condition and, accepting those limits, to establish priorities governing allocation of resources.

Since 1965, this override has driven the basic inflationary tendencies to the verge of an uncontrollable acceleration, as our commitments—to the war in Indochina, to the military and economic support of numerous client states, to the space race, to a host of domestic reform and welfare programs—in their totality came to exceed our capacity to perform. The failure to perform adequately in any one area, and thus to honor the commitments at stake there, calls into question our ability to honor other commitments. This contributes to the continuing disintegration of credibility and trust, and therefore to social disintegration, from which we are now suffering, and of which the current inflation is but a surface manifestation.

For pension plans, the inflation, should it continue at close to the present rate, could be shattering. The longer it continues, the more plans will be involved, and involved sooner, in the ruins. For, any liberalization of benefits diminishes the value of the fund already accrued. The greater the liberalization, the sharper the cut in values.

Consider a fund started in 1950, in which the number of participants (that is, the number for whom contributions are made) has not changed since then and to which the employer has been contributing annually 10 per cent of his total payroll, both salaries and wages. But the average compensation over the period since 1950 will, as we have shown, be well below the salary and wage scales he is paying now. He is required, however, to pay benefits based on final compensation. In addition, he may be required to apply cost-of-living adjustments to the benefits being paid to persons already retired, perhaps for a decade or more. In drawing up a funding program twenty years ago, the actuary engaged could not have made adequate allowance for the unprecedented inflation of the 1960's and for all the kinds of pension benefit liberalization that have occurred since 1950. In the periodic revisions of his assumptions, it is unlikely (for reasons we have already given) that the adjustments in the funding schedule he recommended were adequate, and also unlikely that the employer acted fully on the recommendations. This fund is obviously heading for trouble.

This hypothetical illustration will be realized, with many variants and complications, for a great many actual pension plans, in years to come. Even before the onset of the radical inflation of the later 1960's, a considerable number of funds, and their beneficiaries, had already been seriously affected by underfunding. Not only were many persons denied benefits because of failure to meet stipulated eligibility requirements (stipulations of which they may well have been unaware), but many of those who did satisfy the requirements received no benefits or only a fraction of what they were entitled to, because the plans covering them were unable to make full payments. Merton C. Bernstein, (in *The Future of Private Pensions*—The Free Press, 1964) gives many examples of both kinds. What Bernstein described is only a portent of what could happen in the 1970's.

Much is at stake here. The ability to satisfy pension expectations can help allay the festering discontent of our times. Moreover, the growth of pension funds can help supply the pressing capital needs of industry—provided they remain net accumulators rather than net withdrawers and expenders of capital. (Work done at the National Bureau of Economic Research by Simon Kuznets, Raymond W. Goldsmith and others suggests that voluntary savings by individuals may not suffice to meet future capital needs of industry. The extreme capital stringency from which industry suffers at this writing could become chronic, unless institutional investors—pension plans prominent among them — make up the deficiency.)

On the other hand, the failure to satisfy the pension expectations of large numbers of people could greatly exacerbate the loss of confidence, the unrest, the process of social disintegration, with which we are already afflicted. In addition, the forced liquidation of large pension funds, unable to meet liabilities from annual contributions and return on assets alone, the basic conversion of the private pension system from net accumulator to net dissipator of capital, could throw the investment community into disarray so chaotic and financial values into a decline so precipitous or prolonged as to make the turmoil of the last few years seem halcyon by comparison. To the extent that pension liabilities are made binding, whether by collective bargaining contract or by legislation, companies with inadequately funded pension programs would be compelled to cut more deeply into earnings, or even to sell off corporate assets, in order to meet pension claims, further aggravating market conditions.

The Options

There are several directions in which the private pension system might conceivably move in order to avert possible catastrophe.

The first could be to restrict the growth of pension claims to levels the system can meet without undue burden or strain.

One device for restricting their growth has been the "variable annuity", under which some part of pension benefits, usually between one-third and one-half, is allowed to vary with returns on fund assets. Teachers, editorial workers and other relatively sophisticated persons have accepted this device and its consequences, good and bad. The great majority of workers has shown little willingness to do so. They want benefits they can count on. If the amounts paid are to change, the change can only be upwards—an understandable sentiment in view of inflation.

The temper of the times is such that efforts to restrict the growth of claims—or, at least, to retain flexibility about meeting them—can only be partially successful at best. Claims *will* go up, more steeply than most actuaries have assumed. And benefits *will* have to be paid to satisfy the claims, so long as the employer is at all capable of making payment.

Most pension plans now contain escape clauses, allowing employers to modify or terminate the plan at any time, particularly at times when satisfying pension obligations in full might make it necessary to dip into retained earnings, or even to sell off corporate assets. But many contracts dictated by collective bargaining—notably those prevalent in the steel industry—provide no such "outs". And the unions are pushing vigorously to restrict or eliminate entirely such loopholes. The leadership of the AFL-CIO, in its statements before Congress and in other pronouncements, has recently pressed for an amendment of the bankruptcy laws to give pension plans priority claims against employer assets, immediately after wages, and before the claims of other corporate creditors. The pending legislation mentioned above would also have the effect of deepening and tightening corporate commitments to pensioners.

A second possible course is to increase employer contributions to pension funds. But most companies are already suffering from a cost-price squeeze, which has reduced profits—and, what is worse, turned many profits into deficits—with the incidental effect of lowering the level of economic activity. Even when the economy recovers from the current recession, costs will probably continue to press heavily on profit margins. Although the pressure could be relieved were the rate of price inflation to exceed that of cost, and particularly of wage, inflation, companies would be unwise to count on it.

There is an ineluctable dilemma in pension funding. Liberalizing pension benefits, and enhancing the security of those benefits, by increasing current employer contributions to the funds, tends to diminish employer ability to contribute in the future, and thus to undermine

the security of the benefits. If the financial strain upon the employer is too great, the very existence of the plan may be jeopardized.

A third possible recourse is to institute, or to increase the rate of, employee contributions to plans. At present, employee contributions account only for about 15 per cent of aggregate pension fund accumulations.

One reason their contribution isn't greater is that, while employer contributions are fully tax deductible (if the plans meet the standards of the Internal Revenue Service), those of employees are not. Amending the tax laws to extend tax-deductibility of pension contributions to employees, as is the case in Canada, would undoubtedly encourage a larger flow of employee savings into pension funds.

But it is doubtful that the increase would be very large. Most unions have opposed employee contributions; they insist that providing retirement benefits should be the exclusive obligation of employers (plus that of the Federal Social Security System). Employees themselves prefer to place their liquid savings in individual insurance policies, savings banks or mutual funds, or directly into the stock market, or (given sufficient inducement of matching contributions by employers, etc.) into savings funds set up by their employers, rather than into pension funds.

A fourth possibility is resort to insurance. This can mean either (1) having the insurance company selected assume responsibility for paying specified benefits in return for the premiums paid by the employer or, (2) reinsuring the fund the employer (or, for that matter, groups of employers, or unions or other pension-funding bodies) himself accumulates—perhaps through a government corporation comparable to the Federal Deposit Insurance Corporation. Either course would enhance benefit security—provided that *adequate* premiums are *regularly* paid.

That, of course, is the difficulty. The requirement of regularity makes for rigidity. The employer may not skip the premium in a bad year, as he could, often with relative impunity, in his own or in a multi-employer fund. The requirements of adequacy generally mean substantially higher costs for a given level of benefits than self-funding would require.

For one thing, the insurance company has expenses to meet (and, in a stock company, also profits to make). Much more important is the conservatism which is natural to insurance companies and which is, in part, imposed on them by law. The conservatism has two aspects. First, in determining premiums to be paid, insurance companies' actuaries measure liabilities on "safe" bases, to minimize the chances of losing money on the contract as benefits fall due. They are therefore inclined either severely to restrict the liabilities they are willing to assume or to raise the premiums to be paid. Usually, they settle for some trade-off of both. Second, insurance companies are required by law to be conservative in investing the funds entrusted to them. But conservative investing strategy has — at least in the bull market of the early and mid-1960's—meant lower rates of return than were obtainable through more aggressive strategy. This has meant that larger employer contributions, in the form of premiums, were required to compensate for comparatively low earnings on fund assets.

The conservatism, both in assessing liabilities and in investing assets, may have been quite justified. We have so argued with respect to the first, and we shall consider the second below. But the point here is that it has meant higher costs for a given level of benefits than has characterized the uninsured funds. In a period when other costs have also been rising, and profits have been constricted, higher than necessary pension costs have just not made sense to most employers. That is the main reason that the noninsured funds have grown faster than the insured funds.

Because pension fund trustees have, by and large, found the four approaches we have described unpromising, they have turned eagerly to a fifth, which came strongly into vogue during the 1960's. This is the effort substantially to increase returns on fund assets by aggressive investment policies.

Returns have two facets: current yield, in the form of interest, dividends, rents, royalties and other earnings on assets; and capital gains on sale of assets or on supposition of such sale. Let us consider each in turn.

The recent high interest rates, in particular, have presented exceptional opportunities for boosting yields on pension fund assets. Those managers and advisors of asset investment who are expert in the neglected art of trading debt portfolios are in good positions to exploit these opportunities, sometimes with exceptionally gratifying results.

There are, however, three limitations to the potentials available.

First, only recent and current income to the funds could have been invested at the unprecedentedly high (and, until very recently, steadily rising) interest rates that have obtained during the last several years. Unfortunately, an investment is also a commitment. Except for pension plans established during the past decade, the bulk of fund assets are locked into debt instruments (or equities, for that matter) commanding much lower yields than those now prevailing. The resulting mix of high-yield and low-yield (that is, low by present standards) vehicles is such as to afford most funds an average yield far below that commanded by new money.

Second is the consideration that large pension funds cannot count on achieving and maintaining exceptionally high yields. Returns on large and diversified stores of securities cannot, on average and in the long run, exceed the rates of return on capital characteristic of an economy at each stage of its development. The larger and more diversified the accumulation, the more will this tend to be the case. It follows therefore that while a relatively young and small pension fund can profit from the services of a money manager astute in handling debt portfolios, a large and mature fund will enjoy comparatively little advantage from such services.

Third is the improbability, as well as the undesirability, that the interest rates of 1969-1970 will persist, let alone trend still higher. Not only would a continued upward trend mean continued decline in the market valuation of debt instruments, but it would imply the necessity of pre-empting for debt service an ever-larger part of the total return of which real capital is capable at any given stage of technological and social development, thus leaving less and less for equity shareholders. The cost of debt service presses more and more harshly on more and more companies; on increasing numbers, with an oppressiveness they cannot long endure; on some, with a force that has already proved prostrating. Unless interest rates drift considerably lower than they are today, the effect on the economy, including most of the companies funding pension plans and those covered by the plans, could be disastrous. But sharply lower interest rates would mean a lessened potential for high yields on pension fund assets, unless returns on equity rise in compensation.

Dividend yields have been rising recently as a reciprocal of the sharp decline in stock prices. But as with interest yield, the improvement has only affected new money flowing into the funds, not the bulk of the assets held there. Dividend income, relative to the aggregate of pension fund assets, has not improved; nor is it likely to, for reasons we shall soon present.

An appreciation of the limited potential of yield on pension fund assets as a source of asset growth is the main reason for the popularity that the second facet of investment strategy, the search for capital gains, achieved during the early 1960's. The net purchases of equity securities by uninsured pension funds rose from $1.9 billion in 1960 to $5.4 billion in 1969, from the equivalent of 48 per cent of net new purchases of equity issues in 1960 to the equivalent of an extraordinary 87 per cent in 1969, making them by far the biggest net buyer, and therefore accumulator, of equity securities.

Some of the results achieved by funds that invested heavily in equities were truly spectacular, in some cases rivaling those scored by the "go-go" mutual funds.

Unfortunately, the gains achieved were, for the most part, transitory and illusory, as the whole investment community has recently discovered. When the attempt was made to realize the "gains" shown in market quotations, the prices of the issues held often collapsed. It then became clear that the main reason for the rise in market valuation was the fact that "performance"-minded investors, including the investment managers of many of the pension funds, had bid up the price of the issues they favored beyond all reason, and with pernicious consequences.

These consequences have been of two kinds. First, because asset growth appeared so great, many employers were persuaded that they could afford to reduce their annual contributions to the funds, and still have adequate funding. *This, during a period of high corporate earnings, when they could best have afforded to raise, rather than lower, their rate of contribution.* Today, the sharply reduced asset value, *in market terms,* coincides with shrunken, or vanished, profit margins, and therefore lessened ability to contribute. The funds are accordingly suffering from both kinds of attrition, from the fall in market values and from the not-uncommon necessity to reduce, or suspend, contributions.

The second pernicious effect has been on employee expectations. Though there has been great pressure, which now threatens to result in legislation, for disclosure of pension fund holdings and their changes over time, most fund trustees are still able to keep such matters from employees' knowledge. But more and more funds, particularly those deriving from collective bargaining agreements and in which unions may have a voice, are finding it impossible to preserve secrecy. As news of spectacular gains in market valuations of fund assets "leaks" to workmen and pensioners, the impression of ability to increase pension benefits is inevitably created. This leads to expectations of, and then demands for, higher benefits. In subsequent employer negotiations with unions, benefit levels have, at times, been raised beyond what the funds' assets can sustain over the longer term. With the collapse of market valuations, employers can come under pressure to augment their contributions in order to maintain adequate funding. An investment strategy that avidly searches for higher market valuations of assets invites inflation of liabilities well beyond the assets' capacity to satisfy.

The pension fund investment managers who have been drawn into the performance race have shown little understanding of the necessities by which pension funds are constrained. What they particularly failed to understand is that the capital gains recorded in terms of market quotations *could not,* in substantial part, let alone in the aggregate, be realized. The assets of uninsured pension funds amounted, in 1969, to an estimated $87.2 billion,

more than half of it in equity issues. The effort to liquidate a considerable part of such accumulations, in order to realize the values recorded for them, would utterly collapse those values, and all other security values.

Particular funds, especially relatively small and young funds can, to be sure, invest in situations with profit potentials not yet recognized by the market, and therefore not yet anticipated and discounted by it. Then, at propitious moments, they might be able to cash in their gains without disturbing the market and thus losing what they thought they had. Large funds which must deal in large blocks of stock find it most difficult to do so. A number of large funds, that have flocked together into some assortment of "go-go" investments, find it impossible.

Their prospects for capital gains—even for fictitious, paper gains—are dim. One reason may be enactment of an "anti-gambling tax" on pension funds exhibiting exceptionally high rates of trading activity. But an already actual and far more fundamental reason is that per-share earnings, on which market quotations turn, will themselves tend to decline. Profit margins are unlikely to be as wide in the 1970's as they were in the 1960's. The decline will be due, in part, to the lag in scientific research, the lowered productivity of that research, and a slower rate of innovation. More important is the continued shift of capital from the manufacturing to the service sectors of the economy, in which productivity gains are much harder to come by and in which profit margins therefore tend to be narrower. There is also the consideration that the pace of new equity issues is likely to quicken. It is improbable that industry will be able to meet its capital requirements by the combination of internal capital savings and debt issues. For, as debt becomes an ever larger proportion of a corporation's capitalization, successive debt issues lose quality, and cannot be sold, except possibly at prohibitively high interest. The corporation must then turn to new equity issues, and these tend to dilute earnings.

As it becomes evident that profit margins are narrowing, and per-share earnings are tending to shrink still more, the market will capitalize profits at a lower multiple, thus compounding the downward pressure on market quotations.

All in all, there will be diminished opportunities for spectacular performance, even on paper. The splendor that has gone from performance of equity portfolios will not soon return.

We must conclude that the discontinuities determining asset growth will be as drastic as those determining the accruing of liabilities. In addition to the influences already discussed, there will probably be major discontinuities in the institutional setting—especially the tax structure and the investment channels into which fund assets may be forced (e.g., Representative Patman's recent proposals with respect to residential housing)—which will shape asset growth. The main discontinuities will favor a great expansion of pension liabilities while limiting potentials for expanding assets.

We have painted a bleak picture; but one, we believe, that is faithful to the essential realities of the pension problem. Only by facing these realities honestly and courageously, without the comforting illusions of the recent past, can we deal with the problem effectively. If we fail, instead of contributing to social reintegration, the U. S. private pension system will exacerbate the disintegration now in process. ♦

THE OHIO STATE UNIVERSITY

July 28, 1972

Honorable Robert Taft, Jr.
U.S. Senate
Washington, D.C. 20510

Dear Senator Taft:

During my testimony on June 21 before the Subcommittee on Labor you indicated that you would supply the staff with some questions stimulated by my testimony. They have just been received and I am pleased to reply.

Question 1: In an attempt to show that the vesting provisions of S. 3598 would discriminate against women, you inserted a table on page 9 of your testimony showing "median years on current job." The more meaningful figures would be the median years of retirees at the date of retirement. Would you please supply these figures?

A: In my testimony I said:

"Typically women work for shorter periods of time than men, as the following tables show.

Median Years on Current Job

	All Persons	
Age	Men	Women
30-34	3.9	1.8
35-39	5.8	2.6
40-44	8.4	3.2
45-49	10.2	4.4
50-54	12.6	6.2
55-59	14.7	8.2
60-64	15.1	9.4

Median Years - Selected Occupations

	Men by Age		Women by Age	
	25-44	45 yrs. over	24-44	45 yrs. over
Manufacturing				
Durable Goods	4.5	14.3	2.4	8.3
Nondurable Goods	5.3	15.4	2.8	9.1
Wholesale & retail trade	3.3	8.8	1.5	4.9
Operatives & kindred workers	3.8	12.8	2.1	7.7

Source: "Job Tenure" Monthly Labor Review 18-19 (September 1969).

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These data demonstrate why such a small percentage of women now qualify for pension benefits. They also show that S. 3598 will do little to help them. In wholesale and retail trade where so many women work, the prospects for pension eligibility are negligible. In manufacturing, it is better, but still the bulk of women workers will lose out. Pension plans discriminate against women; S. 3598 does little to remedy that discrimination.

I respectfully suggest that the proper measure to use is the years of service at separation before retirement, which is the situation in which vesting would occur or not occur.

I am not aware of data showing the age and service of all men and women when separated from pension covered jobs. Therefore I presented data that show the nature of the problem--that typically women have shorter service on their jobs than men and that for enormous numbers of both, but especially women, those most likely to leave or be forced out of their jobs (that is, those with shorter service) cannot meet the vesting requirements in most common use among pension plans todays and would not be enabled to do so by S. 3598 which you have co-sponsored.

My book, The Future of Private Pensions, presents some data that point in the same direction. Appendix A set out the turnover tables in actual use by some large companies. (These are difficult to obtain and rarely published.) Only two sets showed the assumed separation rates separately for men and women. Copies are attached. You will see that the projected rates of withdrawals in both companies (which are among the largest in the country) show much higher rates of withdrawal for women before completion of 5 years of service and also before completion of 10 years of service.

These data document what is widely known about the generally shorter service on the job of women.

Data assembled by a survey of Social Security retirees show that about 21% of married couples, 15% of single men and only 8% of retired women received private pension benefits. (The percentages are for each category, so that the percentages are not affected by the fact that there are fewer women workers.) Moreover, while 21% of couples had private pension benefits, only 4% of widow beneficiaries did. (See the Table marked Appendix B which comes from Lenore Bixby and Virginia Reno, "Second Pensions Among Newly Entitled Workers: Survey of New Beneficiaries," Social Security Bulletin 3, 4 (November 1971).

Question 2: In your oral statement regarding portability you correctly observed that the employers' required contribution decreases with a higher rate of return on investments. On pages 10 through 12 of your prepared statement, however, you raised the suggestion that employers may be serving other "interests" by having an unreasonably low rate of return on pension investments. Isn't it inconsistent to suggest that employers may be keeping inventments low when low investment returns require them to make additional contributions each year?

A: I do not believe that there is an inconsistency. I do not suggest that some employer purposely keep earnings low to serve other interests. I suggest that such apparently poor performances require investigation to ascertain whether pension fund reserves are being used to serve employer non-pension purposes.

So, for example, it is conceivable that an employer in a poor cash and poor borrowing position might borrow pension funds for capital investment or even operating expenses. Or the employer-appointed trustees might make such loans to another enterprise in which a principal stockholder has an interest. Or a fund may place its investments with a trustee for a comparatively low rate of interest in return for a loan to another enterprise. For example, a bank trustee told me of an employer who made such a proposal. That banker turned the proposition down but observed that eventually the employer would find a taker.

Or take another situation that came to my attention where the employer made its "contributions" for several years in the form of I.O.U.'s; quite apart from the fact that the obligations were not collectible, they also would have no earnings in the hands of the trustee.

Or take the case of the United Mineworkers Pension and Welfare Fund which deposited tens of millions of dollars of fund assets at no interest in a bank owned by the Union.

Enormous sums running to the tens of billions of dollars are available in pension fund reserves for uses that are valuable to employers and unions. Some--we have no way of knowing how many but there are documented examples of shocking occurrences--yield to that temptation, which offers more advantage than reducing pension contributions which can be minimized in other ways. Even where the yielding is found out and constitutes a breach of trust, restitution may be inadequate. For example, on equitable grounds, the court's 1971 decision in the UMW case limited recovery to a three year period although the conduct found improper was documented back to 1952.

Question 3: What is the average rate of return on all investments of all private pension plans in the United States?

a. How does this rate of return compare with the average rate of return of all stocks listed on the New York Stock Exchange?

b. How does this rate of return compare with the average return of common stocks comprising the Dow Jones industrial average?

A: I do not know and would be very dubious about any material purporting to declare such a rate. The SEC annually makes estimates of pension fund allocation, expenditures and the like. The apparent precision of the data always has baffled me. However, the SEC may be able to provide an estimate.

(a) The rates of return in the data I presented, based on published sources, show many large fund earnings below 4% (as was the case for 4 of the 13 largest funds in the country) and most below 5%. In another grouping of 100 plans, almost all had apparent earnings below 5%, most were in the 3.5%-4.5% range, 17 earned under 3% and some had earnings of 2% and below (data for 1968).

While I do not have access for data for all listed shares, the yield for bonds in that period ranged from 6.41% (industrials) to 6.77% (railroads) reported by Moody's Investor Service as summarized in the 1971 Statistical Abstract of the United States, Table No. 688. The same table reports that Standard & Poor's preferred list for the year yielded 5.78% and Moody's common stocks yielded a composite of 3.2% with both public utility and railroad shares earning 4.6%. During the same year, mortgage yields exceeded 7% and most every form of investment had yields exceeding 5%.

(b) Covered in (a), but the particular index not available to me.

However, at about the period under discussion I remember criticism by a pension consulting firm that pension plans in the airline industry had earnings inferior to the Dow-Jones average.

Question 4: Do you suggest that investments should not be made in common stocks and that investments should be limited to preferred stocks and bonds?

A: Not at all. I urgently suggested that such apparently low yields put Congressional Committees with jurisdiction on notice that some large plans may be doing a very poor investment job. Indeed, many may. Supposedly, freedom to invest as the market dictates is a major advantage of private plans. If some or many are doing a poor job then that advantage is reduced.

It also may be that the funds are being used to advance company purposes to the detriment of employee security. That too bears investigation.

So, for example, I find it unsettling that among the 100 plans summarized by Representative Wright Patman (in the material I presented to the Committee) quite a few plans have substantial amounts in unsecured loans. At the very least, it should be found out to whom the loans were made, why without security, have there been defaults on such loans?

Question 5: Do you believe it is advisable for trustees to place pension money in common stocks of companies with such uncertain futures that their rate of return is high?

A: No. I am not aware that among equities such high risk results in high rates of return.

Question 6: On page 3 of your written statement you suggest that social security might be a preferable alternative to the private pension system. What is the average rate of return on investments made by the Social Security Administration in any recent year?

A: The rate of return for the Social Security trust funds were set out in the table on page 11 of my testimony. In 1967, the rate of return was 3.69% and in 1968 it was 3.8%, rates superior to some of those reported in both years for some of the listed corporate plans. Of course, the Social Security funds are in securities guaranteed by the United States.

However, it also should be noted that the Social Security system depends very little upon earnings upon reserves. Its strength rests upon the vitality of the entire economy.

Question 7: What hedge does the social security system have against inflation?

A: Inflation has been accompanied by steady increases in earned income, which in turn generates larger Social Security payroll taxes. Although those latter increases have not been commensurate with the former, it is significant that Congress has repeatedly cancelled and postponed scheduled Social Security tax rate increases despite repeated increases in benefits.

P.L. 92-336 provides for automatic benefit increases and taxes to finance them whenever the cost-of-living index exceeds 3%. Private plans cannot be adjusted to inflation so quickly.

Question 8: On page 4 you suggest that S. 3598 has a three year deferral. Is it not true that under Section 216 of that bill, the deferral applies only where the fund requirements would be unduly burdensome and impractical and otherwise adversely affect the interest of the participants and beneficiaries?

A: Yes. I cited § 216 in my testimony on page 4 and observed that such a deferral was most likely to occur among the plans on which S. 3598's vesting provisions would have the greatest favorable impact. Unfortunately, that favorable impact would be negated to a degree by the financial weakness of the plans most needing improvement in vesting. Hence the advantage of the bill is even less than it seems.

Question 9: With regard to vesting, on page 4 you observe that most pension plans already have 10 or 15 year vesting. You stated that "S. 3598 offers only minimum improvement in this large sector". The hearings which I chaired in Cleveland on June 5 revealed instances of harsh vesting provisions. One man had worked 26 years and was not yet vested. Would not S. 3598 provide greated protection to the men and women in these situations?

A: Yes, if in addition these plans were funded adequately so as to be able to pay off. I declared that "The Williams-Javits proposal constituted [which you are co-sponsoring] some improvement over existing plans." My detailed testimony was designed to show that the "some" fell far short of the need of the bulk of employed people.

Question 10: What statistics do you have to indicate a disproportionate flow of benefits to higher paid employees?

A: The Treasury has lost several cases in which it tried to establish that a plan discriminated in favor of the highly-paid participants because while fewer in number than all those who participated at one time or another, they lasted in employment and so achieved the bulk of the plan funds. The leading case is Ryan School Retirement Trust v. Commissioner, 24 T.C. 127 (1955). The Commissioner acquiesced in this unfortunate decision. 1955-2 Cum. Bull. 9. Please note that the particular plan had more liberal vesting than S. 3598 which you are co-sponsoring. This is the way I described it in my book:

> In October 1944 the Ryan Aviation School established a plan which then covered four officers, one supervisory employee, and 115 rank and file employees. During the plan's first year, 86 employees were terminated and 24 were transferred to a parent company which operated a separate plan. By late 1951, there were ten plan participants: five officers, three employees who had been in the plan from the start, and two hired subsequently. Contributions of $72,000 made during the seven years of the plan and more than $18,000 in earnings made a plan total of $90,000. Some $52,000 were credited to the officer's accounts, $19,000 credited to the accounts of the five rank and file employees, and $19,000 had been paid out to separated employees. Participation in the plan was conditioned upon one year of service; after two years of plan participation [three years' service] a separated employee was entitled to 20% of his credited amount, with 10% for each additional year of service up to 100% after ten years of plan participation. As the plan had not operated that long, no separated employee had achieved vested rights to 100% of benefits at retirement.

> No provision of the plan was attacked; rather it was the result of the plan's operation--that so few non-officer employees remained covered while such a high proportion of officials continued to build credits--that was condemned as discriminatory. The Tax Court held that the plan's provisions were non-discriminatory and that its results were due to the operation of "unforeseen circumstances." However, when the plan was set up officers were credited with 8.4% of the trust fund, while rank and file employees were credited with 91.6%. After the seven years of operations, officers had credits equal to 58% of the fund and the shares of the rank and file employees' were equal to 42%; there were five officers and five employees, and the former had long service and higher earnings. The discrimination, said the Tax Court, was in favor of "permanent employees," and all those who remained in service, officers and rank and file alike, enjoyed the same appreciation of their shares due to the forfeitures of separated employees. This effort, then, ended in failure.

Unfortunately the case does not stand alone.

Question 11: What percentage of an employer's payroll do you believe should be acceptable as a deduction for pension benefits?

A: The upper limit will vary depending upon pay rates, i.e., what employees can afford to forego from wages in order to save for retirement. The pension contributions do not represent a net addition to employer costs but constitute a portion of those costs which would be paid by the employer in some other way if not devoted to retirement purposes. Chapter VI of my book, The Future of Private Pensions, considers this and related questions.

Question 12: a. Have you ever administered a pension plan?

b. When, and with what results?

(a) No. The pertinence of this question is not clear to me. I have declined several invitations by law firms, consultants and actuaries and a major insurance company to consider an advisory role in their operations and plans. I have declined to accept pay for work in this field (with two minor exceptions in which the plaintiffs were seeking relief of the kind I had advocated in my writing; in those cases I assisted counsel).

Your active concern about the problems of private pension plans is appreciated.

Sincerely,

Merton C. Bernstein

Merton C. Bernstein
Professor of Law

The CHAIRMAN. Our next witness is Warren Barberg, National Association of Life Underwriters.

STATEMENT OF W. WARREN BARBERG, CHAIRMAN, NATIONAL ASSOCIATION OF LIFE UNDERWRITERS COMMITTEE ON FEDERAL LAW AND INVESTIGATION, ACCOMPANIED BY MARSHALL I. WOLPER, CLU

Mr. BARBERG. I am W. Warren Barberg. Mr. Wolper will deliver our statement.

Mr. WOLPER. We would like to first say, Senator that we admire your ability and dedication in this work, and that we generally support the bill you and your colleagues have introduced. We believe S. 3598 can make a very meaningful difference in the problems that affect the pension field today.

Our particular area of concern is with the small employer, and among the things we have noticed in reading the studies made by this committee is that small employers are not generally represented in your information and in many of the thoughts that come out of the bill. As a result, since perhaps 40 or 50 percent of all plans put in last year are the type of small plan that we put in, we felt we could give you some information that would be valuable in your further deliberations.

We would like to point out that small employers have a lot of problems not common to the type of plans you have surveyed. Small employers very rarely deal with union employees, and very rarely have a negotiated plan. Generally speaking, he faces more financial problems. Even though he may have a good business, there is many a Friday when he may have some problems meeting his payroll. Nothing that is proposed here should increase this and thus frighten the small employer away from providing pension benefits for his employees.

The small employer has done a good job for his employees, when he has established a plan. However, the great gap in our national pension coverage picture is the small employer. It costs him more money to provide each dollar of pension benefits for his employees. His plans are much more secure than the large plans. They are usually funded on a level basis. They usually use individual life insurance contracts for all or part of their funding. Thus, they are adequately funded, they are secure, and the vesting is generous.

We did a random survey of 100 plans in my office which differs from the surveys that have been made by this committee. We will make that survey available to your committee and staff, but some of these points I think would be most interesting. (The survey has been added as appendix A to the prepared statement of Mr. Wolper which follows his oral testimony.)

Eighty-two percent of the plans surveyed have some vesting immediately. Ninety-nine percent had some vesting after 7 years, and 100 percent had some vesting after 10 years. In the matter of full vesting, 35 percent had full vesting in the ninth year. The tenth year mark was the magic mark. Eighty-four percent were fully vested in 10 years, 94 percent fully vested in 15 years, leaving only a handful of these plans that would not comply with the vesting provisions of your bill.

Since the cost for the small employer is already higher, we strongly urge you not to add to his administrative burden. The cost of administration of pension plans goes up consistently. Therefore, in order to avoid having this employer concern himself with the cost of such a plan, we urge that you raise the limit of that group exempt from the bill to 100 participants, rather than the 25 participants proposed.

We do not intend this to apply to situations where you have multiemployer plans that might include 1,000 employees, but where no employer would have more than 100. We are dealing with the plan itself, and not just each employer. A multiemployer plan for over 100 participants in total would be included, but an individual employer setting up his own plan covering 80 or 90 employees should be exempt.

Second, we want to discuss the areas of vesting and eligibility. Our experience, which is a very active experience in the field, tells us that employees under age 30 rarely appreciate pension benefits. We find very often that these employees prefer to have cash to pension benefits at that time. If we force the employer to also include these employees in his pension plan, we are going to find that it causes the cost to be higher than the small employer can afford. We would therefore recommend you put a minimum age of 30, similar to the administration's bill (H.R. 12272). We also feel that 6 months is too short a time, and strongly recommend that you permit an anniversary date procedure. We would recommend an eligibility period of 3 years and an anniversary date procedure to help to keep administration costs at a reasonable level. If you have to take in every employee when he has been with you 6 months, you are enrolling employees all year round.

With respect to funding, we believe that the points in your bill are generally good. We feel adequate funding is important. The types of plans we have been administering all have adequate funding. But we do feel that more flexibility is required. We have made some suggestions in our written report, because we do not feel that the small employer who may face 2 or 3 years' business reversals should be forced over the line into bankruptcy, in order to fund pension benefits.

We suggest that while it is important and meaningful to help employees fund their pension plans, little is accomplished if you destroy the employer and the job in the process. We have provided a formula in our statement using a measure dealing with changes in the firm's profits before tax.

Voluntary portability, we would like to point out, has been with us for decades. In our plans we have voluntary portability, and we always have had it. It is possible under the law to provide terminating employees with nontransferable annuity contracts, which contract the employee can retain and which will provide for his benefits to be paid to him when he reaches retirement. He can get a series of these annuities from a series of employers and that series will provide him with the type of benefit you hope to provide in your voluntary program. We have used this for years, and we feel that it is the perfect solution for the problem.

Many of our members believe your insurance program should permit private competitive insuring of these plans. That is to say, not only a Government program, but perhaps a private competitive pro-

gram as well. We also question the value of attaching the assets of the firm (the subrogation right proposed in the bill), to meet the sums that are due under the plan, particularly in the case of the small employer experiencing business reverses. We again would not recommend that any provisions required by this bill handicap the employer if he has a few bad years or discourage him from adopting the pension plan in the first place.

In addition we believe insurance companies' certification should be accepted as far as the actuarial requirements. Insurance companies have actuaries, they are regulated companies, and we believe that in the individual policy plans particularly, their word should be accepted to avoid forcing the cost of actuarial reports on the small employer. We also believe that the audit requirement should be limited to once every 5 years, again to avoid these heavy costs on small employers.

We would also like to suggest that all fully insured individual policy plans should be exempted from every provisions of your bill, except vesting, because they already contain everything that you ask. A fully insured plan has just about every provision in your bill, and you will usually find that it provides more liberal vesting than you request. However, since it would be possible not to have adequate vesting in such a plan, we do not ask that it be exempted from the vesting provisions of your bill.

We also would like to volunteer our help because we believe that we establish more of the small employer plans that any other group or association in the United States. Last year 13,000 plans were established, and insured plans would represent very close to 40 percent of all such plans established. We believe our membership establishes the majority of these insured plans. Therefore, we would like to put ourselves and our Washington counsel at your disposal and that of your staff, in any way that we can help.

We will deliver our prior survey which was presented to the Ways and Means Committee.

The CHAIRMAN. We appreciate that, Mr. Wolper. What is your feeling about the clearinghouse plan for small companies that Professor Bernstein just described here?

Mr. WOLPER. We have no objection to the clearinghouse plan on voluntary basis. We do, however, point out to you that such a plan may not be necessary because we already have a product which would provide the same result. The nontransferable annuity which is tax free—in other words, the employee can take a nontransferable annuity within 60 days of termination for his vested interest, and this annuity cannot be touched by the employee. He cannot assign it, cannot borrow against it, and cannot cash it in without incurring a tax. When he is at retirement age, the annuity would become a portion of his retirement benefits, and he would be taxed on the benefits when received.

The CHAIRMAN. That does not reflect any change in the economy or any growth factor? That is a fixed amount?

Mr. WOLPER. No, it presumes growth on a fixed benefit basis, Senator. It is like selling a deferred annuity plan. The man, age 45, buys an annuity and pays a single premium, that annuity to begin at age 65. The company has allowed for a rate of interest to be paid to him, which rate of interest compares favorable to such as are paid by most of the pension plans. So we do consider that in the benefit. We would be happy to provide you with rates and examples, if that would help.

The CHAIRMAN. I wonder if you could send to the committee a further description of that particular annuity approach.

Mr. WOLPER. We would be pleased to do so. We would be happy to do it. Our Washington counsel will see that you receive it. If you have any questions on any of the matters in our written statement or oral statements, our counsel will provide you with the answers and our membership is available for any types of surveys you might want on small plans.

As I say, we will give you the survey we gave to the Ways and Means Committee.

The CHAIRMAN. Your organization is the National Association of Life Underwriters?

Mr. WOLPER. Yes, and the Association for Advanced Life Underwriting for whom our Washington counsel is Silverstein & Mullens, and through them you can contact us for any information you want, or our national office.

The CHAIRMAN. Describe these organizations a little.

Mr. WOLPER. The National Association of Life Underwriters is the largest trade association of life underwriters in the United States. It consists of 112,000 members operating in 50 States. The Association for Advanced Life Underwriting is a conference of the National Association of Life Underwriters. Its members are specialists in the advanced life underwriting field, specializing in pension and estate planning and so forth. They are all affiliated members. In other words, members of AALU are also members of NALU.

The CHAIRMAN. Thank you very much. We will be in touch and look forward to continuing communication.

(The prepared statement with supplementary information of Marshall I. Wolper, CLU, follow:)

82-079 O - 72 pt. 1 - 25

NATIONAL ASSOCIATION OF LIFE UNDERWRITERS
ASSOCIATION FOR ADVANCED LIFE UNDERWRITING
1922 F Street, N.W.
Washington, D.C.

SUMMARY OF COMMENT OF
MARSHALL I. WOLPER, CLU
ON
S.3598

1. Exemption for Small Plans. The exemption for plans with 25 or less participants should be extended to plans with less than 100 participants in order to encourage small employers who do not currently have any qualified pension or profit-sharing plan, to establish one.

2. Eligibility and Vesting. Eligibility requirements under H.R. 12272 of three years of continuous service or age 30, should be adopted, in lieu of the requirements of six months or age 21, proposed in S.3598. Any requirement with respect to either age or years of service should, however, permit the employer to include the employee in the plan as of the anniversary date following the completion of the required period of service, or attainment of the stated age. The vesting requirements of S.3598 are supported.

3. Funding. The goal of adequate funding requirements are supported. However, the rules should be modified to permit flexibility of contributions in years in which the employer experiences business reverses. A formula designed to accomplish this objective is set forth in the statement.

4. Voluntary Portability. The institution of a voluntary program for portability of benefits, is supported.

5. Plan Termination Insurance. The need for some form of plan termination insurance to insure vested, but unfunded, benefits is recognized. However, the present structure of this program would seriously discourage the establishment of qualified pension plans. While support is given for the plan termination insurance concept, we submit that exemption from the recovery rights of the government, now in terms solely of insolvent employers, should be extended to situations in which the plan termination is brought about through business reverses or where the employer's repayment obligations would endanger the solvency of the corporation or the jobs of the employers of the corporation. Certain recommended criteria in these areas are discussed in the statement.

6. Actuarial Certifications by Life Insurance Companies. It is recommended that S. 3598 be amended to permit actuarial certifications required under the bill to be performed by life insurance companies because of their direct involvement in partially and fully insured pension plans.

7. Auditing Requirements. An audit of an employee benefit fund, if required at all, should not be required more often than once every five years as is provided in the case of actuarial reviews.

THE NATIONAL ASSOCIATION OF LIFE UNDERWRITERS

ASSOCIATION FOR ADVANCED LIFE UNDERWRITING

1922 F Street, N.W.
Washington, D.C.

STATEMENT

OF

MARSHALL I. WOLPER, C.L.U., VICE CHAIRMAN, COMMITTEE ON FEDERAL LAW AND LEGISLATION, THE NATIONAL ASSOCIATION OF LIFE UNDERWRITERS, AND PRESIDENT, ASSOCIATION FOR ADVANCED LIFE UNDERWRITING

accompanied

by

W. WARREN BARBERG, C.L.U. CHAIRMAN, COMMITTEE ON FEDERAL LAW AND LEGISLATION, THE NATIONAL ASSOCIATION OF LIFE UNDERWRITERS

TO THE

SENATE LABOR SUBCOMMITTEE

U.S. SENATE

ON

S.3598

THE

RETIREMENT INCOME SECURITY

FOR EMPLOYEES ACT OF 1972

JUNE 21, 1972

WASHINGTON, D.C.

Mr. Chairman,

I am Marshall I. Wolper, Vice Chairman of the Committee on Federal Law and Legislation of the National Association of Life Underwriters (NALU), and President of the Association of Advanced Life Underwriting (AALU). I am accompanied today by W. Warren Barberg, Chairman of the Committee on Federal Law and Legislation of NALU and by counsel for both organizations. My remarks today are made on behalf of both NALU and AALU.

NALU is the largest national association of life insurance agents, many of whom are involved in the sale and administration of insured retirement plans as part of their work. NALU has approximately 112,000 members across the country. AALU, a smaller but substantial organization, is an affiliate of NALU. Membership in AALU is restricted to those NALU members who specialize in one or more fields of advanced underwriting. Most AALU members devote a substantial portion of their time to the installation, funding and administration of qualified pension and profit-sharing plans.

We support the broad purposes of S.3598 to improve the protection of benefits for pension plan participants.

We believe, however, that several important changes are necessary to make this bill both workable and fair.

I. Exemption for Small Plans.

Tremendous growth has occurred in the private pension field since the World War II days when liberal provisions of the Internal Revenue Code were enacted to encourage the establishment of qualified pension and profit-sharing plans by employers.*/ The Revenue Act of 1942 combined with other conditions existing at the time **/ had the effect of encouraging the establishment of qualified pension and profit-sharing plans primarily by large employers. Given this initial impetus, the pension field has experienced such a growth over the years that it is now encountering the problems of a "giant" industry. Most of the abuses that this Committee has uncovered, however, relate to large plans and notwithstanding the tremendous growth of the pension field, approximately 50 percent of the work force in this country are not covered by the private pension plan system.***/ Indeed, as the private pension system relates to the small employer, the field is in its infancy. Moreover, we are now at

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*/ Revenue Act of 1942.
**/ Excess Profit Tax; Wage Controls.
***/ President's Message to Congress accompanying H.R. 12272 (12/8/71).

crossroads in the retirement field, where either the small employer will be encouraged to provide pension benefits or such benefits will be replaced by social security.

In order to continue to encourage the establishment of pension plans for small employers, we request that the exemption for small employers be raised to any plan which covers less than 100 participants. An analogy to this type of exemption already exists under the Welfare and Pension Plan Disclosure Act, where detailed annual reports (Form D-2) are required only for covered plans of 100 or more participants. This existing provision recognizes that requirements which are both costly and complex, should not and need not be made applicable to small employers.

We respectfully request that the provisions of S.3598 be made inapplicable to any plans which cover less than 100 participants.

II. Eligibility and Vesting.

We believe that the eligibility requirements under S.3598 of 6 months or age 21, whichever occurs later, are too stringent. We do not believe that an employer should be obligated to begin to fund pension benefits for short-term employees. H.R. 12272, the Administration's Pension Bill, would require that employees with three or more years

of service, and employees who have attained age 30, be eligible to participate. We supported these requirements in testimony before the House Ways and Means Committee on May 9, 1972, and continue to support them here. We believe the requirements of three years of service or age 30, provide reasonable methods for "weeding out" employees who are not interested in permanent employment and/or pensions.

We also believe that the 6-month requirement would raise problems in connection with the normal procedure of using an anniversary date in qualified defined benefit pension plans. The requirement, under H.R. 10 Plans benefiting owner-employees, that a participant participate in a plan precisely at the point in which he completes three years of service has already caused considerable problems in this area. This requirement has eliminated the use of an "anniversary date" under these types of plans since under the "anniversary date" concept participation would be deemed to occur as of the anniversary date following the date on which the person completed the eligibility requirements.*/

There are several reasons for the advisability of using an anniversary date in defined benefit pension plans. First of all, the use of a single date at which people may

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*/ Rev. Rul. 70-492, 1970-2 C.B. 92.

enter the plan eliminates serious bookkeeping problems for the Company with a high turnover of employees. In addition, the cost of the plan can be determined as of a single date each year, and thus the employer can use the anniversary date as a reference date to determine the need for increasing or decreasing the company's contribution and to take other action with respect to the plan. In practice, actuarial determinations required by this bill would be made as of an anniversary date. In many cases, for similar reasons, amendments of the plan are made effective as of an anniversary date for administrative convenience.

We suggest, therefore, in the interest of administrative convenience, that any provision establishing an eligibility standard which is adopted by this Committee, permit the employer to include the employee in the plan as of the first anniversary date following the completion of the period of service, or attainment of age, required.

S.3598 would require 30% vesting after eight years of covered service with an additional 10% for each additional year reaching full vesting at fifteen years. We endorse these requirements as fair and equitable means to insure, in part, the payment of pensions which have been earned by employees. In fact the vesting schedule proposed in this

bill would resolve a number of problems associated with the "rule of 50" proposed in H.R. 12272. In our testimony before the House Ways and Means Committee on H.R. 12272 we asked for a increase in the minimum period of service or participation required before any vesting would occur, on the basis that the "rule of 50" proposed by H.R. 12272 would be extremely costly. In addition, such a rule would discourage the employment of older employees. The vesting requirement of this bill would help to resolve both of these problems. In summary, we support the vesting requirements of S.3598.

III. Funding

We endorse the objectives of S.3598 to provide meaningful minimum funding requirements. We believe that the requirement of funding of past service liability over some designated period of time is vitally needed and the absence of existing requirements in this area has made possible many of the abuses which have prevailed. The funding provisions of this bill do not, however, recognize the need for some flexibility with respect to employer contributions to pension plans. The necessity for adequate funding should, we submit, be translated into provisions which permit some flexibility in the amount to be contributed each year, but requiring that minimum general requirements are meet at stated intervals

(i.e. ten years). With respect to the funding requirements concerning normal service costs, plus a portion of initial unfunded liability, we propose that the following formula be adopted in lieu of existing §210 of the bill:

1. An employer would be obligated to contribute all normal service costs of his plan plus 1/40th of the initial unfunded liability in each year except in those years in which the employer encountered a business reversal. A year of business reversal would be defined as a year in which profits were less than 25% of the immediately preceding year's profits or less than 75% of the average profits for the immediately preceding 5 years. In a year of business reversal no funding of either normal service costs or unfunded liability would be required.
2. Notwithstanding the above, however, the employer would be required to fund all normal service costs to date plus 20% of his initial unfunded liability within 10 years after establishment of the plan. All normal service costs and 40% of initial unfunded liability would be required after 20 years. All normal service

costs and 70% of initial unfunded liability would be required after 30 years. All normal service costs plus 100% of initial unfunded liability would be required after 40 years.

In essence the above formula would require, as does S.3598, that all normal costs plus the initial unfunded liability would have to be funded in 40 years, but some flexibility would be provided for individual years.

We also believe that the adoption of the above provisions providing for flexibility within the general funding requirements which the bill proposes, would provide objective tests for most of the situations in which funding variances under Part D of Article II of the bill (providing for variances from the vesting and funding requirements of the bill) would be applied for. We are not, however, recommending the removal of provision for variances, since there will still be some unusual situations in which some variances will be necessary. The adoption of the flexibility criteria stated above, however, should reduce the need for a large number of variance requests on funding.

IV. Voluntary Portability

We strongly endorse the provisions of S.3598

providing for voluntary portability of benefits. The concept of portability is a new and exciting one and we believe that a voluntary program is an excellent way of testing the viability of this type of program.

V. Plan Termination Insurance

We agree with the general need for some form of plan termination insurance to insure vested, but unfunded, benefits for plan participants. We believe, however, that the present structure of this program will in one area, in particular, seriously discourage the establishment of qualified pension plans.

Existing concepts of qualified retirement plans carries with it the idea of a separate trust fund or annuity contract for participants. The concept that such a trust fund or annuity contract is separate from all other obligations of the employer has generally benefited employees, who alone may look to the fund for distribution of benefits. The employer, on the other hand, has been assured that his obligations would not extend beyond the fund. However, §405 of the bill would permit a recovery from the employer (to the extent of his net worth unless he is insolvent) where he terminates his plan with some vested but unfunded liabilities. The subro-

gation right of the government here intrudes upon the concept of the pension fund as separate from other obligations of the employer.

On the other hand, we realize the need for plan termination insurance from the employee's standpoint. The employee's expectation of benefits is geared towards vested rather than funded benefits and the employee's share of "funded" benefits is, in many cases, determined only in the event of a plan termination.

On balance, we support the plan termination insurance concept but submit that exemption from the recovery rights of the government, now in terms solely of insolvent employers, should be extended to employers in situations in which the plan termination is brought about through business reverses or were the employer's repayment obligations would endanger the solvency of the corporation or the jobs of the employees of the corporation.

A plan termination might be deemed to be brought about through business reverses, for example, where the profits of the company in the year of termination are less than 50% of the average profits of the company for the immediately preceeding 5 years. In addition, a repayment obligation should be deemed to endanger the solvency of the

corporation where the payment of the obligation in the year of termination would cause the net worth of the company to fall below some minimal figure, such as $500,000.

In summary of the above points we believe that the plan termination insurance provisions should not be structured in such a way that an employer who has had business reverses, would be faced with the choice of either going out of business or continuing his plan through the use of funds desperately needed as a means of reviving his profits.

We also wish to comment on the procedure set forth in §403(b)(3)(B) with respect to the establishment of new insurance rates for plan termination insurance. This provision provides that establishment of a new rate will be effective unless the House passes a resolution to the effect that it does not favor the proposed rate change within 60 session days after the proposed rates are published in the Federal Register. We submit that, in addition to this safeguard, it is important that the bill prescribe a procedure for public comments on any proposed changes in the rate structure. Such a procedure might encompass, for example, the issuance of proposed new rates in the form of Proposed Regulations issued in the Federal Register on which the public will

be given a chance to comment and on which public hearings will be held if there is sufficient interest.

VI. Actuarial Certifications by Life Insurance Companies

In several areas of the bill reference is made to a "certified actuary". §101(b)(1) of the bill would authorize the Secretary of Labor to establish standards for such actuaries. No specific reference is made to actuaries who are employed by life insurance companies.

A great wealth of actuarial talent is presently employed by various life insurance companies. In many instances of either fully or partially insured plans, the life insurance company involved makes all necessary actuarial computations. In most cases, such services do not involve additional direct charges to the employer. In view of the above, we submit that the bill should provide that any certifications required by an actuary can be made by any life insurance company.

VII. Auditing Requirements

§506(c)(3) of the bill would require an annual audit of each employee benefit fund by an independent certified or licensed public accountant. This provision is not to be construed, however, as requiring any audit of the books and records "of any bank, insurance company or other institu-

tion providing insurance, investment, or relating functions for the plan," if such books and records are already subject to periodic examination by an agency of the Federal or State government. As applied to partially insured pension plans, this provision would require an annual audit of the non-insured portion of the plan. Such a provision, as applied to small employers, would significantly increase the relative administrative costs of the plan.

If any audit of the fund is to be required, we suggest that such an audit be required only once every five years in view of (1) the significant cost to the employer and (2) the already detailed information which each employer must now submit under new Treasury Department forms 4848 and 4849 and revised forms 990-P and 990-T. These new forms, which are applicable to all funded plans of deferred compensation, have already placed a serious administrative burden and cost on the small employer. To add to this cost, the cost of an annual audit would be both unfair and unnecessary. In general, the bill would require an actuarial review only once every five years (§210(d)) and we request that an audit of the fund not be required with any greater degree of frequency.

We thank the committee for this opportunity to present the view of NALU and AALU on S.3598. Thank you.

* * *

Appendix A

To

Statement of Marshall I. Wolper On Behalf of National Association of Life Underwriters And Association for Advanced Life Underwriting, On S. 3598

Summary of Results of Survey of 500 Pension Plans Based On Sample of Approximately 100 Plans

1. Immediate Benefits on Termination of Employment. (See Chart #1, Attached)

   (a) 82% of all plans provided some benefit (i.e. Transfer of Cash Value Life Insurance Policy) to every terminated participant.

   (b) 99% of all plans provided some benefit to every terminated participant with 7 years of participation in the pension plan.

   (c) 100% of all plans provided some benefit for every terminated participant with 10 years of participation in the pension plan.

2. Full Vesting on Termination of Employment. (See Chart #2, Attached)

   (a) 22% of all plans provided full vesting to all participants terminating after designated

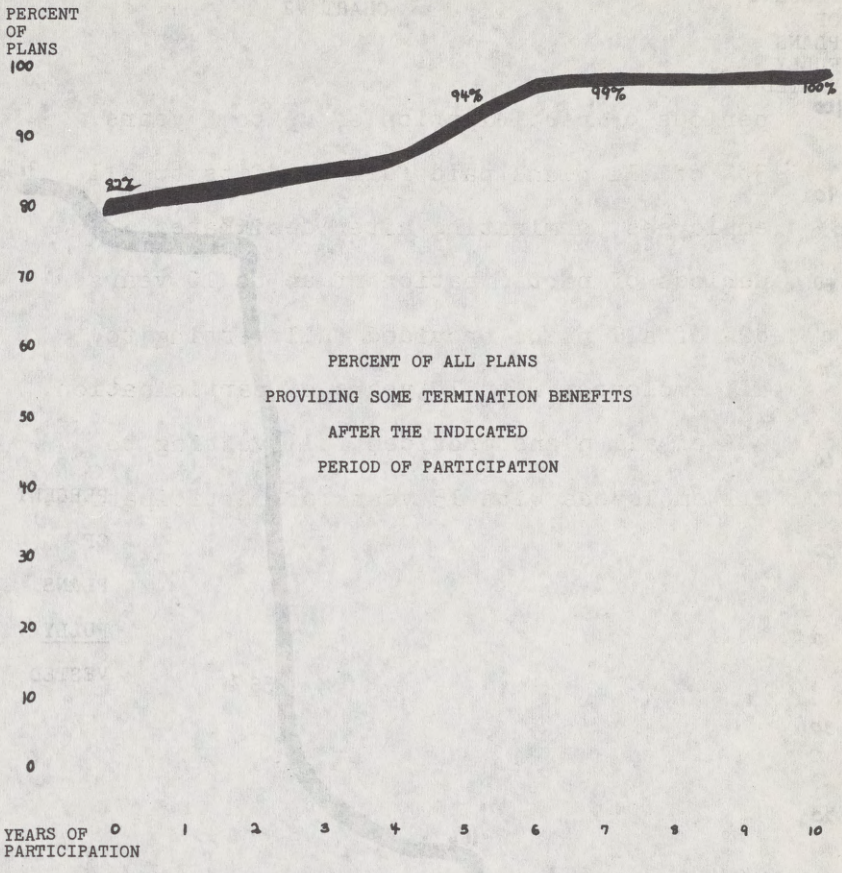
periods of participation of up to 5 years.

(b) 38% of all plans paid full benefits to all employees terminating after designated periods of participation of up to 10 years.

(c) 82% of all plans provided full vesting to all employees with 10 years of participation.

(d) 94% of all plans provided full vesting to all employees with 15 years of participation.

CHART #1


PERCENT
OF
PLANS
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30
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10
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82%
94%
99%
100%
PERCENT OF ALL PLANS
PROVIDING SOME TERMINATION BENEFITS
AFTER THE INDICATED
PERIOD OF PARTICIPATION
YEARS OF PARTICIPATION
0
1
2
3
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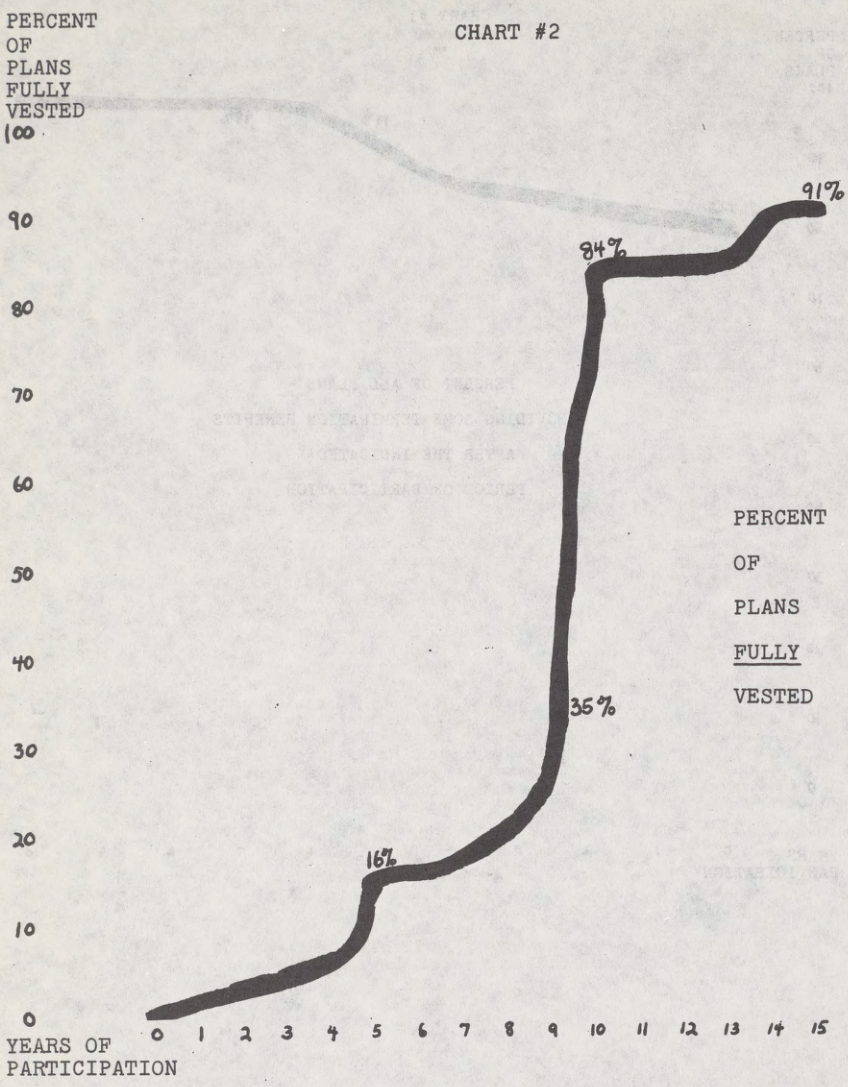
6
7
8
9
10

CHART #2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50
40
30
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0
16%
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84%
91%
PERCENT
OF
PLANS
FULLY
VESTED
0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15
YEARS OF
PARTICIPATION

ASSOCIATION FOR ADVANCED LIFE UNDERWRITING

MADELYN GUILIAN • *Executive Director*

1922 F Street, N.W., Washington, D.C. 20006 • *202/638-3122*

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July 19, 1972

Honorable Harrison A. Williams, Jr.
Chairman
Committee on Labor and Public Welfare
United States Senate
Washington, D.C. 20510

Re: S. 3598

Dear Senator Williams:

Marshall Wolper, accompanied by Warren Barberg of the National Association of Life Underwriters (NALU), testified before your Committee on June 21 on behalf of this organization (AALU) and NALU. He stated that both of those organizations supported the portability concepts reflected in S. 3598. Additionally, he noted that, where a pension plan is fully insured, there would appear to be no need for special legislative requirements for portability, since the portability concept is, in fact, inherent in fully insured plans. In effect, under fully insured plans, the covered employee simply takes with him the annuity policy which has been issued by an insurance company and which is standing to his credit at the time of pre-retirement termination of employment. He can, thus, derive the full economic benefit of the pension amounts funded for him by each of his employers.

By way of additional illustration of the manner in which this insurance based portability works, we are submitting herewith illustrations of policies which are typically used to fund pension plans. The policies have been supplied by The Equitable Life Assurance Society of the United States (Equitable), a major U.S. life insurance company. They are a pension plan

endowment policy, a defined benefit pension plan annuity and a pension plan flexible annuity. Copies of each are enclosed.

Under the pension plan endowment policy the covered employee will, at the time of retirement, receive a stated annuity. In the event of earlier death his beneficiary will receive a stated death benefit. In all events, the accumulated cash value is available for distribution to the employee in the event of death or termination of employment prior to retirement.

The defined benefit pension plan annuity similarly provides guaranteed annuities at retirement or actuarial reduced cash values in the event of pre-retirement termination of employment. It does not provide pre-retirement death benefits.

The pension plan flexible annuity does not provide the covered employee with a guaranteed return. Under the flexible annuity, the covered employee can choose to have a portion of the contribution for his benefit assigned to a separate equity accumulation account and the remaining portion assigned to an interest accumulation account. His distribution of rights are otherwise essentially the same as those pertinent to defined benefit pension plan annuities.

As I have stated, with respect to each type of annuity policy, an employee, who terminates employment prior to retirement, may receive the distribution of the policy or its cash value equivalent. In net result he can, thus, supplement the retirement benefits provided by his other employers. Furthermore, pursuant to the requirements of the Internal Revenue Code the annuity in the hands of the terminated employee-participant must be non-transferable, thus, providing an additional measure of protection against the squandering of benefits. See §401(g) IRC 1954.

I am also enclosing a summary of an actual and typical small company pension plan which has utilized the Equitable pension plan endowment policy described above. Between 1952 and 1971, 39 persons

who were covered by the plan either died, retired or left employment prior to retirement. In every single case, the terminated employee or his beneficiary received a benefit. During the 20-year period (1952-1971) there were contributed to the plan net premiums of $1,500,000 and there were paid out in benefits approximately $1,000,000, although one half of the persons who left the plan did so before attaining normal retirement age. Here is a situation, therefore, which not only illustrates the adaptability of life insurance to the needs of portability, but sharply demonstrates the fact that pension plans of small businesses do not, as I note below, require the protection of your proposed legislation.

This discussion respecting portability and the relationship to it of fully insured pension plans assumes appropriate and adequate eligibility and vesting standards. S. 3598 speaks, of course, to both of these points. Mr. Wolper expressed our views on eligibility and vesting in his testimony.

Both AALU and NALU have been following with admiration your reform efforts in the pension area. In many situations the kinds of legislative proposals you have been sponsoring are much needed. However, we caution against an application of those proposals to situations in which they would do more harm than good. As Mr. Wolper explained in his testimony, pension plans with less than 100 employee-participants should be exempted from the legislation. Less than full exemption for such plans would substantially discourage small businesses from adopting pension arrangements -- much to the detriment of the very class of persons the legislation is intended to help.

If we can be of additional assistance in bringing to your attention pertinent insurance information or if we can be helpful in any other manner, please call upon us.

Sincerely,

Gerald H. Sherman

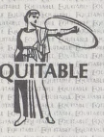
GHS:amp

PENSION PLAN FLEXIBLE ANNUITY

The Annuitant | **Register Date**

Normal Retirement Age | **Contract Number**

A Mutual Company
Organized
July 26, 1859



The EQUITABLE Life Assurance Society of the United States

1285 AVENUE OF THE AMERICAS, NEW YORK, NEW YORK

Agrees, subject to the provisions of this contract, to pay to the Annuitant a monthly annuity commencing at the Retirement Date if the Annuitant is then living. Payments will be due monthly for 10 years certain and thereafter for the remaining lifetime of the Annuitant.

At the Retirement Date the total cash value of this contract will be applied, in accordance with the Retirement Options provision on page seven, (1) to purchase a fixed annuity, or (2) to purchase a variable annuity, or (3) to purchase a fixed annuity with part of the total cash value and a variable annuity with the balance. The amount of each annuity payment will be equal to the sum of any fixed annuity payment and any variable annuity payment. Any variable annuity payments may increase or decrease in amount in accordance with the provisions of this contract, depending on the investment experience of Separate Account A.

The Retirement Date is the contract anniversary nearest the birthday on which the Annuitant attains the Normal Retirement Age shown on page three, except that if the Owner elects an Optional Retirement Date in accordance with the provision on page eight, the Retirement Date shall be the Optional Retirement Date.

Premiums are payable to the Retirement Date or until the prior death of the Annuitant, in accordance with the Premiums provision on page two. Each premium, excluding the premium for any Disability Premium Waiver provision, will be allocated to the Fixed Accumulation or to the Variable Accumulation, or will be divided between the two types of accumulation, in accordance with the Accumulation Options provision on page six.

If the Annuitant dies before the Retirement Date the Equitable agrees, subject to the provisions of this contract, that upon receipt at the Home Office of due proof of such death and surrender of this contract it will pay to the beneficiary a Death Benefit determined in accordance with the Death Benefit Before Retirement Date provision on page eight.

The provisions on the following pages are part of this contract.

SPECIMEN — Chairman of the Board

SPECIMEN — Secretary

SPECIMEN — Assistant Registrar

Deferred Life Annuity, 10 Years Certain, On A Fixed Or Variable Or Combination Fixed And Variable Basis. Death Benefit Before Retirement Date. Premiums Payable Until Retirement Date Or Until Prior Death. Annual Dividends Under Fixed Accumulation And Fixed Annuity Option Only. CASH VALUES UNDER THE VARIABLE ACCUMULATION AND ANNUITY PAYMENTS UNDER THE VARIABLE ANNUITY OPTION MAY INCREASE OR DECREASE AND ARE NOT GUARANTEED AS TO DOLLAR AMOUNT.

No. 104-95
Pension Plan
Flexible
Annuity

GUIDE TO CONTRACT PROVISIONS

	PAGE		PAGE
Premiums	2	Death Benefit Before Retirement Date	8
Separate Account A	5	Optional Modes of Settlement	9-11
Accumulation Options	6	Annuity Option	10
Dividends Under Fixed Accumulation	6	Owner	12
Cash Value	6	Assignments	12
Retirement Options	7	Beneficiary	12
Optional Retirement Date	8	General Provisions	12

Any Disability Premium Waiver provision and a copy of the application will be found following page 4.

PREMIUMS

The initial premium is shown on page three. Subsequent premiums may vary in amount within the following limits:

a. Except as otherwise approved by the Equitable, the total premiums payable with due dates in the first contract year may not exceed the greater of (i) 150% of the annual equivalent of the initial premium, and (ii) $2,500.

b. The total premiums payable with due dates in each contract year after the first may not exceed 150% of the total premiums paid with due dates in the first contract year.

c. No premium payment may be less than $20.

Premiums are payable at the Home Office or to a Cashier of the Equitable. A receipt, signed by a Vice President, the Secretary or the Treasurer and countersigned by the Cashier, will be furnished upon request. The premium due dates are as shown on page three except that upon written request and subject to the Equitable's approval premiums may be made payable annually, semi-annually, quarterly or monthly.

A premium not paid on or before its due date will be in default and its due date will be the date of default.

GRACE. A grace period of 31 days will be granted for the payment of each premium after the first. The contract will continue in force during such grace period. Any premium paid during the grace period will be allocated under the contract in accordance with the Accumulation Options provision on page six.

NONFORFEITURE BENEFIT. Upon default in the payment of a premium this contract, unless surrendered for its total cash value in accordance with the Cash Value provision, will continue in force as a paid-up deferred annuity and the Death Benefit, cash values, and annuity payments commencing at the Retirement Date will be as provided in this contract by the premiums previously paid.

REINSTATEMENT. If premiums are in default and if this contract has not been terminated by payment of its total cash value, this contract may be reinstated as a premium-paying contract during the lifetime of the Annuitant and before the Retirement Date by the resumption of premium payments. If this contract contains a Disability Premium Waiver provision and if such provision has terminated pursuant to (b) of its Termination clause, evidence of insurability satisfactory to the Equitable will be required for reinstatement of this contract with such provision.

THE ANNUITANT	RICHARD ROE	MAR 3, 1969	REGISTER DATE
NORMAL RETIREMENT AGE	65	SPECIMEN	CONTRACT NUMBER
INITIAL PREMIUM	$1,000	35 M	ISSUE AGE AND SEX
BENEFICIARY	MARGARET H. ROE, WIFE		

PREMIUM DUE DATES

INITIAL PREMIUM	DUE ON OR BEFORE DELIVERY OF THE CONTRACT
SUBSEQUENT PREMIUMS	DUE MAR 3, 1970 AND EVERY 12 MONTHS THEREAFTER BEFORE THE RETIREMENT DATE

THIS CONTRACT INCLUDES A DISABILITY PREMIUM WAIVER PROVISION AND WHILE SUCH PROVISION IS IN FORCE 2.88% OF EACH PREMIUM PAID WILL BE THE PREMIUM FOR SUCH PROVISION.

EACH PREMIUM RECEIVED, EXCLUDING THE PREMIUM FOR THE DISABILITY PREMIUM WAIVER PROVISION, WILL BE ALLOCATED AS FOLLOWS:

TO FIXED ACCUMULATION	- 50%
TO VARIABLE ACCUMULATION	- 50%

THE ABOVE ALLOCATION MAY BE CHANGED BY THE OWNER AS PROVIDED IN THE ACCUMULATION OPTIONS PROVISION.

NET PREMIUM FACTORS

FOR PREMIUMS DUE IN THE FIRST CONTRACT YEAR-	.85
FOR PREMIUMS DUE THEREAFTER-	.93

SERIES 110 W68A DATE OF ISSUE MAR 3, 1969

(Entries on this page are to be made only by the Equitable.)

DISABILITY PREMIUM WAIVER

The Equitable agrees, subject to the terms of this provision, that upon receipt of due notice and due proof that total disability of the Annuitant commenced before the contract anniversary nearest the Annuitant's 65th birthday (or before the Retirement Date, if earlier) and while this provision was in force and that such disability has existed continuously for at least six months, it will waive payment of all premiums, in the amount specified in the next paragraph, becoming due under this contract after receipt of such proof and during the continuance of such total disability until the contract anniversary nearest the Annuitant's 65th birthday (or until the Retirement Date, if earlier). The Equitable will credit as an additional premium, deemed to be received by the Equitable as a premium due as of the date of receipt of such proof, an amount equal to the premium to be waived multiplied by the number of premium due dates following the commencement of total disability and before receipt of such proof (excluding any premium due dates more than one year before receipt of written notice of claim, unless it is shown that such notice was given as soon as was reasonably possible). For the purposes of the Death Benefit Before Retirement Date, Accumulation Options, and Cash Value provisions of this contract it will be assumed that each premium waived was received by the Equitable when due. The premium due dates during a period of total disability will be the same as though total disability had not occurred and may not be changed after the commencement of total disability.

AMOUNT OF PREMIUM WAIVED. The amount of each premium waived under this provision shall be equal to the average premium as defined below. If total disability commences three years or more after the Register date, the average premium will be computed by dividing one-third of the sum of the premiums paid with due dates in the last three contract years completed before the commencement of total disability by the number of premiums due per year at the premium frequency in effect at the commencement of total disability. If total disability commences more than one year but less than three years after the Register date, the average premium will be computed on a basis consistent with the foregoing, taking account of the premiums paid with due dates in the contract year or years completed before commencement of total disability. If total disability commences within one year after the Register date, the average premium will be equal to the lesser of (i) the annual equivalent of the initial premium shown on page three divided by the number of premiums due per year at the premium frequency in effect on the date total disability commenced, or (ii) the sum of the premiums paid before the date total disability commenced divided by the number of premiums due before such date at the premium frequency in effect on such date.

TOTAL DISABILITY. Total disability means complete inability of the Annuitant, as a result of bodily injury or disease, to engage in any gainful occupation for which he is or may become reasonably fitted by education, training or experience. The entire and irrecoverable loss of the sight of both eyes, or of the use of both hands or both feet, or of one hand and one foot, will be deemed total disability.

RISKS NOT ASSUMED. No premiums will be waived if total disability

(a) resulted directly from wilfully and intentionally self-inflicted injury; or

(b) resulted from service in any military, naval or air forces of any country at war. The term "war" includes war declared or undeclared and armed aggression resisted by the military, naval or air forces of any country, international organization or combination of countries.

NOTICE OF CLAIM. Written notice of claim must be received by the Equitable at its Home Office during the lifetime of the Annuitant and during the continuance of the total disability for which claim is made. Failure to give notice as required will not invalidate or diminish any claim if it is shown not to have been reasonably possible to give such notice and that written notice was given as soon as was reasonably possible.

PROOF OF DISABILITY. Written proof that total disability has existed continuously for six months must be received by the Equitable at its Home Office not later than one year after termination of this provision. Failure to give proof as required will not invalidate or diminish any claim if it is shown not to have been reasonably possible to give such proof and that written proof was given as soon as was reasonably possible and in no event, except in the absence of legal capacity, later than two years after termination of this provision.

The Equitable shall have the right at reasonable intervals during the first two years after receipt of due proof, and thereafter once a year, to require proof of the continuance of total disability. If such proof is not furnished, or if total disability has terminated, no further premiums will be waived.

EXAMINATION OF THE ANNUITANT. The Equitable shall have the right at reasonable intervals during the first two years after receipt of due notice, and thereafter once a year, to require physical examination of the Annuitant by a medical representative of the Equitable. If the Annuitant fails to submit to any such examination no premiums will be waived.

TERMINATION. This provision shall terminate: (a) on the earlier of the Retirement Date or the contract anniversary nearest the Annuitant's 65th birthday; (b) one year after the due date of a premium in default unless before the end of such year this contract has been reinstated by the resumption of premium payments or unless benefits are allowed under this provision for a total disability existing during such year; or (c) if this contract terminates.

This provision may be terminated on any premium due date by written request satisfactory to the Equitable and the return of this contract to the Equitable at its Home Office for endorsement.

(Continued on back)

PREMIUMS. The premiums for this provision are as shown on page three. No premium will be due for this provision after it terminates.

INCONTESTABILITY. This provision will be incontestable, except for non-payment of premiums, after it has been in force, during the lifetime of the Annuitant and without the occurrence of total disability of the Annuitant, for three years from the Date of Issue shown on page three.

GENERAL PROVISIONS. Any premiums waived will not reduce any amount payable by the Equitable in any settlement of this contract. Any dividends which would otherwise become payable will be allowed as though total disability had not occurred. The premiums for this provision will be excluded in determining any cash value or death benefit under this contract.

SEPARATE ACCOUNT A

Separate Account A is a separate investment account maintained by the Equitable to which a portion of its assets has been allocated for this contract and certain other contracts. The Equitable reserves the right to withdraw from Separate Account A and allocate to another separate account assets determined by the Equitable to be associated with the class of contracts to which this contract belongs. In any such event, to the extent practicable and permissible under applicable laws and regulations, the withdrawal shall be made by withdrawing the same percentage of each investment in Separate Account A, with appropriate adjustments to avoid odd lots and fractions. On and after the date of any such withdrawal the term "Separate Account A" in this contract shall mean such other separate account to which the withdrawn assets were allocated.

The assets allocated to Separate Account A will be invested as permitted by applicable law, and the Equitable may rely conclusively on the opinion of counsel (including attorneys in its employ) as to what investments it is permitted by law to make. It is contemplated, but without limitation of the generality of the foregoing, that such assets will be invested in common stocks and equity-type investments, regardless of form, but that investments may also be made in relatively short term debt securities having maturities considered appropriate by the Equitable, and that funds may temporarily be held uninvested for such periods as the Equitable may determine.

In lieu of making such investments directly, the Equitable reserves the right to operate Separate Account A as a unit investment trust, or in any other form permitted by law, investing all or part of its assets in shares or units of a fund, the investment adviser of which would be the Equitable or controlled by the Equitable. The fund assets would be invested as provided above with respect to Separate Account A.

The Equitable reserves the right to cause the registration or deregistration of Separate Account A under the Investment Company Act of 1940, provided that such registration or deregistration is in conformity with the requirements of applicable law.

Assets of Separate Account A attributable to this contract shall be subject to a charge at the rate of 1% a year, consisting of .15% for investment management and .85% for Equitable's mortality and expense rate guarantees. The charges shall be made against the assets of Separate Account A in accordance with (a) (5) of the Net Investment Factor provision below.

The assets of Separate Account A are the property of the Equitable; however, the portion of the assets of Separate Account A equal to the reserves and other contract liabilities with respect to Separate Account A shall not be chargeable with liabilities arising out of any other business the Equitable may conduct. The Equitable reserves the right to transfer assets of Separate Account A in excess of such reserves and contract liabilities to another separate account or to the general account of the Equitable.

DEFINITIONS RELATING TO SEPARATE ACCOUNT A

VALUATION PERIOD. Each business day together with any non-business day or consecutive non-business days immediately preceding such business day will constitute a valuation period. A business day is any day on which both the Equitable's Home Office and the New York Stock Exchange are open for business and trading, respectively.

NET INVESTMENT FACTOR. The Net Investment Factor for a valuation period is (a) divided by (b), where

(a) is (1) the value of the assets in Separate Account A at the close of business of the preceding valuation period *plus* (2) the investment income and the capital gains, realized or unrealized, credited to the assets of Separate Account A in the valuation period for which the Net Investment Factor is being determined, *minus* (3) the capital losses, realized or unrealized, charged against such assets in such valuation period, *minus* (4) any amount charged against Separate Account A in such valuation period for taxes or for amounts set aside by the Equitable as a reserve for taxes attributable to the maintenance or operation of Separate Account A, *minus* (5) the daily charge, for each calendar day in such valuation period, of .002753% of the value of the assets in Separate Account A at the close of business of the preceding valuation period, for investment management and the mortality and expense rate guarantees provided under this contract;

(b) is the value of the assets in Separate Account A at the close of business of the preceding valuation period.

The value of the assets in Separate Account A, referred to above, shall be taken as their fair market value or, where there is no readily available market, their fair value, as determined by the Equitable's rules, in accordance with accepted accounting practices and applicable laws and regulations.

ACCUMULATION UNIT. The Accumulation Unit is a unit used in determining the value of an interest in Separate Account A on or before the Retirement Date.

ACCUMULATION UNIT VALUE. The Accumulation Unit Value for the valuation period which includes November 1, 1968 was $10.00. The Accumulation Unit Value for each subsequent valuation period is the Accumulation Unit Value for the immediately preceding valuation period multiplied by the Net Investment Factor for such subsequent valuation period.

ANNUITY UNIT. The Annuity Unit is a unit used in determining amounts payable from Separate Account A under the Variable Annuity Option and the Variable Benefit Options of the Optional Modes of Settlement.

ANNUITY UNIT VALUE. The Annuity Unit Value for the valuation period which includes November 1, 1968 was $1.00. The Annuity Unit Value for any subsequent valuation period is the Annuity Unit Value for the immediately preceding valuation period multiplied by the Adjusted Net Investment Factor for such subsequent valuation period. The Adjusted Net Investment Factor for a valuation period is the Net Investment Factor for such period adjusted to recognize the base net earnings rate of 3% per year used in the determination of the number of Annuity Units. Such Adjusted Net Investment Factor is equal to the Net Investment Factor reduced for each calendar day in such subsequent valuation period by .00008098 times the Net Investment Factor.

AVERAGE ANNUITY UNIT VALUE. The Average Annuity Unit Value for a calendar month is equal to the average of the Annuity Unit Values for the valuation periods ending in such month.

ACCUMULATION OPTIONS

During the period before the Retirement Date each premium received (excluding the premium for any Disability Premium Waiver provision) will be allocated to either the Fixed Accumulation or the Variable Accumulation below or will be divided between the two types of accumulations in accordance with the percentages specified on page three. The Owner may change such percentages from time to time upon written request but the change shall not take effect until filed with the Equitable at its Home Office. The percentage designated for each Option must be an integral number. Any change will apply only to premiums received coincident with or subsequent to the request for change.

FIXED ACCUMULATION. The portion of each premium allocated to the Fixed Accumulation will be multiplied by the appropriate Net Premium Factor shown on page three and the resulting net premium will be accumulated at a guaranteed interest rate of 3% per year compounded annually from the date the premium is received by the Equitable at its Home Office.

VARIABLE ACCUMULATION. The portion of each premium allocated to the Variable Accumulation will be multiplied by the appropriate Net Premium Factor shown on page three and the resulting net premium will be applied to purchase Accumulation Units whose value may increase or decrease, depending on the investment experience of Separate Account A. The number of Accumulation Units purchased is equal to the net premium divided by the Accumulation Unit Value for the valuation period during which the premium is received by the Equitable at its Home Office. The number of Accumulation Units purchased by each net premium will not change because of any subsequent change in the Accumulation Unit Value.

DIVIDENDS UNDER FIXED ACCUMULATION

The Fixed Accumulation is participating and before the Retirement Date this contract's share of divisible surplus will be determined annually by the Equitable. Dividends will be payable at the end of each contract year for which surplus has been apportioned to this contract, provided the contract is then in force, and will be applied under one of the following options as elected by the Owner.

1. CASH: Paid in cash.
2. DIVIDEND ADDITIONS. Applied to provide additional monthly annuity. (This option shall apply if no election is in force three months after the Equitable mails the dividend notice.)

The Equitable does not expect that there will be any dividend payable before this contract has been in force two years.

The Owner may surrender dividend additions for their cash value on or before the Retirement Date. The cash value of a dividend addition is the amount of the dividend accumulated from the dividend due date with interest at 3% per year compounded annually.

The additional monthly annuity provided by a dividend addition is determined from its cash value on the Retirement Date in accordance with the Retirement Options provision.

"Dividend credits" as used in this contract means the sum of the cash value of dividend additions and any outstanding dividend which has not been paid in cash or applied to dividend additions.

CASH VALUE

The total cash value of this contract is equal to the sum of (1) the Fixed Accumulation Cash Value, and (2) the Variable Accumulation Cash Value, as defined below. At any time on or before the Retirement Date while the Annuitant is living the Owner may surrender this contract for its total cash value as of the date of receipt by the Equitable at its Home Office of written request for surrender, subject to the Deferment provision.

FIXED ACCUMULATION CASH VALUE. This part of the total cash value of this contract is equal to the aggregate of the cash values for all premiums allocated to the Fixed Accumulation, increased by any existing dividend credits. The cash value for each premium so allocated is determined in accordance with the following table, which shows cash values per $1,000 of premium for whole years elapsed from the date the premium is received by the Equitable at its Home Office. Values for years beyond those shown in the table shall be computed by accumulating the last values shown in the table with interest at 3% per year compounded annually. Values for elapsed periods which include a fractional part of a year will be determined by the Equitable with allowance for the time elapsed and will be furnished on request. The values shown do not reflect dividend credits. The cash values are equal to or greater than those required by statute of the state in which this contract is delivered.

82-079 O - 72 pt. 1 - 27

CASH VALUE PROVIDED BY EACH $1,000 OF PREMIUM RECEIVED AND ALLOCATED TO THE FIXED ACCUMULATION

Whole Years From Date of Receipt of Premium	If Premium Due Date Is In First Contract Year	If Premium Due Date Is After First Contract Year	Whole Years From Date of Receipt of Premium	If Premium Due Date Is In First Contract Year	If Premium Due Date Is After First Contract Year
1	$875.50	$957.90	16	$1364.00	$1492.38
2	901.77	986.64	17	1404.92	1537.15
3	928.82	1016.24	18	1447.07	1583.26
4	956.68	1046.72	19	1490.48	1630.76
5	985.38	1078.12	20	1535.19	1679.68
6	1014.94	1110.47	21	1581.25	1730.07
7	1045.39	1143.78	22	1628.69	1781.98
8	1076.75	1178.10	23	1677.55	1835.44
9	1109.06	1213.44	24	1727.87	1890.50
10	1142.33	1249.84	25	1779.71	1947.21
11	1176.60	1287.34	26	1833.10	2005.63
12	1211.90	1325.96	27	1888.10	2065.80
13	1248.25	1365.74	28	1944.74	2127.77
14	1285.70	1406.71	29	2003.08	2191.61
15	1324.27	1448.91	30	2063.17	2257.35

VARIABLE ACCUMULATION CASH VALUE. This part of the total cash value of this contract is equal to the total number of Accumulation Units credited to this contract under the Variable Accumulation multiplied by the Accumulation Unit Value for the valuation period as of which the cash value is being determined. Such valuation period will be that which (1) in the case of surrender of this contract while the Annuitant is living, includes the date of receipt by the Equitable at its Home Office of written request for surrender; (2) in the case of the death of the Annuitant, includes the date of receipt by the Equitable at its Home Office of due proof of such death; and (3) in the case of application under the Retirement Options, includes the Retirement Date.

RETIREMENT OPTIONS

On or before the Retirement Date the Owner may elect to apply the total cash value of this contract as of the Retirement Date under either option below, or may elect to divide the total cash value between the two options. The election must be made by written notice to the Equitable at its Home Office and will become effective subject to the Deferment provision, if the Annuitant is living on the Retirement Date and the contract has not been surrendered for its total cash value. If no such election has been made, the Owner will be deemed to have elected that the Fixed Accumulation Cash Value be applied under the Fixed Annuity Option below and the Variable Accumulation Cash Value be applied under the Variable Annuity Option.

FIXED ANNUITY OPTION. Applied to purchase a fixed annuity commencing on the Retirement Date with payments due monthly for 10 years certain and thereafter for the remaining lifetime of the Annuitant. The amount of each fixed monthly annuity payment per $1,000 of cash value applied under this option will be equal to the amount of monthly instalment shown for the Annuitant's sex and age nearest birthday as of the Retirement Date in the 10 Years Certain column of the Option 3 table on page eleven.

Excess interest or other dividends, as determined annually by the Equitable, may be allowed on the fixed annuity and will be added to the annuity payment due on each anniversary of the Retirement Date.

VARIABLE ANNUITY OPTION. Applied to purchase a variable annuity commencing on the Retirement Date with payments due monthly for 10 years certain and thereafter for the remaining lifetime of the Annuitant. The amount of each of the first, second and third monthly payments will be the same as the fixed monthly annuity payment that would have been provided had the same amount of cash value been applied under the Fixed Annuity Option above. The amount of the fourth or any subsequent monthly payment will be the number of Annuity Units multiplied by the Average Annuity Unit Value for the second calendar month immediately preceding the due date of the annuity payment. The number of Annuity Units is equal to the amount of the first monthly payment under this option divided by the Annuity Unit Value for the valuation period which includes the Retirement Date. The fourth and subsequent monthly payments may increase or decrease in amount, depending on the investment experience of Separate Account A. Variable annuity payments will not be increased or decreased in amount because of mortality or expense experience.

RETIREMENT OPTIONS (Continued)

PROVISIONS RELATING TO ANNUITY PAYMENTS

PAYEE FOR ANNUITY PAYMENTS AFTER ANNUITANT'S DEATH. Subject to the Payments to Owner provision and not earlier than 31 days before the Retirement Date, the Annuitant may designate (with the right to change such designation) a payee or payees to receive any annuity payments that may become due after the Annuitant's death. A designation or change shall be made, and will take effect, in the same manner as a change of beneficiary. If at the death of the Annuitant or any payee there is no designated person living entitled to receive any remaining annuity payments due after the Annuitant's death, the Equitable will pay to the executors or administrators of the Annuitant or such payee, as the case may be, the commuted value of any remaining payments (on the basis of interest of 3% per year compounded annually) in a single sum. Each remaining variable annuity payment in such event will be assumed to be equal to the product of the number of Annuity Units and the Annuity Unit Value for the valuation period which includes the date of receipt by the Equitable at its Home Office of due proof of such death.

PAYMENTS TO OWNER. Before the Retirement Date, the Owner (if not the Annuitant's employer) may elect to have any dividends after the commencement of annuity payments, or the annuity payments together with such dividends, paid to the Owner instead of to the Annuitant or to any payee after the Annuitant's death. Such an election may be revoked by the Owner at any time. An election or revocation shall be made, and will take effect, in the same manner as a change of beneficiary.

MORTALITY AND INTEREST BASES. The instalment amounts shown for Options 3 and 5 on page eleven are determined on the basis of the ELAS 1963 Life Income Mortality Table and interest of 3% per year compounded annually.

AGE AND SEX. If the Annuitant's age or sex has been misstated, any benefits will be those which would have been purchased at the correct age and sex. Any overpayments made by the Equitable will be charged with interest at 6% per year against benefits falling due thereafter.

GENERAL. Annuity payments will be made monthly and will terminate with the last payment due before the death of the Annuitant or the end of the certain period, if later.

The Equitable will require satisfactory evidence of survival whenever an annuity payment depends upon the survival of the Annuitant.

If the total cash value of this contract on the Retirement Date is less than $2,000, the Equitable may pay the total cash value to the Owner in a single sum in lieu of the annuity payments.

OPTIONAL RETIREMENT DATE

The Owner may elect to have annuity payments commence at an Optional Retirement Date instead of at the contract anniversary nearest the birthday on which the Annuitant attains the Normal Retirement Age shown on page three. An Optional Retirement Date may be any date after the filing of the election (other than the 29th, 30th or 31st day of any month) which (a) is on or after the tenth contract anniversary, and (b) is on or before the contract anniversary nearest the Annuitant's 70th birthday, unless a later date is approved by the Equitable. Before a previously elected Optional Retirement Date, the Owner may elect to change such date to another Optional Retirement Date. Any election must be in writing and shall not take effect until filed with Equitable at its Home Office.

DEATH BENEFIT BEFORE RETIREMENT DATE

If the Annuitant dies before the Retirement Date and before the contract anniversary nearest his 70th birthday, the Death Benefit shall be the sum of (1) and (2) below.

(1) The Fixed Accumulation Cash Value or, if greater, the sum of the premiums received by the Equitable and allocated to the Fixed Accumulation reduced by the amount of any dividends paid in cash and by any other cash payments previously made by the Equitable from the Fixed Accumulation.

(2) The Variable Accumulation Cash Value or, if greater, the sum of the premiums received by the Equitable and allocated to the Variable Accumulation reduced by any cash payments previously made by the Equitable from the Variable Accumulation.

If the Annuitant dies before the Retirement Date but on or after the contract anniversary nearest his 70th birthday, the Death Benefit shall be equal to the total cash value of this contract.

The total cash value, Fixed Accumulation Cash Value, and Variable Accumulation Cash Value referred to in this provision will be determined as of the date of receipt by the Equitable at its Home Office of due proof of death of the Annuitant, subject to the Deferment provision.

OPTIONAL MODES OF SETTLEMENT

ELECTIONS

In lieu of payment in one sum, an election may be made to apply the whole or any part of the Death Benefit or total cash value under the options listed below. An election for the benefit of a payee who is not a natural person or who is acting in a fiduciary capacity, or which includes more than one of the options, may be made only with the Equitable's approval.

ELECTION AS TO DEATH BENEFIT. During the lifetime of the Annuitant, the Owner may make an election for the benefit of the beneficiary and may change or revoke a previous election. A change of beneficiary revokes any previous election. An election in effect at the death of the Annuitant may not be changed or revoked by an election made after the death of the Annuitant.

If no election is effective at the death of the Annuitant, the beneficiary in furnishing proof of such death may make an election for his own benefit, or in the case of Option 5 or 8, for the benefit of two persons, one of whom must be the beneficiary.

ELECTION AS TO TOTAL CASH VALUE. Upon surrender of this contract for its total cash value, the Owner may make an election for the benefit of the Owner or the Annuitant, or in the case of Option 5 or 8, for the benefit of two persons, one of whom must be the Owner or the Annuitant.

FIXED BENEFIT OPTIONS

Payments under the Fixed Benefit Options will not be affected by the investment experience of Separate Account A after proceeds are applied under such options.

1. DEPOSIT OPTION: Left on deposit with the Equitable with interest payable at a rate of 2½% per year. The deposit period and withdrawal rights will be as approved by the Equitable at the time of election.
2. INSTALMENT OPTION, FIXED PERIOD: Payable in equal instalments for the number of years elected (not more than 30) in an amount determined by the Table of Instalments. Rights of commutation of unpaid instalments (based on interest of 3% per year compounded annually) will be as approved by the Equitable at the time of election.
3. LIFE INCOME OPTIONS:
   A. *10 or 20 Years Certain.* Payable in instalments for the certain period elected, and continuing thereafter for the remaining lifetime of the person upon whose life the income depends.
   B. *Refund Certain.* Payable in instalments until the total amount paid (exclusive of dividends) equals the proceeds applied under this option and continuing thereafter for the remaining lifetime of the person upon whose life the income depends.

   The amount of each instalment will be determined by the Table of Instalments. Instalments shall be without the right of commutation.
4. INSTALMENT OPTION, FIXED AMOUNT: Payable in instalments until the proceeds applied, together with interest on the unpaid balance at the effective rate of 3% per year, are exhausted. Amounts of instalments and withdrawal rights will be as approved by the Equitable at the time of election.
5. JOINT AND SURVIVOR OPTION, 10 YEARS CERTAIN: Payable in instalments for ten years, and continuing thereafter while either of two persons upon whose lives the income depends is surviving. The amount of each instalment will be determined by the Table of Instalments. Instalments shall be without the right of commutation.

VARIABLE BENEFIT OPTIONS

Under Options 6, 7, and 8 below the amount of each of the first, second, and third monthly instalments will be the same as the instalment amount that would have been provided had the same proceeds been applied under Option 2 above in the case of Option 6, under Option 3A above for the corresponding certain period in the case of Option 7, and under Option 5 above in the case of Option 8. The amount of the fourth or any subsequent monthly instalment will be the number of Annuity Units multiplied by the Average Annuity Unit Value for the second calendar month immediately preceding the due date of the instalment. The number of Annuity Units is equal to the amount of the first instalment divided by the Annuity Unit Value for the valuation period which includes the due date of the first instalment. The fourth and subsequent monthly instalments may increase or decrease in amount, depending on the investment experience of Separate Account A. Instalments under a Variable Benefit Option will not be increased or decreased in amount because of mortality or expense experience.

6. INSTALMENT OPTION, FIXED PERIOD: Payable in variable instalments for the number of years elected (not more than 30). Rights of commutation of unpaid instalments will be as approved by the Equitable at the time of election and will be based on 3% per year compound interest with the remaining instalments being assumed to be equal to the number of Annuity Units multiplied by the Annuity Unit Value for the valuation period which includes the date of commutation.
7. LIFE INCOME OPTIONS, 10 OR 20 YEARS CERTAIN: Payable in variable instalments for the certain period elected and continuing thereafter for the remaining lifetime of the person upon whose life the income depends. Instalments shall be without the right of commutation.
8. JOINT AND SURVIVOR OPTION, 10 YEARS CERTAIN: Payable in variable instalments for ten years certain and continuing thereafter while either of two persons upon whose lives the income depends is surviving. Instalments shall be without the right of commutation.

GENERAL PROVISIONS OF OPTIONAL MODES OF SETTLEMENT

Interest under Option 1 will be paid annually or monthly, in accordance with the election. Instalments under the other options will be paid monthly. Deposit years under Option 1 and instalment years under the other options are measured from the date the option becomes operative and the first instalment under the other options will be due on such date.

Excess interest or other dividends may be allowed under the fixed benefit options as determined annually by the Equitable. Any such dividends will be applied to increase the payments under Option 1, the payment at the end of each instalment year under Option 2, 3 or 5, and the unpaid balance at the end of each instalment year under Option 4.

If at the death of any payee there is no designated person living entitled to receive any remaining payments, the Equitable will pay in a single sum to such payee's executors or administrators: (a) any balance remaining under Option 1 or 4, or (b) the commuted value of any remaining instalments under Option 2, 3, 5, 6, 7 or 8 (on the basis of compound interest of 3% per year with each remaining instalment under Option 6, 7 or 8 being assumed to be equal to the product of the number of Annuity Units and the Annuity Unit Value for the valuation period which includes the date of commutation).

The payee for whose benefit an option is operative may designate (with the right to change such designation) a person or persons to receive any amount which would otherwise become payable to such payee's executors or administrators.

If proceeds are applied under Option 3 or 7 for the benefit of the Annuitant, or under Option 5 or 8 for the benefit of the Annuitant and another person, the Owner (if not the Annuitant's employer) may elect, before the due date of the first instalment, to have any dividends (in the case of Option 3 or 5) after the commencement of instalments, or the instalments together with such dividends, paid to the Owner instead of to any other payee. Such an election may be revoked by the Owner at any time.

Any election, change, revocation or designation shall be made, and will take effect, in the same manner as a change of beneficiary.

If Option 3, 5, 7 or 8 is elected the Equitable will require satisfactory evidence of the age of any person upon whose life the income depends. Instalments under such options terminate with the last instalment due before the death of the person upon whose life the income depends or the end of the certain period, whichever is later.

The Equitable will require satisfactory evidence of survival whenever a payment depends upon the survival of any person.

If the amount to be applied under an option with respect to a payee is less than $2,000, or would result in an initial instalment or interest payment of less than $20, the Equitable may pay the amount to the payee in a single sum instead of applying it under the option.

If a withdrawal or commutation right under a fixed benefit option is exercised, the Equitable may defer payment for up to six months from the receipt of request.

ANNUITY OPTION

In lieu of payment in one sum, an election may be made to apply the whole or any part of the Death Benefit or total cash value under a supplementary contract providing any kind of single consideration annuity issued by the Equitable at the time of application of such proceeds, with annuity payments which are 103% of those provided on the basis of the Equitable's rates then in effect. An election for the benefit of a payee who is not a natural person or who is acting in a fiduciary capacity may be made only with the Equitable's approval.

ELECTION AS TO DEATH BENEFIT. After the death of the Annuitant, the beneficiary in furnishing proof of such death may make an election for his own benefit.

ELECTION AS TO TOTAL CASH VALUE. Upon surrender of this contract for its total cash value the Owner may make an election for the benefit of the Owner or the Annuitant. If an election is made for the benefit of the Annuitant, the Owner (if not the Annuitant's employer) may elect to have the annuity payments paid to the Owner instead of to the Annuitant. Such an election may be revoked by the Owner at any time.

Any election or revocation shall be made, and will take effect, in the same manner as a change of beneficiary. This option is not available if the amount to be applied is less than $2,000, or if annuity payments would amount to less than $20 each. The Equitable will require satisfactory evidence of the age of any person upon whose life the annuity depends.

TABLE OF INSTALMENTS UNDER OPTIONAL MODES OF SETTLEMENT FOR EACH $1,000 OF PROCEEDS

Instalment amounts for Options 3 and 5 are based on age nearest birthday on the due date of the first instalment. Option 5 instalment amounts for ages not shown, or for two males or two females, will be furnished on request.

OPTION 2		OPTION 3—LIFE INCOME (Monthly Instalment)															
Number of Years' Instalments	Monthly Instalment	AGE	10 Years Certain		20 Years Certain		Refund Certain		AGE	10 Years Certain		20 Years Certain		Refund Certain	
			Male	Female	Male	Female	Male	Female		Male	Female	Male	Female	Male	Female
		5 & under	$2.86	$2.77	$2.85	$2.77	$2.85	$2.77	45	$4.13	$3.72	$4.00	$3.67	$3.98	$3.65
1	$84.47	6	2.87	2.78	2.87	2.78	2.86	2.78	46	4.20	3.77	4.05	3.72	4.04	3.70
2	42.86	7	2.88	2.79	2.88	2.79	2.87	2.79	47	4.27	3.82	4.10	3.77	4.10	3.75
3	28.99	8	2.90	2.80	2.89	2.80	2.89	2.80	48	4.34	3.88	4.16	3.82	4.16	3.80
4	22.06	9	2.91	2.81	2.91	2.81	2.90	2.81	49	4.42	3.94	4.22	3.87	4.22	3.85
5	17.91	10	2.93	2.82	2.92	2.82	2.91	2.82	50	4.50	4.00	4.27	3.92	4.29	3.91
		11	2.94	2.84	2.94	2.83	2.93	2.83	51	4.58	4.07	4.33	3.98	4.36	3.96
		12	2.96	2.85	2.95	2.85	2.94	2.84	52	4.67	4.13	4.39	4.04	4.44	4.02
6	15.14	13	2.97	2.86	2.97	2.86	2.96	2.85	53	4.76	4.21	4.45	4.10	4.51	4.09
7	13.16	14	2.99	2.88	2.98	2.87	2.98	2.87	54	4.85	4.28	4.52	4.16	4.59	4.16
8	11.68	15	3.01	2.89	3.00	2.89	2.99	2.88	55	4.95	4.37	4.58	4.22	4.68	4.23
9	10.53	16	3.03	2.90	3.02	2.90	3.01	2.89	56	5.05	4.45	4.64	4.29	4.76	4.30
10	9.61	17	3.05	2.92	3.04	2.92	3.03	2.91	57	5.16	4.54	4.70	4.35	4.86	4.38
		18	3.07	2.93	3.06	2.93	3.05	2.92	58	5.28	4.64	4.76	4.42	4.95	4.46
		19	3.09	2.95	3.08	2.95	3.07	2.94	59	5.40	4.74	4.83	4.49	5.06	4.55
11	8.86	20	3.11	2.97	3.10	2.96	3.09	2.96	60	5.52	4.85	4.89	4.56	5.16	4.64
12	8.24	21	3.13	2.99	3.12	2.98	3.11	2.97	61	5.65	4.96	4.95	4.64	5.28	4.74
13	7.71	22	3.16	3.00	3.15	3.00	3.13	2.99	62	5.79	5.08	5.00	4.71	5.40	4.84
14	7.26	23	3.18	3.02	3.17	3.02	3.16	3.01	63	5.93	5.20	5.06	4.78	5.52	4.95
15	6.87	24	3.21	3.04	3.20	3.04	3.18	3.03	64	6.08	5.34	5.11	4.85	5.65	5.06
		25	3.24	3.06	3.22	3.06	3.21	3.05	65	6.23	5.48	5.17	4.92	5.79	5.18
16	6.53	26	3.26	3.08	3.25	3.08	3.23	3.07	66	6.39	5.62	5.21	4.99	5.94	5.31
17	6.23	27	3.29	3.11	3.28	3.10	3.26	3.09	67	6.55	5.78	5.26	5.06	6.10	5.45
18	5.96	28	3.33	3.13	3.31	3.12	3.29	3.11	68	6.71	5.94	5.30	5.12	6.26	5.59
19	5.73	29	3.36	3.15	3.34	3.14	3.32	3.13	69	6.88	6.11	5.33	5.18	6.43	5.74
20	5.51	30	3.39	3.18	3.37	3.17	3.35	3.15	70	7.06	6.29	5.37	5.24	6.62	5.91
		31	3.43	3.20	3.40	3.19	3.38	3.18	71	7.23	6.47	5.40	5.29	6.81	6.08
		32	3.46	3.23	3.44	3.22	3.41	3.20	72	7.41	6.66	5.42	5.33	7.01	6.26
21	5.32	33	3.50	3.26	3.47	3.25	3.45	3.23	73	7.59	6.86	5.44	5.37	7.23	6.46
22	5.15	34	3.54	3.29	3.51	3.27	3.48	3.26	74	7.76	7.06	5.46	5.41	7.46	6.67
23	4.90	35	3.59	3.32	3.54	3.30	3.52	3.29	75	7.94	7.26	5.47	5.43	7.71	6.89
24	4.84	36	3.63	3.35	3.58	3.33	3.56	3.32	76	8.11	7.47	5.49	5.46	7.96	7.13
25	4.71	37	3.68	3.39	3.62	3.37	3.60	3.35	77	8.28	7.68	5.49	5.47	8.24	7.39
		38	3.72	3.42	3.67	3.40	3.64	3.38	78	8.44	7.89	5.50	5.49	8.53	7.66
		39	3.78	3.46	3.71	3.43	3.68	3.41	79	8.60	8.10	5.51	5.50	8.85	7.96
26	4.59														
27	4.47	40	3.83	3.50	3.75	3.47	3.73	3.45	80	8.74	8.30	5.51	5.50	9.18	8.28
28	4.37	41	3.88	3.54	3.80	3.51	3.77	3.49	81	8.88	8.50	5.51	5.51	9.53	8.62
29	4.27	42	3.94	3.58	3.85	3.55	3.82	3.53	82	9.00	8.68	5.51	5.51	9.91	8.99
30	4.18	43	4.00	3.62	3.90	3.59	3.87	3.57	83	9.11	8.84	5.51	5.51	10.32	9.39
		44	4.07	3.67	3.95	3.63	3.93	3.61	84	9.21	9.00	5.51	5.51	10.75	9.81
									85 & over	9.30	9.13	5.51	5.51	11.21	10.29

OPTION 5—JOINT AND SURVIVOR, 10 YEARS CERTAIN (Monthly Instalment)

Male Age	Female Age																	
	45	50	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	75
45	$3.49	$3.62	$3.74	$3.77	$3.79	$3.81	$3.83	$3.86	$3.88	$3.89	$3.91	$3.93	$3.95	$3.96	$3.98	$3.99	$4.01	$4.02	$4.07
50	3.55	3.72	3.89	3.93	3.96	3.99	4.02	4.05	4.08	4.11	4.14	4.17	4.20	4.22	4.25	4.27	4.29	4.32	4.40
55	3.61	3.81	4.03	4.07	4.12	4.16	4.21	4.25	4.29	4.34	4.38	4.42	4.46	4.50	4.54	4.58	4.61	4.65	4.79
56	3.62	3.82	4.05	4.10	4.14	4.19	4.24	4.29	4.33	4.38	4.43	4.47	4.52	4.56	4.60	4.64	4.68	4.72	4.87
57	3.62	3.84	4.07	4.12	4.17	4.22	4.27	4.32	4.37	4.42	4.47	4.52	4.57	4.62	4.66	4.70	4.75	4.79	4.96
58	3.63	3.85	4.10	4.15	4.20	4.25	4.31	4.36	4.41	4.47	4.52	4.57	4.62	4.67	4.72	4.77	4.82	4.86	5.05
59	3.64	3.86	4.12	4.17	4.23	4.28	4.34	4.40	4.45	4.51	4.56	4.62	4.68	4.73	4.78	4.83	4.88	4.93	5.14
60	3.65	3.87	4.14	4.19	4.25	4.31	4.37	4.43	4.49	4.55	4.61	4.67	4.73	4.79	4.84	4.90	4.95	5.01	5.24
61	3.65	3.89	4.16	4.22	4.28	4.34	4.40	4.46	4.53	4.59	4.65	4.72	4.78	4.84	4.90	4.97	5.02	5.08	5.33
62	3.66	3.90	4.18	4.24	4.30	4.36	4.43	4.49	4.56	4.63	4.70	4.76	4.83	4.90	4.96	5.03	5.09	5.16	5.43
63	3.66	3.91	4.19	4.26	4.32	4.39	4.45	4.52	4.59	4.66	4.74	4.81	4.88	4.95	5.02	5.09	5.16	5.23	5.53
64	3.67	3.92	4.21	4.27	4.34	4.41	4.48	4.55	4.63	4.70	4.78	4.85	4.93	5.00	5.08	5.16	5.23	5.30	5.63
65	3.67	3.92	4.23	4.29	4.36	4.43	4.51	4.58	4.66	4.73	4.81	4.89	4.97	5.06	5.14	5.22	5.30	5.38	5.73
66	3.68	3.93	4.24	4.31	4.38	4.45	4.53	4.61	4.69	4.77	4.85	4.93	5.02	5.10	5.19	5.28	5.36	5.45	5.84
67	3.68	3.94	4.25	4.32	4.40	4.47	4.55	4.63	4.71	4.80	4.88	4.97	5.06	5.15	5.24	5.33	5.43	5.52	5.94
68	3.69	3.95	4.27	4.34	4.41	4.49	4.57	4.65	4.74	4.83	4.92	5.01	5.10	5.20	5.29	5.39	5.49	5.58	6.04
69	3.69	3.95	4.28	4.35	4.43	4.51	4.59	4.67	4.76	4.85	4.95	5.04	5.14	5.24	5.34	5.44	5.55	5.65	6.14
70	3.69	3.96	4.29	4.36	4.44	4.52	4.61	4.69	4.78	4.88	4.97	5.07	5.18	5.28	5.39	5.49	5.60	5.71	6.24
75	3.71	3.98	4.33	4.41	4.49	4.58	4.67	4.77	4.87	4.98	5.09	5.20	5.32	5.45	5.57	5.70	5.84	5.98	6.68

OWNER

The Owner is as specified in the application unless otherwise endorsed on this contract by the Equitable. The Owner may exercise all rights and take any other action agreed to by the Equitable in connection with this contract (including changing the ownership) only while the Annuitant is living, unless otherwise specifically provided in this contract. Exercise of the rights of ownership shall not require the concurrence of any person whose interest at the time of such exercise is that of a contingent or successor owner, or of any other person referred to in this contract.

The Equitable may deal with any trustee Owner, or any successor trustee, proof of whose appointment is on file with the Equitable, in accordance with the terms of this contract without regard to the provisions of any trust agreement, including any modification, amendment, or supplemental agreement. Nothing in any such trust or other agreement shall in any way be construed to enlarge, change, vary or in any way affect the obligations of the Equitable as expressly provided in this contract. The Equitable shall not be responsible for any failure of a trustee to perform the duties of a trustee, nor for the application or disposition of any money paid to a trustee. Such payment shall fully discharge the Equitable for the amount so paid.

TRANSFER TO ANNUITANT. On or before the Retirement Date, if no assignment of this contract other than an assignment to the Equitable is in force and on file with the Equitable, the Owner may change the ownership of this contract to make the Annuitant the Owner, but the change will not take effect until endorsed on this contract by the Equitable.

ASSIGNMENTS

If the Owner is the Annuitant or the Annuitant's employer, this contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose to any person other than the Equitable.

If the Owner is other than the Annuitant or the Annuitant's employer, the Owner may assign this contract before the Retirement Date, but no assignment of this contract will bind the Equitable or be deemed to be in force as to it unless in writing and until filed at the Equitable's Home Office. The Equitable assumes no responsibility for the validity of any assignment.

If the terms of the assignment permit, an assignee may make or change an election under the Dividends Under Fixed Accumulation provision, and may surrender this contract in accordance with the Cash Value provision, and the Equitable may pay to an assignee, in a single sum, any amount claimed by the assignee to be payable under the terms of the assignment. An assignee cannot change the beneficiary nor make an election under any other provision of this contract. If an assignment of this contract is in force and on file with the Equitable, such a change or election may be made in accordance with the provisions of this contract without the consent of the assignee, but subject to the terms of the assignment. Any amount payable which is not claimed by the assignee shall be payable in accordance with the provisions of this contract to the person or persons who would have been entitled to the amount then payable had there been no assignment outstanding .

No sum payable under this contract to a payee other than the Owner may be assigned or encumbered by such payee and, to the extent permitted by law, no such sum shall in any way be subject to any legal process to subject the same to the payment of any claim against such payee.

BENEFICIARY

The beneficiary is as designated in the application unless changed. The Owner may change the beneficiary from time to time during the lifetime of the Annuitant and before the Retirement Date, by written notice to the Equitable, but any change will be effective only if it is approved by the Equitable. Upon approval, the change will take effect as of the date the written notice was signed, whether or not the Annuitant is living at the time of approval, but without further liability as to any payment or other settlement made by the Equitable before approval.

Unless otherwise specified in the designation, if two or more persons are designated as beneficiary, the beneficiary will be the designated person or persons who survive the Annuitant, and if more than one survive, they will share equally.

If the executors or administrators of any person are not designated as beneficiary, any proceeds for which there is no designated beneficiary surviving at the death of the Annuitant before the Retirement Date will be payable in a single sum to the children of the Annuitant who survive the Annuitant in equal shares, or should none survive, then to the Annuitant's executors or administrators.

GENERAL PROVISIONS

THE CONTRACT. This contract is granted in consideration of payment of the initial premium. This contract and the application (a copy of which is attached at issue) constitute the entire contract.

All statements made in the application shall be deemed representations and not warranties. No statement shall avoid this contract or be used in defense of a claim unless contained in the written application.

This contract may not be modified, nor may any of the Equitable's rights or requirements be waived, except in writing signed by a duly authorized officer of the Equitable.

All sums payable by the Equitable under this contract are payable at its Home Office in the City of New York.

The rights of the Equitable under this contract may be exercised at any time and from time to time.

GENERAL PROVISIONS (Continued)

CONTRACT YEARS AND ANNIVERSARIES. The first contract year will begin on the Register date and subsequent contract years on anniversaries of the Register date (referred to as contract anniversaries).

INCONTESTABILITY. Except as to any Disability Premium Waiver provision, this contract will be incontestable, except for non-payment of premiums, after it has been in force during the lifetime of the Annuitant for two years from the Date of Issue shown on page three.

DEFERMENT. If this contract is surrendered while the Annuitant is living, the payment of the Fixed Accumulation Cash Value may be deferred by the Equitable for up to six months after receipt of written request for surrender. Interest at the rate of 3% per year will be allowed on any such cash value payment deferred for 30 days or more.

The payment of the Variable Accumulation Cash Value will be made within seven days after receipt of written request for surrender during the lifetime of the Annuitant or of due proof of death of the Annuitant, except as provided in this provision.

The Equitable reserves the right to defer determination and payment of the Variable Accumulation Cash Value, or application of any amount under the Variable Annuity Option or the Variable Benefit Options of the Optional Modes of Settlement, until seven days after the end of (1) any period when the sale of securities or the determination of the Accumulation Unit Value or the Annuity Unit Value is not reasonably practicable because an emergency, as defined by the Securities and Exchange Commission, exists, or the New York Stock Exchange is closed or trading on such exchange is restricted, or (2) any other period during which the Securities and Exchange Commission may by order permit postponement for the protection of persons having interests in Separate Account A.

ANNUAL NOTICE. Each contract year after the first and before the Retirement Date the Equitable will furnish the Owner with a notice showing as of a specified recent date (1) the Fixed Accumulation Cash Value, (2) the total number of Accumulation Units credited under the Variable Accumulation, and (3) the Accumulation Unit Value. After the Retirement Date the Equitable will notify the Owner of the number of Annuity Units and the Average Annuity Unit Value used in determining the amount of each variable annuity payment, if any.

NON-QUALIFICATION. In the event that this contract fails to qualify as a "qualified pension, profit sharing or annuity contract", the Equitable shall have the right, upon receiving notice of such fact, to transfer as of the date of receipt of such notice, any Variable Accumulation Cash Value for this contract to the Fixed Accumulation less a deduction for the appropriate part attributable to this contract of any Federal income tax payable by Equitable which would not have been payable if this contract had been a "qualified pension, profit sharing or annuity contract." Thereafter, the Variable Accumulation, the Variable Annuity Option and the Variable Benefits of the Optional Modes of Settlement will not be available under this contract. The Equitable reserves the right to require proof of such contract's qualification under the Internal Revenue Code prior to commencement of any variable annuity or variable instalment benefit. "Qualified pension, profit sharing, or annuity contract" means any contract in this form which implements a plan or agreement which meets the requirements for qualification under Sections 401 or 403 (a) of said Code or is being purchased under Section 403 (b) for an employee by an organization described in Section 501 (c) (3) and exempt from taxation under Section 501 (a), or is being purchased under Section 403 (b) for an employee by a public school described in Sections 403 (b) (1) (A) (ii) and 151 (e) (4). As used in this contract, all references to sections of the Internal Revenue Code means said sections as now or hereafter amended, or any corresponding provisions of prior or subsequent United States Revenue laws.

The EQUITABLE Life Assurance Society of the United States

1285 AVENUE OF THE AMERICAS, NEW YORK, NEW YORK



PENSION PLAN FLEXIBLE ANNUITY

Deferred Life Annuity, 10 Years Certain, On A Fixed Or Variable Or Combination Fixed and Variable Basis. Death Benefit Before Retirement Date. Premiums Payable Until Retirement Date Or Until Prior Death. Annual Dividends Under Fixed Accumulation and Fixed Annuity Option Only. CASH VALUES UNDER THE VARIABLE ACCUMULATION AND ANNUITY PAYMENTS UNDER THE VARIABLE ANNUITY OPTION MAY INCREASE OR DECREASE AND ARE NOT GUARANTEED AS TO DOLLAR AMOUNT.

No. 104-95

SPECIMEN POLICY

NOTE — Because of variations in state policy form requirements, the policy as actually issued may differ somewhat from this specimen policy.

DEFINED BENEFIT PENSION PLAN ANNUITY

The Annuitant

Monthly Annuity

Normal Retirement Age

Register Date

Contract Number

Issue Age & Sex

A Mutual Company
Organized
July 26, 1859



The EQUITABLE Life Assurance Society of the United States

1285 AVENUE OF THE AMERICAS, NEW YORK, NEW YORK 10019

Agrees, subject to the provisions of this contract, to pay to the Annuitant the monthly annuity shown on page three commencing at the Normal Retirement Date if the Annuitant is then living and premiums have been duly paid to that date. Payments will be due monthly for ten years certain and thereafter for the remaining lifetime of the Annuitant.

The Normal Retirement Date is the contract anniversary nearest the birthday on which the Annuitant attains the Normal Retirement Age shown on page three.

In lieu of the annuity commencing at the Normal Retirement Date, an election may be made in accordance with the Optional Retirement Date provision to have annuity payments begin on an Optional Retirement Date. The Retirement Date referred to in this contract is the Normal Retirement Date, or, if elected, the Optional Retirement Date.

DEATH BENEFIT BEFORE RETIREMENT DATE. Upon receipt of due proof that the Annuitant died before the Retirement Date, upon surrender of this contract, and if all premiums due before such death have been duly paid, the Equitable agrees, subject to the provisions of this contract, to pay to the beneficiary a Death Benefit equal to the tabular cash value as of the date to which premiums have been duly paid, except that if the Annuitant dies before the Retirement Date and before the contract anniversary nearest his 70th birthday, the Death Benefit shall not be less than the sum of the premiums due and paid (excluding premiums for any disability premium waiver benefit).

Premiums as shown on page three are payable from the Register Date to the Retirement Date or until the prior death of the Annuitant.

The provisions on the following pages are part of this contract.

SPECIMEN **President**

SPECIMEN **Secretary**

SPECIMEN **Assistant Registrar**

No. 112-75
Defined Benefit Pension Plan Annuity

Deferred Life Annuity Ten Years Certain. Optional Retirement Dates. Death Benefit Before Retirement Date. Premiums Payable Until Retirement Date Or Until Prior Death. Annual Dividends Before Retirement Date.

GUIDE TO CONTRACT PROVISIONS

	PAGE		PAGE
Owner	2	Optional Modes of Settlement	6-8
Assignments	2	Cash Value	9
Beneficiary	5	Options on Lapse	9
Premiums	5	Annuity Option	9
Grace	5	Optional Retirement Date	10
Reinstatement	5	Provisions Relating to Annuity Payments	10
Dividends Before the Retirement Date	5	Optional Termination of Contract	10
General Provisions	6		

Additional benefit provisions, if any, and a copy of the application will be found following page four.

OWNER

The Owner is as specified in the application unless otherwise endorsed on this contract by the Equitable. The Owner may exercise all rights and take any other action agreed to by the Equitable in connection with this contract (including changing the ownership) only while the Annuitant is living, unless otherwise specifically provided in this contract. Exercise of the rights of ownership shall not require the concurrence of any person whose interest at the time of such exercise is that of a contingent or successor owner, or of any other person referred to in this contract.

The Equitable may deal with any employer Owner or trustee Owner, or any successor employer Owner or successor trustee, proof of whose appointment is on file with the Equitable, in accordance with the terms of this contract without regard to the provisions of any plan or trust agreement, including any modification, amendment, or supplement thereto. Nothing in any such trust or other agreement shall in any way be construed to enlarge, change, vary or in any way affect the obligations of the Equitable as expressly provided in this contract. The Equitable shall not be responsible for any failure of an employer Owner to act in accordance with the terms of any applicable plan agreement or of a trustee to perform the duties of a trustee, nor for the application or disposition of any money paid to an employer or trustee. Such payment shall fully discharge the Equitable for the amount so paid.

TRANSFER TO ANNUITANT. On or before the Retirement Date, if no assignment of this contract other than an assignment to the Equitable is in force and on file with the Equitable, the Owner may change the ownership of this contract to make the Annuitant the Owner, but the change will not take effect until endorsed on this contract by the Equitable.

ASSIGNMENTS

If the Owner is the Annuitant or the Annuitant's employer, this contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose to any person other than the Equitable.

If the Owner is other than the Annuitant or the Annuitant's employer, the Owner may assign this contract before the Retirement Date but no assignment of this contract will bind the Equitable or be deemed to be in force as to the Equitable unless in writing and until filed at the Equitable's Home Office. The Equitable assumes no responsiblity for the validity of any assignment.

So long as an assignment remains in force, the rights of the Owner and of any other person referred to in this contract shall be subordinate to those of the assignee but shall not otherwise be affected by the assignment.

The Equitable may pay to an assignee, in a single sum, any amount claimed by the assignee to be payable under the terms of the assignment. Any amount payable which is not claimed by the assignee shall be payable in accordance with the terms of the contract to the person or persons who would have been entitled to the amount then payable had there been no assignment outstanding.

An assignee cannot change the beneficiary nor make an election under the Optional Modes of Settlement or Annuity Option provisions. If an assignment of this contract is on file with the Equitable, such a change or election may be made without the consent of the assignee, but the rights of the beneficiary shall be subordinate to those of the assignee.

No sum payable under this contract to a payee other than the Owner may be assigned or encumbered by such payee and, to the extent permitted by law, no such sum shall in any way be subject to any legal process to subject the same to the payment of any claim against such payee.

DATE OF ISSUE JAN 1, 1971

THE ANNUITANT	RICHARD ROE	JAN 1, 1971	REGISTER DATE
MONTHLY ANNUITY	$100.00 COMMENCING AT NORMAL RETIREMENT DATE	SPECIMEN	CONTRACT NUMBER
NORMAL RETIREMENT AGE	65	35 M	ISSUE AGE & SEX
BENEFICIARY	MARGARET H. ROE, WIFE		

********** PREMIUM AMOUNTS AND DUE DATES **********

FIRST PREMIUM	$349.70
SUBSEQUENT PREMIUMS	$349.70 DUE JAN 1, 1972 AND EVERY 12 MONTHS THEREAFTER.

******** TABLE OF MONTHLY ANNUITY PAYMENTS AT OPTIONAL RETIREMENT DATES **********

OPTIONAL RETIREMENT AGE	AMOUNT	OPTIONAL RETIREMENT AGE	AMOUNT	OPTIONAL RETIREMENT AGE	AMOUNT
60	$ 68.50	64	$ 93.00	68	$124.40
61	74.10	65	100.00	69	133.50
62	79.90	66	107.80	70	143.30
63	86.20	67	115.80		

********** TABLE OF VALUES **********

END OF CONTRACT YEAR	TABULAR CASH VALUE	MONTHLY PAID-UP ANNUITY AT NORMAL RETIREMENT DATE	END OF CONTRACT YEAR	TABULAR CASH VALUE	MONTHLY PAID-UP ANNUITY AT NORMAL RETIREMENT DATE
1	$ 310	$ 4.60	13	$ 5,200	$ 54.10
2	660	9.50	14	5,690	57.50
3	1,010	14.10	15	6,190	60.80
4	1,380	18.70	16	6,710	63.90
5	1,750	23.10	17	7,250	67.10
6	2,140	27.40	18	7,800	70.10
7	2,540	31.60	19	8,370	73.00
8	2,950	35.60	20	8,960	75.90
9	3,370	39.50	AGE 60	12,160	88.80
10	3,810	43.40	AGE 62	13,580	93.50
11	4,260	47.10	AGE 65	15,870	
12	4,720	50.60			

THE VALUES ABOVE WILL BE INCREASED BY ANY DIVIDEND CREDITS.
THE NONFORFEITURE FACTOR IS $32.525

(Entries on this page are to be made only by the Equitable.)

BENEFICIARY

The beneficiary is as designated in the application unless changed. The Owner may change the beneficiary from time to time during the lifetime of the Annuitant and before the Retirement Date, by written notice in a form satisfactory to the Equitable. The change will, upon recording at the Equitable's Home Office, take effect as of the time the written notice was signed, whether or not the Annuitant is living at the time of recording, but without further liability as to any payment or other settlement made by the Equitable before recording the change.

Unless otherwise specified in the designation, if two or more persons are designated as beneficiary, the beneficiary will be the designated person or persons who survive the Annuitant, and if more than one survive, they will share equally.

Any proceeds for which there is no designated beneficiary surviving at the death of the Annuitant before the Retirement Date will be payable in a single sum to the children of the Annuitant who survive the Annuitant, in equal shares, or should none survive, then to the Annuitant's executors or administrators.

PREMIUMS

Premiums are payable from the Register Date to the Retirement Date, but no premium will fall due after the death of the Annuitant.

Premiums are payable on or before their duedates at the Home Office or to an Equitable premium collection office. A receipt, signed by a Vice President, the Secretary or the Treasurer, will be furnished upon request.

Premiums are as shown on page three except that by written request premiums may be made payable at a different frequency allowed by the Equitable at the Equitable's applicable rates provided each premium payment is at least $10. If the request is applicable to the first premium, it must be made on or before the payment of that premium and delivery of this contract. Requests made after the first premium has been paid are subject to the Equitable's approval.

A premium not paid on or before its due date will be in default, and its due date will be the date of default. Upon default this contract will lapse and its benefits will cease as of the date of default, except as stated in the Grace and Options on Lapse provisions.

GRACE

A grace period of 31 days will be granted for the payment of each premium after the first. The contract will continue in force during the grace period but if the Annuitant dies on the due date or during the grace period, the premium then due, if unpaid, will be deducted from the proceeds.

REINSTATEMENT

If premiums are in default and if this contract has not been terminated by payment of its cash value, it may be reinstated during the lifetime of the Annuitant within three years from the date of default and before the Retirement Date, upon payment of all overdue premiums with interest at 6% compounded annually. If this contract contains a Disability Premium Waiver provision, evidence of insurability satisfactory to the Equitable will be required as a condition of reinstatement with such provision.

DIVIDENDS BEFORE THE RETIREMENT DATE

Before the Retirement Date this contract is a participating contract and its share of divisible surplus will be determined annually by the Equitable. Dividends will be payable at the end of each contract year for which surplus has been apportioned to this contract, provided the contract is then in force, and will be applied under one of the following options as elected by the Owner.

1. CASH: Paid in cash.

2. PREMIUM PAYMENT: Applied toward payment of any premium then due if the remainder of the premium is duly paid.

3. DIVIDEND ADDITIONS: Applied as a net single premium to provide a paid-up additional monthly annuity commencing at the Retirement Date with a death benefit before the Retirement Date equal to the reserve. If there is a change of the Retirement Date, the Equitable will convert any dividend additions standing to the credit of this contract to a paid-up additional monthly annuity commencing at the new Retirement Date and having the same reserve. (This option shall apply if no election is in force three months after the Equitable mails the dividend notice.)

The Equitable does not expect that there will be any dividend payable before the end of the second contract year.

On or before the Retirement Date, the Owner may surrender dividend additions for their cash value, which is equal to the reserve.

Net single premiums and reserves referred to in this provision will be determined on mortality and interest bases consistent with those specified in the Basis of Computation provision.

"Dividend credits" as used in this contract means the cash value of dividend additions increased by any outstanding dividend which has not been applied under one of the above options.

At the death of the Annuitant before the Retirement Date the death benefit under any existing dividend additions and any dividend then payable (including any pro rata post-mortem dividend) will be payable in the same manner as the Death Benefit described on the face.

Upon lapse of this contract, any existing dividend credits will be applied in accordance with the Options on Lapse provision and will then cease.

GENERAL PROVISIONS

THE CONTRACT. This contract is granted in consideration of payment of the required premiums. This contract and the application (a copy of which is attached at issue) constitute the entire contract.

All statements made in the application shall be deemed representations and not warranties. No statement shall avoid this contract or be used in defense of a claim unless contained in the application.

This contract may not be modified, nor may any of the Equitable's rights or requirements be waived, except in writing signed by the President, a Vice President, the Secretary or the Treasurer of the Equitable.

All sums payable by the Equitable under this contract are payable at its Home Office in the City of New York.

CONTRACT YEARS AND ANNIVERSARIES. The first contract year will begin on the Register Date and subsequent contract years on anniversaries of the Register Date (referred to as contract anniversaries).

AGE AND SEX. If the Annuitant's age or sex has been misstated, any benefits will be such as the premium paid would have purchased at the correct age and sex. Any overpayments made by the Equitable will be charged with interest at 6% per year against benefits falling due thereafter.

DEFERMENT. The payment of a cash value or termination value may be deferred by the Equitable for up to six months after the receipt of request. Interest at the rate of 3% per year will be allowed on any such payment deferred for 30 days or more.

BASIS OF COMPUTATION. The tabular cash value at the end of a contract year equals the excess of the present value at compound interest of 3% per year of the tabular cash value for the latest Optional Retirement Date over the present value of an annual annuity certain due computed at compound interest of 3% per year of the non-forfeiture factor (the amount of which is shown in the Table of Values for each $10 of monthly annuity commencing at the Normal Retirement Date) and for the number of years remaining until the latest Optional Retirement Date. The tabular cash value on the latest Optional Retirement Date is equal to the amount required to provide the monthly annuity commencing on that date, as shown on page three. The amount of monthly annuity commencing at the Normal Retirement Date or at any Optional Retirement Date, in accordance with the Provisions Relating to Annuity Payments, is determined on the basis of the ELAS 1971 Life Income Mortality Table and compound interest of 3¼% per year.

The cash values and paid-up annuity benefits are equal to or greater than those required by statute of the state in which this contract is delivered.

OPTIONAL MODES OF SETTLEMENT

ELECTIONS

In lieu of payment in one sum, an election may be made to apply the whole or any part of the Death Benefit or cash value under the options on page seven. An election for the benefit of a payee who is not a natural person or who is acting in a fiduciary capacity, or which includes more than one of the options, may be made only with the Equitable's approval.

ELECTION AS TO DEATH BENEFIT. During the lifetime of the Annuitant, the Owner may make an election for the benefit of the beneficiary and may change or revoke a previous election. A change of beneficiary revokes any previous election. An election in effect at the death of the Annuitant may not be changed or revoked by an election made after the death of the Annuitant.

If no election is effective at the death of the Annuitant, the beneficiary may then make an election for his own benefit, or in the case of Option 5, for the benefit of two persons, one of whom must be the beneficiary.

ELECTION AS TO CASH VALUE. Upon surrender of this contract for its cash value, the Owner may make an election for the benefit of the Owner or the Annuitant, or in the case of Option 5, for the benefit of two persons, one of whom must be the Owner or the Annuitant.

OPTIONAL MODES OF SETTLEMENT (Continued)

OPTIONS

1. DEPOSIT OPTION: Left on deposit with the Equitable with interest payable at a rate of 3% per year. The deposit period and withdrawal rights and rights to change to another option will be as approved by the Equitable at the time of election.

2. INSTALMENT OPTION, FIXED PERIOD: Payable in equal instalments for the number of years elected (not more than 30) in an amount determined by the Table of Instalments. Rights of commutation of unpaid instalments (based on interest of 3% per year compounded annually) will be as approved by the Equitable at the time of election.

3. LIFE INCOME OPTIONS:

   A. *10 or 20 Years Certain.* Payable in instalments for the certain period elected, and continuing thereafter for the remaining lifetime of the person upon whose life the income depends.

   B. *Refund Certain.* Payable in instalments until the total amount paid equals the proceeds applied under this option and continuing thereafter for the remaining lifetime of the person upon whose life the income depends.

   The amount of each instalment will be determined by the Equitable at the time of payment of the first instalment but will not be less per $1000 of proceeds than the Minimum Monthly Instalment shown in the Table of Instalments. Instalments shall be without the right of commutation.

4. INSTALMENT OPTION, FIXED AMOUNT: Payable in instalments until the proceeds applied, together with interest on the unpaid balance at the effective rate of 3% per year, are exhausted. Amounts of instalments and withdrawal rights will be as approved by the Equitable at the time of election.

5. JOINT AND SURVIVOR OPTION, 10 YEARS CERTAIN: Payable in instalments for ten years, and continuing thereafter while either of two persons upon whose lives the income depends is surviving. The amount of each instalment will be determined by the Equitable at the time of payment of the first instalment but will not be less per $1000 of proceeds than the Minimum Monthly Instalment shown in the Table of Instalments. Instalments shall be without the right of commutation.

GENERAL PROVISIONS

Interest under Option 1 and instalments under Options 2 and 4 will be paid annually, semi-annually, quarterly or monthly, in accordance with the election. Instalments under Options 3 and 5 will be paid monthly. Deposit years under Option 1 and instalment years under the other options are measured from the date the option becomes operative, and the first instalment under the other options will be due on such date.

Excess interest or other dividends may be allowed under Options 1, 2 and 4 as determined annually by the Equitable. Any such dividends will be applied to increase the payments under Option 1, the payment at the end of each instalment year under Option 2, and the unpaid balance at the end of each instalment year under Option 4. Options 3 and 5 are nonparticipating.

If at the death of any payee there is no designated person living entitled to receive any remaining payments, the Equitable will pay in a single sum to such payee's executors or administrators: (a) any balance left with the Equitable under Option 1 or 4, or (b) the commuted value of any remaining instalments under Option 2, 3 or 5 on the basis of compound interest of 3% per year under Option 2 and 3¼% per year under Options 3 and 5 except that if the amount of instalments under Option 3 or 5 is greater than the amount determined in accordance with the Table of Instalments, the commutation interest rate will be that associated with the more favorable amount.

The payee for whose benefit an option is operative may designate (with the right to change such designation) a person or persons to receive any amount which would otherwise become payable to such payee's executors or administrators.

If proceeds are applied under Option 3 for the benefit of the Annuitant, or under Option 5 for the benefit of the Annuitant and another person, the Owner may elect, before the due date of the first instalment, to have the instalments paid to the Owner instead of to any other payee. Such an election may be revoked by the Owner at any time.

Any election, change, revocation or designation shall be made, and will take effect, in the same manner as a change of beneficiary.

If Option 3 or 5 is elected the Equitable will require satisfactory evidence of the age of any person upon whose life the income depends. Instalments under Option 3 or 5 terminate with the last instalment due before the death of the person upon whose life the income depends or the end of the certain period, whichever is later.

The Equitable will require satisfactory evidence of survival whenever a payment depends upon the survival of any person.

If instalments or interest payments to any payee would amount to less than $20 each, the Equitable may change the interval of payment so that the payments will amount to at least $20 each.

If the amount to be applied under an option with respect to a payee is less than $2,000, the Equitable may pay the amount to the payee in a single sum instead of applying it under the option.

No sum payable under any option elected by the Owner for the benefit of a payee other than the Owner may be assigned or encumbered by such payee and, to the extent permitted by law, no such sum shall in any way be subject to any legal process to subject the same to the payment of any claim against such payee.

If a withdrawal or commutation right under an option is exercised, the Equitable may defer payment for up to six months from the receipt of request.

TABLE OF INSTALMENTS UNDER OPTIONAL MODES OF SETTLEMENT FOR EACH $1,000 OF PROCEEDS

Instalment amounts for Options 3 and 5 are based on age nearest birthday on the due date of the first instalment. Option 5 instalment amounts for ages not shown, or for two males or two females, will be furnished on request.

OPTION 2			OPTION 3 – LIFE INCOME (Minimum Monthly Instalment)													
Number of Years' Instalments	Monthly Instalment	Annual Instalment	AGE	10 Years Certain		20 Years Certain		Refund Certain		AGE	10 Years Certain		20 Years Certain		Refund Certain	
				Male	Female	Male	Female	Male	Female		Male	Female	Male	Female	Male	Female
1	$84.48	$1000.00	5 & under	$3.02	$2.93	$3.02	$2.93	$3.01	$2.93	45	$4.27	$3.83	$4.13	$3.79	$ 4.13	$ 3.78
2	42.86	507.39	6	3.03	2.94	3.03	2.94	3.02	2.94	46	4.34	3.88	4.19	3.83	4.19	3.82
3	28.99	343.23	7	3.05	2.95	3.04	2.95	3.04	2.95	47	4.41	3.93	4.24	3.88	4.25	3.87
4	22.06	261.19	8	3.06	2.96	3.06	2.96	3.05	2.96	48	4.49	3.99	4.29	3.93	4.31	3.92
5	17.91	211.99	9	3.07	2.97	3.07	2.97	3.06	2.97	49	4.56	4.05	4.35	3.98	4.37	3.97
6	15.14	179.22	10	3.09	2.98	3.08	2.98	3.08	2.98	50	4.64	4.10	4.40	4.03	4.44	4.02
7	13.16	155.83	11	3.10	3.00	3.10	2.99	3.09	2.99	51	4.72	4.17	4.46	4.08	4.51	4.08
8	11.68	138.30	12	3.12	3.01	3.11	3.00	3.11	3.00	52	4.81	4.23	4.52	4.14	4.58	4.14
9	10.53	124.69	13	3.13	3.02	3.13	3.02	3.12	3.01	53	4.90	4.30	4.58	4.20	4.66	4.20
10	9.61	113.81	14	3.15	3.03	3.14	3.03	3.14	3.02	54	4.99	4.38	4.64	4.26	4.74	4.26
11	8.86	104.92	15	3.17	3.04	3.16	3.04	3.15	3.04	55	5.08	4.46	4.70	4.32	4.82	4.33
12	8.24	97.53	16	3.19	3.06	3.18	3.05	3.17	3.05	56	5.18	4.54	4.76	4.38	4.91	4.40
13	7.71	91.29	17	3.21	3.07	3.20	3.07	3.19	3.06	57	5.29	4.62	4.82	4.45	5.00	4.48
14	7.26	85.94	18	3.23	3.09	3.22	3.08	3.21	3.08	58	5.40	4.72	4.88	4.51	5.09	4.56
15	6.87	81.32	19	3.25	3.10	3.24	3.10	3.23	3.09	59	5.51	4.81	4.94	4.58	5.19	4.64
16	6.53	77.29	20	3.27	3.12	3.26	3.11	3.25	3.11	60	5.63	4.92	4.99	4.65	5.30	4.73
17	6.23	73.74	21	3.29	3.13	3.28	3.13	3.27	3.12	61	5.76	5.02	5.05	4.72	5.41	4.83
18	5.96	70.59	22	3.31	3.15	3.30	3.15	3.29	3.14	62	5.88	5.14	5.11	4.79	5.52	4.93
19	5.73	67.78	23	3.34	3.17	3.33	3.16	3.31	3.16	63	6.02	5.26	5.16	4.86	5.64	5.03
20	5.51	65.25	24	3.36	3.19	3.35	3.18	3.34	3.17	64	6.16	5.39	5.22	4.93	5.77	5.14
21	5.32	62.98	25	3.39	3.21	3.38	3.20	3.36	3.19	65	6.30	5.52	5.27	5.00	5.91	5.26
22	5.15	60.91	26	3.42	3.23	3.40	3.22	3.39	3.21	66	6.46	5.66	5.32	5.07	6.05	5.38
23	4.99	59.04	27	3.45	3.25	3.43	3.24	3.42	3.23	67	6.61	5.81	5.36	5.14	6.20	5.51
24	4.84	57.32	28	3.48	3.27	3.46	3.26	3.44	3.25	68	6.77	5.96	5.40	5.21	6.36	5.65
25	4.71	55.75	29	3.51	3.29	3.49	3.28	3.47	3.27	69	6.93	6.13	5.44	5.27	6.53	5.80
26	4.59	54.30	30	3.54	3.32	3.52	3.31	3.50	3.30	70	7.10	6.30	5.47	5.33	6.71	5.96
27	4.47	52.97	31	3.58	3.34	3.55	3.33	3.53	3.32	71	7.27	6.47	5.50	5.38	6.90	6.12
28	4.37	51.74	32	3.61	3.37	3.58	3.36	3.57	3.34	72	7.45	6.66	5.53	5.43	7.10	6.30
29	4.27	50.59	33	3.65	3.40	3.62	3.38	3.60	3.37	73	7.62	6.85	5.55	5.47	7.31	6.49
30	4.18	49.53	34	3.69	3.42	3.65	3.41	3.64	3.40	74	7.80	7.04	5.57	5.51	7.54	6.69
Quarterly instalments are 25.28% of the annual instalments.			35	3.73	3.45	3.69	3.44	3.67	3.42	75	7.97	7.24	5.59	5.54	7.77	6.91
			36	3.78	3.48	3.73	3.47	3.71	3.45	76	8.14	7.45	5.60	5.56	8.02	7.14
			37	3.82	3.52	3.77	3.50	3.75	3.48	77	8.31	7.66	5.61	5.58	8.30	7.39
			38	3.87	3.55	3.81	3.53	3.79	3.51	78	8.48	7.87	5.62	5.60	8.58	7.66
Semi-annual instalments are 50.37% of the annual instalments.			39	3.92	3.59	3.85	3.56	3.83	3.55	79	8.63	8.08	5.62	5.61	8.89	7.94
			40	3.97	3.62	3.90	3.59	3.88	3.58	80	8.78	8.28	5.63	5.62	9.22	8.25
			41	4.03	3.66	3.94	3.63	3.93	3.62	81	8.92	8.48	5.63	5.63	9.56	8.58
			42	4.09	3.70	3.99	3.67	3.97	3.65	82	9.05	8.67	5.63	5.63	9.93	8.94
			43	4.15	3.74	4.04	3.71	4.02	3.69	83	9.17	8.85	5.63	5.63	10.34	9.33
			44	4.21	3.79	4.08	3.75	4.08	3.73	84	9.28	9.01	5.63	5.63	10.76	9.74
										85 & over	9.37	9.16	5.63	5.63	11.21	10.20

OPTION 5 – JOINT AND SURVIVOR, 10 YEARS CERTAIN (Minimum Monthly Instalment)

Male Age	Female Age																		
	45	50	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	75
45	$3.61	$3.74	$3.86	$3.89	$3.91	$3.93	$3.96	$3.98	$4.00	$4.02	$4.04	$4.06	$4.07	$4.09	$4.11	$4.12	$4.14	$4.15	$4.21
50	3.68	3.84	4.00	4.04	4.07	4.10	4.13	4.17	4.20	4.23	4.26	4.28	4.31	4.34	4.36	4.39	4.41	4.43	4.53
55	3.73	3.92	4.13	4.17	4.22	4.26	4.31	4.35	4.39	4.44	4.48	4.52	4.56	4.60	4.64	4.68	4.71	4.75	4.90
56	3.73	3.93	4.15	4.20	4.24	4.29	4.34	4.38	4.43	4.48	4.52	4.57	4.61	4.65	4.70	4.74	4.78	4.81	4.98
57	3.74	3.95	4.17	4.22	4.27	4.32	4.37	4.42	4.47	4.52	4.57	4.61	4.66	4.71	4.75	4.80	4.84	4.88	5.06
58	3.75	3.96	4.20	4.25	4.30	4.35	4.40	4.45	4.50	4.56	4.61	4.66	4.71	4.76	4.81	4.86	4.90	4.95	5.14
59	3.76	3.97	4.22	4.27	4.32	4.37	4.43	4.48	4.54	4.59	4.65	4.71	4.76	4.81	4.87	4.92	4.97	5.02	5.23
60	3.76	3.98	4.23	4.29	4.34	4.40	4.46	4.52	4.57	4.63	4.69	4.75	4.81	4.87	4.92	4.98	5.03	5.08	5.32
61	3.77	3.99	4.25	4.31	4.37	4.43	4.49	4.55	4.61	4.67	4.73	4.79	4.86	4.92	4.98	5.04	5.10	5.15	5.41
62	3.77	4.00	4.27	4.33	4.39	4.45	4.51	4.58	4.64	4.71	4.77	4.84	4.90	4.97	5.03	5.10	5.16	5.22	5.50
63	3.78	4.01	4.29	4.35	4.41	4.47	4.54	4.60	4.67	4.74	4.81	4.88	4.95	5.02	5.09	5.16	5.22	5.29	5.59
64	3.79	4.02	4.30	4.36	4.43	4.49	4.56	4.63	4.70	4.77	4.85	4.92	4.99	5.07	5.14	5.21	5.29	5.36	5.69
65	3.79	4.03	4.32	4.38	4.45	4.51	4.58	4.66	4.73	4.80	4.88	4.96	5.04	5.11	5.19	5.27	5.35	5.43	5.78
66	3.79	4.04	4.33	4.40	4.46	4.53	4.61	4.68	4.76	4.84	4.91	5.00	5.08	5.16	5.24	5.33	5.41	5.49	5.88
67	3.80	4.04	4.34	4.41	4.48	4.55	4.63	4.70	4.78	4.86	4.95	5.03	5.12	5.20	5.29	5.38	5.47	5.56	5.97
68	3.80	4.05	4.36	4.42	4.50	4.57	4.65	4.73	4.81	4.89	4.98	5.07	5.16	5.25	5.34	5.43	5.53	5.62	6.06
69	3.81	4.06	4.37	4.44	4.51	4.59	4.66	4.75	4.83	4.92	5.01	5.10	5.19	5.29	5.38	5.48	5.58	5.68	6.16
70	3.81	4.06	4.38	4.45	4.52	4.60	4.68	4.76	4.85	4.94	5.03	5.13	5.23	5.33	5.43	5.53	5.63	5.74	6.25
75	3.82	4.08	4.42	4.49	4.57	4.66	4.75	4.84	4.94	5.04	5.14	5.25	5.37	5.48	5.61	5.73	5.86	5.99	6.67

CASH VALUE

At any time on or before the Retirement Date the Owner may surrender this contract for its cash value, provided that surrender may be made before the first contract anniversary only upon default in the payment of a premium.

The cash value is determined as follows:

(i) If no premium is in default, the cash value is the tabular cash value increased by any existing dividend credits. The tabular cash value is determined in accordance with the Table of Values, which shows values applicable at the ends of contract years. The tabular cash value as of a date during a contract year will be determined by the Equitable with allowance for the time elapsed and for any portion of the year for which premiums due have been paid.

(ii) Within three months after the date of default, the cash value is the tabular cash value determined as of the date of default increased by any dividend credits existing at that date and not thereafter withdrawn or surrendered.

(iii) More than three months after the date of default, if this contract is continued as a reduced paid-up deferred annuity under the Options on Lapse provision, the cash value as of any date is equal to the tabular cash value at the date of default accumulated at compound interest of 3% per year to such date, increased by any existing dividend credits arising after the date of default.

TABLE OF VALUES. The values shown in the Table of Values on page three are for the amount of annuity under this contract and apply at the ends of the contract years shown provided premiums are duly paid. Values not shown will be furnished on request. Where an age is shown, the values are those applicable at the end of the contract year nearest the birthday on which the Annuitant attains such age.

OPTIONS ON LAPSE

Upon default in the payment of a premium, the Owner may elect (a) to continue this contract as a reduced paid-up deferred annuity, or (b) to surrender this contract for its cash value. If no election has been made within three months after the date of default, the reduced paid-up deferred annuity option will take effect automatically.

Under the reduced paid-up deferred annuity, the amount of monthly annuity commencing on the Retirement Date if the Annuitant is then living will be determined by applying an amount equal to the cash value at the date of default accumulated at 3% interest to the Retirement Date under Option 3 (Life Income — 10 Years Certain) of the Optional Modes of Settlement provision. Such amount of annuity will be increased by the amount of any existing dividend additions arising after the date of default. If the Annuitant dies before the Retirement Date, a Death Benefit equal to the cash value as of the date of death will be payable to the beneficiary.

For default occurring at the end of a contract year, the Table of Values shows the amount of monthly annuity if the Normal Retirement Date is the Retirement Date and if there are no dividend credits.

Any dividend credits existing at the date of default which are withdrawn or surrendered will be excluded from the operation of this provision.

If the reduced paid-up deferred annuity would provide monthly annuity payments of less than $5 each, the Equitable may cancel such annuity at any time after the period when this contract may be reinstated in accordance with the Reinstatement provision by payment of the cash value on the date of cancellation to the Owner.

ANNUITY OPTION

In lieu of payment in one sum, an election may be made by the payee to apply the whole or any part of the proceeds which have become so payable under a supplementary contract for the benefit of the payee providing any kind of single consideration annuity issued by the Equitable at the time of application of such proceeds (other than an annuity on a plan available under Option 3 or 5 of the Optional Modes of Settlement provision), with annuity payments which are 103% of those provided on the basis of the Equitable's rates then in effect. An election for the benefit of a payee who is not a natural person or who is acting in a fiduciary capacity may be made only with the Equitable's approval.

The election must be made on the Equitable's blank and filed with the Equitable at its Home Office. This option is not available if the amount to be applied is less than $2,000, or if the initial annuity payment would amount to less than $20. The Equitable will require satisfactory evidence of the age of any person upon whose life the annuity depends.

OPTIONAL RETIREMENT DATE

The Owner may elect to have annuity payments commence at an Optional Retirement Date (which may be any contract anniversary after the filing of the election on which the Annuitant's age at nearest birthday is one of the Optional Retirement Ages shown on page three) instead of at the Normal Retirement Date. An Annuity commencing at an Optional Retirement Date will be in the same form and payable in the same manner as the annuity described on the first page, and for an amount determined in accordance with the Provisions Relating to Annuity Payments. Before a previously elected Optional Retirement Date, the Owner may change such date to another Optional Retirement Date later than the filing of the request for change. Any election or request for change must be in writing and shall not take effect until filed with the Equitable at its Home Office.

PROVISIONS RELATING TO ANNUITY PAYMENTS

AMOUNT OF MONTHLY ANNUITY. The amount of monthly annuity commencing at the Retirement Date, provided premiums have been duly paid, will be that shown on page three, increased by the amount of any dividend additions, except that a higher amount, as determined by the Equitable at the Retirement Date, may be payable if the Equitable is then making available a rate basis for annuity payments which is more favorable to the payee than the rate basis otherwise applicable under this contract.

PAYEE FOR ANNUITY PAYMENTS AFTER ANNUITANT'S DEATH. Not earlier than 31 days before the Retirement Date, the Annuitant may designate (with the right to change such designation) a person or persons to receive any annuity payments that may become due after the Annuitant's death, subject to the Payments to Owner provision. A designation or change shall be made, and will take effect, in the same manner as a change of beneficiary. If at the death of the Annuitant or any payee there is no designated person living entitled to receive any remaining annuity payments due after the Annuitant's death, the Equitable will pay to the executors or administrators of the Annuitant or such payee, as the case may be, the commuted value of any remaining payments. Any commuted value will be determined on the basis of compound interest of 3¼% per year, except that if the annuity payments are determined on the more favorable rate basis referred to in the Amount of Monthly Annuity provision above, the commutation interest rate will be that associated with the more favorable rate basis.

PAYMENTS TO OWNER. Before the Retirement Date, the Owner may elect to have the annuity payments paid to the Owner instead of to the Annuitant or to any payee after the Annuitant's death. Such an election may be revoked by the Owner at any time. An election or revocation shall be made, and will take effect, in the same manner as a change of beneficiary.

GENERAL PROVISIONS. Annuity payments will be made monthly except that if the payments would amount to less than $20 each, the Equitable may change the interval of payment so that the payments will amount to at least $20 each.

This contract will be nonparticipating after the commencement of annuity payments.

Annuity payments will terminate with the last payment due before the death of the Annuitant or the end of the certain period, if later.

The Equitable will require satisfactory evidence of survival whenever a payment depends upon the survival of the Annuitant.

If an assignment of this contract is on file with the Equitable, the designations, changes, elections and revocations referred to in this provision may be made without the consent of the assignee, but the rights of a payee for annuity payments shall be subordinate to those of the assignee.

OPTIONAL TERMINATION OF CONTRACT

During the first contract year, if no premium is in default, the Owner may surrender this contract for its termination value, provided the Owner is not the Annuitant and certifies to the Equitable that the Annuitant, since the last premium due date before the date of surrender of this contract, has terminated his employment with the employer who has been providing funds toward payment of the premiums on the contract.

The termination value will be the greater of (a) the cash value as of the premium due date next following the date of surrender, discounted from such premium due date to the date of surrender with interest at the rate of 3% per year, or (b) the fraction of the last premium paid corresponding to the ratio between (i) the period from the date of surrender to the next premium due date and (ii) the period from the due date of the last premium paid (or the Register Date if the premium was the initial premium) to the next premium due date.

The EQUITABLE Life Assurance Society of the United States

1285 AVENUE OF THE AMERICAS, NEW YORK, NEW YORK 10019

DEFINED BENEFIT PENSION PLAN ANNUITY



Deferred Life Annuity Ten Years Certain. Optional Retirement Dates. Death Benefit Before Retirement Date. Premiums Payable Until Retirement Date Or Until Prior Death. Annual Dividends Before Retirement Date.

No. 112-75

SPECIMEN POLICY

NOTE — Because of variations in state policy form requirements, the policy as actually issued may differ somewhat from this specimen policy.

PENSION PLAN ENDOWMENT POLICY

The Insured
Face Amount
Retirement Income

Register Date
Policy Number
Maturity Age

A Mutual Company
Organized
July 26, 1859



The EQUITABLE Life Assurance Society of the United States

1285 AVENUE OF THE AMERICAS, NEW YORK, NEW YORK 10019

Agrees, subject to the provisions of this policy, to pay to the Insured the Retirement Income shown on page three commencing at the Maturity Date if the Insured is then living. Payments will be due monthly for ten years certain and thereafter for the remaining lifetime of the Insured.

DEATH BENEFIT BEFORE MATURITY DATE. If the Insured dies before the Maturity Date, the Equitable agrees, subject to the provisions of this policy, to pay the face amount, or the tabular cash value at the end of the policy month of death, if larger, to the beneficiary upon receipt of due proof of the death of the Insured and the surrender of this policy.

The Maturity Date is the policy anniversary nearest the birthday on which the Insured attains the Maturity Age shown on page three.

Premiums as shown on page three are payable for the premium period indicated or until the prior death of the Insured.

The provisions on the following pages are part of this contract.

SPECIMEN President

SPECIMEN Secretary

SPECIMEN Assistant Registrar

No. 112-30
Pension Plan
Endowment

Insurance Payable In Event Of Death Before Maturity Date. Life Annuity, Ten Years Certain, Beginning At Maturity Date. Maturity Options. Annual Dividends. Premiums Payable For Premium Period Shown on Page Three Or Until Prior Death.

GUIDE TO POLICY PROVISIONS

	PAGE		PAGE
Owner	.2	Optional Modes of Settlement	6-8
Assignments	.2	Loans	.9
Premiums	.5	Cash Value	.9
Grace	.5	Options on Lapse	.9
Reinstatement	.5	Maturity Options	.10
Dividends Before the Maturity Date	.5	Annuity Option	.10
Beneficiary	.6	General Provisions Relating to Income Payments	.11
General Provisions	.6	Optional Termination of Policy	.11

Additional benefit provisions, if any, and a copy of the application will be found following page four.

OWNER

The Owner is as specified in the application unless otherwise endorsed on this policy by the Equitable. The Owner may exercise all rights and take any other action agreed to by the Equitable in connection with this policy (including changing the ownership) only while the Insured is living, unless otherwise specifically provided in the policy. Exercise of the rights of ownership shall not require the concurrence of any person whose interest at the time of such exercise is that of a contingent or successor owner, or of any other person referred to in this policy.

The Equitable may deal with any employer Owner or trustee Owner, or any sucessor employer Owner or successor trustee, proof of whose appointment is on file with the Equitable, in accordance with the terms of this policy without regard to the provisions of any plan or trust agreement, including any modification, amendment, or supplemental agreement. Nothing in any such trust or other agreement shall in any way be construed to enlarge, change, vary or in any way affect the obligations of the Equitable as expressly provided in this policy. The Equitable shall not be responsible for any failure of an employer Owner to act in accordance with the terms of any applicable plan agreement or of a trustee to perform the duties of a trustee, nor for the application or disposition of any money paid to an employer or trustee. Such payment shall fully discharge the Equitable for the amount so paid.

TRANSFER TO INSURED. On or before the Maturity Date (or the Deferred Maturity Date, if effective), provided there is no assignment of this policy in force and on file with the Equitable (other than to the Equitable as security for an advance), the Owner may change the ownership of this policy to make the Insured the Owner, but the change will not take effect until endorsed on this policy by the Equitable.

ASSIGNMENTS

If the Owner is the Insured or the Insured's employer, this policy may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose to any person other than the Equitable.

If the Owner is other than the Insured or the Insured's employer, the Owner may assign this policy before the Maturity Date (or the Deferred Maturity Date, if effective) but no assignment of this policy will bind the Equitable or be deemed to be in force as to the Equitable unless in writing and until filed at the Equitable's Home Office. The Equitable assumes no responsibility for the validity of any assignment.

So long as an assignment remains in force, the rights of the Owner and of any other person referred to in this policy shall be subordinate to those of the assignee but shall not otherwise be affected by the assignment.

The Equitable may pay to an assignee, in a single sum, any amount claimed by the assignee to be payable under the terms of the assignment. Any amount payable which is not claimed by the assignee shall be payable in accordance with the terms of the policy to the person or persons who would have been entitled to the amount then payable had there been no assignment outstanding.

An assignee cannot change the beneficiary, nor make an election under the Optional Modes of Settlement or Annuity Option provisions. If an assignment of this policy is on file with the Equitable, such a change or election may be made without the consent of the assignee, but the rights of the beneficiary shall be subordinate to those of the assignee.

No sum payable under this policy to a payee other than the Owner may be assigned or encumbered by such payee and, to the extent permitted by law, no such sum shall in any way be subject to any legal process to subject the same to the payment of any claim against such payee.

DATE OF ISSUE JAN 1, 1971

THE INSURED	RICHARD ROE	JAN 1, 1971	REGISTER DATE
FACE AMOUNT	$10,000	SPECIMEN	POLICY NUMBER
RETIREMENT INCOME	$100 MONTHLY	65	MATURITY AGE
BENEFICIARY	MARGARET H. ROE, WIFE	35 M	ISSUE AGE & SEX

**********BENEFITS AND PREMIUMS TABLE**********

BENEFITS	ANNUAL PREMIUM	PREMIUM PERIOD
INSURANCE AND RETIREMENT BENEFITS	$ 436.10	TO AGE 65

THE FIRST PREMIUM IS $436.10 AND IS DUE ON OR BEFORE DELIVERY OF THE POLICY. SUBSEQUENT PREMIUMS ARE DUE ON JAN 1. 1972 AND EVERY 12 MONTHS THEREAFTER DURING THE PREMIUM PERIOD.

**********TABLE OF VALUES**********

END OF POLICY YEAR	TABULAR CASH OR LOAN VALUE	PAID-UP ENDOWMENT INSURANCE DEATH BENEFIT*	ENDOWMENT BENEFIT AT MATURITY DATE
1	$ 200	$ 430	$ 430
2	530	1,110	1,110
3	880	1,800	1,800
4	1,230	2,440	2,440
5	1,590	3,070	3,070
6	1,970	3,710	3,710
7	2,350	4,310	4,310
8	2,780	4,960	4,960
9	3,220	5,600	5,600
10	3,670	6,220	6,220
11	4,130	6,820	6,820
12	4,610	7,420	7,420
13	5,110	8,010	8,010
14	5,580	8,530	8,530
15	6,070	9,040	9,040
16	6,580	9,550	9,550
17	7,100	10,000	10,060
18	7,640	10,000	10,670
19	8,210	10,000	11,250
20	8,790	10,000	11,770
AGE 60	12,060	12,060	13,990
AGE 62	13,520	13,520	14,780
AGE 65	15,870	THE MATURITY DATE	

*SEE OPTIONS ON LAPSE PROVISION
THE AMOUNTS ABOVE DO NOT REFLECT DIVIDEND CREDITS OR INDEBTEDNESS

(Entries on this page are to be made only by the Equitable.)

PREMIUMS

Premiums are payable for the premium period indicated on page three but no premium will fall due after the death of the Insured. The premium period is measured from the Register Date. If the end of the premium period is indicated by an age it extends to the policy anniversary nearest the birthday on which the Insured attains that age.

Premiums are payable on or before their due dates at the Home Office or to an Equitable premium collection office. A receipt, signed by a Vice President, the Secretary or the Treasurer, will be furnished upon request.

Premiums are as shown on page three except that by written request premiums may be made payable at a different frequency allowed by the Equitable at the Equitable's applicable rates provided each premium payment is at least $10. If the request is applicable to the first premium, it must be made on or before the payment of that premium and delivery of this policy. Requests made after the first premium has been paid are subject to the Equitable's approval.

A premium not paid on or before its due date will be in default, and its due date will be the date of default. Upon default this policy will lapse and the insurance will cease as of the date of default, except as stated in the Grace and Options on Lapse provisions.

The proceeds payable upon the death of the Insured while this policy is in force on a premium paying basis will be increased by the portion of the last premium due and paid which is applicable to any part of the then current premium interval extending after the end of the policy month in which death occurs.

GRACE

A grace period of 31 days will be granted for the payment of each premium after the first. The insurance will continue in force during the grace period but if the Insured dies during the grace period of a premium then due and unpaid, the portion of the premium due which is applicable to the period from the premium due date to the end of the policy month in which death occurs will be deducted from the proceeds.

REINSTATEMENT

If premiums are in default and if this policy has not been terminated by payment of its cash value, it may be reinstated within five years from the date of default and before the Maturity Date upon production of evidence of insurability satisfactory to the Equitable, the payment of all overdue premiums with interest at 6% compounded annually, and the payment or reinstatement of any indebtedness (as defined in the Loans provision) with interest.

DIVIDENDS BEFORE THE MATURITY DATE

This policy is a participating contract and its share of divisible surplus will be determined annually by the Equitable. Dividends will be payable at the end of each policy year before the Maturity Date for which surplus has been apportioned to this policy, provided premiums have been duly paid to the end of the policy year, and provided this policy is then in force. Such dividends will be applied under one of the following options as elected by the Owner.

1. CASH: Paid in cash.

2. PREMIUM PAYMENT: Applied toward payment of any premium then due if the remainder of the premium is duly paid.

3. DIVIDEND ADDITIONS: Applied to provide paid-up endowment insurance on the Insured maturing on the Maturity Date. (This option shall apply if no election is in force three months after the Equitable mails the dividend notice.)

4. DIVIDEND ACCUMULATIONS: Accumulated with interest at 3% compounded annually. Accumulations may be increased each year by excess interest as determined by the Equitable.

The Equitable does not expect that there will be any dividend payable before the end of the second policy year.

While this policy is continued as paid-up endowment insurance under the Options on Lapse provision, any dividend will be applied as a dividend addition.

Dividend accumulations or dividend additions existing at the death of the Insured before the Maturity Date and any dividend then payable (including any pro rata post-mortem dividend) will be payable in the same manner as the Death Benefit.

On or before the Maturity Date, the Owner may withdraw dividend accumulations and may surrender dividend additions for their cash value, if not required as security for an advance. The cash value of dividend additions is their reserve on the last preceding policy anniversary, or the original cash dividends if greater.

Upon lapse of this policy, any existing dividend, dividend accumulations or dividend additions will be applied in accordance with the Options on Lapse provision and will then cease.

"Dividend credits" as used in this policy means the sum of dividend accumulations, the cash value of dividend additions, and any outstanding dividend which has not been applied under one of the above options.

Any dividend credits existing at the Maturity Date and not withdrawn will be applied as follows, subject to the Loans provision:

(i) If the Owner elects any of the Maturity Options, such dividend credits will be included in determining the Conversion Value.

(ii) If the Owner surrenders this policy for its cash value or if this policy matures as an endowment under the paid-up endowment insurance option of the Options on Lapse provision, such dividend credits will be included in the single sum payable.

(iii) If neither (i) or (ii) above is applicable, the monthly Retirement Income shown on page three will be increased in the proportion that such dividend credits bear to the tabular cash value on the Maturity Date.

BENEFICIARY

The beneficiary is as designated in the application unless changed. The Owner may change the beneficiary from time to time during the lifetime of the Insured, by written notice in a form satisfactory to the Equitable. The change will, upon recording at the Equitable's Home Office, take effect as of the time the written notice was signed, whether or not the Insured is living at the time of recording, but without further liability as to any payment or other settlement made by the Equitable before recording.

Unless otherwise specified in the designation, if two or more persons are designated as beneficiary, the beneficiary will be the designated person or persons who survive the Insured, and if more than one survive, they will share equally.

Any Death Benefit for which there is no designated beneficiary surviving at the death of the Insured will be payable in a single sum to the children of the Insured who survive the Insured, in equal shares, or should none survive, then to the Insured's executors or adminstrators.

GENERAL PROVISIONS

THE CONTRACT. This insurance is granted in consideration of payment of the required premiums. This policy and the application (a copy of which is attached at issue) constitute the entire contract.

All statements made in the application shall be deemed representations and not warranties. No statement shall avoid this policy or be used in defense of a claim unless contained in the application.

This policy may not be modified, nor may any of the Equitable's rights or requirements be waived, except in writing signed by the President, a Vice President, the Secretary or the Treasurer of the Equitable.

All sums payable by the Equitable under this policy are payable at its Home Office in the City of New York.

POLICY PERIODS AND ANNIVERSARIES. Policy years, policy months, and policy anniversaries are measured from the Register Date shown on page three. Each policy month begins on the same day in each calendar month as that specified in the Register Date.

AGE AND SEX. If the Insured's age or sex has been misstated, any benefits will be such as the premium paid would have purchased at the correct age and sex.

SUICIDE. In the event of the suicide of the Insured, sane or insane, within two years from the Date of Issue shown on page three, the Equitable's liability will be limited to the payment to the beneficiary of a single sum equal to the premiums paid less any indebtedness.

INCONTESTABILITY. Except as to any disability provision, this policy will be incontestable, except for non-payment of premiums, after it has been in force during the lifetime of the Insured for two years from the Date of Issue shown on page three.

DEFERMENT. The payment of a cash value, of a Conversion Value, or of a termination value and the making of an advance other than to pay premiums on policies in the Equitable may be deferred by the Equitable for up to six months after the receipt of request. Interest at the rate of 3% per year will be allowed on any such payment deferred for 30 days or more.

POLICY CHANGES. The Owner, with the consent of the Equitable, may change this policy to another form, kind or plan of insurance or make any other change permitted by the Equitable.

BASIS OF COMPUTATION. All cash values, reserves and net single premiums referred to in this policy are based on the Commissioners 1958 Standard Ordinary Mortality Table, except that for any extended term insurance they are based on the Commissioners 1958 Extended Term Insurance Table. Continuous functions are used and interest is assumed at a rate of 3% compounded annually. The cash values and paid-up insurance benefits are equal to or greater than those required by statute of the state in which this policy is delivered. A detailed statement of the method of computing values and benefits has been filed with the insurance supervisory official of that state. The tabular cash value at the end of a policy year after the 20th is equal to the reserve. Reserves referred to in this policy are computed by the net level premium method.

OPTIONAL MODES OF SETTLEMENT

ELECTIONS

In lieu of payment in one sum, an election may be made to apply the whole or any part of the proceeds of this policy other than the Income payments under the options on page seven. An election for the benefit of a payee who is not a natural person or who is acting in a fiduciary capacity, or which includes more than one of the options, may be made only with the Equitable's approval.

ELECTION AS TO A DEATH BENEFIT. During the lifetime of the Insured, the Owner may make an election for the benefit of the beneficiary and may change or revoke a previous election. A change of beneficiary revokes any previous election. An election in effect at the death of the Insured may not be changed or revoked by an election made after the death of the Insured.

If no election is effective at the death of the Insured, the beneficiary may then make an election for his own benefit, or in the case of Option 5, for the benefit of two persons, one of whom must be the beneficiary.

ELECTION AS TO CASH VALUE, CONVERSION VALUE OR ENDOWMENT MATURITY VALUE. Upon surrender of this policy for its cash value or Conversion Value or upon its maturity as an endowment under the Options on Lapse provision, the Owner may make an election for the benefit of the Owner or the Insured, or in the case of Option 5, for the benefit of two persons, one of whom must be the Owner or the Insured.

OPTIONAL MODES OF SETTLEMENT (Continued)

OPTIONS

1. DEPOSIT OPTION: Left on deposit with the Equitable with interest payable at a rate of 3% per year. The deposit period and withdrawal rights and rights to change to another option will be as approved by the Equitable at the time of election.

2. INSTALMENT OPTION, FIXED PERIOD: Payable in equal instalments for the number of years elected (not more than 30) in an amount determined by the Table of Instalments. Rights of commutation of unpaid instalments (based on interest of 3% per year compounded annually) will be as approved by the Equitable at the time of election.

3. LIFE INCOME OPTIONS:

   A. *10 or 20 Years Certain.* Payable in instalments for the certain period elected, and continuing thereafter for the remaining lifetime of the person upon whose life the income depends.

   B. *Refund Certain.* Payable in instalments until the total amount paid equals the proceeds applied under this option and continuing thereafter for the remaining lifetime of the person upon whose life the income depends.

   The amount of each instalment will be determined by the Equitable at the time of payment of the first instalment but will not be less per $1000 of proceeds than the Minimum Monthly Instalment shown in the Table of Instalments. Instalments shall be without the right of commutation.

4. INSTALMENT OPTION, FIXED AMOUNT: Payable in instalments until the proceeds applied, together with interest on the unpaid balance at the effective rate of 3% per year, are exhausted. Amounts of instalments and withdrawal rights will be as approved by the Equitable at the time of election.

5. JOINT AND SURVIVOR OPTION, 10 YEARS CERTAIN: Payable in instalments for ten years, and continuing thereafter while either of two persons upon whose lives the income depends is surviving. The amount of each instalment will be determined by the Equitable at the time of payment of the first instalment but will not be less per $1000 of proceeds than the Minimum Monthly Instalment shown in the Table of Instalments. Instalments shall be without the right of commutation.

GENERAL PROVISIONS

Interest under Option 1 and instalments under Options 2 and 4 will be paid annually, semi-annually, quarterly or monthly, in accordance with the election. Instalments under Options 3 and 5 will be paid monthly. Deposit years under Option 1 and instalment years under the other options are measured from the date the option becomes operative, and the first instalment under the other options will be due on such date.

Excess interest or other dividends may be allowed under Options 1, 2 and 4 as determined annually by the Equitable. Any such dividends will be applied to increase the payments under Option 1, the payment at the end of each instalment year under Option 2, and the unpaid balance at the end of each instalment year under Option 4. Options 3 and 5 are nonparticipating.

If at the death of any payee there is no designated person living entitled to receive any remaining payments, the Equitable will pay in a single sum to such payee's executors or administrators: (a) any balance left with the Equitable under Option 1 or 4, or (b) the commuted value of any remaining instalments under Option 2, 3 or 5 on the basis of compound interest of 3% per year under Option 2 and 3¼% per year under Options 3 and 5, except that if the amount of instalments under Option 3 or 5 is greater than the amount determined in accordance with the Table of Instalments, the commutation interest rate will be that associated with the more favorable amount.

The payee for whose benefit an option is operative may designate (with the right to change such designation) a person or persons to receive any amount which would otherwise become payable to such payee's executors or administrators.

If proceeds are applied under Option 3 for the benefit of the Insured, or under Option 5 for the benefit of the Insured and another person, the Owner may elect, before the due date of the first instalment, to have the instalments paid to the Owner instead of to any other payee. Such an election may be revoked by the Owner at any time.

Any election, change, revocation or designation shall be made, and will take effect, in the same manner as a change of beneficiary.

If Option 3 or 5 is elected the Equitable will require satisfactory evidence of the age of any person upon whose life the income depends. Instalments under Option 3 or 5 terminate with the last instalment due before the death of the person upon whose life the income depends or the end of the certain period, whichever is later.

The Equitable will require satisfactory evidence of survival whenever a payment depends upon the survival of any person.

If instalments or interest payments to any payee would amount to less than $20 each, the Equitable may change the interval of payment so that the payments will amount to at least $20 each.

If the amount to be applied under an option with respect to a payee is less than $2,000, the Equitable may pay the amount to the payee in a single sum instead of applying it under the option.

No sum payable under any option elected by the Owner for the benefit of a payee other than the Owner may be assigned or encumbered by such payee and, to the extent permitted by law, no such sum shall in any way be subject to any legal process to subject the same to the payment of any claim against such payee.

If a withdrawal or commutation right under an option is exercised, the Equitable may defer payment for up to six months from the receipt of request.

TABLE OF INSTALMENTS UNDER OPTIONAL MODES OF SETTLEMENT FOR EACH $1,000 OF PROCEEDS

Instalment amounts for Options 3 and 5 are based on age nearest birthday on the due date of the first instalment. Option 5 instalment amounts for ages not shown, or for two males or two females, will be furnished on request.

OPTION 2			OPTION 3 – LIFE INCOME (Minimum Monthly Instalment)													
Number of Years' Instalments	Monthly Instalment	Annual Instalment	AGE	10 Years Certain		20 Years Certain		Refund Certain		AGE	10 Years Certain		20 Years Certain		Refund Certain	
				Male	Female	Male	Female	Male	Female		Male	Female	Male	Female	Male	Female
1	$84.48	$1000.00	5 & under	$3.02	$2.93	$3.02	$2.93	$3.01	$2.93	45	$4.27	$3.83	$4.13	$3.79	$ 4.13	$ 3.78
2	42.86	507.39	6	3.03	2.94	3.03	2.94	3.02	2.94	46	4.34	3.88	4.19	3.83	4.19	3.82
3	28.99	343.23	7	3.05	2.95	3.04	2.95	3.04	2.95	47	4.41	3.93	4.24	3.88	4.25	3.87
4	22.06	261.19	8	3.06	2.96	3.06	2.96	3.05	2.96	48	4.49	3.99	4.29	3.93	4.31	3.92
5	17.91	211.99	9	3.07	2.97	3.07	2.97	3.06	2.97	49	4.56	4.05	4.35	3.98	4.37	3.97
6	15.14	179.22	10	3.09	2.98	3.08	2.98	3.08	2.98	50	4.64	4.10	4.40	4.03	4.44	4.02
7	13.16	155.83	11	3.10	3.00	3.10	2.99	3.09	2.99	51	4.72	4.17	4.46	4.08	4.51	4.08
8	11.68	138.30	12	3.12	3.01	3.11	3.00	3.11	3.00	52	4.81	4.23	4.52	4.14	4.58	4.14
9	10.53	124.69	13	3.13	3.02	3.13	3.02	3.12	3.01	53	4.90	4.30	4.58	4.20	4.66	4.20
10	9.61	113.81	14	3.15	3.03	3.14	3.03	3.14	3.02	54	4.99	4.38	4.64	4.26	4.74	4.26
11	8.86	104.92	15	3.17	3.04	3.16	3.04	3.15	3.04	55	5.08	4.46	4.70	4.32	4.82	4.33
12	8.24	97.53	16	3.19	3.06	3.18	3.05	3.17	3.05	56	5.18	4.54	4.76	4.38	4.91	4.40
13	7.71	91.29	17	3.21	3.07	3.20	3.07	3.19	3.06	57	5.29	4.62	4.82	4.45	5.00	4.48
14	7.26	85.94	18	3.23	3.09	3.22	3.08	3.21	3.08	58	5.40	4.72	4.88	4.51	5.09	4.56
15	6.87	81.32	19	3.25	3.10	3.24	3.10	3.23	3.09	59	5.51	4.81	4.94	4.58	5.19	4.64
16	6.53	77.29	20	3.27	3.12	3.26	3.11	3.25	3.11	60	5.63	4.92	4.99	4.65	5.30	4.73
17	6.23	73.74	21	3.29	3.13	3.28	3.13	3.27	3.12	61	5.76	5.02	5.05	4.72	5.41	4.83
18	5.96	70.59	22	3.31	3.15	3.30	3.15	3.29	3.14	62	5.88	5.14	5.11	4.79	5.52	4.93
19	5.73	67.78	23	3.34	3.17	3.33	3.16	3.31	3.16	63	6.02	5.26	5.16	4.86	5.64	5.03
20	5.51	65.25	24	3.36	3.19	3.35	3.18	3.34	3.17	64	6.16	5.39	5.22	4.93	5.77	5.14
21	5.32	62.98	25	3.39	3.21	3.38	3.20	3.36	3.19	65	6.30	5.52	5.27	5.00	5.91	5.26
22	5.15	60.91	26	3.42	3.23	3.40	3.22	3.39	3.21	66	6.46	5.66	5.32	5.07	6.05	5.38
23	4.99	59.04	27	3.45	3.25	3.43	3.24	3.42	3.23	67	6.61	5.81	5.36	5.14	6.20	5.51
24	4.84	57.32	28	3.48	3.27	3.46	3.26	3.44	3.25	68	6.77	5.96	5.40	5.21	6.36	5.65
25	4.71	55.75	29	3.51	3.29	3.49	3.28	3.47	3.27	69	6.93	6.13	5.44	5.27	6.53	5.80
26	4.59	54.30	30	3.54	3.32	3.52	3.31	3.50	3.30	70	7.10	6.30	5.47	5.33	6.71	5.96
27	4.47	52.97	31	3.58	3.34	3.55	3.33	3.53	3.32	71	7.27	6.47	5.50	5.38	6.90	6.12
28	4.37	51.74	32	3.61	3.37	3.58	3.36	3.57	3.34	72	7.45	6.66	5.53	5.43	7.10	6.30
29	4.27	50.59	33	3.65	3.40	3.62	3.38	3.60	3.37	73	7.62	6.85	5.55	5.47	7.31	6.49
30	4.18	49.53	34	3.69	3.42	3.65	3.41	3.64	3.40	74	7.80	7.04	5.57	5.51	7.54	6.69
Quarterly instalments are 25.28% of the annual instalments.			35	3.73	3.45	3.69	3.44	3.67	3.42	75	7.97	7.24	5.59	5.54	7.77	6.91
			36	3.78	3.48	3.73	3.47	3.71	3.45	76	8.14	7.45	5.60	5.56	8.02	7.14
			37	3.82	3.52	3.77	3.50	3.75	3.48	77	8.31	7.66	5.61	5.58	8.30	7.39
			38	3.87	3.55	3.81	3.53	3.79	3.51	78	8.48	7.87	5.62	5.60	8.58	7.66
			39	3.92	3.59	3.85	3.56	3.83	3.55	79	8.63	8.08	5.62	5.61	8.89	7.94
Semi-annual instalments are 50.37% of the annual instalments.			40	3.97	3.62	3.90	3.59	3.88	3.58	80	8.78	8.28	5.63	5.62	9.22	8.25
			41	4.03	3.66	3.94	3.63	3.93	3.62	81	8.92	8.48	5.63	5.63	9.56	8.58
			42	4.09	3.70	3.99	3.67	3.97	3.65	82	9.05	8.67	5.63	5.63	9.93	8.94
			43	4.15	3.74	4.04	3.71	4.02	3.69	83	9.17	8.85	5.63	5.63	10.34	9.33
			44	4.21	3.79	4.08	3.75	4.08	3.73	84	9.28	9.01	5.63	5.63	10.76	9.74
										85 & over	9.37	9.16	5.63	5.63	11.21	10.20

OPTION 5 – JOINT AND SURVIVOR, 10 YEARS CERTAIN (Minimum Monthly Instalment)

Male Age	Female Age																	
	45	50	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	75
45	$3.61	$3.74	$3.86	$3.89	$3.91	$3.93	$3.96	$3.98	$4.00	$4.02	$4.04	$4.06	$4.07	$4.09	$4.11	$4.12	$4.14	$4.15	$4.21
50	3.68	3.84	4.00	4.04	4.07	4.10	4.13	4.17	4.20	4.23	4.26	4.28	4.31	4.34	4.36	4.39	4.41	4.43	4.53
55	3.73	3.92	4.13	4.17	4.22	4.26	4.31	4.35	4.39	4.44	4.48	4.52	4.56	4.60	4.64	4.68	4.71	4.75	4.90
56	3.73	3.93	4.15	4.20	4.24	4.29	4.34	4.38	4.43	4.48	4.52	4.57	4.61	4.65	4.70	4.74	4.78	4.81	4.98
57	3.74	3.95	4.17	4.22	4.27	4.32	4.37	4.42	4.47	4.52	4.57	4.61	4.66	4.71	4.75	4.80	4.84	4.88	5.06
58	3.75	3.96	4.20	4.25	4.30	4.35	4.40	4.45	4.50	4.56	4.61	4.66	4.71	4.76	4.81	4.86	4.90	4.95	5.14
59	3.76	3.97	4.22	4.27	4.32	4.37	4.43	4.48	4.54	4.59	4.65	4.71	4.76	4.81	4.87	4.92	4.97	5.02	5.23
60	3.76	3.98	4.23	4.29	4.34	4.40	4.46	4.52	4.57	4.63	4.69	4.75	4.81	4.87	4.92	4.98	5.03	5.08	5.32
61	3.77	3.99	4.25	4.31	4.37	4.43	4.49	4.55	4.61	4.67	4.73	4.79	4.86	4.92	4.98	5.04	5.10	5.15	5.41
62	3.77	4.00	4.27	4.33	4.39	4.45	4.51	4.58	4.64	4.71	4.77	4.84	4.90	4.97	5.03	5.10	5.16	5.22	5.50
63	3.78	4.01	4.29	4.35	4.41	4.47	4.54	4.60	4.67	4.74	4.81	4.88	4.95	5.02	5.09	5.16	5.22	5.29	5.59
64	3.79	4.02	4.30	4.36	4.43	4.49	4.56	4.63	4.70	4.77	4.85	4.92	4.99	5.07	5.14	5.21	5.29	5.36	5.69
65	3.79	4.03	4.32	4.38	4.45	4.51	4.58	4.66	4.73	4.80	4.88	4.96	5.04	5.11	5.19	5.27	5.35	5.43	5.78
66	3.79	4.04	4.33	4.40	4.46	4.53	4.61	4.68	4.76	4.84	4.91	5.00	5.08	5.16	5.24	5.33	5.41	5.49	5.88
67	3.80	4.04	4.34	4.41	4.48	4.55	4.63	4.70	4.78	4.86	4.95	5.03	5.12	5.20	5.29	5.38	5.47	5.56	5.97
68	3.80	4.05	4.36	4.42	4.50	4.57	4.65	4.73	4.81	4.89	4.98	5.07	5.16	5.25	5.34	5.43	5.53	5.62	6.06
69	3.81	4.06	4.37	4.44	4.51	4.59	4.66	4.75	4.83	4.92	5.01	5.10	5.19	5.29	5.38	5.48	5.58	5.68	6.16
70	3.81	4.06	4.38	4.45	4.52	4.60	4.68	4.76	4.85	4.94	5.03	5.13	5.23	5.33	5.43	5.53	5.63	5.74	6.25
75	3.82	4.08	4.42	4.49	4.57	4.66	4.75	4.84	4.94	5.04	5.14	5.25	5.37	5.48	5.61	5.73	5.86	5.99	6.67

LOANS

At any time before the Maturity Date while this policy has a loan value, the Owner may obtain an advance from the Equitable upon assignment of the policy as sole security, if no premium is in default beyond the grace period or if this policy is continued as paid-up endowment insurance under the Options on Lapse provision. "Indebtedness" as used in this policy means an advance by the Equitable on the sole security of this policy together with due or accrued interest. An advance may not exceed the loan value, and any existing indebtedness will be deducted from the advance. The loan value is the amount which, accumulated with interest to the date to which premiums due have been paid (or the next policy anniversary if this is a paid-up policy), equals the cash value as of that date determined in accordance with the Cash Value provision.

Interest on an advance will accrue daily at the effective rate of 6% per year, and will become part of the indebtedness as it accrues. Interest is payable on the first premium due date in each policy year (or on each policy anniversary if this is a paid-up policy). If not then paid, interest will be added to the advance and will bear interest at the same rate.

Whenever the indebtedness against this policy equals or exceeds the cash value, this policy shall terminate provided 31 days prior notice has been mailed by the Equitable to the Owner and any assignee of record at their last known addresses.

Indebtedness may be repaid while the Insured is living at any time before the Maturity Date and before the end of the grace period of a premium in default. Indebtedness will be deducted in a single sum in any settlement.

Any indebtedness existing at the Maturity Date will be applied as follows:

(i) If the Owner elects any of the Maturity Options, the indebtedness will be deducted in determining the Conversion Value.

(ii) If the Owner surrenders this policy for its cash value or if this policy matures as an endowment under the paid-up endowment insurance option of the Options on Lapse provision, the indebtedness will be deducted from the single sum payable.

(iii) If neither (i) nor (ii) above is applicable, the monthly Retirement Income shown on page three will be decreased in the proportion that the indebtedness bears to the tabular cash value on the Maturity Date.

CASH VALUE

On or before the Maturity Date, the Owner may surrender this policy for its net cash value at any time during a policy year at the end of which this policy has a cash value as determined below, provided that surrender may be made before the first policy anniversary only upon default in the payment of a premium. The net cash value is the cash value less any indebtedness.

The cash value on or before the Maturity Date is determined as follows:

(i) If no premium is in default, the cash value is the tabular cash value increased by any existing dividend credits. The tabular cash value is determined in accordance with the Table of Values, which shows values applicable at the ends of policy years. The tabular cash value as of a date during a policy year will be determined by the Equitable with allowance for the time elapsed and for any portion of the year for which premiums due have been paid and have not been refunded pursuant to the last paragraph of the Premiums provision.

(ii) Within three months after the date of default, the cash value is the tabular cash value determined as of the date of default increased by any dividend credits existing at that date and not thereafter withdrawn or surrendered.

(iii) More than three months after the date of default, if this policy is continued as paid-up endowment insurance under the Options on Lapse provision, the cash value at any time is the reserve for the policy (based on the Insured's age at nearest birthday) increased by the cash value of any existing dividend additions.

The cash value of paid-up insurance within 30 days after a policy anniversary will not be less than on that anniversary.

TABLE OF VALUES. The values shown in the Table of Values on page three are for the face amount of this policy and apply at the ends of the policy years shown provided premiums are duly paid. Values not shown will be furnished on request. Where an age is shown, the values are those applicable at the end of the policy year nearest the birthday on which the Insured attains such age.

OPTIONS ON LAPSE

Upon default in the payment of a premium while this policy has a net cash value, the Owner may elect (a) to continue insurance on the Insured as participating paid-up endowment insurance, or (b) to surrender this policy for its net cash value.

Under the paid-up endowment insurance option, the net cash value as of the date of default will be applied as a net single premium at the Insured's age at nearest birthday on the date of default to purchase a level amount of death benefit and endowment benefit maturing on the Maturity Date except, however, that the level amount may not exceed an amount equal to the Death Benefit (defined on the first page) at the date of default, plus the amount of any dividend additions (including the dividend addition provided by any outstanding dividend) and dividend accumulations and less any indebtedness. If the net cash value is more than sufficient to purchase such maximum level amount, the benefits under this option will be determined by applying the net cash value as a single premium to purchase a larger amount of endowment benefit at the Maturity Date together with a Death Benefit before the Maturity Date equal to the greater of (i) the maximum level amount defined above and (ii) the present value at the date of death of the larger endowment benefit at the Maturity Date (on the basis of compound interest of 3% per year). When, in the Table of Values, the Death Benefit shown is less than the Endowment Benefit at Maturity Date, the Death Benefit payable will be determined in accordance with the preceding sentence. Payment will be made to the beneficiary upon receipt of due proof that the Insured died before the Maturity Date or to the Owner if the Insured is living at the Maturity Date.

If no election has been made within three months after the date of default, the paid-up endowment insurance option will take effect automatically. However, if the Insured dies after the grace period but within three months from the date of default and before the Maturity Date, and if the policy has not been surrendered for its net cash value, extended term insurance will be payable equal to the Death Benefit (defined on the first page)

OPTIONS ON LAPSE (Continued)

plus the amount of any dividend additions (including the dividend addition provided by any outstanding dividend) and dividend accumulations and less any indebtedness, provided the net cash value as of the date of default is at least equal to the net single premium required to provide such extended term insurance from the date of default until the date of death. However, the amount payable as extended term insurance shall not be less than the amount provided under the paid-up endowment insurance option. If extended term insurance becomes payable, any election of the paid-up endowment insurance option will be automatically cancelled.

Any dividend credits existing at the date of default which are withdrawn or surrendered will be excluded from the operation of this provision. Account will be taken of any advance made or repaid during the grace period.

MATURITY OPTIONS

In lieu of the benefits which otherwise would become payable at the Maturity Date (including any endowment benefit maturing at that date under the Options on Lapse provision), the Owner may elect one of the options below.

The election must be made by written notice to the Equitable at its Home Office within 31 days before the Maturity Date and will become effective if the Insured is living on the Maturity Date. If Option B becomes effective on the Maturity Date, Option A may be elected in lieu of any other benefit on the Deferred Maturity Date by written notice within 31 days before the Deferred Maturity Date and will become effective if the Insured is living on the Deferred Maturity Date.

Income payments under Option B below will be subject to the General Provisions Relating to Income Payments.

OPTION A. ALTERNATIVE FORMS OF INCOME. The Conversion Value (defined below) may be applied under the Optional Modes of Settlement or Annuity Option provisions upon surrender of this policy.

OPTION B. DEFERRED MATURITY DATE. The commencement of the Retirement Income (or, if this policy is being continued under the Options on Lapse provision, the payment of the endowment benefit) may be deferred to a designated Deferred Maturity Date.

If the election becomes effective, the following will apply, subject to the provisions of this policy:

1. No premiums will be due or payable on or after the Maturity Date.
2. If the Insured is living on the Deferred Maturity Date and if no premium was in default on the Maturity Date, the Equitable will commence payment of a monthly Retirement Income of the same form and payable in the same manner as that described on the first page. The amount of monthly Retirement Income will be the same as the amount which the Conversion Value on the Deferred Maturity Date would provide if applied for the benefit of the Insured under Option 3 (Life Income – 10 Years Certain) of the Optional Modes of Settlement provision.
3. If the Insured is living on the Deferred Maturity Date and this policy was being continued under the Options on Lapse provision at the Maturity Date, the Equitable will pay the Conversion Value on the Deferred Maturity Date to the Owner in a single sum.
4. If the Insured dies before the Deferred Maturity Date, the Equitable will pay to the beneficiary a Death Benefit equal to the Conversion Value on the date of death upon receipt of due proof of death and the surrender of this policy.
5. The Owner may surrender this policy at any time on or before the Deferred Maturity Date for its Conversion Value, which may be taken in cash or applied under Option A above.
6. Excess interest dividends may be allowed as determined annually by the Equitable and will be paid in cash to the Owner on each policy anniversary on or before the Deferred Maturity Date.
7. Any additional benefit provisions in force in this policy on the Maturity Date will terminate on that date.
8. At any time before a previously elected Deferred Maturity Date, the Owner may change such date to any Deferred Maturity Date after the filing of the request for change by written notice to the Equitable at its Home Office.

CONVERSION VALUE. The Conversion Value on the Maturity Date is an amount equal to the net cash value on the Maturity Date, as determined in accordance with the Cash Value provision. The Conversion Value on a date after the Maturity Date is an amount equal to the Conversion Value on the Maturity Date accumulated with compound interest at 3% per year to the later date.

ANNUITY OPTION

In lieu of payment in one sum, an election may be made to apply the whole or any part of the proceeds of this policy other than the Income payments under a supplementary contract providing any kind of single consideration annuity issued by the Equitable at the time of application of the proceeds (other than an annuity on a plan available under Option 3 or 5 of the Optional Modes of Settlement provision) with annuity payments which are 103% of those provided on the basis of the Equitable's rates then in effect. An election for the benefit of a payee who is not a natural person or who is acting in a fiduciary capacity may be made only with the Equitable's approval.

ELECTION AS TO A DEATH BENEFIT. After the death of the Insured, the beneficiary may make an election for his own benefit.

ELECTION AS TO CASH VALUE, CONVERSION VALUE, OR ENDOWMENT MATURITY VALUE. Upon surrender of this policy for its cash value or Conversion Value or upon its maturity as an endowment under the Options on Lapse provision, the Owner may make an election for the benefit of the Owner or the Insured.

The election must be made on the Equitable's blank and filed with the Equitable at its Home Office. This option is not available if the amount to be applied is less than $2,000, or if the initial annuity payment would amount to less than $20. The Equitable will require satisfactory evidence of the age of any person upon whose life the annuity depends.

GENERAL PROVISIONS RELATING TO INCOME PAYMENTS

This provision applies to the Retirement Income payments described on the first page and those made under Option B of the Maturity Options provision.

AMOUNT OF RETIREMENT INCOME. The amount of Retirement Income will, subject to the provisions of this policy, be the amount shown on page three (or, if Maturity Option B is elected, the amount determined in accordance with the Maturity Options provision), except that a higher amount, as determined by the Equitable at the time of payment of the first Retirement Income payment, may be payable if the Equitable is then making available a rate basis for income payments more favorable to the payee than the rate basis otherwise applicable under this policy.

PAYEE FOR INCOME PAYMENTS AFTER INSURED'S DEATH. Not earlier than 31 days before the due date of the first Income payment, the Insured may designate (with the right to change such designation) a person or persons to receive any Retirement Income payments that may become due after the Insured's death, subject to the Payments to Owner provision. A designation or change shall be made, and will take effect, in the same manner as a change of beneficiary. If at the death of the Insured or any payee there is no designated person living entitled to receive any remaining Retirement Income payments due after the Insured's death, the Equitable will pay to the executors or administrators of the Insured or such payee, as the case may be, the commuted value of any remaining payments in a single sum (on the basis of compound interest of 3¼% per year, except that if the Retirement Income payments are determined on the more favorable rate basis referred to in the Amount of Retirement Income provision above, the commutation interest rate will be that associated with the more favorable rate basis).

PAYMENTS TO OWNER. Before the due date of the first Income payment, the Owner may elect to have the Income payments paid to the Owner instead of to the Insured or to any payee after the Insured's death. Such an election may be revoked by the Owner at any time. An election or revocation shall be made, and will take effect, in the same manner as a change of beneficiary.

GENERAL PROVISIONS. Income payments will be made monthly except that if the payments would amount to less than $20 each, the Equitable may change the interval of payment so that the payments will amount to at least $20 each.

This policy will be nonparticipating after the commencement of the Retirement Income payments.

Income payments will terminate with the last instalment due before the death of the Insured or the end of the certain period, if later.

The Equitable will require satisfactory evidence of survival whenever a payment depends upon the survival of the Insured.

If an assignment of this policy is on file with the Equitable, the designations, changes, elections and revocations referred to in this provision may be made without the consent of the assignee, but the rights of a payee for Income payments shall be subordinate to those of the assignee.

OPTIONAL TERMINATION OF POLICY

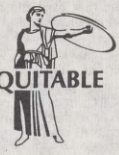
During the first policy year, if no premium is in default, the Owner may surrender this policy for its termination value, provided the Owner is not the Insured and certifies to the Equitable that the Insured, since the last premium due date before the date of surrender of this policy, has terminated his employment with the employer who has been providing funds toward payment of the premiums on the policy.

The termination value will be the greater of (a) the cash value as of the premium due date next following the date of surrender or (b) the fraction of the last premium paid corresponding to the ratio between (i) the period from the date of surrender to the next premium due date and (ii) the period from the due date of the last premium paid (or the Register Date if the premium was the initial premium) to the next premium due date.

Any indebtedness will be deducted from the termination value.

The EQUITABLE Life Assurance Society of the United States

1285 AVENUE OF THE AMERICAS, NEW YORK, NEW YORK 10019



PENSION PLAN ENDOWMENT POLICY

Insurance Payable In Event Of Death Before Maturity Date.
Life Annuity, Ten Years Certain, Beginning At Maturity Date.
Maturity Options. Annual Dividends. Premiums Payable For
Premium Period Shown On Page Three Or Until Prior Death.

No. 112-30

SPECIMEN POLICY

NOTE — Because of variations in state policy form requirements, the policy as actually issued may differ somewhat from this specimen policy.

SUMMARY OF PLAN

Submitted to
Senator Harrison A. Williams
July 19, 1972

1. Employee Eligibility:

Each full time active salaried employee or officer of the Company can become a Participant on effective date of the Agreement if completed five years of continuous service (Provided he is not less than 31 years of age and not over 61 years of age).

A break in continuous service constitutues a termination of his employment for the purpose of this plan. If he returns, he is then considered a new employee for purposes of this Plan.

2. Retirement Date:

Retirement date means the Anniversary Date of the register date of the Contract nearest the 65th birthday of the Participant.

3. Pension Formula:

The Pension Schedule is based on the monthly salary of the Participant which is 25%. If at any time after date of Agreement, a Participant has an increase or decrease in salary, on the next Anniversary Date, such increase or decrease shall be taken into consideration in determining the benefits to be provided and the contributions and the premium payments to be made. Any such change in salary during the five year period preceding the retirement date, shall not, however, result in any such change in contract.

4. Contributions:

Each Participant contributes from his compensation an amount equal to twenty five per cent of his annual cost of his Contract. This amount is withheld by the Company from time to time in order to reimburse the Company for its advance payment of the cost of his Contract.

5. Vesting:

This Contract has a 10% vesting schedule. For every year of service, the interest of the Participant is 10%. If an employee terminates before ten full years of service, the Trustee then determines the equity of the Participant and the Trustee in the Contract. Twenty five per cent of such cash surrender value, or optional termination value, shall belong to the Participant by reason of his contributions. The remaining seventy five per cent will be apportioned between the Participant and the Trustee depending upon the years of participation of the Participant.

6. Death Benefit:

Each contract has the same basic Options and cash values and provides for retirement income after retirement age, which is payable for a period of Ten Years Certain, and so long thereafter as the Participant may survive. Such benefits will be paid in full, including any withdrawal values available to a living Participant and any death or survivor's benefits on behalf of a Participant who dies after retirement.

7. Method of Funding:

All contributions made by the Company and the Participant is put in a Trust Fund and the Trustee in return administers and disposes of all trust properties and assets. The purpose of the Trust is to provide retirement income for employees of the Company at retirement.

YEAR	NO. OF PARTICIPANTS	NUMBER OUT	NEW PARTICIPANTS	TOTAL PARTICIPANTS
1952	30	---	---	30
1953		-0-	1	31
1954		-0-	-0-	31
1955		1	5	35
1956		-0-	3	38
1957		1	4	41
1958		-0-	4	45
1959		2	1	44
1960		-0-	2	46
1961		2	4	48
1962		8	6	46
1963		4	1	43
1964		2	3	44
1965		2	3	45
1966		3	3	45
1967		3	5	47
1968		2	3	48
1969		2	2	48
1970		4	4	48
1971		2	1	47
1972		1		
		39		

YEAR	NO. IN PLAN	GROSS ANNUAL PREMIUMS	DIVIDENDS	NET PREMIUMS
1952	30	$ 55,653.16	$ -0-	$ 55,653.16
1953	31	63,933.85	-0-	63,933.85
1954	31	65,961.33	5,033.10	60,928.23
1955	35	73,985.31	6,278.68	67,706.63
1956	38	84,427.13	7,148.46	77,278.67
1957	41	93,821.42	8,647.58	85,173.84
1958	45	104,515.92	9,694.70	94,821.22
1959	44	103,044.29	11,115.83	91,928.46
1960	46	108,883.04	12,720.48	96,162.56
1961	48	108,690.37	14,724.22	93,966.15
1962	46	81,895.50	12,875.66	69,019.84
1963	43	77,488.20	11,890.22	65,597.98
1964	44	78,875.52	14,085.71	64,789.81
1965	45	84,389.20	14,780.87	69,608.33
1966	45	84,877.37	16,062.98	68,814.39
1967	47	90,574.93	13,556.11	77,018.82
1968	48	100,679.64	16,753.03	83,926.61
1969	48	105,376.98	17,017.40	88,359.58
1970	48	108,340.04	21,549.07	86,790.97
1971	47	106,207.83	19,162.58	87,045.25
		$1,781,621.03	$233,096.68	$1,548,524.35
		X .25		
		$ 445,405.	13%	28.76% of Net

TERMINATIONS

DATE - REASON	NAME	SETTLEMENT	AMOUNT SETTLED (PROCEEDS)
1-19-55 Died	Irma Klinkner	Option 4-$100.00 a month	$ 10,802.82
6-1-57 Dropped out of Plan Voluntarily	Stella J. Scheff	Cash for Termination Value to Trustee	$ 360.00
12-30-58 Died	Charles E. Heil	Cash	$ 25,902.20
6-8-59 Died	William H. Hetter	Cash	$ 16,152.77
12-1-61 Early Retirement	Harry J. Seubert	Option 4-$175.00 a month as of 12-1-61	$ 26,018.40
12-31-61 Died	Howard R. Johns	Option 4-$100.00 a month as of 4-10-62	$ 16,769.99
12-1-61 Left Employ	Richard C. Sensobaugh	Took Vested Interest in Cash	$ 1,904.00 (Vested=761.60)
12-1-62 Normal Retirement Date (Def.)	John W. Erbach	Option 4-$270.00 a month as of 7-1-63	$ 45,699.57
12-1-62 Left Employ	Edward V. Hain	Took Vested Interest-Part in Cash & Balance @ $150.00 a month as of 1-1-63	$ 14,528.50 (Vested=13428.86)
12-1-62 Early Retirement	Robert Linn	Option 4-$250.00 a month as of 1-1-63	$ 36,712.84
2-10-62 Died	Chester H. Mitz	Cash to Bank as Trustee	$ 61,781.70
12-1-62 Normal Retirement Age	Charles S. Prosser	103% Ref. Ann. as of 12-1-62	$ 26,855.06
12-1-62 Normal Retirement Age	Albert L. Seeman	103% Ref. Ann. as of 12-1-62	$ 53,197.64
12-1-62 Left Employ	Dorothy M. Helger	Took Vested Interest in Cash	$ 3,049.50 (Vested=1189.30)
12-1-63 Normal Retirement Age	William S. Mertz	103% Life Income-10 Year Certain as of 12-1-63	$ 33,287.99
12-1-63 Normal Retirement Age (Def.)	Charles H. Shaffer	Option 4-$200.00 a month as of 9-1-64	$ 22,948.67
12-1-63 Left Employ	Catherine C. Perry	Took Vested Interest in Cash 12-11-63	$ 4,088.50 (Vested=2861.95)
12-1-63 Left Employ	A. Lorraine Apicella	Took Vested Interest in Cash	$ 153.00 (Vested=49.73)
12-1-64 Early Retirement	Lawrence J. McElhinny	103% Ref. Ann. as of 12-1-64	$ 33,589.00
12-1-64 Left Employ	Anne E. Nackey	Took Vested Interest in Cash	$ 2,451.00 (Vested=1531.90)
12-1-65 Normal Retirement Age	Joseph H. Brent	103% Life Income-10 Year Certain as of 1-1-66	$ 30,880.50
12-1-65 Normal Retirement Age (Def.)	Frederick E. Hays	103% Life Income-10 Year Certain as of 12-1-71	$ 64,241.84
12-1-66 Normal Retirement Age (Def.)	Robert O. Dierker	103% Life Income-10 Year Certain as of 6-1-71	$ 100,663.84
12-1-66 Normal Retirement Age	Oscar A. Kamper	Part Cash & Balance Part Life Income-10 Year Certain & Part @ $175.00 a month-Option 4 as of 1-5-67	$ 38,591.57
12-1-66 Left Employ	Ann Stachowicz	Took Vested Interest in Cash	$ 470.50 (Vested=152.91)
3-19-67 Died	Richard T. Hill	Option 4-$250.00 a month	$ 37,335.15
12-1-67 Normal Retirement Age (Def.)	Ann E. Hollahan	Part Cash & Bal. Option 2-8 yrs.-6-1-68	$ 14,776.92
7-23-67 Died	Louis A. Snyder	Cert. of Dep.	$ 12,801.15
12-1-68 Normal Retirement Age (Def.)	Paul E. McGill	Took Cash-Feb. 1970	$ 40,243.45
12-1-68 Left Employ	Margaret Harbism	Took Vested Interest in Cash	$ 2,114.50 (Vested=1480.15)
3-19-69 Died	Clarence E. Koss	Option 4-$300.00 a month	$ 30,478.92
12-1-69 Left Employ	Charles Patch	Took Vested Interest in Cash	$ 4,023.50 (Vested=2212.93)

TERMINATIONS

DATE	REASON	NAME	SETTLEMENT	AMOUNT SETTLED (PROCEEDS)
12-1-70	Normal Retirement Age (Def.)	Robert C. Dell	103% Life Income-10 Year Certain as of 12-1-71	$ 40,747.20
12-1-70	Normal Retirement Age (Def.)	William P. Kim	103% Life Income-10 Year Certain as of 6-1-71	$ 32,029.26
12-1-70	Normal Retirement Age (Def.)	Howard F. Stocker	103% Life Income-10 Year Certain as of 6-1-71 Bal. - Part Cash	$ 27,042.98 $ 6,521.50 (Vested=309.72)
12-1-70	Left Employ	John W. Fitch	Took Vested Interest in Cash	$ 35,372.07
4-27-71	Died	William Berger	Option 2-Over 7 Year Period	
12-1-71	Early Retirement	Charles D. Myers	103% Life Income-10 Year Certain as of 1-1-72	$ 49,381.56
3-11-72	Died	Leonard P. Patton, Jr.	103% Life Income-20 Year Certain	$ 37,392.00
				$1,041,361.56

The CHAIRMAN. Our next witness is Robert L. Augenblick, president of Investment Company Institute.

STATEMENT OF ROBERT L. AUGENBLICK, PRESIDENT, INVESTMENT COMPANY INSTITUTE, ACCOMPANIED BY DAVID SILVER, GENERAL COUNSEL

Mr. AUGENBLICK. My name is Robert Augenblick. I appear here today on behalf of Investment Company Institute of which I am president. With me today is Mr. David Silver, our general counsel.

The Investment Company Institute is the national association of the mutual fund industry. Our members consist of 372 mutual funds, together with their investment advisers and principal underwriters. Our mutual fund members have assets of almost $60 billion, representing about 90 percent of the assets of all mutual funds in this country. Our mutual fund members have approximately 8½ million shareholders.

I have a written statement which I would like to offer for the record.

In view of the hour, it seems to me that the best thing for me to do here is to summarize in as short a way as possible what the points are in this statement.

The CHAIRMAN. Fine.

Mr. AUGENBLICK. At the outset, the Investment Company Institute wishes to endorse a declared policy of the bill and the purposes which it seeks to achieve. With hundreds of millions of dollars of employee benefit plan money invested in mutual funds, our industry has a very definite interest in the health and integrity of employee benefit plans. I do not intend to address myself broadside to the provisions of the bill; rather, I restrict what I have to say to those parts of the bill which are of particular interest to our industry and which might cause, I believe, some unintended difficulties. I am referring to title V of the bill and the scope of the definitions of a fiduciary and a party in interest.

But before I get to that, I think it would be helpful just by way of background to point briefly to the normal structure of the mutual fund organization. There are three functions involved. There is the fund itself, which receives money from the public, and which invests this money to create its own portfolio of securities. There is a separate entity, the investment adviser which renders not only investment advisory services but important administrative services to the fund. And third, there is the principal underwriter whose responsibility is to see to it that the shares of the fund are distributed to the public. Very often the investment advisor and principal underwriter are one and the same entity or are under common control.

If the definitions of "fiduciary" and "party in interest"—and it is not clear whether this is the case—if they are extended to embrace a mutual fund or its investment adviser, then I think there would be certain unfortunate and probably unintended results which would follow, which would discourage the use of mutual funds as a medium for investment by an employee benefit plan. In my written statement I have submitted a number of examples of this, and I do not wish to repeat them. As one example, suppose a mutual fund was the funding medium for an employee benefit plan of a large employer. If the mutual

fund is a fiduciary, then the bill could be interpreted to prohibit the mutual fund from selling any of its own shares, outside the employee pension plans, to thousands and thousands of employees on the ground that they were by definition parties in interest.

I could multiply these examples but I leave this to my written statement. What is important here is the fact that mutual fund organizations today, the fund, the investment adviser, principal underwriter, are subject—what I am referring to are the stringent regulations of mutual funds under the Federal securities laws, the Securities Exchange Act of 1933, and Investment Company Act of 1940. Under existing law, the investment adviser to a mutual fund has a fiduciary duty to that fund. Moreover, the SEC, under existing law, has power to prescribe rules and regulations, and they have, with respect to the custody of the assets of the mutual funds and with respect to the bonding of those who have access to mutual fund assets. Moreover, affiliates of a mutual fund are forbidden to have transactions with a fund, except with prior SEC approval.

So all of these safeguards are already written into the law. Mutual funds, like stocks and bonds, are a potential investment medium for employee benefit plans. I think it is very important to distinguish between an investment medium and the people who have the discretion to determine what the investment medium shall be. There seems no reason why those who manage the employee benefit plan and have the discretion to determine what its assets shall be invested in, whether it is mutual fund or stocks or bonds, why they should not be classified as fiduciaries. But once these fiduciaries have determined that all or a portion of the employee benefit plan should be invested in the shares of the mutual fund rather than some other area, we see no reason why the scope of the term "fiduciary" or " party in interest" should extend to either the mutual fund or its investment adviser. We are reinforced in this, because a trustee of a particular investment medium has the advantage in the case of a mutual fund of a prospectus carrying full and complete information concerning the fund, setting forth information required by the SEC to be set forth, including a statement of the investment policy of the fund.

The CHAIRMAN. On this point the provision in our bill referring to the term "employee benefit fund," does not include (a) any assets of an investment company subject to regulation under the Investment Company Act of 1940.

Mr. AUGENBLICK. We took a good look at that, too, Mr. Chairman. While there is some ambiguity there, what this is talking about is the employee benefit fund itself, and we could not read this as excluding the mutual funds or the investment adviser from the definition of a fiduciary or a party in interest, and in fact what we are asking for here simply is clarification. We think in view of the pattern—the regulation of Federal securities laws, this committee would be justified and it would be proper to make it explicit in the bill that the terms "fiduciary" and "party in interest" do not for purposes of the bill apply to a mutual fund, its investment adviser or principal underwriter, but at the same time making it very clear that any such exclusion does not in any way limit the fiduciary duties otherwise applicable under the law to these parties.

We have drafted some language which appears at the end of our written statement.

The CHAIRMAN. I think we are in common agreement on purpose here. Maybe the language needs some change to make it very clear.

Mr. AUGENBLICK. Thank you very much.

The CHAIRMAN. Thank you very much.

(The prepared statement of Mr. Augenblick follows:)

June 21, 1972

STATEMENT OF ROBERT L. AUGENBLICK, PRESIDENT

INVESTMENT COMPANY INSTITUTE

BEFORE THE SUBCOMMITTEE ON LABOR

OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

INTRODUCTION

My name is Robert L. Augenblick. I am testifying today on behalf of the Investment Company Institute, of which I am president. The Investment Company Institute is the national association of the American mutual fund industry. Its membership includes 372 open-end investment companies (popularly called "mutual funds"), their investment advisers and principal underwriters. Our mutual fund members account for almost 90% of industry assets and have approximately eight and one-half million shareholders.

We appreciate this opportunity to express our views on Title V of S.3598, entitled "Disclosure and Fiduciary Standards".

May I say at the outset that the Institute endorses the declared policy of this bill and the purposes which it seeks to achieve. We do not propose in our testimony to deal with all the provisions of the bill. Rather, we limit our testimony to certain technical ambiguities in the bill which, if not clarified, could seriously impede the use of mutual fund shares as an investment medium for employee benefit plans.

Mutual fund shares are a desirable medium for the funding of employee benefit plans. They offer professional management of the shareholder's invest-

ment by people who are trained and expert in the investment field. They offer diversification, and therefore a minimizing of investment risk by spreading the shareholder's investment over many carefully selected securities. They are particularly adapted to smaller private employee benefit plans in that they furnish, at modest cost, a complete, professionally managed investment program.

As of the end of 1970, the last year for which figures are available, the investment of employee pension and profit-sharing plans in mutual fund shares exceeded $800 million, and the current figure is undoubtedly larger. The mutual fund industry is, therefore, interested in S.3598 and supports legislation designed to provide effective and meaningful safeguards for employee benefit plans.

Before referring to particular technical ambiguities in the bill, it might be helpful to outline the structure of a typical mutual fund complex. There are three distinct functions involved. First, there is the mutual fund itself, which issues its shares to the public and uses the proceeds to acquire its own portfolio of securities. Second, there is the investment adviser, which not only provides investment advisory services to the mutual fund but also performs many important administrative services for the fund. Third, there is usually a principal underwriter, which arranges for the distribution to the public of the fund's own shares. Often the investment adviser and the principal underwriter are the same entity or are under common control.

Mutual fund organizations are strictly regulated under the federal securities laws -- namely, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940. In addition, virtually every state in the Union regulates the sale of mutual fund shares.

As a matter of existing federal securities law, the investment adviser to a mutual fund has a fiduciary obligation to the fund. This obligation is enforceable by the United States Securities and Exchange Commission, the mutual fund itself and individual shareholders of the fund. Moreover, the SEC has substantial authority under the Investment Company Act of 1940 to regulate the operations of mutual funds, including authority, among other things, to promulgate rules with respect to the custody of fund assets and to prescribe requirements for fidelity bonding of fund officers and employees. In addition, the 1940 Act forbids transactions between a fund and its affiliated persons except with SEC approval.

As some of the members of this Committee are aware, there were amendments to the Investment Company Act of 1940 which were enacted into law in 1970 after a detailed SEC study of the mutual fund industry and extensive hearings by Congress. These amendments were primarily directed to an increase in controls over various fees paid by mutual funds. However, there was no question raised in the SEC study or the hearings about the honesty and integrity of those handling fund assets. In fact, it was agreed that the 1940 Act had been quite effective in controlling potential conflicts of interest and in preserving the integrity of mutual funds.

The problems we have with the bill before the Committee are centered in Title V. Title V places fiduciary duties on those who have power to deal with plan assets and also places controls over certain potential conflicts of interest involving various persons who are defined to be parties in interest. We have no quarrel with this objective -- mutual funds are already subject to stringent limitations in this regard under the Investment Company Act. The difficulty arises because definitions in Title V of fiduciary and parties in interest are so broadly drafted as to possibly sweep up a mutual fund and its investment adviser and impose on them duties and restrictions which are inappropriate. If the bill is so interpreted, it would confuse the investment medium selected by those who have discretion over benefit plan assets with the persons who have such discretion.

Mutual fund shares are securities, and like stocks and bonds, are a potential investment medium for employee benefit plans. We think that the term "fiduciary", for purposes of the bill, should cover those who decide what securities, whether they be stocks, bonds or mutual funds, are to be selected as benefit plan investments. But once a selection of one or more mutual funds as an investment medium has been made, we see no reason why the scope of the term "fiduciary", as used in the bill, should be extended to the mutual fund or those who manage it. We are reinforced in this belief by the fact that full details as to the operations of the mutual fund appear in its prospectus, including a statement of its investment policies. Failure to stay within the stated restrictions in the prospectus would create liabilities under the federal securities laws.

DEFINITIONS OF "FIDUCIARY" AND "PARTY IN INTEREST"

Section 502(a)(25) (page 52 of the bill) defines the term "fiduciary" as:

> "any person who exercises any power of control, management, or disposition with respect to any moneys or other property of an employee benefit fund, or has authority or responsibility to do so."

It is unclear from this language whether, if assets of an employee benefit fund are invested in shares of a mutual fund registered under the Investment Company Act of 1940, such mutual fund or its investment adviser would thereby become a "fiduciary" within the meaning of Section 502(a)(25), on the theory that the mutual fund or its investment adviser exercises an investment discretion with respect to moneys or property which originally came from the employee benefit fund.

Section 502(f)(13), contained on page 53 of the bill, defines the term "party in interest" as:

> "any administrator, officer, trustee, custodian, counsel, or employee of any employee benefit plan, or a person providing benefit plan services to any such plan, or an employer, any of whose employees are covered by such a plan or any person controlling, controlled by, or under common control with, such employer or officer or employee or agent of such employer or such person, or an employee organization having members covered by such plan, or an officer or employee or agent of such an employee organization, or a relative, partner, or joint venturer or any of the above described persons."

The term "benefit plan services" is not defined in Title V. As the bill is presently drafted, it might be argued that the services performed by the mutual fund, its investment adviser or principal underwriter constitute "benefit plan services", and that therefore the fund, its adviser or underwriter might be a "party in interest".

If a mutual fund registered under the Investment Company Act of 1940, its investment adviser or principal underwriter were considered to be a "fiduciary" or a "party in interest" for purposes of Title V, this could produce a number of inappropriate, and we believe unintended, results by reason of the specific prohibitions applicable to a fiduciary under Section 502(b)(2) of the bill.

Byway of illustration, it is possible that the following could result under the present drafting of the bill (the clauses referred to are clauses of Section 509(b)(2) contained on page 72 of the bill):

1. Clause (A) forbids a fiduciary to sell property of an employee benefit fund to any person known to be a party in interest. Suppose a bank trustee for an employee benefit fund buys shares of a mutual fund and then wishes to redeem part of the shares -- i.e., sell them back to the fund at asset value. Such a transaction might be forbidden by Clause (A) because the bank trustee (a fiduciary) would be selling pension plan property to the mutual fund (a party in interest).

2. Clause (G) prohibits a fiduciary from furnishing goods or services to any person known to be a party in interest. It is unclear from the definition of "party in interest" whether all officers, employees, or agents of an employer whose employee benefit plan is funded with mutual fund shares are parties in interest. If they are parties in

interest, this section might prohibit a mutual fund from selling its shares and furnishing services directly to thousands of employees of a large employer, because the mutual fund is a fiduciary and the employees are parties in interest.

Or, a large bank might manage the assets of an employee benefit fund and thus be a fiduciary. If the employee benefit plan includes mutual fund shares in its assets, this section might prevent the bank from providing normal banking services, e.g., as depositary, custodian or transfer agent, for the mutual fund, since the bank is a fiduciary and the mutual fund might be a party in interest.

3. Clause (H) provides that a fiduciary may not permit the transfer of any property of the employee benefit fund to any person known to be a party in interest. This section might prevent the fiduciary of an employee benefit fund from purchasing additional shares in a mutual fund, since this might involve the transfer of property of the employee benefit fund to a mutual fund which is a party in interest.

In view of the existing pattern of federal regulation of mutual funds, their investment advisers and principal underwriters, including the fiduciary duty owed to a fund by its investment adviser, and in light of the undesirable results which could follow if a mutual fund, its investment adviser or principal underwriter were caught up in the definition of a "fiduciary" or a "party in interest" for purposes of Title V, we suggest that mutual funds, their investment

advisers and principal underwriters be excluded from the definitions of "fiduciary" and "party in interest". At the same time it should be made clear that such exclusions are not intended in any way to diminish existing fiduciary obligations under other statutes or under the common law. This could be accomplished by adding a new paragraph at the bottom of page 53 of the bill, reading as follows:

> "(14) If any moneys or other property of an employee benefit fund are invested in shares of an investment company registered under the Investment Company Act of 1940, such investment shall not cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a 'fiduciary' or a 'party in interest' as those terms are defined in this Title; provided, however, that nothing contained herein shall limit the duties imposed on such investment company, investment adviser or principal underwriter by any other provision of law."

The CHAIRMAN. We are scheduled for 9:30, Friday.

(Whereupon, at 1:15 p.m. the committee was adjourned, to be reconvened at 9:30 a.m., on Friday, June 23, 1972).

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