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 28 AND 29, 1972

PART 3

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

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 28 AND 29, 1972

PART 3

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

U.S. GOVERNMENT PRINTING OFFICE

82-079 O WASHINGTON : 1972

COMMITTEE ON LABOR AND PUBLIC WELFARE

HARRISON A. WILLIAMS, JR., New Jersey, *Chairman*

JENNINGS RANDOLPH, West Virginia
CLAIBORNE PELL, Rhode Island
EDWARD M. KENNEDY, Massachusetts
GAYLORD NELSON, Wisconsin
WALTER F. MONDALE, Minnesota
THOMAS F. EAGLETON, Missouri
ALAN CRANSTON, California
HAROLD E. HUGHES, Iowa
ADLAI E. STEVENSON III, Illinois
JACOB K. JAVITS, New York
PETER H. DOMINICK, Colorado
RICHARD S. SCHWEIKER, Pennsylvania
BOB PACKWOOD, Oregon
ROBERT TAFT, JR., Ohio
J. GLENN BEALL, JR., Maryland
ROBERT T. STAFFORD, Vermont

STEWART E. MCCLURE, *Staff Director*
ROBERT E. NAGLE, *General Counsel*
ROY H. MILLENSON, *Minority Staff Director*
EUGENE MITTELMAN, *Minority Counsel*

SUBCOMMITTEE ON LABOR

HARRISON A. WILLIAMS, JR., New Jersey, *Chairman*

JENNINGS RANDOLPH, West Virginia
CLAIBORNE PELL, Rhode Island
GAYLORD NELSON, Wisconsin
THOMAS F. EAGLETON, Missouri
ADLAI E. STEVENSON III, Illinois
HAROLD E. HUGHES, Iowa
JACOB K. JAVITS, New York
RICHARD S. SCHWEIKER, Pennsylvania
BOB PACKWOOD, Oregon
ROBERT TAFT, JR., Ohio
ROBERT T. STAFFORD, Vermont

GERALD M. FEDER, *Counsel*
MARIO T. NOTO, *Special Counsel*
EUGENE MITTELMAN, *Minority Counsel*
MICHAEL S. GORDON, *Minority Special Counsel*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

WEDNESDAY, JUNE 28, 1972

THURSDAY, JUNE 29, 1972

STATEMENTS

ADDITIONAL INFORMATION

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT, 1972

WEDNESDAY, JUNE 28, 1972

U.S. Senate,
Subcommittee on Labor of the
Committee on Labor and Public Welfare,
Washington, D.C.

The subcommittee met, pursuant to recess, in room 4232, New Senate Office Building, Hon. Harrison A. Williams, Jr., chairman, presiding.

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

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

The Chairman. We will resume our hearings on S. 3598, and the other pension legislation before the Subcommittee on Labor.

This morning we have Mr. E. S. Willis, manager, employee benefits, General Electric Co., also speaking as representative for the U.S. Chamber of Commerce.

STATEMENT OF E. S. WILLIS, MANAGER, EMPLOYEE BENEFITS, GENERAL ELECTRIC CO., ON BEHALF OF THE U.S. CHAMBER OF COMMERCE, ACCOMPANIED BY ANDREW A. MELGARD, U.S. CHAMBER OF COMMERCE COMMITTEE EXECUTIVE

Mr. Willis. Thank you very much. We appreciate this opportunity to present our views to the committee and to preserve the time of the committee I would like to follow, but not read all parts of, our testimony.

I would appreciate it if we could have the full testimony made a part of the record.

The Chairman. It will be included at the end of your testimony.

Mr. Willis. As you have indicated, sir; my name is E. S. Willis. I am manager of employee benefits for the General Electric Co.

My associate on my left is Mr. Andrew Melgard, the Committee executive of the chamber's private pension social security committee.

We are speaking today on behalf of the Chamber of Commerce of the United States, representing more than 40,000 business enterprises and 3,600 trade and professional associations, local and State chambers of commerce. The underlying membership is more than 5 million individuals and firms.

In general, we support amendments to strengthen and improve the protection of participants in and beneficiaries of employee welfare and pension benefit plans under the Welfare and Pension Plans Disclosure Act. We also support reasonable minimum Federal standards or regulations governing the vesting of private pensions.

We support bills that would encourage individuals to save for retirement, and that would increase the present tax deferral available to the self-employed who have or establish pension plans for themselves and their employees.

The growth of private pension plans is one of America's most recent success stories. Huge social and economic dividends are beginning to flow from these plans. Retirees are enjoying more economic freedom and independence as private retirement income increases.

In addition, our economy has benefited from the current $150 billion in assets that are held in trust for present and future retirees. Income and continuing additions to these funds help provide this Nation with the new capital that is vital for economic growth and high employment.

Overall, the business community has an obvious and continuing interest in all legislative proposals that would affect private pension plans and their growth. Furthermore, we are vitally concerned with any proposal that would mandate, through new Federal legislation, any burdensome and unnecessary increase in private pension costs.

The national chamber takes a positive, clear-cut approach on private pension plans—one which calls for maximum encouragement of continued growth and expansion of private pension plans. At the same time, we believe that every effort should be made to prevent needless governmental restrictions on private pension growth. In short, the business community wants to see private pension plans improved and their benefits spread to more employers and employees.

Employers and employees should remain free to work out pension plan arrangements best suited to their own needs and requirements. To accomplish these ends, basic principles applicable to the establishment and administration of private pension plans include:

1. A clear explanation to employees of the pension plan provisions, employee rights thereunder, and the extent of employer obligations and responsibilities.

2. The highest standards of fiduciary responsibility and effective and meaningful disclosure.

3. Provisions for vesting that will afford to a plan participant, who meets specified age and/or length of service conditions, a right to an accrued pension benefit based on his service to date of termination of employment, payable when he reaches the plan's normal retirement age.

4. In addition, all individuals should be encouraged during their lives to build private retirement income out of earnings either on an individual or group basis. Furthermore, individuals should be permitted to exercise maximum freedom of choice in the selection of savings and investment media for personal or group retirement planning.

We are concerned about the economic impact of increasing costs of doing business and shrinking profits. The long-term trend, over the last five business cycles, has been downward for after tax profits as a percent of corporate wages and salaries, and upward for supplements as a percent of such wages and salaries. We have two exhibits covering that.

Our membership, therefore, is vitally concerned with any legislation that would increase employer costs for private pension plans.

A futher fact of major importance is the growth of private pension plans. While pension plans were first adopted by industry as early as 1875, they began their major growth in the 1940's and 1950's. As the tabulation indicates, they are now making a significant and major contribution not only to retirement security, but to the capital market.

Moving down the page a bit, you see that another table shows there are over 237,000 qualified plans, a truly astounding record of voluntary growth.

In addition to private pensions, the benefits from Government administered plans to Federal civilian employees, State and local employees, and railroad employees have been increasing. In 1970, some 2,266,000 pensions totaling $6.4 billion annually were being paid to retired public and railroad employees.

We believe the statistics on private pension growth show the concern of employers with helping to provide adequate retirement income and their willingness up to now to assume the heavy and long-range financial burdens that are involved. This growth has occurred voluntarily, not by compulsion. Any action that would curtail growth would be highly undesirable.

While there have been statements recently suggesting that there is little Government regulation in the private pension area, the record indicates otherwise. The present rules and regulations are found principally in the Internal Revenue Code and under the Federal Welfare and Pension Plan Disclosure Act.

The Internal Revenue Service provisions help assure that bona fide, definite, and essentially nondiscriminatory plans are established.

The Federal Disclosure Act, passed in 1958 and amended in 1962, was initially passed on the theory of self-enforcement through public disclosure of a plan's operation. The 1962 amendments to the act gave the Secretary of Labor enforcement authority, required bonding of administrators and added criminal provisions against embezzlement, bribery, kickbacks, et cetera. The required annual report (D–2 form) has been considerably broadened into a most comprehensive and detailed 15-page document. There are, however, areas where some additional disclosure may be helpful as outlined later.

Turning to the middle of page 5. The chamber seeks the highest standards of honesty in the administration of employee benefit plans. Also, we believe that employees need to better understand the values of private pension and other employee benefits. We, therefore, support suitable amendments to the Disclosure Act.

Specifically, we:

1. Support the concept that administrators of pension funds should observe the highest standards of fiduciary responsibility, and favor the concept of a Federal fiduciary responsibility act for pension plan administrators and trustees.

2. Support an amendment which would bar persons convicted of certain crimes from serving as a fiduciary or consultant to a welfare or pension fund.

3. Support an amendment requiring annual audits of funds, with appropriate exceptions for those plans already subject to adequate audits by various Federal or State insurance or banking regulatory agencies. Actuarial certifications would be of value.

4. Support the principle of applying a prudent man rule as the standard for the investment of employee benefit funds, and oppose any attempt to limit its effectiveness or flexibility.

5. Support adequate investigatory powers for the Secretary of Labor where he has reasonable cause to believe a violation of the act has occurred or is about to occur, but oppose giving the Secretary of Labor added powers to regulate or interfere in the management of plans in the absence of a proven need for such additional powers.

6. Support certain improved meaningful disclosure amendments, but oppose additional unnecessary disclosure requirements. For example, the requirement that calls for the details of all transactions of $100,000 or 3 percent of the fund, whichever is smaller, should be revised to eliminate the $100,000 minimum.

These amendments of the Disclosure Act should have a first priority of attention in Congress. We testified in support of such legislation before the House General Subcommittee on Labor in both the 90th and 91st Congress, and we look forward to working with the members and the staff of this subcommittee. The bill does present a number of difficult matters, often of a highly technical nature, and we are concerned with excessive disclosure requirements that would serve no purpose, or perhaps be of marginal value. However, these problems can be resolved.

Vesting is a right given a plan participant who meets specified age and/or length of service conditions to receive, when he reaches normal retirement age, a proportionate pension benefit based upon his service to date of termination—and that right is not dependent upon his continued employment.

We support sound programs of vesting. The majority of plans do have some form of early vesting, and vesting periods are becoming shorter.

During the past few years, various proposals have been made for a vesting standard for all qualified plans. There have been proposals for a "Rule-of-50", 10- or 15-year vesting, graded vesting of 10 percent a year from the sixth to 15th years of participation in a plan, or 30 percent after 8 years and 10 percent a year thereafter.

We support reasonable minimum Federal standards or regulation governing the vesting of private pensions. These standards should embody certain criteria. Some of the basic criteria to consider are:

1. It should be accomplished through amendment of the Internal Revenue Code, as a condition for qualifying a plan.

2. The reasonable minimum vesting standards should apply to all private pension plans including multiemployer plans.

3. It should allow employers a reasonable time, including the duration of existing collective bargaining agreements, to comply with the act from the date of its enactment. This is important because of the additional cost which vesting imposes on new plans, or existing plans that do not have adequate vesting provisions.

Now on other issues: first, the President's message to Congress on private pensions stated that there was insufficient information "to determine what Federal policy should be on questions such as funding, the nature of the employer's liability, and termination insurance."

The Departments of Labor and Treasury have been directed to undertake a study to determine the extent of benefit losses under pension plans that are terminated.

We see no reason for the Senate to consider funding or plan termination insurance legislation in the absence of sufficient information to determine what public policy should be in these areas. In fact, present information shows no need for such legislation. Furthermore, we doubt that further studies will demonstrate any changes in this situation.

In 1969, the Pension Research Council issued a funding study showing that "a very high degree of security had been reached by the 4,000 private pension plans, covering 9 million employees that had been surveyed. Pension plans which had been accumulating funds for 15 years or more had assets sufficient to cover 94 percent of all accrued benefits, and 99 percent of vested accrued benefits.

The most recent survey of employee pension funds by the State of Wisconsin for the period January 1, 1971; to May 5, 1972, shows an even more favorable picture of funding. For the 142 plans examined by the State, assets were sufficient to cover over 107 percent of vested benefit liabilities.

Additionally, the issue of mandatory funding may be somewhat academic in view of Opinion No. 8 of the Accounting Principles Board which requires the disclosure of pension plan liabilities on the corporate balance sheet.

Under current IRS regulations, there are adequate requirements for current service funding. Restrictions on prior service funding are now unnecessary in view of existing practices in managing funds. Further restrictions imposed by law would only serve to create more obstacles to pension fund operations. All evidence, such as indicated above, shows no need for any additional funding requirements. In fact even the present IRS regulations on the minimum period of funding may have had deleterious effects.

Reinsurance proposals contemplate an elaborate and potentially costly mechanism which would involve the most detailed regulation of every aspect of private pension plan operations. It would require:

1. Uniform actuarial assumptions,
2. Controlled benefit formulas,
3. Standardized plan design,
4. Standardized vesting,
5. Detailed restrictions on investments, with a consequent serious loss to the whole economy.

It is important to point out that this kind of program would try to insure nonexistent assets. This is distinctly different from an FDIC-type arrangement which insures deposited funds or savings. It is questionable whether pension insurance for unfunded liabilities is a workable plan. Certainly, it would require the most stringent and complex regulation imaginable.

Furthermore, a program of reinsurance to cover unfunded liabilities would in the long run result in inadequate funding. Sound plans would be financing unsound plans, and this would result in the loss of benefits to the employees in sound plans.

As to portability, sound vesting in all private pension plans will effectively meet the needs in this area. In other words, adequate vesting makes the question of portability academic. Portability would increase administrative costs. Additionally, investment yields in current plans would be less because of necessary changes in investment practices. This would lead to smaller retirement benefits.

There are certain other areas of concern we would like to point out. We realize that your subcommittee has not completed its study and that further reports may be issued. We suggest that the subcommittee may wish to consider, if it has not already done so, the following related areas of concern.

Public pensions. In 1970 during hearings on investment policies of pension funds held by the Subcommittee on Fiscal Policy of the Joint Economic Committee, Chairman Martha W. Griffiths said, during a colloquy with Hon. Arthur Levitt, comptroller of the State of New York:

> Chairman GRIFFITHS. My personal opinion is since all of us are public employees that the day is going to come when the next revolution is going to be those who are going to oppose the payment for a favored group of public employees of such tremendous pensions that are so much greater than anything they will ever get themselves and that is true whether we are Congressmen or Comptrollers or Presidents or whatever. I feel that this is one of the great burdens that is being borne by American society.

Mrs. Griffiths also thinks the cost of public employee pensions is one of the things that is destroying America's cities.

On February 9, Senator John C. Stennis, chairman of the Armed Services Committee, said of military retirement:

> We cannot continue indefinitely retiring men in their middle and late forties at the prime of their experience and hope to have any retirement system within reasonable cost bounds.

On public employee pension problems in New York City, the New York Times editorialized:

> City officials have done a poor job of safeguarding the taxpayers' interest in the pension field and the state's help is necessary to protect them against some of the consequences of their own folly.

The retirement fund for Federal civil employees has unfunded liabilities estimated to be $65 to $85 billion. Senator Stennis estimates the unfunded liability for retired military pay at $129 billion. Disregarding current costs to maintain these two Federal retirement funds, future taxpayers will have about $200 billion in unfunded liabilities to pay off—that is about $1,000 for every American man, woman and child. No one seems to know what the figure is if you add unfunded liabilities of State and local public employee funds.

Comments such as these from Members of Congress and the media have caused some people to wonder whether it is public employee pensions, not private pensions, that need reform.

Your subcommittee may wish to consider this problem.

All individuals should be encouraged during their working lives to build private retirement income out of earnings either on an individual or group basis. Further, individuals should be permitted to exercise maximum freedom of choice in the selection of savings and investment media for such retirement planning. Therefore, the chamber does in general support proposals that would provide income tax deferral for employees who defer income for their retirement, and that would increase the present tax deferral available to the self-employed who have or establish pension plans.

If the percentage rate of coverage for private pensions is to be increased, ways must be found to encourage pension growth among the employees of small, and in some cases marginal, firms on either a group or individual basis, among the self-employed, and among individuals whose employers have no pension or profit-sharing plans.

In general, we support the provisions of sections 3 and 4 of S. 3012, the Individual Retirement Benefits Act. They will encourage individual employees, not covered by employer plans, to establish retirement plans of their own choice and to save for their retirement. They will also help many employees covered by employer plans to increase the amount of their retirement income through their individual savings.

Under section 4, the present tax deferral available to the self-employed who have or establish pension plans would be increased. Encouragement here is of critical importance since it is estimated that 15 to 20 million working Americans could be benefited, and the majority of these individuals do not have H.R. 10 coverage. This is a step in the right direction. It will lead to more pensions for the self-employed and their employees, and the increased deferral will mean larger pensions and more adequate retirement income for this large group of Americans.

Inflation, of course, is the real thief of pension values. A 6-percent rate of inflation will destroy $420 million of the purchasing power of the current $7 billion a year in private pension retirement benefits. Successful efforts by Congress and the administration to control inflation will directly and immediately help all Americans who are retired and living on fixed incomes, as well as working Americans who are looking forward to retirement.

Your subcommittee may wish to consider this problem of inflation in relation to your study of helping to provide adequate income through private pension plans.

Now in summary, maximum encouragement should be given to continued growth and expansion of private pension plans. Governmental restrictions which would hamper such growth and expansion should be avoided. Employers and employees should remain free to work out pension plan arrangements best suited to their own needs and requirements.

In addition, all individuals should be encouraged during their working lives to build private retirement income out of earnings either on an individual basis or group basis. Individuals should be permitted to exercise maximum freedom of choice in the selection of savings and investment media for personal or group retirement planning.

We support the highest standards of honesty in the administration of employee benefit funds. Therefore, we support suitable amendments to the Welfare and Pension Plan Disclosure Act, including some form of Federal fiduciary responsibility act for pension and welfare plan administrators and trustees. We hope your subcommittee will give priority to such legislation to assure that plan participants and their beneficiaries are protected against possible dishonesty.

We support reasonable minimum Federal standards or regulation governing the vesting of private pensions. Such legislation should be accomplished through amendment of the Internal Revenue Code, as a condition for qualifying a plan.

We oppose provisions of bills, such as S. 3598, that would create a new Federal agency or office to regulate private pension plans and their assets, and that would impose new Federal funding, insurance, or portability requirements on private pension plans and their assets.

Finally, any pension legislation, rather than imposing restrictive regulation, should encourage private pension growth so that our citizens will have adequate retirement income.

Thank you, sir.

The CHAIRMAN. Thank you very much, Mr. Willis. We appreciate very much your statement.

Let me first say that your concern expressed about and directed to public pensions is shared here by members of the committee that introduced this legislation. As a matter of fact, the bill that Senator Javits and I sponsor together with other members has a title I study directed to the Secretary, and included in that study is the requirement that the Secretary look into the problem of benefit protection in pension plans covering State and municipal employees.

Mr. WILLIS. Very encouraging.

The CHAIRMAN. We share your concern. Your concern is eloquently expressed by Martha Griffiths, who appeared here as one of our witnesses.

You suggest the continuing availability of the chamber of commerce staff to work with our staff, and there is an area in which I suggest there might be some fruitful discussions concerning your feelings about the reinsurance provisions here.

On page 8 of your statement you list five points that you suggest the reinsurance proposals contemplated would require. I believe there should be greater communication on this. I do not believe that all of those points are a part of our design for an insurance program.

Mr. WILLIS. We would be happy to work with the committee any time on this or any other aspects.

I might say that I think in order to make insurance work, it would require a lot of rule establishment, so if there were to be such a thing as insurance, termination insurance, to make it work would require pretty well set up rules and regulations; otherwise the rules or the program would be bypassed by some unscrupulous people.

The CHAIRMAN. That really lends itself to rather deep and penetrating discussion, because obviously the insurance principles are a little too much to discuss right here and now. I do not believe that rigidity you mention is a necessary consequence of our bill.

Mr. WILLIS. Well, I have seen so many ways that pension funds can be valued and different actuarial bases used—nothing wrong with them, but varied—that I think unless the rules are set up rigidly there would be some problems. We would be happy to work with you, in any event.

Mr. CUMMINGS. Mr. Willis, first I would like to apologize for Senator Javits not being here this morning. He wanted to be. He is on his way down from New York. I know he would have wanted to thank the chamber for the assistance that they gave our staff back in 1966 when we were drafting the first of these pension bills.

We did not agree on an awful lot of things, but they certainly put totogether a task force for us and helped us a great deal in technical matters.

In your statement, on page 8, you refer to the Internal Revenue Service rules or regulations under sections 401 and 404 of the Internal Revenue Code as imposing sufficient requirements to assure adequate funding and vesting of private pension plans.

Would you correct me if I am wrong, that under the present system required by the Internal Revenue Code, funding is required only of current service costs, interest on past service liabilities, so that in effect you never have to amortize an initial debt of a pension plan; am I correct on that?

Mr. Willis. That is right. Of course the funding that goes on in past service area——

Mr. Cummings. Completely voluntary.

Mr. Willis. Voluntary, but the practices have been quite satisfactory; and if the interest builds up into such a large factor, then the plan will have to fund anyway.

Mr. Cummings. If you set up a pension plan in which you give 40 years of past service credit which creates initial unfunded liability of millions of dollars——

Mr. Willis. I know it will. We have done it.

Mr. Cummings. Under existing regulations, you can maintain that deficit literally forever?

Mr. Willis. That is right.

That has not been true in most of the plans.

Mr. Cummings. Not in most. But it is permissible.

As to vesting, existing IRS regulations, with a few minor exceptions, require no vesting until actual retirement. Thus, for example, we have the practice of permitting a man to start at the age of 20 and work to the age of 64 years 11 months and 29 days, and if, for any reason, he loses his job, not being vested because he did not reach the age of 65, well, you and I would agree that that is not necessarily a desirable practice, but as far as the IRS regulation is concerned, that is completely permissible. Am I correct?

Mr. Willis. Now I think you are on another subject, Mr. Cummings. On vesting we support some regulation of vesting. We are pointing out here that the IRS regulations cover funding, which is another problem.

Mr. Cummings. I have an exchange of correspondence with Isadore Goodman, Chief of Pension Trust Branch of Internal Revenue Service, setting forth in detail what the current IRS rules are on vesting and funding and respectfully request that that be put in the record.

The Chairman. Good.

(The information referred to follows:)

United States Senate

COMMITTEE ON
LABOR AND PUBLIC WELFARE
WASHINGTON, D.C. 20510

72 6 01442

RECEIVED
JUN 12 1972
TECHNICAL SERVICES BRANCH

June 8, 1972

Dear Mr. Goodman:

As you are no doubt aware, this Committee will shortly begin hearings on bills dealing with minimun standards for private pension plans. In the course of those hearings, members of this Committee will want to know the status of current requirements of vesting and funding under the Internal Revenue Code and regulations. Accordingly, I would appreciate it if you would confirm or correct my present understanding of the requirements imposed by the I.R.S., which are as follows:

A. FUNDING

It is my understanding that the Treasury, as part of the statutory requirement of "permanency" under Code section 401, generally requires that a pension fund receive contributions sufficient to cover current service costs,plus an amount equal to interest on any unfunded past service liability; but it is also my understanding that this funding requirement is merely a general standard, and need not be met in any particular year. It is also my understanding that there is an upper limit for contributions (I believe this is in the neighborhood of 10% of unfunded past service liabilities).

Could you please inform me (1) whether my understanding, as set forth above, is correct, (2) if not, what corrections should be made, and (3) in any event, what is the authority (a) in the Code, (b) in the Treasury Regulations, and (3) in currently applicable Revenue Rulings, for the funding requirements and limits which are now in force?

B. VESTING

It is my understanding that as a general matter the Treasury does not require vesting in private pension plans qualified under section 401, except that (1) benefits must vest when the employee actually retires, and (2) there may be vesting requirements imposed by the Treasury upon small businesses where the work force is of such a nature that, without vesting, the plan would automatically discriminate in favor or higher-paid or owner-operator employees, in violation of 401.

RECEIVED
JUN 12 1972
Pension Trust Branch
Miscellaneous & Special
Provisions Tax Division

Again, could you confirm or correct my understanding, as expressed above, and also cite me to the applicable provisions of the Code, Regulations, and Revenue Rulings?

Many thanks for your help.

With best wishes,

Sincerely,

Frank Cummings

Frank Cummings
Minority General Counsel

Mr. Isadore Goodman
Chief, Pension Trust Branch
Internal Revenue Service
United States Department of the Treasury
Washington, D. C.

Internal Revenue Service
Washington, DC 20224

Date: JUN 23 1972

In reply refer to: T:MS:PT:2:6

Frank Cummings
Minority General Counsel
Committee on Labor and Public Welfare
United States Senate
Washington, D.C. 20510

Dear Mr. Cummings:

In your letter of June 8, 1972, you request our confirmation of, or statements in regard to, your understanding relative to funding and vesting requirements for qualified private pension plans under the current provisions of the Internal Revenue Code of 1954 and the Income Tax Regulations thereunder.

Your understanding of the requirements for adequate funding of pension plans is substantially in accord with existing rules if it recognizes that any suspension of contributions to such a plan may ripen into a discontinuance, if it affects the benefits to be paid or made available under the plan or if it permits the unfunded past service costs to exceed the unfunded past service costs as of the establishment of the plan, plus any additional past service or supplemental costs added by amendment. Such a discontinuance would require that employees' interests, to the extent then funded, be made nonforfeitable. See Revenue Ruling 56-596, C.B. 1956-2, 288. The upper limit for contributions of ten percent is basically a deduction limit, but does not limit the amount that may be contributed, and is one of several limits applicable to deductions. There is also a provision for carrying over to a subsequent year a contribution in excess of the deduction limit in the taxable year. See section 404(a)(1)(A), (B), (C), and (D) of the Code.

In regard to the second area set forth in your letter, namely vesting requirements, section 401(a)(7) of the Code requires that upon termination of a plan, or complete discontinuance of contributions, the rights of all employees to benefits accrued to the date of such termination or discontinuance, to the extent then funded, or to the amounts credited to the employees' accounts, must be nonforfeitable. In addition, section 401(d)(2)(A) of the Code requires that employees must have nonforfeitable rights to or derived from contributions at the time of contribution, where a qualified pension or profit-sharing plan provides contributions or benefits for owner-employees.

In other situations, vesting is not required prior to attainment of normal retirement age and completion of the service and reasonable requirements set forth in the plan. See Rev. Rul. 68-302, C.B. 1968-1, 163. Furthermore, the vesting provisions in a plan must not result in prohibited discrimination. See Rev. Rul. 71-151, C.B. 1971-1, 123. Thus, as you mention, adequate vesting or other additional provisions may be necessary where the work force is such that, without such provisions, the plan will automatically discriminate in favor of employees in whose favor discrimination is prohibited. See Rev. Rul. 71-263, C.B. 1971-1, 125, for an example of such a situation.

I hope that the above information has been of help to you. I am also enclosing a copy of I.R.S. Publication 778 dealing with guides for qualification of pension, profit-sharing, and stock bonus plans. Note in particular the discussion of vested rights in Part 5(c) on page 17, and discontinuance or suspension of contributions or curtailments in Part 6(d) on pages 21 and 22. If I can be of further assistance please feel free to call on me.

Sincerely yours,

I. Goodman

Chief, Pension Trust Branch

Enclosures

Mr. CUMMINGS. Finally, Mr. Willis, you show on your table in the back of your testimony that the current average of supplements as a percent of wages is 13 percent of base wages.

Are you familiar at all with the recent ruling of the Pay Board as to what a new employer is permitted to use as a base for setting up fringe benefit package?

Mr. WILLIS. I have forgotten the figure.

Mr. CUMMINGS. Perhaps Mr. Melgard is aware of that.

Mr. MELGARD. I do not recall.

Mr. CUMMINGS. Does this 13 percent represent an average industry-wide, including most people who have no pension plan at all or no other benefit plans at all, or is it just an average of those who have fringe benefit plans?

Mr. WILLIS. This is an across-the-board figure.

Mr. MELGARD. These figures were taken from the National Income Statistics which have been published by the U.S. Department of Commerce since 1929. They are across the board. I might point out that supplements to corporate wages and salaries are estimated to be about 60 percent of the cost of what are commonly considered employee benefits. The remaining 40 percent include items like paid vacation, paid holiday, paid sick leave, paid rest period.

Mr. CUMMINGS. These are fringe benefits—supplements?

Mr. MELGARD. This 40 percent of the costs for these benefits covers pay for time not worked.

Mr. CUMMINGS. Would you favor a standard permitting a newly established employer to use a maximum base of either 5 or 7 percent of base wages? The Pay Board's limit of 5.5 percent of base wages is well below the standard, I think, and might be characterized as substandard?

Mr. WILLIS. That is the increase in benefits, is it not?

Mr. CUMMINGS. If a new employer that did not exist at all goes into business and wants to set up fringe benefit package today, my understanding is that he is limited, depending upon interpretations of PB 51, to something like 5.5 percent of base wages.

Mr. WILLIS. They are on up to 7 percent now, more in line. I think probably as a starting employer, that is about all he can afford to start out with in this particular fringe benefit area, recognizing that vacations, holidays, and things of that sort are not in this figure nor in the percentage figure.

Mr. CUMMINGS. Do you think that percentage is an adequate percentage?

Mr. WILLIS. As a starter, it is probably all right. Ultimately as a going figure, it is low.

Mr. CUMMINGS. You would not be able to compete with GE on the basis of 5 percent.

Mr. WILLIS. He would probably sell his products pretty much lower. I think as a longrun operation, obviously 5½ to 7 percent would be low, but as a one year thing, and then moving on it probably would work out.

Mr. CUMMINGS. As to reinsurance, you say that you would oppose the application of this concept because, as you said on page 8, it insures assets which are not there. In other words, it insures a contingency which is not funded——

Mr. WILLIS. That is right.

Mr. CUMMINGS. Isn't labor relations just full of essentially casualty-type insurance? When you pay insurance on, say, the possibility of unemployment, that is, unemployment insurance, when you pay a premium on your workmen's compensation, you are insuring something which is based upon an actuarial projection, not just insuring against theft of assets that are already there. That is common practice in labor relations; is it not?

Mr. WILLIS. I think you are putting some apples and oranges together.

Mr. CUMMINGS. Maybe you are.

Mr. WILLIS. Unemployment compensation is not really insurable. It is handled through State programs, because private insurance felt it could not pick it up, it could not control it.

Mr. CUMMINGS. Is that not exactly what the chairman is proposing?

Mr. WILLIS. And insurance on workmen's compensation, health insurance, that is really not true insurance, but again it is insurance against an event. Now when you are in a pension fund, there is a control of the issue, whether they fund or do not fund.

Mr. CUMMINGS. Is the reinsurance that the chairman is proposing not reinsurance against an event, to wit, collapse of a plan, and is it not being insured on a public basis just as you said, say unemployment insurance is insured on a public basis, precisely because it is not feasible to do it on a private basis?

Mr. WILLIS. Well, if it were set up on a public basis, I suppose it would be, as you say. I suppose it would be, but it is a different kind of protection. Of course our objection is largely in the other areas, that it would raise questions about the soundness of funding and would subject sound plans to unnecessary charges.

In my own company's case, I could see the amount of money we would have to spend for reinsurance, and I would much prefer to give that in other forms of benefits to employees.

Mr. CUMMINGS. You would say although you are opposed to reinsurance, if you were going to have it, once you become satisfied the Congress is going to enact it, you want to be sure that all plans are required to fund adequately so as not to subject sound plans to an unfair burden of bailing out the unsound ones?

Mr. WILLIS. Well, that is a good basic premise if we are going to be subjected to it. That is why, as I answered Senator Williams, you have to have a tremendous amount of regulation to make sure that they are on a sound basis. By sound, I mean a basis that can be measured to determine what you are insuring and what you are not insuring.

I think the general problem would be that a lot of companies, not a lot, but there would be certain companies who would use insurance instead of funding, and this would not be appropriate.

Mr. CUMMINGS. If permitted to, they might.

Mr. WILLIS. I think under the bill as I see it, they would be permitted to.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Senator JAVITS. Mr. Chairman, I regret that I am late, but I have just come from a hearing to appoint some Federal judges in New York.

I wish to apologize to Mr. Willis, who I know and to Mr. Melgard, and to say that the chamber, as Mr. Cummings, who was really the inventor of this whole idea some 6 years ago, said in my name, is to be commended for the help that we got from them to reflect the employer's point of view, as we got help from labor unions, actuaries, and others, in drafting the legislation.

I shall study very carefully the points that you make. Would you agree that the bill which has been introduced by Senator Williams and myself represents the most authoritative step taken so far in this field in modern times, and well worthy of consideration for legislation, whatever it might be, on the part of the Congress?

Mr. WILLIS. Certainly, Senator, it represents the broadest range bill that has been introduced I think up to the present time. There are certain provisions of it we do not agree with, as our testimony points out, but it does give an opportunity for all of us to take up each of the issues that have arisen in this field, and we will gladly be of assistance anytime we can in helping to formulate future legislation.

Senator JAVITS. You have been, and I am sure we will call on you again. But would you feel that the time has come for legislation in this field?

Mr. WILLIS. For certain of the areas as we point out in our testimony; yes, we quite agree, for example, fiduciary responsibility and things of that sort.

Senator JAVITS. There is need for some legislation in this field?

Mr. WILLIS. Right; just so long as it does not cripple the growth of future pension plans.

Senator JAVITS. I understand you have your point of view, which you are entitled to. But I think that it is good for Congress to know that such an authoritative body as yours feels that this is not Government messing around for something that it has no business in. This is an appropriate area for some action by the Congress?

Mr. WILLIS. Right; we agree.

Senator JAVITS. Thank you.

The CHAIRMAN. Thank you very much, Mr. Willis.

Mr. WILLIS. Thank you.

Mr. MELGARD. Thank you.

(The prepared statement of Mr. Willis follows:)

PREPARED STATEMENT OF E. S. WILLIS, ON PRIVATE PENSION BILLS, JUNE 28, 1972

My name is E. S. Willis. I am Manager of Employee Benefits for the General Electric Company.

My associate is Mr. Andrew A. Melgard, the Committee Executive of the Chamber's Private Pension-Social Security Committee.

We are speaking today on behalf of the Chamber of Commerce of the United States, representing more than 40,000 business enterprises and 3,600 trade and professional associations, local and state chambers of commerce. The underlying membership is more than five million individuals and firms.

In general, we support amendments to strengthen and improve the protection of participants in and beneficiaries of employee welfare and pension benefit plans under the Welfare and Pension Plans Disclosure Act. We also support reasonable minimum federal standards or regulation governing the vesting of private pensions.

We support bills that would encourage individuals to save for retirement, and that would increase the present tax deferral available to the self-employed who have or establish pension plans for themselves and their employees.

The growth of private pension plans is one of America's most recent success stories. Huge social and economic dividends are beginning to flow from these plans. Retirees are enjoying more economic freedom and independence as private retirement income increases.

In addition, our economy has benefited from the current $150 billion in assets that are held in trust for present and future retirees. Income and continuing additions to these funds help provide this Nation with the new capital that is vital for economic growth and high employment.

Overall, the business community has an obvious and continuing interest in all legislative proposals that would affect private pension plans and their growth. Furthermore, we are vitally concerned with any proposal that would mandate, through new Federal legislation, any burdensome and unnecessary increase in private pension costs.

The National Chamber takes a positive, clear-cut approach on private pension plans—one which calls for maximum encouragement of continued growth and expansion of private pension plans. At the same time, we believe that every effort should be made to prevent needless governmental restrictions on private pension growth. In short, the business community wants to see private pension plans improved and their benefits spread to more employers and employees.

Employers and employees should remain free to work out pension plan arrangements best suited to their own needs and requirements. To accomplish these ends, basic principles applicable to the establishment and administration of private pension plans include:

1. A clear explanation to employees of the pension plan provisions, employee rights thereunder, and the extent of employer obligations and responsibilities.

2. The highest standards of fiduciary responsibility and effective and meaningful disclosure.

3. Provisions for vesting that will afford to a plan participant, who meets specified age and/or length of service conditions, a right to an accrued pension benefit based on his service to date of termination of employment, payable when he reaches the plan's normal retirement age.

4. In addition, all individuals should be encouraged during their working lives to build private retirement income out of earnings either on an individual or group basis. Furthermore, individuals should be permitted to exercise maximum freedom of choice in the selection of savings and investment media for personal or group retirement planning.

We are concerned about the economic impact of increasing costs of doing business and shrinking profits. The long term trend, over the last five business cycles, has been downward for after tax profits as a percent of corporate wages and salaries, and upward for supplements as a percent of such wages and salaries.

Our membership, therefore, is vitally concerned with any legislation that would increase employer costs for private pension plans.

A further fact of major importance is the growth of private pension plans. While pension plans were first adopted by industry as early as 1875, they began their major growth in the 1940's and 1950's. As the following tabulation indicates, they are now making a significant and major contribution not only to retirement security but to the capital market.

PRIVATE PENSION PLANS

Year	Coverage (millions)	Number of pensioners	Private plan assets (billions)	Benefits (millions)
1940	4.1	200,000	$2.4	$100
1950	9.8	450,000	12.0	370
1960	21.2	1,780,000	52.0	1,750
1971 (estimate)	(1)	5,250,000	151.8	7,000

[1] Over 30.0.

These figures show the phenomenal growth in private pensions, and particularly the increase in the number of pensioners receiving benefits—some five million retired employees receiving monthly checks totaling some $7 billion a year. The Securities and Exchange Commission reports that employer contributions to pension funds amounted to $9.7 billion in 1970, 14% more than in 1969. It is estimated that employers put over $10 billion into pension funds in 1971.

The table below shows that over 257,000 plans have been approved by IRS since the 1940's. Apparently 20,001 of these plans have been terminated. This leaves over 237,000 qualified plans. A truly astounding record of voluntary growth.

IRS figures on approved pension, annuity, and profit-sharing plans as of December 31, 1971

1. Total number of pension or annuity plans approved	138, 685
2. Number of pension or annuity plans approved in 1971	22, 493
3. Total number of profit-sharing plans approved	118, 565
4. Number of profit-sharing plans approved in 1971	18, 171
5. Total number of IRS approved pension, annuity, and profit-sharing plans	257, 550

Source : Pension Trust Branch, Internal Revenue Service.

In addition to private pensions, the benefits from government administered plans to federal civilian employees, state and local employees, and railroad employees have been increasing. In 1970, some 2,266,000 pensions totaling $6.4 billion annually were being paid to retired public and railroad employees.

We believe the statistics on private pension growth show the concern of employers with helping to provide adequate retirement income and their willingness up to now to assume the heavy and long-range financial burdens that are involved. This growth has occurred voluntarily, not by compulsion. Any action that would curtail this growth would be highly undesirable.

While there have been statements recently suggesting that there is little government regulation in the private pension area, the record indicates otherwise. The present rules and regulations are found principally in the Internal Revenue Code and under the Federal Welfare and Pension Plan Disclosure Act.

The Internal Revenue Service provisions help assure that bona-fide, definite, and essentially non-discriminatory plans are established. These provisions require, for example, that in order for a plan to be qualified :

(a) There must be a trust, contract or other legally binding arrangement.

(b) There must be a permanent and continuing program.

(c) It must be for the exclusive benefit of employees.

(d) It must not discriminate in favor of officers or highly compensated employees.

(e) It must have definitely determinable benefits.

(f) All employer contributions must be irrevocably committed.

The Federal Disclosure Act, passed in 1958 and amended in 1962, was initially passed on the theory of self-enforcement through public disclosure of a plan's operation. The 1962 amendments to the Act gave the Secretary of Labor enforcement authority, required bonding of administrators and added criminal provisions against embezzlement, bribery, kick-backs, etc. The required Annual Report (D–2 Form) has been considerably broadened into a most comprehensive and detailed fifteen page document. There are, however, areas where some additional disclosure may be helpful as outlined later.

The Chamber seeks the highest standards of honesty in the administration of employee benefit plans. Also, we believe that employees need to better understand the values of private pension and other employee benefits. We, therefore, support suitable amendments to the Disclosure Act.

Specifically, we :

1. support the concept that administrators of pension funds should observe the highest standards of fiduciary responsibility, and favor the concept of a federal fiduciary responsibility act for pension plan administrators and trustees.

2. support an amendment which would bar persons convicted of certain crimes from serving as a fiduciary or consultant to a welfare or pension fund.

3. support an amendment requiring annual audits of funds, with appropriate exceptions for those plans already subject to adequate audits by various federal or state insurance or banking regulatory agencies. Actuarial certifications would be of value.

4. support the principle of applying a "prudent man rule" as the standard for the investment of employee benefit funds, and oppose any attempt to limit its effectiveness or flexibility.

5. support adequate investigatory powers for the Secretary of Labor where he has reasonable cause to believe a violation of the Act has occurred or is about to occur, but oppose giving the Secretary of Labor added powers to regulate or interfere in the management of plans in the absence of a proven need for such additional powers.

6. support certain improved meaningful disclosure amendments, but oppose additional unnecessary disclosure requirements. For example, the requirement that calls for the details of all transactions of $100,000 or 3% of the fund, whichever is smaller, should be revised to eliminate the $100,000 minimum.

These amendments of the Disclosure Act should have a first priority of attention in Congress. We testified in support of such legislation before the House General Subcommittee on Labor in both the 90th and 91st Congress, and we look forward to working with the members and the staff of this subcommittee. The bill does present a number of difficult matters, often of a highly technical nature, and we are concerned with excessive disclosure requirements that would serve no purpose, or perhaps be of marginal value. However, these problems can be resolved.

Vesting is a right given a plan participant who meets specified age and/or length of service conditions to receive, *when he reaches normal retirement age*, a proportionate pension benefit based upon his service to date of termination—and that right is not dependent upon his continued employment.

We support sound programs of vesting. The majority of plans do have some form of early vesting, and vesting periods are becoming shorter.

During the past few years, various proposals have been made for a vesting standard for all qualified plans. There have been proposals for a "rule-of-50", 10 or 15 year vesting, graded vesting of 10% a year from the sixth to fifteenth years of participation in a plan, or 30% after 8 years and 10% a year thereafter.

We support reasonable minimum federal standards or regulation governing the vesting of private pensions. These standards should embody certain criteria. Some of the basic criteria to consider are:

1. It should be accomplished through amendment of the Internal Revenue Code, as a condition for qualifying a plan.

2. The reasonable minimum vesting standards should apply to all private pension plans including multiemployer plans.

3. It should allow employers a reasonable time, including the duration of existing collective bargaining agreements, to comply with the Act from the date of its enactment. This is important because of the additional cost which vesting imposes on new plans, or existing plans that do not have adequate vesting provisions.

OTHER ISSUES

The President's message to Congress on private pensions stated that there was insufficient information "to determine what Federal policy should be on questions such as funding, the nature of the employer's liability, and termination insurance."

The Departments of Labor and Treasury have been directed to undertake a study to determine the extent of benefit losses under pension plans that are terminated.

We see no reason for the Senate to consider funding or plan termination insurance legislation in the absence of sufficient information to determine what public policy should be in these areas. In fact, present information shows no need for such legislation. Furthermore, we doubt that further studies will demonstrate any change in this situation.

In 1969, the Pension Research Council issued a funding study showing that "a very high degree of security" had been reached by the 4,000 private pension plans, covering nine million employees, that had been surveyed. Pension plans which had been accumulating funds for 15 years or more had assets sufficient to cover 94% of all accrued benefits, and 99% of vested accrued benefits.

The most recent survey of employee pension funds by the State of Wisconsin for the period 1/1/71 to 5/1/72 shows an even more favorable picture of funding. For the 142 plans examined by the State, assets were sufficient to cover over 107% of vested benefit liabilities.

Additionally, the issue of mandatory funding may be somewhat academic in view of Opinion # 8 of the Accounting Principles Board which requires the disclosure of pension plan liabilities on the corporate balance sheet.

Under current IRS regulations, there are adequate requirements for current service funding. Restrictions on prior service funding are now unnecessary in view of existing practices in managing funds. Further restrictions imposed by law would only serve to create more obstacles to pension fund operations. All evidence, such as indicated above, shows no need for any additional funding requirements. In fact even the present IRS regulations on the minimum period of funding may have had deleterious effects.

Reinsurance proposals contemplate an elaborate and potentially costly mechanism which would involve the most detailed regulation of every aspect of private pension plan operations. It would require:

1. Uniform actuarial assumptions
2. Controlled benefit formulas
3. Standardized plan design
4. Standardized vesting
5. Detailed restrictions on investments, with a consequent serious loss to the whole economy.

It is important to point out that this kind of program would try to insure non-existent assets. This is distinctly different from an FDIC-type arrangement which insures deposited funds or savings. It is questionable whether pension insurance for unfunded liabilities is a workable plan. Certainly, it would require the most stringent and complex regulation imaginable.

Furthermore, a program of reinsurance to cover unfunded liabilities would in the long run result in inadequate funding. Sound plans would be financing unsound plans, and this would result in the loss of benefits to employees in sound plans.

As to portability, sound vesting in all private pension plans will effectively meet the needs in this area. In other words, adequate vesting makes the question of portability academic. Portability would increase administrative costs. Additionally, investment yields in current plans would be less because of necessary changes in investment practices. This would lead to smaller retirement benefits.

We realize that your Subcommittee has not completed its study and that further reports may be issued. We suggest that the Subcommittee may wish to consider, if it has not already done so, the following related areas of concern.

Public Pensions.—In 1970 during hearings on "Investment Policies of Pension Funds" held by the Subcommittee on Fiscal Policy of the Joint Economic Committee, Chairman Martha W. Griffiths said, during a colloquy with Honorable Arthur Levitt, comptroller of the State of New York:

Chairman Griffiths. "My personal opinion is since all of us are public employees that the day is going to come when the next revolution is going to be those who are going to oppose the payment for a favored group of public employees of such tremendous pensions that are so much greater than anything they will ever get themselves and that is true whether we are Congressmen or Comptrollers or Presidents or whatever. I feel that this is one of the great burdens that is being borne by American society."

Mrs. Griffiths also thinks the cost of public employee pensions is "one of the things that is destroying America's cities."

On February 9, Senator John C. Stennis, chairman of the Armed Services Committee, said of military retirement:

"We cannot continue indefinitely retiring men in their middle and late forties at the prime of their experience and hope to have any retirement system within reasonable cost bounds."

On public employee pension problems in New York City, the New York *Times* editorialized:

"City officials have done a poor job of safeguarding the taxpayers' interest in the pension field and the state's help is necessary to protect them against some of the consequences of their own folly."

The retirement fund for federal civil employees has unfunded liabilities estimated to be $65 to $85 billion. Senator Stennis estimates the unfunded liability for retired military pay at $129 billion. Disregarding current costs to maintain these two federal retirement funds, future taxpayers will have about $200 bililon in unfunded liabilities to pay off—that is about $1,000 for every American man, woman and child. No one seems to know what the figure is if you add unfunded liabilities of state and local public employee funds.

Veteran newsmen have been reporting that hefty pension increases are being given to public employees before the future costs of such gains are known to public officials and taxpayers.

Comments such as these from members of Congress and the media have caused some people to wonder whether it is public employee pensions, not private pensions, that need reform.

Your Subcommittee may wish to consider the problem.

All individuals should be encouraged during their working lives to build private retirement income out of earnings either on an individual or group basis. Further, individuals should be permitted to exercise maximum freedom of choice in the selection of savings and investment media for such retirement planning. Therefore, the Chamber does in general support proposals that would provide income tax deferral for employees who defer income for their retirement, and that would increase the present tax deferral available to the self-employed who have or establish pension plans.

If the percentage rate of coverage for private pensions is to be increased, ways must be found to encourage pension growth among the employees of small, and in some cases marginal, firms on either a group or individual basis, among the self-employed, and among individuals whose employers have no pension or profit-sharing plans.

In general, we support the provisions of Sections 3 and 4 of S. 3012, the "Individual Retirement Benefits Act." They will encourage individual employees, not covered by employer plans, to establish retirement plans of their own choice and to save for their retirement. They will also help many employees covered by employer plans to increase the amount of their retirement income through their individual savings.

Under Section 4, the present tax deferral available to the self-employed who have or established pension plans would be increased. Encouragement here is of critical importance since it is estimated that 15 to 20 million working Americans could be benefited, and the majority of these individuals do not have H.R. 10 coverage. This is a step in the right direction. It will lead to more pensions for the self-employed and their employees, and the increase deferral will mean larger pensions and more adequate retirement income for this large group of Americans.

Inflation, of course, is the real thief of pension values. A 6% rate of inflation will destroy $420 million of the purchasing power of the current $7 billion a year in private pension retirement benefits. Successful efforts by Congress and the Administration to control inflation will directly and immediately help all Americans who are retired and living on fixed incomes, as well as working Americans who are looking forward to retirement.

Your Subcommittee may wish to consider this problem of inflation in relation to your study of helping to provide adequate income through private pension plans.

Now in summary, maximum encouragement should be given to continued growth and expansion of private pension plans. Governmental restrictions which would hamper such growth and expansion should be avoided. Employers and employees should remain free to work out pension plan arrangements best suited to their own needs and requirements.

In addition, all individuals should be encouraged during their working lives to build private retirement income out of earnings either on an individual basis or group basis. Individuals should be permitted to exercise maximum freedom of choice in the selection of savings and investment media for personal or group retirement planning.

We support the highest standards of honesty in the administration of employee benefit funds. Therefore, we support suitable amendments to the Welfare and Pension Plan Disclosure Act, including some form of federal fiduciary responsibility act for pension and welfare plan administrators and trustees. We hope your Subcommittee will give priority to such legislation to assure that plan participants and their beneficiaries are protected against possible dishonesty.

We support reasonable minimum federal standards or regulation governing the vesting of private pensions. Such legislation should be accomplished through amendment of the Internal Revenue Code, as a condition for qualifying a plan.

We oppose provisions of bills, such as S. 3598, that would create a new federal agency or office to regulate private pension plans and their assets, and that would impose new federal funding, insurance or portability requirements on private pension plans and their assets.

Finally, any pension legislation, rather than imposing restrictive regulation, should encourage private pension growth so that our citizens will have adequate retirement income.

EXHIBIT A

Trends in Corporate Wages and Salaries, Supplements, and After Tax Profits, 1946-1971

(Billions of Dollars)

	Corporate Wages and Salaries	Supplements to Corporate Wages and Salaries	Corporate After Tax Profits	Supplements as Per Cent of Wages and Salaries	After Tax Profits as Per Cent of Wages and Salaries	Supplements as Per Cent of After Tax Profits
1946	66.5	3.2	15.1	4.8%	22.7%	21%
1947	78.1	3.9	19.5	5.0	25.0	20
1948	86.9	4.2	21.8	4.8	25.1	19
1949	84.4	4.4	17.7	5.2	21.0	25
1950	92.9	5.7	23.9	6.1	25.7	24
1951	107.4	7.1	20.4	6.6	19.0	35
1952	115.4	7.6	18.5	6.6	16.0	41
1953	125.7	8.2	19.2	6.5	15.3	43
1954	123.4	8.7	19.1	7.1	15.5	46
1955	134.7	9.9	25.4	7.3	18.9	39
1956	146.8	11.3	25.3	7.7	17.2	45
1957	153.8	12.6	24.1	8.2	15.7	52
1958	151.1	12.8	20.6	8.5	13.6	62
1959	164.5	15.1	26.7	9.2	16.2	57
1960	172.1	16.7	24.8	9.7	14.4	67
1961	174.3	17.5	24.9	10.0	14.3	70
1962	186.1	19.8	28.7	10.6	15.4	69
1963	194.9	21.4	30.5	11.0	15.6	70
1964	208.7	22.9	35.3	11.0	16.9	65
1965	224.5	25.2	43.2	11.2	19.2	58
1966	246.1	29.5	46.7	12.0	19.0	63
1967	260.6	31.2	43.0	12.0	16.5	73
1968	284.3	35.2	43.8	12.4	15.4	80
1969	311.1	39.4	40.0	12.7	12.9	99
1970	324.2	41.8	36.4	12.9	11.2	115
1971	339.9	46.1	41.8	13.6	12.3	110

Source: Survey of Current Business, U.S. Department of Commerce. Percentages computed by Chamber of Commerce of the United States.

EXHIBIT B

Chart A

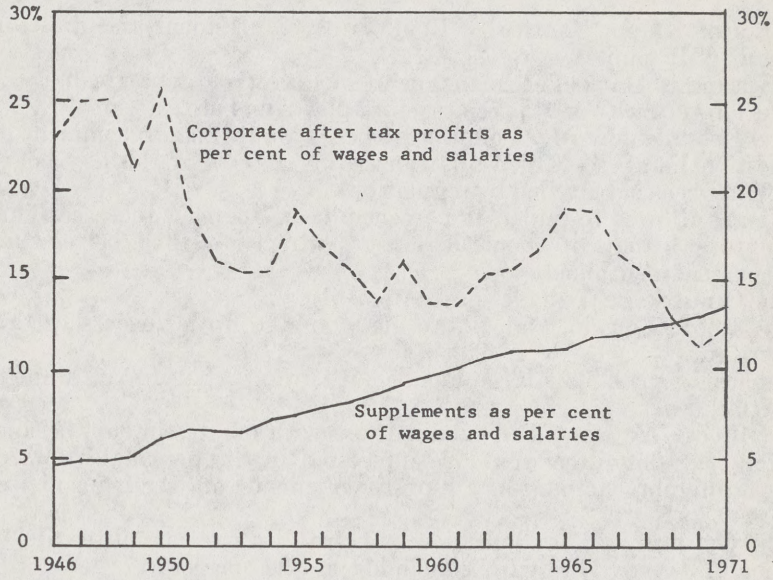
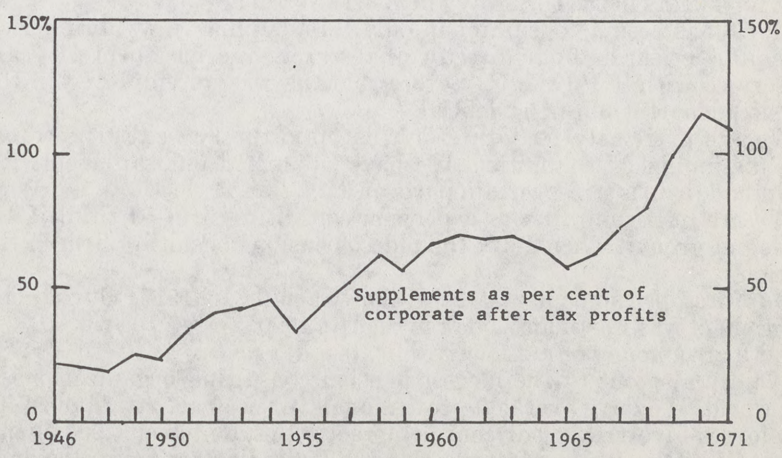


Chart B



The CHAIRMAN. Our next witness is Mr. Quentin Smith, president, research department, Towers, Perrin, Forster & Crosby, Inc.

STATEMENT OF CHARLES D. ROOT, JR., VICE PRESIDENT AND DIRECTOR, TOWERS, PERRIN, FORSTER & CROSBY, INC., ACCOMPANIED BY MARIO LEO, MANAGER, RESEARCH DEPARTMENT

Mr. ROOT. I am Charles D. Root, Jr., vice president and director, instead of Mr. Smith.

With me is Mario Leo, manager of our research department.

The CHAIRMAN. We appreciate your appearing here.

Mr. ROOT. Before Mr. Cummings goes, I would like to comment on a question he asked Mr. Willis concerning PB 51 of the pay board which has been superseded by regulations.

We are allowed to put in 10 percent plus a 7-percent increase. That amounts to a total of about 11 percent, which is a little better than the 5 percent mentioned.

The CHAIRMAN. We have your statement.

Mr. ROOT. You do, and all we are going to do is discuss certain parts of it.

Senator JAVITS. This large number of letters; what do you want to do with those?

Mr. ROOT. We wanted to submit those with our testimony, because we felt the committee would be interested in the personal views of many different companies, all of them clients of ours, unsolicited letters.

The CHAIRMAN. They will be very helpful in our committee file.

Senator JAVITS. They will be included; is that correct?

The CHAIRMAN. That is correct, at the end of their testimony.

Mr. ROOT. I am Charles D. Root, Jr., vice president and director of Towers, Perrin, Forster & Crosby.

With me is Mario Leo, manager of our research department. I have had 32 years in the pension consulting field, all with T.P.F. & Co., except for 4 years in the U.S. Navy in World War II.

Mario has been a consultant in our Philadelphia/New York offices, becoming a year ago our director of research, and has spent 11 years of service with T.P.F. & C. Before that, he was an employee in the pension department of Prudential.

We are extremely grateful for this opportunity to testify before this distinguished committee. We have submitted our statement. All we intend to do is stress certain parts of it.

We are testifying first as a pension consulting firm—I think I am on sound ground when I say the oldest pension consulting firm in the Nation.

Our first pension client was Union Carbide in 1917. Our second large client was Eastman Kodak in the late 1920's.

Both are among our most active clients today.

We are also one of the largest pension consulting organizations in the world. We have over 200 professionals, over 50 actuaries, over 400 employees involved in our consulting activities, and over 1,200 clients internationally. We have 10 offices in the United States from Boston to San Francisco, and two in Canada and three in Europe, London, Brussels, and Wiesbaden.

The point I am trying to make is, we have had long experience in the pension consulting field, with large and small companies, colleges, universities, hospitals, schools, charitable organizations, law firms, accounting firms, local and State governments.

We are testifying second as a corporate employer with our own benefit program, and a darned good one, if I say so myself, which we owe primarily to the wisdom of one of our founders, H. Walter Forster, who decided at the outset that if we were to sell pension consulting advice, we should darned well know whereof we spoke, by having one of the best overall programs in the Nation ourselves.

Now, about 40 years later, our plans have undergone many revisions, our retirement plans and our death benefit plans and we still do have one of the best benefit programs around.

Our vesting in our pension plans, for example: A person is essentially 100 percent vested after 10 years of service or 5 years of service if he is age 40 or over.

Our pension plan, if we went out of business today, could finance all of the benefits that have been accrued by all of our people up to today. All employees are eligible for our pension plan. We have a compulsory retirement age of 60. The company pays the full cost of all of our plans. Liberal survivor benefits, death benefits, and disability benefits are also included.

The market value of our pension fund is considerably in excess of the net worth of our company. Mr. Forster, I should add, testified at least twice in the 1930's and early 1940's before Senate committees. One I remember particularly with both Senators Vandenburg and Taft, Forster had gone to Washington a Vandenburg man and came back a Taft booster, saying that man had done his homework.

Finally, to complete the background picture of T.P.F. & C. so you can better weigh the impact of our testimony—as a firm, we survive solely by the fees generated in selling our consulting and actuarial advice.

Our basic consulting philosophy is very simple: Good benefit plans are profit producing, not profit reducing. Corporations are not eleemosynary institutions giving away their shareholders' money.

They have got to get value back for dollars spent. Therefore, they should expect better profits for the shareholders in the presence of a good benefit program than they would have had without that program.

How does this work?

First, by attracting, retaining, and motivating good employees and by providing financial security to those employees, thus enabling older workers to retire and be retired, thus opening promotional channels and opportunities for the younger workers, thus keeping an organization young, vigorous, active, and competitive.

One company, for example, with 33 retirees, had 220 promotions up and down the line behind those retirements. The new payroll and the pensions being paid to those retirees was still less than the old payroll.

Designing the best program to produce these desired results, more profitability for shareholders, is not easy. It varies by industry and business. Who is to be eligible for these plans and when?

How much, if any, encouragement to retire early?

Whether the company would pay all or partially employees contributory?

How much total retirement income?

Integrated or nonintegrated with social security?

What kinds and how much ancillary benefits, death, disability, survivor income—how to be financed and funded?

And vesting—what arrangement makes the most sense for that company, in that industry, in that geographical location?

Our second basic guiding principle is to keep the plan simple. They get complex so fast.

I would like to suggest the merits of simplicity to this committee, and I hope the Congress will have that also as one of its legislative goals. Simplicity, simple to understand, simple to explain, simple to apply, and most of all, simple to administer.

We have admittedly a select group of clients. We have not seen any dishonesty in administration or funding. Most if not all of our clients have vesting: some good, some more liberal than others. Nevertheless, Senator Javits, in reply to your question, we do support, as a consulting firm, legislation in this area, and I think most of our corporate clients would join us.

In fact, we testified in a similar vein last month before the House Committee on Ways and Means and attached to our written testimony there were 50 letters from clients supporting our position, plus a few suggested modifications, major and minor, to our position.

All were voluntarily offered on very short notice. Other letters have arrived since, and I think we have attached 65 letters to the written testimony we submitted last week.

I would like to quote from just one of those letters. This is written by Tom Gosnell, president of the Lawyers Cooperative Publishing Co., in Rochester, N.Y., and Tom was writing to me and he said:

> DEAR CHUCK: After reviewing your comments with regard to proposed legislation in the area of fiduciary responsibility and disclosure, vesting and portability, minimum funding standards and insurance for unfunded liability, and deductability of employee contributions, we find that we share the basic thrust of your position.
>
> We strongly urge you to impress on the Committee that pension expense is for most employers the largest single expense other than payroll. That is the case with this company.
>
> Therefore, we feel that the private sector should be heard carefully and should be convinced that all areas of pension proposed legislation have been researched and researched exhaustively prior to passage of any current proposed bills.

Therefore, I can say that we do support your objectives. The growth of the private pension system in this country has been phenomenal by any yardstick. That great success should not be tarred by the few unfortunate failures in the system. But if there is any abuse or dishonest administration, however small, if not punishable or controllable under current law, we should have laws that do insure honest compliance and see to it that employees do receive their just due.

We would be happy also to offer our services to this committee if there is any way we could be helpful. Mario and I would be glad to comply with any requests that come from this committee.

Mario Leo is now going to detail, as the additional part of our oral testimony, some specific comments and stress the various parts of our written testimony on S. 3598.

Mr. LEO. Thank you, Chuck.

To save the committee's time, I will not spend a lot of time on the rationale for our recommendation because that is included in our written testimony.

But there are certain points that I would like to reiterate orally before the committee.

I would like to cover the areas of exclusion for any legislation which is enacted by Congress, eligibility requirements, vesting, portability, plan termination insurance, disclosure, fiduciary standards, and State laws.

First, in the area of exclusions, our feeling is that any pension legislation which is enacted should apply broadly to all pension plans. We particularly see no reason why employers with fewer than 25 employees should be excluded from pension legislation.

In many instances, these are the very plans and these are the very employers who are in most need of, particularly, the vesting requirement and fiduciary standards and some of the other disclosure requirements which we will be recommending before this committee, and the committee is recommending in its legislation.

In the area of eligibility, we feel the committee's bill pays too much attention to eligibility at very early stages.

Employees at age 21 and after 6 months of employment are not particularly concerned about pensions, and we are not either at those early ages. We think if eligibility requirements are to be mandated by Congress, they should be something realistic, like the eligibility requirement included in the individual Retirement Benefits Act, S. 3012, which is 3 years of service, or age 30. This still gives the employee some 35 years of future employment opportunities and future opportunities to accrue additional pension credits.

This seems a sufficient time for most employees to accrue adequate pensions under an adequate pension scheme.

In the area of vesting, as Chuck has mentioned, we support legislative vesting. We think legislative vesting should be based on a rule of 50, combination of age and service equal to 50.

We think it should be subject to a minimum of five years of service to avoid vesting to nominal benefits.

We stress the importance of including age as a condition for vesting, because again we say that the younger employee has far greater opportunities for reemployment and for the accrual of future pension credits than older employees.

Since we are dealing with a limited amount of moneys, we prefer to see the moneys concentrated at older ages where vesting is far more sorely needed than at the younger ages. We think vesting schedules should start at 50 percent, so at the point at which the employee has vested, he has vested half the benefit. We suggest he vest at 10 percent a year thereafter so that the employee is fully vested after an additional 5 years.

We urge that vesting be based on all years of service with an employer, not simply years of service after the effective date of legislation.

Under the proposals in S. 3598, it is possible for an employee to work for an additional 8, or under certain exceptional circumstances, as many as 11½ or 14½ years before he is entitled to a vested benefit under a private pension plan. We feel this would be a serious disillusionment to employees looking toward the committee to come out with effective vesting provisions which would apply to their benefits.

We feel any vesting schedule should be applied to all credited pensions, not simply pensions credited after the effective date of legislation. So older employees, who are most seriously concerned about vesting, are covered by this legislation.

We recommend a 5-year transition period, so employers can adjust to accommodate themselves to higher costs involved in any mandated vesting. We strongly urge that vesting be limited to lifetime pensions.

Definition 30 in S. 3598, implies mandatory vesting of death as well as pension benefits. We urge the committee to concentrate on the pension an employee accrues to age 65, and not apply vesting costs to death and other supplemental benefits.

Additionally, where pension plans require employee contribution, we feel vesting under those plans should be conditional upon the employee's agreement to leave his own money under the plan. If the employee is not sufficiently concerned about his future plan credits under the private pension plan to leave his own money under the plan to preserve his own pension, the portion of benefits purchased by his own contribution, we see no reason why the employer should be so concerned on his behalf.

In the area of funding, Mr. Willis has mentioned the IRS requirement in this area, and Iwill not reiterate those. We do feel very definitely that more study is required.

We think the specific questions which require answers are those related to the extent of the plan terminations, the number of employees adversely affected by those terminations, and the effect legislated vesting would have had in such situations.

There are many plan terminations which result from plan mergers, from discontinuance of profit-sharing plans, and substitution of a pension plan, for the discontinued profit-sharing plan, which do not result in loss of accrued benefits.

We believe there are unanswered questions with respect to the amounts of lost benefits, and the ages of employees who lose such benefits. If the employee loses benefits at a very early age, like 20 and 22 or 25, well, he still has a long period of time in which to recuperate, to accrue future credits. When a plan is terminated and some benefits are not paid under the plan because of fund inadequacy, allocation of a set schedule in the plan typically provides benefits for retired people first, and people eligible to retire and then vested and younger people.

Of the employees who have been adversely affected—I do not think the number is that great—most are generally at earlier rather than later ages.

This is something that should be covered in a study in this area.

We also feel a study should be made as to whether or not funding requirements are desirable and specifically what kind of funding requirements would have had a significant effect on the results which are uncovered in the study of funding and plan termination.

If legislation is enacted in the funding area, we suggest such legislation be limited to cost and liabilities which are legislatively vested.

We think if substantial funding requirements are applied to full accrued pension credits, it would have serious disruptive effects on many smaller employers. It would not affect most of our clients, because most of our clients are soundly financed, firmly financed plans.

We do know of situations however where this would have a seriously disruptive effect.

In the area of portability, we feel that the machinery which is being proposed is very complicated and administratively expensive and provides something of really minimal value.

Canada has had legislation authorizing the establishment of portability schemes for a number of years. Because of massive apathy by unions and industry, Canadians do not have an effective portability scheme in effect now.

Portability is subject to certain antiselection. For example, if you want to provide portability with respect to vested pension credits, and vested death benefits, presumably many employers who have employees in poor health would terminate their employment and transfer liabilities to the portability scheme rather than have death benefits paid from the employer's plan.

My point here is that portability as envisioned would be of minimal value. It is a question of who pays benefits, not whether benefits will ultimately be paid.

In the area of plan termination insurance, we pointed out in our written testimony that the fact that the assessment under such a scheme would be uniform really does not say very much. It does not give any employer any protection that the assessments themselves will be unreasonably determined or arbitrarily large. We also believe that the concept that recovery by the insurer from the employer based on the relationship between unfunded vested liability and employer's net worth is irrelevant because there is no causal relationship between these two amounts.

It is unfair, since a uniform assessment is not predicated by its nature on potential claim probabilities, and it is unrealistic because it penalizes high net worth industries, such as steel, auto, and so on, when compared with low net worth industries, such as service industries.

We support the statements made by Secretary Hodgson before this committee on June 20. The Treasury and the Labor Department are making extensive studies in this area. These studies are to be completed in December 1972.

It seems to me that careful analysis of both studies is a prerequisite to formulation of sound Federal policy in this and in funding and in the plan termination insurance areas.

In the areas of fiduciary standards and disclosure, we support the comments made by the Chamber on fiduciary standards: the use of the prudent man rule.

We support increased and adequate disclosure to employees. We support legislation which would require employers to give employees full and clear information about eligibility requirements for participation in the employer's pension plans, vesting provisions, the calculation of benefits, plan administration, filing for claims, and related matters of importance to employees.

But we do not support additional voluminous information being submitted to Federal agencies. There is a proliferation of forms being filed with the Internal Revenue Service and the Department of Labor now, and we see no reason to increase those forms.

We do not think that the Federal agencies involved have the capability to digest the information they are now receiving, and we see no reason for increasing the amount that they are receiving.

Finally, we strongly support section 609 of Senate bill 3598, which would provide Federal legislation that would supersede any State laws.

New York, New Jersey, and Pennsylvania, have introduced proposed vesting legislation in their States, and if the States were permitted to legislate vesting across the board, this would create an administrative nightmare as far as private pension plans are concerned.

In conclusion, we do support fiduciary standard proposals. We support disclosure—compulsory adequate disclosure to employees but no additional burden so far as submitting information to government is concerned.

We support vesting, basically the rule of 50. We think additional study is required in the areas of funding, portability, and plan termination insurance.

That concludes our testimony. We would be happy to answer any questions which you Mr. Chairman or the subcommittee may have.

The CHAIRMAN. This program in the bill that Senator Javits and I introduced does not descend below businesses with fewer than 25 employees.

You suggest that if we are going this particular route, it should be universal, is that right?

Mr. LEO. Yes; basically universal.

We do not see any reason to exclude the small employer from the requirement that he disclose the plan details to his employees in full, in clear language, or that he be excluded from the compulsory vesting provision.

Mr. ROOT. In some ways the employee of a small employer needs more protection than the employee of a larger one, because of the public exposure that the large one has that the smaller one does not have.

The CHAIRMAN. There seems to be an inclination around here not to put additional burdens on the small businessman. We saw this yesterday in another area, where it dealt with the safety of the workers.

The Senate voted to remove from effective coverage under the health and safety law employers of less than 15.

Mr. ROOT. If your object is not to protect those employees of small employers, I think that is wrong. I think they should be given the same protection that employees of larger employers have.

The CHAIRMAN. If you had stood, as I stood, and argued that, you would have stood while the roll was called, and you would have lost.

Mr. ROOT. Let me make one further comment.

There is a real burden on the employer today, the proliferation of forms. There are five or six forms, five or six pages long, which ask a whole series of questions from IRS.

We have different forms for the Labor Department. The real burden to the small employer is filling out literally dozens of these forms, and they are voluminous. They are complex; they ask a lot of questions that nobody is ever going to use the answers to.

If somehow or other—and I realize this is beyond the purview of your committee—if somehow or other we could have one form going to the Government, which asks all the questions the Labor Department wanted and the Internal Revenue Service wanted and really needed, then there would be no great burden on the small employers in filling out these forms.

The CHAIRMAN. You have put your finger right on the problem. Procedures get so complicated you need professional help just to meet the forms and all the requirements. That is what this was all about yesterday. They called it harassment of the small businessman.

I can see where this would be a classic situation, where you would be giving your productive day over to the filling out of forms.

Mr. ROOT. Exactly. Or if you do not have the capacity to fill them out, you have to hire somebody to do it for you. That is very expensive.

Mr. CUMMINGS. We have proposed, with hope, under section 106, where the Secretary may, by regulation, provide for the filing of a single report satisfying the reporting requirements of this act and the Welfare and Pension Plans Disclosure Act. We would legislate that with great hope.

Mr. ROOT. That does not cover IRS, though; but it would be great if somehow or other, instead of giving the Secretary the suggestion that he do so, that you would mandate that he do so. I think that would carry a lot more weight and be a lot more valuable to small employers and large ones.

Companies like General Electric, Mr. Willis can testify to this better than I, they must have a tremendous staff just filling out these forms and maintaining the forms that are necessary for filing with the Federal Government.

Mr. LEO. I think there is another point to be noted with respect to the small employers, we are talking here about incidental costs of pension plans. You are not mandating minimal pensions for all employers. You are saying, in effect, if the employer has a plan, one of the provisions for qualification is that there must be minimal vesting.

It seems to me the small employer who assumes the responsibility for a pension plan, has accepted the basic cost of the plan. Vesting is incidental cost to having that plan. Once he has made the decision to have the plan, it seems to me he should conform this plan with whatever vesting requirement is legislated by Congress.

The CHAIRMAN. We frequently hear reference to portability that is provided for in Canada; it has not been very useful up there. You described the reception as apathetic.

We had a witness here from Canada before the committee and he described the portability under law. He said portability was not used because an employee moving from one job to another can withdraw his accrued benefit without its being taxed, and invest it at that point; therefore there is no incentive for portability because of the nontax impact of withdrawal and right of withdrawal.

Mr. LEO. That is surprising. Because the employee contributions are deductible in Canada up to $1,500. Presumably they tax at the point of withdrawal. You may be right. I think the basic problem with portability is it really does not achieve very much.

What you are saying, in effect, is you are going to get *x* dollars of pension from source A instead of source B. Unless source A, the point from which you are getting your pension, is fiscally a lot more sound than source B, you have not said anything to the employee.

Our second objection to the administrative problems. If you had a plan 70-percent funded or a large number of employees terminate employment, and they elect portability, presumably they would take 100 percent of their reserve values and transfer them to another scheme. If the plan were subsequently terminated, the remaining employees would have their benefit rights adversely affected by the decision of this group of early terminees to have their reserve value transferred from the existing plan to a new plan.

The CHAIRMAN. That is a worthy observation. On the surface, that would seem to be a problem. This relates to the reinsurance provisions in our bill.

Mr. ROOT. I want to make a comment on portability.

I think if you legislate vesting, it makes the necessity of portability somewhat less.

Mr. CUMMINGS. That is why it is voluntary.

Mr. ROOT. The thing that bothers me, the thing that bothers us about portability is the additional Federal bureaucracy that this can create. I think this is unnecessary.

Mr. LEO. The employer can now go to an insurance company and purchase individual policies to protest terminated employees' rights. There is nothing in this bill which the employer cannot do now.

Mr. CUMMINGS. I do not think you are aware of what the voluntary portability title requires. It has nothing to do with going to an insurance company.

Mr. LEO. What can the employer not do now under the present scheme, which this legislation would enable him to do?

Mr. CUMMINGS. What the portability title does is create a central clearinghouse through which, if a plan is tied into that clearinghouse voluntarily, an employee leaving one plan and hoping to join another company with another plan can have the discounted current value of vested credits represented in dollars, transferred into central clearinghouse. Then, at a later time, if he gets into another plan tied into the clearinghouse, that discount of current value, plus such earnings as it gains in central funds, will be transferred into the new plan, to purchase whatever those dollars purchase under the new plan, without any capital gains realization or tax consequence, by virtue of transfer.

I do not think you can do that now.

Mr. LEO. You stand corrected. You can do it now. It has been done. You can take funds from a company pension plan, for example, and transfer them to a negotiated plan.

Mr. CUMMINGS. That is if the man transfers from one plan directly to another plan, and the two plans happen to agree, but if he quits one job and——

Mr. LEO. This is the employer's option.

Mr. CUMMINGS. It is voluntary. We are not saying—well, it is like the commercial; we are not imposing it on you; we are saying, try it out.

Mr. ROOT. We would like to have a separate discussion with you. We have some definite views on it.

Mr. CUMMINGS. The bill does not make it necessary.

Mr. ROOT. I do not think it is desirable in the bill.

Mr. LEO. We have incurred the expense of setting up machinery, which we do not think was very useful. If everything that is voluntarily were accepted, we would have a huge bureaucracy.

Mr. CUMMINGS. You made a big point that small and large businessmen would like to be able to file a single form and qualify for all purposes under all laws.

Have you examined the provisions of section 111 of the original Javits bill, S. 2?

Mr. ROOT. S. 2, I have not got it in front of me.

Mr. CUMMINGS. I recommend it to you. It does exactly what you say; it gives you, by single registration, not only qualification under this act and the Welfare Pension Plan Disclosure Act, but also Internal Revenue.

Senator SCHWEIKER. I see there is a vote on the Senate floor.

I want to say we are delighted to have you. I know your company well. I know you speak with authority and you have a well-respected background in the field.

So I think that your points of view will be quite helpful. I wonder if you could maybe submit to us—I am very interested and I know it is very technical—and you probably cannot adequately cover it here—if you could submit to us some further ideas or thoughts you have on portability. I did read your statement here, but I think there is dialog here, and it would be helpful to have the benefit of your experience and expertise if you could submit to the committee some further thoughts on portability. I am interested in prohibiting some of the redtape that invariably clings to any governmental process. Maybe with your thinking, there might be a way to accomplish some of the things we want to accomplish by portability without some of the redtape involved.

If you could just give us some further views in writing as to any practical suggestions you would have, I think we would appreciate it.

Mr. ROOT. We would very much be willing to do so, and happy to do so.

Senator SCHWEIKER. We appreciate your coming.

(The prepared statement of Mr. Root with attachments follows:)

TESTIMONY PRESENTED TO THE

SENATE COMMITTEE ON LABOR AND WELFARE

ON THE PROPOSED

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT, S. 3598

JUNE 28, 1972

TOWERS, PERRIN, FORSTER & CROSBY

TPF/C Testimony On Proposed Pension Legislation (S. 3598) Prepared For
The Subcommittee On Labor Of The Committee On
Labor And Public Welfare
June 28, 1972

For over 50 years, Towers, Perrin, Forster & Crosby have been consultants to the managements of both large and small organizations in the United States, Canada and Europe. Currently, we are consultants to over 1,200 clients, including major companies, non-profit organizations, and state and local governments. We recognize that proposed pension legislation is controversial and that there are many valid, yet varying, points of view about it. Therefore, we believe we should take a position on this subject, and appreciate this opportunity to present our views on the proposed Retirement Income Security for Employees Act, S. 3598. We also testified in a similar vein on May 18, 1972 at the pension hearings conducted in Washington by the House Committee on Ways and Means.

Growth of the Private Pension System

Regardless of the measurement criteria adopted, the growth of the private pension plan system has been extraordinary, a fact on which S. 3598 also comments. The number of qualified pension and profit sharing plans has grown from 12,925 plans in 1950 to 230,000 plans by the end of 1970, a rate of growth over these past 20 years in number of plans alone of 15.5% annually. More importantly, the percent of non-agricultural workers in private industry covered by these private plans has grown from 22.5% in 1950 to 48.3% by the end of 1970.

Other indicators of the tremendous growth of private pension and profit sharing plans are shown in the following table:

Private Pension and Profit Sharing Plans - Selected Statistics

Year	Employees Covered* (millions)	Employer Contributions (billions)	Employee Contributions (billions)	Number of Beneficiaries (millions)	Benefit Payments (billions)	Reserves (billions)
1950	9.8	$ 1.75	$ .33	.45	$ .37	$ 12.1
1955	15.4	3.28	.56	.98	.85	27.5
1960	21.2	4.71	.78	1.78	1.72	52.0
1961	22.2	4.83	.78	1.91	1.97	57.8
1962	23.1	5.20	.83	2.10	2.33	63.5
1963	23.8	5.56	.86	2.28	2.59	69.9
1964	24.6	6.37	.91	2.49	2.99	77.7
1965	25.3	7.37	.99	2.75	3.52	86.5
1966	26.3	8.21	1.04	3.11	4.19	95.5
1967	27.5	9.05	1.13	3.41	4.79	106.2
1968	28.0	9.94	1.23	3.77	5.53	117.8
1969	29.0	11.42	1.36	4.18	6.45	127.8
1970	29.7	12.58	1.42	4.72	7.36	137.1
Annual Growth Rate	5.7%	10.4%	7.6%	12.5%	16.1%	12.9%

Source: Table 7 in "Trends in Employee Benefit Plans in the Sixties," W. W. Kolodrubetz, Social Security Bulletin, April, 1972, Volume 35, Number 4.

*Excludes retired employees and employees of governmental units covered under plans not funded with private agencies.

These growth statistics indicate the increasing magnitude of benefits provided under private pension plans. In addition, extensive research studies in recent years have provided some very useful indicators of: (1) the extent to which private pensions supplement Social Security for employees covered under private plans, (2) the extent to which employees have vested rights to benefits promised under private plans, and (3) the extent to which these vested benefits are covered by assets held in reserves established under these plans.

The increase in average benefits paid under private pension plans also has been impressive. In 1970, average payments per pensioner reached $1,654, a 62% increase over the average payment of $1,021 for 1960. The average Social Security payment to retired workers for 1970 was $1,417. Although it is dangerous to make too many assumptions about these two averages, it seems reasonable to assume that workers covered by both Social Security and private pension plans were getting about 50% of their pension income from each -- probably somewhat less than 50% from private plans for workers at the lower earnings levels and more than 50% for workers with earnings at the higher earnings levels.

As to the probable extent of vesting under private pension plans, the highly regarded series of Studies of Industrial Retirement Plans prepared by Bankers Trust Company of New York, documents the dramatic increase in vesting provisions under private pension plans (both of the negotiated and non-negotiated type) and the steady liberalization of vesting requirements. The study is based on industries classified in 71 different categories, and analyzes plans covering approximately 7.8 million employees. The 1970 edition points out that 99% of the negotiated "pattern plans" and 98% of the "conventional plans" reviewed in the 1965-70 period include provisions for vesting (including early retirement), up from 82% and 90%, respectively, for these plans in the 1956-59 period. These studies also document the progressive liberalization of the age and/or service requirements an employee must satisfy in order to achieve vested rights to his accrued benefits.

Extensive data was collected for a study of private plans conducted for the Pension Research Council of the Wharton School of Finance and Commerce. * The basic conclusions of this study emphasize the prudent and conscientious financing policies adopted by most employers and unions with respect to benefits promised under private pension plans:

> "As of the central date of this study, a very high degree of benefit security had been accomplished by a vast majority of the plans included in the study. (In most cases these plans are those qualified under Internal Revenue Service regulations and subject to those regulations.) For example, assets accumulated to the date of valuation were sufficient, on the average, to cover 94.4% of all accrued benefits under plans whose effective funding periods were 15 years or more. ... Consistent results apply to plans at the other funding durations. Assets were, of course, sufficient to cover an even greater proportion of vested accrued benefits."

*<u>Status of Funding under Private Pension Plans,</u> Frank L. Griffin, Jr., and Charles L. Trowbridge; Richard D. Irwin, Inc., Homewood, Illinois; 1969

The foregoing very brief review of the growth of the private pension plan system is all too frequently ignored when discussions focus on "what's wrong" with the system rather than on "what's right" with it.

Factors Fostering Private Pension Plan System

The basic factors which fostered the growth and present levels of success of the private pension system are:

1. Economic needs of retirees,
2. Employee demands for better and better pension benefits,
3. Employer profitability and desire to provide pensions, and
4. Congressional creation of a legislative climate favorable to the initiation and development of private pension plans.

The first factor which contributed to and supports the further development of private pension plans is the economic need of retired individuals for income to replace the wages and salaries they earned while actively employed. Social Security provides basic income to help cover these needs, but only the private pension system is sufficiently flexible to respond satisfactorily to the heterogeneous financial needs and desires of most retired individuals and the varying abilities of employers to help provide for these needs. In combination, Social Security and the private pension system have substantially improved the economic well-being of retired individuals; further improvements are very much dependent on this continued partnership.

The second factor, employee demands (directly or though union representatives) for better and better pension plan benefits, has increased significantly over the last 10-20 years. As a result of such demands, pension income levels and vesting provisions, in particular, have been substantially improved over the years. This factor will undoubtedly continue to play an important role in the future development of the private pension system.

Naturally, the continuance of the private pension system depends on the ability of the American economy to provide the resources needed to cover the requirements of both the employed and unemployed. This third factor, then, is that employers must continue to run their business on a profitable basis so that continued pension improvements can be financed. Any impairment of this ability would adversely affect the amount of pension which can be accrued by employees under the private system.

The fourth essential factor is the active role played by Congress in promoting the private pension system, particularly since the early forties. In addition to creating a social, legal and tax climate favorable to the creation of a broadly applicable private pension system, legislation to date has had an important and salutary effect on both the design and funding of private pension plans. Through the present concept of "qualified plans" introduced into the Internal Revenue Code in 1942 and modified several times since then, Congress has promoted private pension plans which provide nondiscriminatory benefits for nondiscriminatory classifications of employees and has created a tax framework which has resulted in the substantial funding of the benefits promised under private plans. Thus, the private pension plan system has been given impetus and support by past legislation; its future is very heavily dependent on continued Congressional support.

In summary, our basic position is that any legislation should be directed toward strengthening the private pension system. As previously noted, this system has existed for over 50 years, with the most significant growth occurring during the last two decades. We believe the system is sound and in the vast majority of cases has proven to be both financially and socially responsible. Frequent statements which emphasize isolated cases involving hardships, inequity, or even fraud lead many individuals who have little experience with private pension plans to believe that such unusual cases are the rule and not, as our experience confirms, the rare exceptions.

Comments on Provisions of S. 3598

We would now like to present our specific comments on the principal provisions of the Retirement Income Security for Employees Act, S. 3598.

1. Vesting: Title II (Parts A, C and D)

TPF/C believes that after a reasonable period of service, employees should be entitled to vested rights to their credited pension benefits even though service with their employer is terminated. While we recognize that many employers currently provide reasonable vesting and that there is a trend for more companies to provide more liberal vested benefits, we still believe some legislative minimums are desirable. Basically, we recommend that legislated vesting be based on:

(a) the Administration's proposed "rule of 50" (vesting commences when age plus service total 50), but subject to a minimum service period of 5 years;

(b) a graded vesting schedule which starts at 50% and increases by 10% for each of the next 5 years to 100% vesting;

(c) use of all years of service with an employer;

and be applied to:

(a) all credited benefits, not simply those credited after the effective date of legislation, but with an appropriate transition provision, such as 5 years, to allow employers time to make provisions for the higher plan costs involved; and

(b) only the lifetime pensions <u>payable at age 65</u> provided under a plan, and not death, disability, and other supplemental benefits.

Furthermore, we recommend that for pension plans which require employee contributions, legislated vesting be limited to terminated employees who satisfy the legislated age <u>and</u> service requirements and who agree to leave their own contributions under the plan until retirement.

Pension benefits credited during the early years of employment generally do not produce a significant portion of a person's total retirement income. In an expanding economy with an increasing cost of living, pension benefits credited during the early years tend to lose significance by the time an employee reaches retirement age. Moreover, younger employees have better re-employment opportunities than older employees, and, consequently, are more likely to accrue pension credits with a future employer. For these reasons, we recommend that age be a significant factor in determining when benefits become vested under a pension plan, and we support a "rule of 50" based on age and service. The "rule of 50" seems preferable to the vesting proposal under S. 3598 which bases vesting solely on service because:

(a) it avoids vesting at younger ages for employees who terminate with the opportunity for substantial years of future employment and pension credits still before them, and

(b) insures that older employees get vested credits after comparatively short periods of service.

We recommend a minimum service period of 5 years for vesting purposes to avoid vesting of nominal benefits. The minimum service requirement of 8 years proposed under S. 3598 also recognizes this need to avoid vesting of small amounts of pension benefits.

We support the Administration's proposal for a graded vesting schedule which starts at 50% (rather than the 30% proposed under S. 3598) and increases 10% per year to 100% after an additional five years of service. The Administration proposal seems to offer at least two important advantages over the proposed schedule under S. 3598:

(a) once an employee achieves vested status, he is vested in at least one-half of his benefit; and

(b) the additional period required for 100% vesting is reduced from 7 years to 5 years (we prefer the 5-year incremental schedule).

As to the years of service to be used to determine when an employee achieves vested status under a pension plan, our feeling is that all years of service should be counted for this purpose. Counting only years of service after the effective date of legislation unduly delays, in our opinion, the accrual of vested rights and will seriously disappoint older employees who have already accumulated considerable years of past service with their employer. For similar reasons, we also recommend that vested benefits include benefits credited during all years of prior service and not just for service subsequent to December 31, 1973. We believe that any legislation, such as S. 3598, which provides for vested benefits based only on service after a current or future date, will prove to be a disillusionment to employees, particularly to those who lose their jobs after long years of prior service. If Congress is to pass a bill requiring vesting, we believe it should be meaningful and that credited service should include all service prior to the date of the employee's termination of employment. Under S. 3598, it is possible for an employee not to receive any vested benefits until 8-1/2 years (or 14-1/2 under exceptional circumstances) after the effective date of the Act, and then he would only receive benefits equal to 30% of those accrued after the effective date. In our judgment, that is too long a period for employees to have to wait for the operation of a legislated vesting provision.

We recognize that the above proposals will add more costs to pension plans provided by employers than has been contemplated under most of the legislative proposals introduced to date. However, we feel these costs are justified if Congressional objectives are to be realized. In order that employers may prepare to meet this increased cost, we recommend that an employer be permitted to comply with the provisions of this Act any time within five years of its effective date. This should be ample time for union negotiated contracts to be renegotiated, for unilateral plans to be amended and for companies to recognize the costs for this vesting provision, which in some cases could be substantial.

As previously noted, we urge that any Act should make it clear that the mandated vesting is only for lifetime pensions and does not include death, disability, or other supplemental benefits. Mandated vesting of pension benefits alone will be a costly additional burden for many employers, and the pension payable at age 65 should, in our opinion, be Congress' main concern at this time. The employer's cost burden should not be increased further by extending vesting to supplemental benefits that do not affect the amount of retirement income provided under a pension plan. Also, the Act should make it clear that the vested pension benefits need not be payable earlier than age 65, so that the current trend toward liberalized early retirement provisions under private pension plans is not discouraged.

Finally, for contributory plans, we recommend that any legislated vesting provision permit the traditional practice under these plans of making vesting contingent upon an employee's agreement to leave his own contributions under the plan until age 65. We see no reason to require vesting to employer-provided benefits when an employee voluntary chooses to cancel his employee-provided benefits by withdrawing his own contributions from the plan.

In concluding our comments on legislated vesting, we would like to take issue with the claim that some have made that vesting should not be required because it will discourage the hiring of older employees. The implication here is that the cost of vesting is more significant at older ages than at younger ages, but it is important note that vesting costs nothing unless an employee terminates his employment. Taking into account the much higher probability of termination of employment at the younger ages than at the older ages, we believe the real cost of vesting is more heavily concentrated at the middle ages, or at the younger ages under some of the proposals now before Congress. From a social point of view, it is obviously much more important for benefits to vest for the older employees rather than for those at younger ages. Because the probability of terminating is less at the older ages than at the younger, an age-related vesting provision should not produce unreasonable cost increases.

2. Funding: Title II (Parts B and D)

We agree with the comments of President Nixon when he introduced the Administration Bill and recommended that action on pension funding legislation be deferred until further study has been completed. In effect, certain minimum standards already exist under federal tax law. Employers with qualified plans must contribute their normal costs plus at least interest on their initial unfunded liability (and increases in liabilities attributable to future plan improvements). Possibly, the problem (if there is one) in this area is due to inadequate government enforcement of present rules rather than inadequate legislation.

Recent studies clearly demonstrate that the level of funding in private pension plans generally has created a high degree of benefit security for employees. For an excellent treatise on this topic, we refer the Committee to the article written by Griffin and Trowbridge under the auspices of the Pension Research Council. More study is needed to determine the extent of plan terminations, the number of employees affected, the amount of lost benefits, and whether or not funding requirements and what kind of funding requirements would have had a significant effect on the results. The Treasury Department is now collecting data to provide statistics on these items.

If legislation in this area is to be considered before completion of this necessary additional study, we urge that any new requirements at least be limited to costs and liabilities related to benefits which are legislatively vested. Application of new funding rules to all plan benefits, regardless of when they were accrued or the extent to which they are vested, could prove seriously disruptive and would increase plan administrative costs substantially.

3. Portability: Title III

Title III proposes setting up very complicated and expensive administrative procedures to accomplish something which seems of minimal value. The amount transferred from one "member plan" to another "member plan" is the "actuarial equivalent" of the value of the deferred benefit. Thus, by definition, the employee should receive exactly the same benefit at normal retirement date. Portability to the employee is then reduced to the fact that the retirement check will come from an insurance company instead of a pension trust, or vice versa, with no effect on the amount of payment to be received by the employee. Legislated vesting proposals seem adequate to cover the outstanding problems in this area, and portability schemes would be an unnecessary and expensive additional complication.

4. <u>Plan Termination Insurance</u>: <u>Title IV</u>

A properly designed program for Plan Termination Insurance might be of some value to the private pension system. However, here again, this is an area which requires considerable additional study before important concerns with respect to feasibility, potential cost exposure, and potential abuse exposure can be addressed in a legislative proposal. S. 3598, for example, requires that each plan pay a "uniform assessment" for this insurance, but sets forth no criteria which the Secretary should use in developing an appropriate assessment. The requirement that the assessment be "uniform" gives no assurance to employers that the assessment will be equitable and gives no protection against arbitrarily determined and unreasonably large assessments.

Furthermore, the proposal in Section 405(b) that the insurance fund be permitted to recover from an employer a percentage of his plan's unfunded liability based on the relationship between the plan's unfunded vested liabilities and the employer's net worth is arbitrary and unreasonable. For insurance payment purposes, the relationship of pension liabilities to net worth is irrelevant (there is no causal relationship between these amounts), unfair (since the "uniform assessments" presumably will not be based on claim probabilities), and unrealistic (since it penalizes high net worth industries -- steel, auto, etc. -- when compared with intrinsically low net worth industries -- the service industries).

5. Disclosure and Fiduciary Standards

We support amending the Welfare and Pension Plans Disclosure Act in a manner which:

(a) assures that administrators and trustees of pension plans and funds observe the highest standards of fiduciary responsibility;

(b) relies on the "prudent man" rule as a sufficient standard for the investment of funds;

(c) provides for forthright, positive, continuing disclosure of essential provisions and operations to employees and government authorities; and

(d) simplifies and standardizes the forms and information required by various government agencies.

As to disclosure, we support the proposed requirements to furnish employees with full and clear information about the eligibility requirements for participation in their organization's pension plan; the vesting provisions of the plan; the calculation and amount of actual benefits; the procedures involved in claiming benefits; the effect of a plan suspension or plan termination; the effect of a merger on plan funds and contributions; plan administration; the availability of official plan documents to plan participants and their beneficiaries; and all other provisions pursuant to the rights and obligations of plan participants or their beneficiaries.

We are also in favor of identifying by name the professional organization or organizations charged with managing and investing pension funds. Employees should be told that these funds are for their future security and that the funds cannot be used for any other purpose. We do not, however, believe that it is necessary to make a full disclosure of all the investments of the pension fund, primarily because we support the principle of fiduciary responsibility. Also, there is sometimes little resemblance between what "was" held by a fund compared to what "is" held by a fund at the time a report is made to employees.

We note that on December 14, 1971, Senators Javits, Beall, Dominick, Schweiker and Taft introduced S. 3024, which proposed certain amendments to the Welfare and Pension Plans Disclosure Act. We believe with very few minor modifications, this Bill provides all that is necessary in regard to disclosure and fiduciary standards, and it seems preferable to separate these standards from the other items covered in S. 3598.

6. State Laws

We strongly support Section 609 of S. 3598 which provides that Federal legislation in the pension area would supersede state laws covering the same matters. This is essential to avoid a hopelessly confusing situation, particularly in the vesting area.

7. Miscellaneous

In reviewing the text of S. 3598, we noted a number of ambiguities and technical problems. Several important ones which we would like to call to your attention are noted below:

(a) Section 211(a) seems to pose the following problems:

(i) The introductory sentence refers to the allocation of "contributions;" this reference should be to fund assets attributable to contributions made with respect to Section 202 vested benefits.

(ii) The language in this section provides that contributions attributable to the portions of pension benefit credits covered by the vesting provisions of Section 202 shall be applied to provide the total benefits credited to plan participants in accordance with the preference allocation schedule set forth in Section 211(a). This allocation procedure would not assure payment of Section 202 vested benefits, which we presume is the intention of Section 211(a).

(iii) The allocation prescribed under this section may conflict in certain cases with Internal Revenue Service benefit limitations applicable to the 25 highest-paid employees of a company.

(iv) The allocation schedule fails to provide for the refund of employee plan contributions before any other allocation of plan assets is made. This refund should enjoy the highest priority.

(b) Section 215(b)(2) requires that contributions under the new portion of a "Divided Pension Plan" be made at a "rate not less than the continuing plan." This language is very imprecise and can lead to what we believe are unintended results. For example, if employees under the present plan have a much higher average age than employees under the "new plan," use of the same contribution "rate" initially would provide much higher pensions for those covered under the new plan than under the present plan and the "rate" would increase for this younger group as their average age increased. Other similar problems are possible depending on the definition of "rate" and the actuarial cost methods and assumptions which are used.

(c) Section 217(e)(1) requires that under certain circumstances the plan fund be "equitably allocated..." Here, again, we feel that this language is too imprecise and would lead to complicated regulations and/or considerable future litigation as to what is "equitable."

(d) Section 302 provides for deposits to the Voluntary Portability Program equal to the "current discounted value of the participants' vested rights." In addition to actuarial problems related to the determination of "current discounted value," this section could also result in a situation where employees whose "values" are transferred to the Voluntary Portability Program have a higher plan asset allocation made on their behalf than do employees who remain with the employer and subsequently have their benefits reduced due to plan termination before all vested benefits are fully funded or insured.

(e) Section 403(a) provides for payment of a "uniform assessment" to the insurance program without any limits on how this assessment is to be determined. Other problems in this area were covered earlier in our testimony.

(f) Section 404(a) provides that no "plan insured under this title shall terminate without approval of the Secretary." For the employer who is economically forced to terminate his plan promptly, some alternative should be offered to cover cases where the Secretary may not make his approval decisions expeditiously or where, for some reason, the Secretary disapproves a particular plan termination.

There are a number of other areas which we believe can be modified to improve their clarity and minimize the possibilities of misinterpretation. However, this does not seem to be the place or time for a discussion of these comparatively minor revisions.

Conclusion

In summary, our position on the proposed Retirement Income Security for Employees Act, S. 3598, is:

1. We are opposed to the portions of S. 3598 which deal with funding, portability, and insurance.

2. We prefer a modified version of the Administration's "rule of 50," rather than the vesting provision of S. 3598.

3. We favor the basic proposals on disclosure and fiduciary requirements, except for certain overly burdensome requirements related to investment transactions.

Although proposals for tax deductible employee contributions are not under consideration by this Committee, we would like to take this opportunity to express our support for the deductibility of employee contributions either to an employer-sponsored plan or to an individual-regulated savings/retirement plan. Specifically, TPF/C supports the deductibility each year of an amount equal to the lesser of 10% of basic earnings or $1,500. Because of the varying financial ability to make contributions from year to year, some provision should be made for carrying forward unused prior limits. In order to achieve equity and simplicity, this deduction should be granted regardless of participation in a qualified pension or profit sharing plan.

TPF/C also supports a liberalization of the tax-deductible contributions permitted for self-employed individuals under H. R. 10 plans.

In preparation for our May 18th testimony before the House Committee on Ways and Means, we sent a special TPF/C Letter to all of our clients on May 3rd (copy attached as Exhibit 1), setting forth our position on pending legislation. Although time was short, the companies listed on Exhibit 2 voluntarily responded to our Letter. Almost all of these companies endorsed our position without reservation; a few suggested modifications or alternatives. Copies of all of these letters are attached.

We thank you on behalf of our clients and ourselves for this opportunity to present our views.

Charles D. Root, Jr.
Vice President and Director

Mario Leo
Manager, Research Department

EXHIBIT 1

Special Supplement
TPFC Letter
The TPF/C Letter May 3, 1972

TPF/C Position on Pension Legislation

As we indicated in the April 19, 1972 Special Supplement of the TPF/C Letter, public hearings on proposed legislation will be held by Chairman Wilbur Mills, of the House Committee on Ways and Means, beginning on May 8.

TPF/C requested an opportunity to testify at those hearings, and we are scheduled to appear on May 11. We recognize that proposed pension legislation is controversial and that there are many valid, yet varying, points of view about it. Nonetheless, we believe it important, as responsible consultants and actuaries, to take a position on this subject.

Background

Our basic position is that any legislation should be directed toward strengthening the private pension system. This system has existed for over 50 years with the most significant growth occurring during the last two decades. We believe the system is sound and in the vast majority of cases has proven to be both financially and socially responsible. The following demonstrates the dramatic growth of private pension plans:

Year	Number of Private Pension Plans Qualified by IRS	Number of Employees Covered by Private Plans	Annual Benefits Paid to Retirees and Beneficiaries
1950	9,232	10,255,000	$ 370,000,000
1960	38,808	23,015,000	1,750,000,000
1970	128,148	35,080,000	6,730,000,000

(Not including profit sharing plans or any plans covering local, State and Federal government employees.)

In 1970, employers contributed $9.7 billion to private retirement funds on behalf of 35 million covered employees. This money has been irrevocably set aside for the benefit of those employees.

The pension legislation now before the Congress deals essentially with the following:

- fiduciary responsibility and disclosure
- vesting and portability
- minimum funding standards and insurance for unfunded liabilities
- deductibility of employee contributions

TPF/C's position with respect to each is set forth in this Supplement.

Fiduciary Responsibility and Disclosure

We support an amendment to the Welfare and Pension Plans Disclosure Act that:

(1) assures that administrators and trustees of pension plans and funds observe the highest standards of fiduciary responsibility,

(2) relies on the "prudent man" rule as a *sufficient* standard for the investment of funds,

(3) provides for forthright, positive, continuing disclosure of *essential* provisions and operations to employees and government authorities,

(4) simplifies and standardizes the forms and information required by various government agencies.

TPF/C does not support any limitations on the investment of funds in employer securities beyond those which presently exist. As to disclosure, we support a form of general information on an annual basis to employees, but do not support required disclosure on an individualized basis except to the extent of notifying terminated participants of their vested rights and how to obtain them. Further, TPF/C feels that the general disclosure of a plan's financial condition should be limited to a statement of the plan's liabilities for vested benefits and the approximate extent to which such liabilities are funded.

Vesting and Portability

TPF/C supports vesting of pension benefits. However, TPF/C recognizes the significant cost implications of liberal vesting and the inhibiting effect that such costs might have on the adoption of new plans as well as the improvement of existing plans. Therefore, TPF/C believes that any minimum vesting requirements should reflect a balance of both social and financial considerations.

For this reason, TPF/C supports a provision which would require 50% vesting of all pension benefits credited when age and service total 50, with a minimum period of service of five years, increasing 10% for each of the next five years to 100% vesting. Employees should be eligible for participation in a plan no later than after three years of service. There should be a five-year transition period during which existing plans can conform to the vesting requirements. (The underlined portions in this paragraph represent modifications of the Administration Bill.)

TPF/C does not support the enactment of any legislation on portability at this time, because we believe it is a complex subject requiring a great amount of additional study. In the context of the proposed pension legislation, portability would provide for the transfer of the value of vested pensions under the plan to a central clearing house or another qualified agency.

Minimum Funding Standards and Insurance for Unfunded Liabilities

Recent studies clearly demonstrate that the level of funding in private pension plans has created a high degree of benefit security for employees. As a matter of fact, existing Federal Tax Law in effect already creates certain minimum funding standards. Further, it should be noted that funding requirements and related benefit security are meaningful only in the event of plan termination — an improbable event in the vast majority of situations.

The concept of insurance for unfunded plan liabilities raises a number of difficult questions that cannot be answered quickly or easily. For example, how will the amount of unfunded liability be determined and by whom? How will the insurance premium be determined and to whom will it be paid?

TPF/C recognizes that there may be a need for a responsible legislation providing benefit security. Such legislation might include minimum funding standards and insurance for unfunded liabilities. We recommend a thorough study of these areas.

Deductibility of Employee Contributions

In order to encourage the further development of the private pension system, TPF/C supports the deductibility of employee contributions either to an employer-sponsored plan or to an individual-regulated savings/retirement plan. Specifically, TPF/C supports the deductibility each year of an amount equal to the lesser of 10% of basic earnings or $1,500. Because of the varying financial ability to make contributions from year to year, some provision should be made for carrying forward unused prior limits. In order to achieve equity and simplicity, this deduction should be granted regardless of participation in a qualified pension or profit sharing plan.

TPF/C also supports a liberalization of the tax-deductible contributions permitted for self-employed individuals under HR 10 plans.

* * * * * * *

Our testimony will be strengthened if it is supported by the organizations we serve. Therefore, if you agree with our position, we encourage you to inform us of this fact as quickly as possible so we can indicate your support to the Committee. If you do not agree with our position, we would appreciate knowing those points with which you disagree.

EXHIBIT 2
(Page 1 of 2)

Aladdin Industries, Incorporated D
Bibb Company, The D
Boeing Company, The
Brockway Glass Company, Inc.
Burroughs Corporation

Campbell Soup Company
Cincinnati Gas & Electric Company, The D
Citizens and Southern National Bank, The D
Coats & Clark Inc. D
Columbus and Southern Ohio Electric Company D

Commonwealth Telephone Company D
Cone Mills Corporation
Crouse-Hinds Company D
Delmarva Power & Light Company D
Diamond Shamrock Corporation

Eastman Kodak Company
Ethyl Corporation D
Farmers Bank of the State of Delaware D
First National Bank of Tampa, The
First Pennsylvania Banking and Trust Company, The D

Fleer Corp. D
Foremost-McKesson, Inc. D
French Company, The R. T. D
Fulton National Bank, The D
Gleason Works D

Gold Kist Inc. D
Gulf Oil Corporation
Hallmark Cards Incorporated
Harris-Intertype Corporation
Hartford Steam Boiler Inspection and Insurance Company, The D

Home Insurance Company, The D
Honeywell Inc.
ICA America Inc. D
ITE Imperial Corporation D
Lawyers Co-operative Publishing Co. D

EXHIBIT 2
(Page 2 of 2

Lincoln Rochester Trust Company
Magic Chef
Minnesota Mining and Manufacturing Company
Mohasco Industries, Inc.
Mountain Fuel Supply

New York State Electric & Gas Corporation
Pacific Gas and Electric Company
Penn Virginia Corporation
Pennsylvania Power & Light Company
Pennwalt Corporation

Philadelphia Electric Company
Philadelphia Saving Fund Society
Reliance Insurance Companies
Retail Credit Company
Reynolds Metals Company

Rochester Gas and Electric Corporation
Rockwell Manufacturing Company
Rohm and Haas Company
Royal Crown Cola Co.
St. Regis Paper Company

Smith Kline & French Laboratories
Staley, A. E., Manufacturing Company
Sun Oil Company
Sybron Corporation
Unigard Insurance Group

Union Pacific Corporation
United-Carr
University Computing Company
Washington Gas Light Company
Western Pennsylvania National Bank

TOWERS, PERRIN, FORSTER & CROSBY

82-079 O - 72 - pt. 3 - 5

TOWERS, PERRIN, FORSTER & CROSBY, INC.

THREE PENN CENTER, PHILADELPHIA, PA. 19102 LOcust 8-1200

Jul 5 '72

June 30, 1972

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

Re: Retirement Income Security for Employees Act of 1972
S. 3598

Dear Sir:

After we presented our testimony to the Committee on June 28, we were requested to submit our suggestions on how the portability proposal under the Retirement Income Security for Employees Act, S. 3598, could be effectuated through the private pension system without the interposition of a government agency. As we noted in our oral comments, pension fund assets have already been moved between private pension plans in situations involving mergers (where the successor employer brings employees affected by the merger under his own pension plan) or involving negotiation by a union group out of a company pension plan and into a union-sponsored multi-employer plan (e.g., the Western Conference of Teamsters Plan).

This portability of pension assets with respect to the accrued benefits of employee groups can be extended rather simply to provide portability for individual employees who terminate after having satisfied a plan's vesting requirements. We believe such individual benefit portability is permitted under present Internal Revenue Service rules, but there is no regulation or revenue ruling which explicitly authorizes it. Individual portability would be encouraged

TOWERS, PERRIN, FORSTER & CROSBY, INC.

LETTER TO The Honorable Harrison A. Williams, Jr.
SHEET NO. - 2 -
DATE June 30, 1972

if the Internal Revenue Service were to issue a revenue ruling which states that the qualified status of a plan under Section 401 (a) of the Internal Revenue Code will not be affected adversely if the actuarial reserve required to provide for a vested employee's benefits is transferred, at the employee's option and with the employer's concurrence, either to:

(a) a legal life insurance company to purchase an annuity to which the employee is entitled, or

(b) another qualified pension plan to provide such vested benefit to the employee under such pension plan.

Naturally, any such transfer of assets would involve waiver of the employee's rights under the transferor plan. The ruling would also state that such asset transfers must not operate in a manner which discriminates in favor of officers, supervisors, shareholders, or highly compensated employees of the transferor company, to avoid certain abuses which could otherwise occur under inadequately funded plans.

Insurance companies and employers, we are certain, can easily arrange for such credit transfers in cases where such transfers are deemed desirable. This should accomplish portability without the added taxpayer expense and administrative complexity involved in creating a government agency for this purpose.

We would also like to avail ourselves of this opportunity to state our position on two additional issues which were raised at the hearings but on which we did not comment in the written statement we submitted to the Committee last week:

1. Certification of Actuaries: Members of the Society of Actuaries, the American Academy of Actuaries, or similar widely recognized professional actuarial societies are required to demonstrate their skills in the actuarial sciences before being accredited by such groups. However, such accreditation is not required under present law for a person to set himself up as an "actuary." Thus, any individual who can spell "actuary" can now claim to be one.

TOWERS, PERRIN, FORSTER & CROSBY, INC.

LETTER TO The Honorable Harrison A. Williams, Jr.
SHEET NO. - 3 -
DATE June 30, 1972

If he is not sufficiently knowledgeable in this highly technical area, he could easily give counsel which adversely affects the funded status of benefits promised employees under a pension plan. We urge that Congress or the Secretary of Labor establish reasonable standards for the certification of "actuaries," based on the standards set by the Society of Actuaries and the American Academy of Actuaries.

2. Government Forms: We earnestly support efforts we understand the Subcommittee is undertaking to simplify the massive amount of reporting now required of qualified plans. Hopefully, the annual IRS and Labor Department forms can be simplified and consolidated into a single form to alleviate the administrative burden and costs related to completion of the present portfolio of required forms (at least four forms involving considerable duplication are now required each year). We recommend that such single form be submitted to the IRS, the government agency now responsible for plan qualification and deductibility of employer contributions.

We were grateful for the opportunity to present oral testimony to the Committee and very much appreciate the Committee's and Staff Members' expressed interest in our views on these matters. We would be pleased to assist you in any way that would be helpful in your attempts to draft reasonable and effective pension legislation.

Respectfully submitted,

C. D. Root, Jr.

Charles D. Root, Jr.
Vice President and Director

Mario Leo

Mario Leo
Manager
Research Department

CDR:cr

cc: Senator Richard S. Schweiker
Mario Noto

SENAT WILLIAMS JUL 12 3 20

TOWERS, PERRIN, FORSTER & CROSBY, INC.

THREE PENN CENTER, PHILADELPHIA, PA. 19102 LOcust 8-1200

July 10, 1972

Charles D. Root, Jr.
Vice President

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

Retirement Income Security for Employees
Act of 1972 - S. 3598

Dear Senator Williams:

I've just had the privilege and pleasure of reading the testimony which Leonard Woodcock, of the UAW, gave before your Committee on June 27, one day before we appeared before you.

As a consulting firm working exclusively with management, we find ourselves often on the opposite side of the bargaining table from the UAW, and, therefore, I am particularly pleased to find our position (TPF/C's) on your proposed bill generally in agreement with the UAW position. When two organizations looking at the same problems from quite different vantage points suggest solutions which are essentially in agreement, I think that has some significance.

Specifically with respect to the five amendments to your bill (S. 3598) recommended by Mr. Woodcock at the conclusion of his testimony here are our comments:

UAW Recommendation

1. "Make plan termination insurance effective as soon as is reasonably practicable, and no later than January 1, 1974."

TPF/C Comment

Here we agree in principle. The only difference is how soon is "reasonably practicable" and we're not at all certain that that would be "no later than January 1, 1974."

Mr. Woodcock in his testimony did indicate that the UAW "would not object to further study if study were accompanied by a commitment to corrective lesiglation to solve a problem known to exist." He opposed further study, however, as an attempt on the part of the administration to further delay needed legislation.

TOWERS, PERRIN, FORSTER & CROSBY, INC.

LETTER TO The Honorable Harrison A. Williams, Jr.
SHEET NO. -2-
DATE July 10, 1972

We agree that there is a problem, that it ought to be corrected, but we also strongly urge that it be corrected in the right way and that is going to require some additional study to make sure that it is legislated properly.

UAW Recommendation

2. "Include insurance against loss of accrued benefits with respect to service performed both before and after enactment of legislation."

TPF/C Comment

Here again, we agree substantially with the UAW position. If you are going to have any insurance, the benefits already accrued should be insured, otherwise the insurance is a snare and a delusion, as we pointed out in our testimony. Ninety-nine percent of the American workers would not understand when they were told that their benefits were being insured only to learn later that this means only their benefits accrued after the date of legislation. They would automatically assume that their total benefits would be protected when that would not be so, for many, many years to come. As Mr. Woodcock said "this generation of workers should not be expected to forego the protection of reinsurance." We agree.

UAW Recommendation

3. "Require that service performed prior to the legislation be counted, for eligibility and benefit purposes towards vesting."

TPF/C Comment

We are in 100% agreement with Mr. Woodcock as indicated in our testimony.

UAW Recommendation

4. "Permit substitution of alternative vesting schedules of at least equivalent actuarial values to the standard prescribed by S. 3598."

TPF/C Comment

First, for the reasons outlined in our testimony we recommend the "rule of 50" vesting schedule as proposed by the Administration, but with modifications, instead of the vesting schedule included in S. 3598. With that preamble, we do not disagree in principle with what the UAW is trying to accomplish by its

TOWERS, PERRIN, FORSTER & CROSBY, INC.

LETTER TO The Honorable Harrison A. Williams, Jr.
SHEET NO. -3-
DATE July 10, 1972

recommendation, but we do disagree in fact that this could in any way be practically and simply administered. We would much prefer to have a simple legislated vesting requirement, but with a period of time -- we suggested five years in our testimony -- over which employers could amend their plans to meet the legislated vesting provision. It seems to us that you want to avoid as much as possible the exercise of individual judgments in determining what is an actuarial equivalent and what is not. That is not at all easy to do, even for the most qualified actuaries.

UAW Recommendation

5. "Establish a vested benefit clearing house operated by the Social Security Administration, to notify eligible workers of private plan benefit entitlements."

TPF/C Comment

Here again we and the UAW are in essential agreement that portability as proposed in bill S. 3598 is not needed or desirable. As we pointed out in our testimony, legislated vesting will solve most of the problems in this area. What Mr. Woodcock is suggesting (a Social Security administered vested benefit clearing house) has some merit, but we would oppose his suggestion on the basis that such an additional Federal administrative function is not really necessary. We would like to suggest what seems to us as a reasonable compromise, which ought to satisfy the desires of the proponents of portability, and at the same time the people like Mr. Woodcock who are concerned with protecting the vested rights of individual employees. We suggest you include in your legislation a requirement that an employer has to furnish a terminated vested employee with a statement of his vested rights within 30 days of his termination.

The statement would include:

- what his vested pension is,
- when it starts normally,
- whether he could elect to have it start early and under what conditions,
- what action he has to take to trigger its payment and when, and
- what his benefits, if any, are and to whom paid, if he dies or becomes disabled prior to his normal retirement date.

Our strong recommendation continues to be not to include portability on a voluntary basis or otherwise in your proposed bill. Legislated vesting should make portability unnecessary.

TOWERS, PERRIN, FORSTER & CROSBY, INC.

LETTER TO The Honorable Harrison A. Williams, Jr.
SHEET NO. -4-
DATE July 10, 1972

Qualification of Actuaries

In Mr. Woodcock's testimony he indicated that from the beginning the UAW has emphasized sound principles as "fundamental building blocks" for pension programs. Normally included in UAW negotiations is the whole question of funding as determined and calculated by "qualified independent actuaries." Although Mr. Woodcock makes no other comment in this respect I do want to emphasize again as we did in our testimony and in our follow-up letter of June 30 that we do strongly recommend that Congress, otherwise the Secretary of Labor or the Secretary of the Treasury, establish reasonable standards for the certification of actuaries based on the standards set by the Society of Actuaries and the American Academy of Actuaries. The American Academy of Actuaries has been trying for the last seven years to get some legislation aimed at providing some legal recognition of the profession, but without success. It disturbs us that there are people practicing as actuaries who do not have the competence to do so. The losers in the long run are the employees covered by those plans serviced by those pseudo actuaries.

Minimum Funding Standards

Mr. Woodcock generally supported the minimum funding standards provided in S. 3598. We do not. As outlined in our testimony the Treasury Department has a study on this subject underway. We feel that legislation should at least be delayed until that study has been completed.

There are a host of inequities possible in any 40-year funding requirement as proposed by S. 3598, such as the differences in actuarial assumptions and methods (some very conservative, some not so), the differences in liberality of benefits (final pay plans whose benefit formulae remain generally unchanged over the years vs. the UAW dollar per month type plans which are increased at every bargaining session), the effect of any such legislation on plans substantially better funded than the minimum requirements (and most are) etc. Therefore, we recommend no action on minimum funding at this time.

Charles D. Rooting

CDR:jmg

cc: Senator Richard S. Schweiker
Senator Hugh Scott
Mr. Mario T. Noto
Mr. Leonard Woodcock

The CHAIRMAN. Thank you very much, gentlemen.

We will recess for 15 minutes.

(Short recess.)

The CHAIRMAN. William N. Bret, Jr., vice president, A. S. Hansen, Inc.

We appreciate your being here with us this morning.

STATEMENT OF WILLIAM N. BRET, JR., VICE PRESIDENT, A. S. HANSEN, INC.

Mr. BRET. I have submitted written testimony this morning only, and I apologize to the committee, but I give 50 talks or so a year, and if I wrote all these speeches, that is all I would be doing.

So you will forgive me for my negligence.

I am vice president of Hansen and a member of the executive committee, and I represent the western region of the company, 25 States, from Texas to California.

Our region serves maybe a thousand corporations and their compensation systems.

Perhaps the approach I will take this morning is a bit different than the other witnesses. If you will indulge me, I will be brief.

I do have some points I would like to make for the committee's consideration.

I would like to point out that it strikes me as a compensation consultant, that it is increasingly difficult to legislate on any one phase of compensation. I think, compensation in our country has gone through four phases with cost and design implications.

First, there was the 1942 Revenue Act, which Mr. Hansen, now dead, helped write.

He was one of the primary architects of that act, so we have had a great attachment to it. It certainly led to the vast developments in the retirement plan field.

Second, beginning in the 1950's and continuing through the 1960's and even into the 1970's, you have had a broad development of medical, group life disability plans that we have loosely labeled the protectors against the hazards of an employee in his work life. These plans grew rapidly in the late 1950's and 1960's, and, of course, since that time pensions have continued to grow, as have SUB plans and other plans of like kind.

Eleven holidays, 3-week vacations—13-week vacations after so many years seniority in steel—give an increasing pay package that in the 1969 survey of the U.S. Chamber of Commerce, reached 60 percent of payroll for two of the top companies, average 27.3 percent.

In 1969, we had the Tax Reform Act of 1969 which, I believe, thrust us toward the British system of prerequisites and away from ownership. I think it will have a dramatic effect on compensation, particularly of executives.

Lastly, we have union negotiations of 1971 that substantially increased the fringe benefit packages of the steel and auto industries, and therefore everything else. Pension benefits were dramatically increased, and beginning in 1973 and 1974, we have drugs and dental plans following. Social security will be increased 20 percent momentarily. You might ask what is my point?

My point is in approaching compensation one ought to consider all these costs before one passes legislation on any one phase of it. We do not practice compensation that way. We think it is difficult to practice legislation that way.

We respectfully ask the committee to consider the additional costs that are being imposed on management by these items that I have mentioned and others that I have not.

To be specific as to S. 3598—and my written testimony goes into detail—let me discuss very briefly funding.

One of the myths of America is that you have to fund totally past service, that you have to fund to avoid the Studebaker crisis—and I am tired of hearing about Studebaker because it was this that was the problem: They did not fund enough assets to pay off their accrued liabilities.

The Internal Revenue Code ought to provide a more liberal definition of funding; to provide that a company can in fact, ought to, in fact, fund its accrued liabilities. It has very little to do with terminology of past service. It is the funding of accrued liabilities and vested liabilities that matters.

If you funded your vested and then funded your accrued liabilities, your plan ought to be safe. Now, it so happens that when competent actuaries do the calculations and competent trustees handle the funds, that after 10, 15, certainly not more than 20 years, these funds, if anything, may be overfunded.

We do not have an underfunding situation in this country. I have said it many times. We may have an overfunding situation. We have more assets than liabilities, not fewer assets than liabilities.

I am going to put before the committee the Status of Funding by Trowbridge and Griffin, which you probably have copies of. It is well worth your studying the early tables because it clearly demonstrates funding adequacy of 1,047 major plans.

It is certainly our finding on our major plans that if they fund according to IRS rules and regulations that after 15 years, and even 10, they will fund their vested and their accrued liabilities absent large benefit increases. I mean if they terminate the company, they can pay people off. They could pay their obligations, past and accrued, to the date of termination.

It strikes me that this is realistic. If you fund the normal cost of a plan—and I heard the earlier question to someone else, and you fund interest on a large past service, and you have an expanding company and a decent investment return on the fund in one sense of the word you are funding your past service obligation. You certainly will fund your accrued liabilities.

Now, as a member of one of the largest actuarial firms in the country, I believe I would like to ask the committee to delve into this further than perhaps they have.

The author's conclusion—Trowbridge's and Griffin's—is that a high degree of benefit security has been achieved by 1966 by a vast majority of the plans. For example, assets were sufficient to cover 94.4 percent of all accrued benefits under plans whose effective funding periods were 15 years or more.

Let us talk communications a minute.

The Internal Revenue Service has, since the beginning of time, 1942, required communications with the employees. It has not been enforced as rigidly as it ought to be. But 1.404(a)(2) of the IRC regulations all require communications or they will not qualify the plan. No part of our practice is growing more rapidly than the electronic communication of employee information.

If there is any need for strengthening of communications, may I respectfully request that the Internal Revenue Service strengthen its rules and that the committee itself look to that way of doing it, rather than passing new legislation. The same goes for funding.

To make a further point in funding, I am much more concerned with the Accounting Principles Board Opinion No. 8 at this point in time, and funding and qualified statements than I am the Internal Revenue Code and new legislation from labor. I think this Accounting Principles Board Opinion No. 8 which requires adequate funding ought to be incorporated into the law.

In lieu of other people doing so, I am going to submit a copy of Accounting Principles Board Opinion No. 8 and ask that the committee carefully consider particularly those sections that deal with funding. They are tight; they are rigid. They are compelling. They are controlling.

None of our clients ignore their accountants, and I think the accounting profession, in introducing Accounting Principles Board Opinion No. 8 did their clients in this country and its employees a service.

As to vesting, I particularily wanted to testify for one reason.

ASH, Inc., 4 months before the Senate Labor Subcommittee started its study on vesting, completed a study on vesting that we volunteered originally to the U.S. Treasury Department. This was done at our expense, but it was done to seek information on an unbiased basis. It was done to find out the status of vesting.

One million employees were involved; 864 plans were involved; 126 of those plans covered more than 1,000 people. It shows that 30 percent of the employees in that sample are vested and 36 percent will be expected to vest.

Now, let me distinguish the reason why we show high vesting and the Senate Labor Subcommittee shows low vesting.

The ASH, Inc. study looks to the future and the Senate study looks to the past. Their methodology is different. They are not complementary.

Let me say this again: It strikes me starting with President Kennedy's committee in 1963 or 1964, the attendant publicity since that time, you have had a continual increase in vesting provisions, the liberalization of vesting going on daily. The situation that existed in 1963 and 1965 no longer exists in 1972 and 1973. You have more liberal vesting provisions, and if you look to the future, you can make a strong case that 66 to 70 percent of employees or more will get pensions.

I again would like to submit to the committee our special report to the Treasury. I would be happy to meet with the committee and discuss its method and its implications.

I will further introduce an article by Mr. Keating, who made this study and volunteer his services or his testimony to the committee on private pension plan performance.

Having made these rather volatile remarks, I would like to simply say on reinsurance, that we would like to see what Labor and Treasury Department have to say on plan terminations before we comment on reinsurance. We do not have enough facts on plan terminations to even hazard a guess. I have asked our 51 actuaries to give me an opinion on the cost of reinsurance. I can tell you they cannot. In our area, I think there is no secret that there is no great enthusiasm for reinsurance on the part of our clients.

We have an old-fashioned view on the part of some of us that we do not feel that we should pay for our competitors' failure, and we do not see the need for reinsurance. We feel that adequate funding, adequate vesting, should be sufficient employee protection and there is little enthusiasm for reinsurance in any part of the country.

I would like to note on disclosure that the Internal Revenue Service has recently expanded disclosure requirements, perhaps to our dismay, by the introduction in 1972 of forms 4848 and 4849. They come very close to disclosure requirements that are added to this bill by S. 3598. They should be discussed and looked at to see if there is any of the overlapping and duplication.

Last, I think there is little doubt on fiduciary standards that in interstate matters there is a conflict of laws problem and we need legislation permitting employees to sue on an interstate basis.

On the other hand, I have incorporated into my statement something I believe in very strongly.

In 25 years of professional practice, I have never seen an abuse where there was a bank trustee involved, because the control of bank trustees seem very tight to me. I do not see the need to control the banks further, and I think they should be an exception to this rule.

It seems to me as I went through 1969, 1970, and the recession—I have a heavy practice in aerospace—that vesting may not be the issue at all. We need to find ways to provide men with a year's pay when they lose their jobs due to 9½-percent interest rate or technological changes that in fact destroy them through no fault of their own.

It is engineers and executives that caught hell in 1969 and 1970 in this country, and you often ask yourself will vesting help? Will vesting really help, or is what we are really talking about the speedup of information flow and technological change so fast that we cannot cope with it?

As I tamper with my own ideas, I often think that perhaps what Eric Fromm said in The Sane Society in 1954, ought to be implemented today. Maybe when a man loses a job without fault, and he is a competent man, perhaps he ought to be protected in some way, from the company's pension plan, or whitecollar SUB (Supplemental Unemployment Benefits) plan.

I thank the committee very much for a chance to express my views.

The Chairman. Thank you. Can you amplify on that last statement? We see these problems resulting from technological change in aerospace, in a lot of our other defense areas. Give me a little wisdom that I can pass on to our committee as we meet this afternoon on exactly that subject.

Mr. Bret. When I first read Fromm in 1954, I thought he was insane. As I have grown older and maybe wiser, I began to wonder about the truth of his statements. Maybe our pension funds are the place to do it or maybe we need separate SUB plans.

I believe people who have given 5, 10, or 15 years to industry, and lose their jobs, are not hurt by lack of vesting—but it is the loss of their job and loss of pay for a year.

Now blue-collar workers, particularly in the auto and steel industries, have SUB plans where they get almost 100 percent of pay for 52 weeks—95 percent of the plan.

It is the white collar and executive not covered under SUB plans that are hurt. Maybe it is in this area that we need to spend the extra dollars you are talking about. Maybe a man after 5 years of service should receive a year's pay: after 10 years of service, 2 years of pay until he finds new employment. It is not only obsolescence, it is task force project work—like the C–154 Lockheed project—and it is the whole technological society we live it.

Before I dash off and solve one thing and leave another unsolved, I would like to meditate on this a bit. It is why I made my original statement to you. So, if I had a well funded pension plan, maybe it would not hurt to make termination payments under conditions of layoff or termination not due to the faults of these individuals. So in one sense I am going further than the committee's thoughts.

The CHAIRMAN. Now the proposal advanced by Secretary Hodgson in connection with the President's proposal in this area, the rule of 50, it stands there rather naked as a vesting proposal. Am I right on that?

Mr. BRET. It is a vesting proposal that was a compromise, I suppose, on what is the best thing to do. It would certainly guarantee everyone particularly the older people, at this point in time, a vested benefit. I certainly endorse the rule of 50, as opposed to, say, 6 years of service as was the committee's original proposal. It would answer the critics of the private system in providing everyone eventually with a vested benefit.

That was the purpose of it in my mind.

The CHAIRMAN. When I say naked vesting, I mean that there is no companion funding provision. It left me a little startled and breathless.

Mr. BRET. Let me go back to the funding. My experience as a member of one of the large actuarial firms is that if you fund normal cost, plus interest on past service, or you fund according to the Accounting Principles Board Opinion No. 8, you do not let your past service costs increase—you continue funding in advance. You will build assets in excess of liabilities. The Trowbridge study proves this.

It is my contention that the code itself, which sets the maximum and revenue ruling, 69–421, and its antecedents, establish a sufficiently high standard that you will fund most pension plans adequately and certainly their vested liabilities. If you force me to—— and I had to do this to fund to a termination liability, so I could pay off—I would not fight the 40-year funding. It is already in the Accounting Principles Board Opinion.

The CHAIRMAN. Well, forced to do by principles of sound accounting practice.

Mr. BRET. And good actuarial practice.

The CHAIRMAN. Good actuarial practice. But certainly good actuarial practice, we cannot take as a matter of course. It does not happen that way.

Mr. BRET. Let me answer you this way. The difference between current cost and interest on past service and 40-year funding cost is not a large figure in most instances.

The CHAIRMAN. That will be said again and again around here. I am glad you said it just that way. That is the way it impresses me.

It still does not answer me in my naivete—why is there lack of specific mention of funding in the administration's proposal?

Mr. BRET. I certainly am not their spokesman. I am guessing they feel the present code and its rules are sufficient funding requirements.

The CHAIRMAN. That was not stated, was it? Was it so obvious it had to be implied and it did not have to be stated? It is not that obvious.

Mr. BRET. Senator, you know, by age and service I am one of the oldest consultants in the United States, if not the wisest, and I simply say my experience has been that that present funding rates overfund in many instances in companies that in fact continue profitable.

The CHAIRMAN. We are calling on Mr. Cummings more and more today, because he leaves our Senate society on Friday, off to greener pastures.

Mr. CUMMINGS. It is a fact, is it not, that the funding mechanism or funding standard that Studebaker used at South Bend would have met the requirements of the Internal Revenue Code, and had there been APB No. 8 at that time, it would have met those APB standards.

Mr. BRET. It met the code. I do not know whether it would have met APB 8.

Mr. CUMMINGS. I think it was 30-year funding. I recall it rather well since Studebaker was my client.

Mr. BRET. It probably did. I do not know whether it did or not.

Mr. CUMMINGS. It is fact, is it not, that notwithstanding that degree of funding, that the assets at the Studebaker plant were only sufficient to pay 15 cents on the dollar to vested beneficiaries who had not yet reached retirement age?

Mr. BRET. How long did they fund that—7 or 8 years——

Mr. CUMMINGS. I think the problem, sir, was because of the way this past service credit accrues when you amend the plan. You never catch up, and indeed you get further and further behind if your amendments grant retroactive past service credit, which is a fact in Studebaker and in fact almost every place else. So if you had the initial benefit level, and you only funded current service costs, for example, and you never raise benefits, and never amended the plan, in 20 years you could almost ignore the past service cost, but during those 20 years you are going to amend the plan 10 times, and each time we are going to increase past service liability.

Mr. BRET. I do not think here is any argument that in a given instance you may have to fund your past service in totality. There may be instances, and I think Studebaker is an example, where 40-year funding would not have answered it either.

Mr. CUMMINGS. Unless you funded each level separately.

Mr. BRET. Incidentally, may I make this point, Frank. I would amend the Internal Revenue Code to require it. I would not write it in this bill. Why should you write a new bill about funding?

Mr. CUMMINGS. Senator Javits could not be here at the moment and the witness has referred to the Trowbridge study and the Hansen study done for the Treasury. Senator Javits prepared a memorandum on these two studies last year, and I think he would like to have it included in the record.

Senator SCHWEIKER. Without objection, so ordered.

(The information referred to follows:)

MEMORANDUM CONCERNING CERTAIN STUDIES CITED BY VARIOUS PENSION CONSULTANTS

A. THE GRIFFIN-TROWBRIDGE STUDY

I would like to urge the Chairman and the members of this committee to review this well-publicized study on funding in private pension plans, which was co-authored by one of the architects of the criticism directed at the Senate Labor Subcommittee's survey. This study, which incidentally purportedly demonstrated the soundness of private pension plan funding, was conceded by its authors to underrepresent multiemployer plans and small plans and was based exclusively on plans which "cooperated" with the authors. In this regard, the Chief Economist of the Bureau of Labor Statistics stated in 1969: "The actuaries who supplied the data for the study succeeded in persuading their client plans to adopt conscientious funding programs. But the actuaries who did not supply any data—particularly those who advise multiemployer plans—may not have been as successful. In other words, it is impossible to determine whether the plans included in the survey are representative of those who by the nature of the survey had to be excluded."

B. THE A. S. HANSEN STUDY

I have been led to understand that the principal basis for the "criticism" of of the Senate survey is that the data produced by the Senate survey is only "historical" in nature and therefore cannot be used to evaluate the future impact of private pension plans on employee benefit expectations. It is asserted that vesting has vastly improved and can be expected to improve even more in the future.

These predictions are based on a "study" of private pension plans by A. S. Hansen, Incorporated, prepared at the request of the Treasury Department, after it was suggested by A. S. Hansen Incorporated to the Treasury Department that they perform such a study.

A. S. Hansen purported to survey all private pension plans serviced by A. S. Hansen. They directed their study to the number of current employees covered by these plans and purported to ascertain the number of these current employees who were already vested and the number of those current employees who could be "expected to vest." Out of 864 plans surveyed, with 881,281 current active participants, it was found that 132,466 were retired and vested, 265,817 were vested and 319,239 were "expected to vest." Thus the percentage vested and expected to vest is 66%; the percentage expected to forfeit is 34%. With respect to the percentage expected to forfeit, it is anticipated, according to one press report that they will "find future employment in firms with pension coverage."

Hansen also breaks down the percentage not vested by age group. In the 25–30 age category, the percentage not vested is 99%, in the 30–35 age group the percentage is 96%, in the 35–40 age group the percentage is 86% and in the over 40 age group, the percentage is 47%. However, no attempt is made to breakdown these age categories by length of the employee's service so it is impossible to ascertain the degree to which longer service employees might lose pensions under these plans.

Aside from the fact that the percentage expected to forfeit (34%) is not exactly insubstantial, and that many of these may very well be longer-service employees, major defects in the Hansen study are these:

(1) Since it is only directed at current employees it necessarily results in exaggerating the quota for vesting, because the total number "expected to vest" is stated as a percentage of current employees, instead of being stated as a percentage of the much larger number of participants who will come into and pass out of the plans during the years ahead. By way of contrast, the Senate Labor Subcommittee study took account of all participants who had flowed through the plans it sampled during a 20-year period.

(2) In determining the number of employees "expected to vest," Hansen made "estimates" on the basis of "typical" employee turnover rates which Hansen characterizes as "armchair" assumptions which can be made applicable to all plans regardless of specific experience. The Labor Subcommittee study did not "assume" turnover and forfeiture experience for each plan sampled.

Senator SCHWEIKER. I apologize to the witness for running in and out, but I was testifying on another committee down the hall.

I do want to cover portability, however, and I suspect you might have touched on this before so I apologize for this, but I wonder if you would recapitulate your views on the matter of portability and what your opinions of this are?

Mr. BRET. I avoided it. I did not say anything about portability deliberately, Senator. If I may say so, I am against it.

Senator SCHWEIKER. Why are you against it?

Mr. BRET. I frankly think it can be handled another way. We do not wish to impose that particular provision on the private system at this time. I honestly think it will lead to mandatory portability and destruction of the private system ultimately. I do not trust the word "voluntary."

I consider it the camel's head under the tent.

There are people in Washington and throughout the United States who believe that social security should be the primary pension plan. That is no secret. Portability is a stride in that direction. Obviously since our own self interest is involved and those of our clients, we oppose portability.

Senator SCHWEIKER. I wonder if you would also summarize vesting—I know you did discuss this. In a nutshell, what is your position on vesting?

Mr. BRET. The committee's methodology has been in looking at vesting backwards. I said the future look that we took for the Treasury indicated that 30 percent of the people are vested and 36 percent of the people will vest.

I thought our sample was appropriate. It covered a million workers in 864 plans. I think there is a real possibility that 30 percent of the people would not vest and would lose their benefits—perhaps less than that—because most of this 30 percent are young people who ought to be reemployed somewhere where vesting would occur. I also said vesting was not a high cost item in most instances, there are instances where costs can increase dramatically.

Mr. CUMMINGS. One more question on vesting. What do you consider good vesting? Putting the legal question aside, say you are advisor to pension plans and a fellow comes to you and says I want to set up a plan for my employes. I want it to have good vesting. What should I do?

Mr. BRET. I am tempted to make a speech. I will not.

Frank, let me simply say this. I believe that you have to set objectives in compensation. I put old age, death, disability and sickness as a package. If I have provided adequate benefits in these hazard areas, then I am perfectly prepared to liberalize vesting.

I think people have a right to a pension after 10 years of service. If I can afford it, I recommend it.

Mr. CUMMINGS. You think 10-year vesting is good?

Mr. BRET. I have done so many times. Many of my plans have it and I continue to recommend it at the point when a client has adequate old age, death, disability and sickness benefits.

Mr. CUMMINGS. What do you consider bad vesting?

Mr. BRET. I would consider no vesting bad vesting obviously.

Mr. CUMMINGS. Don't you think it is fundamentally unfair to an employee to hire him at the age of 20 and to have him lose his job at the age of 60 and get no pension?

Mr. BRET. Hansen does not have a single plan——

Mr. CUMMINGS. I did not say Hansen. I am sure Hansen is a highly competent, very ethical firm, and you advise your clients properly. But the world is not full of Hansen clients.

Mr. BRET. Unfortunately.

Mr. CUMMINGS. Do you think it is fundamentally unfair for a plan to get out a booklet to a new employee who walks in, little comic book type of booklet, and shows a man in his sixties sitting on a dock casting for trout, or whatever it is, and it says: You will get a pension from this plan.

This man is hired at the age of 20 and either fired at the age of 60 or the company goes out of business at the age of 60 and he gets nothing. Is there something that rubs you the wrong way about that?

Mr. BRET. I do not think Treasury should approve a qualified plan where vesting does not occur at least at 60. In the beginning, would at least require vesting at 60 or perhaps 55.

Mr. CUMMINGS. Do you feel that the present standards that the Treasury is applying, which is that you just have to vest at the retirement age, which is ordinarily 65, is not good enough and that it is really just a question of how much better should it be?

Mr. BRET. I do not know if I have a dichotomy with the Treasury about this. I suspect I do. I think they have sufficient power now under the code to impose this.

Mr. CUMMINGS. As a general matter, without getting down to the specifics of any bill or any device or any jurisdiction, would you agree with me that the present standard, which is no vesting required until retirement, is not good enough and that something, without saying what it ought to be, something better than that ought to be required?

Mr. BRET. I have said what I thought it should be as a minimum. I would say with age 60.

Mr. CUMMINGS. There is something unfair about a man working 40 years in a pension plan and getting nothing.

Mr. BRET. In 25 years I have never done it any other way. My whole life is my testimony of what I believe.

Mr. CUMMINGS. I can only commend to you records before this committee which seem to be replete with fellows who have not heard your advice or have not taken it.

Senator SCHWEIKER. Thank you very much. We appreciate your being here and also your very frank advice. Thank you.

(The prepared statement of Mr. Bret follows:)

SENATE LABOR SUBCOMMITTEE
RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT
S. 3598

The history of compensation has four distinct phases in the last thirty years with cost and design implications.

First, passage of the provisions of the Internal Revenue Code in 1942 remain substantially unchanged in 1972 permitting a tax deduction for contributions to deferred pension, profit-sharing, stock bonus and savings plans.

From the viewpoint of A.S. Hansen, Inc., it is a particularly notable date since Arthur Stedry Hansen, the founder of our firm but now deceased, was an important and primary architect of the IRC sections that laid a predicate for the immense development in the private retirement system since that time.

Second, beginning in the 1950's, but accelerating in the 1960's and continuing even today, was the installation of and improvement in the plans that protect employees against the "hazards" of sickness, death and disability. Of course, the pension system continued to improve its old age benefits and to supplement death and disability and early retirement as ancillary benefits to old age. Vesting began to appear at earlier ages and years of service. Lastly, there was the growth of other private fringes such as supplemental unemployment benefit (SUB) plans, longer vacations, more holidays. The 1969 U.S. Chamber of Commerce survey showed employee benefits to be 27.3% of payroll and increasing rapidly. When the 1971 results are published, the increased percentage should be most interesting.

Third, we have the Tax Reform Act of 1969 which stressed earned income and pushed the USA closer to the British system of compensation that emphasizes perquisites as opposed to ownership. It is undoubtedly true that this Tax Act of 1969 makes it increasingly difficult to compensate executives for the risks they take in managing and assuming responsibility for an expanding economy. It did not, however, redistribute wealth as it was advertised to do.

Lastly, we have the union negotiations of 1971 that dramatically increased employee benefits in the steel and auto industries and added new programs in 1973-1974. Other industries follow these patterns.

It is my point that one must not approach compensation from one viewpoint or program only, but in totality. Why not consider the total compensation package an American worker can aspire to? Fragmentation is what we strive against in compensation practice and it is what we would wish our legislators could understand as they approach the American pay package. It is with this in mind that we ask this subcommittee to consider much higher costs for industry in the 1970's from expanding Social Security benefits, unemployment compensation, SUB, drugs, dental, medical, group life, disability and pension benefits plus more vacation, holiday and sick leave pay.

To be specific about S. 3598, the subcommittee should pay particular attention to the funding and communication requirements of the Internal Revenue Service before passing new legislation on these topics.

<u>Funding</u>

It should be noted that the Internal Revenue Code, Section 404(a)-(1)(c), has set maximum funding rates since 1942. It could easily be expanded to include a minimum funding of all accrued liabilities. Presently, Internal Revenue Ruling 69-421 sets the minimum funding rates for pension plans. They are not too different from that of S. 3598.

Accounting Principles Board Opinion Number 8 clearly sets forth maximum and minimum funding rates that corporations, both public and private, must follow in order to secure certified accounting statements. It is as rigid and compelling as your pending legislation.

When the Internal Revenue Code, Rulings, and the Accounting Principles Board Opinion Number 8 are combined, they provide adequate funding protection without new legislation. It is perhaps irreverent to ask, but - does the left hand of Congress know what the right hand previously legislated and delegated some 30 years ago?

To clarify the funding status in this country, the Pension Research Council, in 1968, under the able direction of Frank L. Griffin, Jr. and Charles L. Trowbridge (Vice President and Chief Actuary of Bankers Life Company), completed an extensive study of <u>Status of Funding under Private Pension Plans</u>. This comprehensive work was published in 1968 and covered the funding status of 1,047 plans, covering 4,562,000 participants with a valuation of $22.2 billion.

Dan M. McGill, in the Foreword to this report stated, "The findings of this study are eloquent testimony to the conscientiousness with which employers and other plan sponsors have attempted to make financial provision for their accruing pension obligations. The results suggest that pension plans in general are currently in sound financial condition."

The authors' conclusions are:

1. A high degree of benefit security had been achieved by the year 1966 by a vast majority of the plans included in the study. For example, assets were sufficient, on the average, to cover 94.4 percent of all accrued benefits under plans whose effective funding periods were 15 years or more.

2. Considered in relation to the effective period of funding, between 90 and 94 percent of the plans studied had developed benefit security ratios in excess of the two benchmarks of funding progress used by the authors for illustrative purposes.

3. The study furnishes impressive evidence that sound programs of financing have been the rule. While the recent period of rising interest rates has contributed to the favorable results, one may nonetheless conclude that conservative assumptions and cost methods have been employed in the funding of most private pensions.

4. With regard to the extent of vesting found under private pension plans, approximately half of the participants and benefit values in the study were found to be under plans having vesting classified as "early" (essentially after approximately ten years of service). Another one-third of the participants and benefit values were found under plans having vesting classified as "intermediate" (less favorable than "early" but essentially prior to

satisfaction of early retirement requirements). Overall, 81 percent of the values of all accrued benefits were vested. Vesting therefore appears to be at a reasonably advanced stage in its evaluation, with liberalizations continuing to occur as other benefit priorities are satisfied.

Communications to Employees:

Under Internal Revenue Ruling 69-421-2(i), the employees must be apprised of the establishment of a qualified plan and the salient provisions thereof. The most effective way of doing so is to furnish each employee with a copy of the plan. Where this is not feasible, however, various substitutes may be used. It will be sufficient that a booklet summarizing the plan in all its essential features be furnished the employees, or that a notice be posted on the company's bulletin board, which must be in conspicuous view, stating that a plan has been established, setting forth the type thereof, specifying the eligibility requirements, containing a synopsis of all benefits provided thereunder, indicating whether employees are to contribute and, if so, the amount or rate of contributions, defining the provisions for vesting, and, in the case of a profit-sharing or stock bonus plan, setting forth the employer contribution formula, if any. . . .

It may then be asked if new legislation is needed on funding and communications. It would seem that participants are adequately protected by the present rules of the Internal Revenue Service.

Vesting

We should like to introduce into the record the 1970 A.S. Hansen, Inc. "Survey of Private Pension Plans" and the article published by Richard C. Keating of our staff entitled "Private Pension Plan Performance" based on this survey.

Briefly, they showed that out of 881,281 active employees covered under Hansen plans, 30% or 265,817 were vested and 36% additional or 319,239 were expected to vest. An additional 132,282 were retired and vested. This survey covered:

318 plans of 100 employees or less
420 plans of 100 to 1000 employees
126 plans of over 1000 employees
864 plans in all

In addition to the 66% vested or expected to vest, a significant additional percentage will qualify for benefits in plans other than the 864 surveyed.

The Keating article on the Senate Labor Subcommittee Study states that "considerable misunderstandings have already developed in Washington about the Hansen survey, its relationship to the Senate's Labor Subcommittee study, and the apparent conflicts between the two. The Hansen survey has been criticized as a "counterstudy," although it was completed four months before the Senate Labor Subcommittee Staff report was released.

In a sense the studies are to an extent complementary since the Subcommittee study deals with the past and the Hansen study deals with the present and the future. Accordingly, differences in findings are to a degree an indication of the progress that the private pension system has made over the 20-year period covered by the

Subcommittee study.

In other respects, the two studies are simply not comparable because of methodological differences. As noted previously, the Subcommittee's technique of extrapolating the number of employees who terminate without vesting is misleading and not meaningfully relevant to the issue of vesting. The technique exaggerates the number who "forfeit" and fails to relate those terminated without vesting to those who will remain in a plan long enough to qualify. The study's data on the number of persons who have terminated with vested rights seems to be rather meaningless because most persons with vested rights are still working and will continue to do so until retirement. Not seeking information on present vesting status when vesting seems to be a main issue is a serious defect in the technique used in the Subcommittee study.

Cost of Vesting

From an investigation of the effect of current vesting provisions in private plans, it is evident that the average cost of mandated vesting provisions is low.

However, the average cost is deceptive. (Like drowning in the river with average depth of one foot.) For many established plans, the cost is zero, or close to it. For certain plans in certain industries and at particular stages of development, the cost increase is significant.

The cost increase is regressive in that it falls most heavily on newly established plans, or plans whose establishment was a marginal decision in the first place.

There are examples of plans where experience indicates there is a high turnover even at older ages and significant periods of service. For these, the costs can be high.

Reinsurance

There is little hard data now on benefit loss through plan terminations. It seems very peculiar to set up an elaborate mechanism when no one really knows what they are talking about in regard to reinsurance costs.

The FDIC analogy is very weak. FDIC insures what was there. Reinsurance is concerned with what isn't there - it insures a promise, not a material fact.

There is a question on the concept of insurable risk. The liability is determined by the insured and the circumstances leading to the maturing of the liability are under the control of the insured. In any insurance scheme, there must be some control on either or both of these freedoms or it isn't insurance or reinsurance.

There is a study under way being conducted by the Labor and Treasury Department of plan terminations. Nothing should be done until this is completed and careful consulting analysis made of the cost implications.

Disclosure

It would seem that recent hearings (6/26/72) by the Department of Labor indicate that they feel they already have authority to do what S. 3598 proposes to correct. At the very least, the subcommittee and the Department of Labor should set mutual objectives in disclosure. If new disclosure is needed, it certainly should not duplicate present IRS practices. Again, most of what is suggested could best be obtained by the IRS who require filing of annual status reports on trust fund assets, liabilities, receipts and disbursements.

IRS disclosure was recently expanded by the introduction in 1972 of Forms 4848 and 4849. Little more seems needed and, if so, it could be best obtained in this manner.

Fiduciary Standards

It is doubtful that banks need to be covered under S. 3598, particularly when they act in a fiduciary capacity. Analysis should be made to see whether these institutions can be exempt from the Act.

The American Bankers Association's position on this legislation "gives general support to the concept that all persons who handle employee benefit funds have a fiduciary responsibility and that no employee or beneficiary should be denied adequate remedy for the breach of such responsibility. However, there is an important difference between a law which lays down standars of conduct and gives interested parties the ability to act to protect their interests, and a law which grants to a government agency broad powers to investigate and sue to enforce the provisions of such law."

"....Bank trustees are already strictly supervised by Federal and state banking agencies-the Comptroller of the Currency, the Governors of the Federal Reserve Board, the Federal Deposit Insurance Corporation and the state banking boards. The examinations by these agencies include a comprehensive review of the trust activities of the banks, embracing adequacy and qualifications of personnel, audit and other control procedures, investment philosophy and observance of provisions of trust agreements and Federal and state laws."

"Furthermore, these supervisory agencies have adequate power to take action against banks which do not meet their standards or have handled trust funds improperly, and the capital funds of the banks are available to make good any losses trusts may suffer as the result of improper acts."

"The need for the banks to maintain their reputation both in the banking community and in the trust field is further assurance that they will continue to use the care of a prudent man in dealing with the funds placed with them in trust, as they have done in the past."

"To impose on the banks additional supervision in the absence of a showing of need for such additional protective measures seems entirely unnecessary, involving as it does additional burden and expense to the banks, their customers, and the government."

Sale and leaseback transactions should be subject to prior approval by the IRS but they should not be restricted. Advance rulings are given by the IRS on company stock transactions so it would seem little additional staff would be needed to handle party-in-interest transactions. In fact, Section 503 of the IRC already restrains trustees from party-in-transactions and would need little strengthening to make it very effective in controlling such investments. If this is true, then S. 3598 would not need to cover such investments.

Conclusion

1972-73 does not seem an appropriate time in which to load additional costs on an American industry striving to provide full employment and remain world competitive. Other private and government compensation increases have already established priority over vesting, reinsurance and added disclosure.

Indeed, one might reasonably ask in contemplating this legislation if vesting of benefits is the real issue when, in fact, the speedup of technological change and information flow has created quite different social and employment problems than those contemplated by President Kennedy in the electronic century ago that he started his studies of the private pension system and continued by this subcommittee and other Congressional committees.

Senator SCHWEIKER. Next I would like to call on the American Society of Pension Actuaries, Samuel J. Savitz, president. Will you please come forward and proceed and identify who your associate is.

STATEMENT OF SAMUEL J. SAVITZ, PRESIDENT, AMERICAN SOCIETY OF PENSION ACTUARIES, ACCOMPANIED BY SOLAMAN G. LIPPMAN, COUNSEL

Mr. SAVITZ. I am Samuel J. Savitz, president of the American Society of Pension Actuaries, and this is Solaman Lippman, counsel to the society, next to me.

The remarks I will make are on behalf of the American Society of Pension Actuaries, and I will refer to that organization as ASPA.

ASPA is a nonprofit organization and its membership consists of more than 600 persons who, principally, if not exclusively, are engaged in the design and administration of pension and profit-sharing programs.

ASPA regularly conducts examinations and the present structure calls for a series of five separate examinations, covering such diverse areas as law, taxation, administration, planning, and actuarial techniques related to retirement plans.

I would like to start by indicating that I am here largely in support of S. 3598 and that my purpose is to contribute toward the structure of an ultimate bill that would better serve the objective of its distinguished sponsors.

I will attempt to paraphrase, rather than read from my formal statement.

I would like first to comment on specific provisions of the bill. First, there is section 104 of title I, part B, wherein coverage is extended to all nonexempted entities with more than 25 participants.

I note that the definition of the term "participant" is rather expansive and includes all employees who have acquired a vested interest, even though these employees may no longer be employed.

It is suggested that the number be increased perhaps to 50 or preferably 100.

Alternatively, it might be feasible to redefine the term "participant" to include only active members of the plan, thereby excluding former employees who may have acquired a vested interest, as well as retired employees. The chief purpose of this proposal is to permit smaller employers to avoid what otherwise might prove to be an unduly high administrative cost of compliance.

In section 201 of title II, part B, it is stated that the most stringent eligibility requirements permissible are 6 months of service and a minimum age 21. This appears to be unduly liberal and could serve to discourage the adoption of new retirement programs, and possibly cause the scaling down of existing ones, particularly in the case of smaller employers. One reason for this belief is that it is typical in the case of smaller employers to determine first, not what constitutes a reasonable benefit, but instead, what dollar amount might be available to support an employee retirement program; then this dollar amount is used as the basis for designing the plan and, consequently, the benefit formula and the plan features are a direct outgrowth of this predetermined contribution. Moreover, to maximize the benefit, it is not uncommon to restrict the program to full-time personnel who are likely to remain with the company for an indefinite period. This, in turn, suggests that a minimum service, a minimum age, and/or, perhaps, a maximum age (although for a different reason) requirement be stipulated, thereby tending to narrow the covered group and enabling the largest possible benefit for a given dollar amount of contribution.

Presently, the Internal Revenue Code allows a minimum service requirement of up to five years, and the Income Tax Regulations specifically sanction the use of reasonable age requirements. I am not necessarily suggesting that the requirements presently part of the code and regulations be those which should be established for the purpose of the bill, for there is some reasonable argument as to whether the IRS requirements are too stringent; however, it could also be argued, and perhaps more convincingly, that the maximum eligibility requirements proposed in the bill are far too liberal. I am of the opinion that a three-year service requirement, a minimum age 25 (or perhaps 30), and authority to impose a maximum age would be a realistic approach. The need for a maximum age is quite apparent, for otherwise, many employers would be inclined to adopt money purchase pension plans, rather than fixed benefit plans. This, undoubtedly, would serve to the disadvantage of most concerned.

In section 201 of title II, part B, a requirement is imposed applicable to the funding of "experience deficiencies" over a period of 5 years. In the case again of smaller employers, this may prove to be an undue burden and, therefore, it is recommended that such experience deficiency be satisfied within a 10-year period, and that the internal revenue code be modified to specifically accommodate deductibility with respect to such experience deficiency.

By strict reading of section 202 of title II, part A, it appears that the vested interest acquired after 8 years of "credited service under the plan" applies to an employee's total accrued pension. This presumably includes past service benefits, and if so, could create problems of material proportions, and thereby discourage the adoption of fixed benefit pension plans by existing corporations (where past service is significant), or, alternatively, induce such corporations not to give past service credits. The reason is that to vest an employee with an accrued pension which includes accrued past service benefits would require the corporation to continue to make contributions for a since-departed employee over an indefinite period of years. And this is because, almost invariably, the cost for past service benefit credits are amortized over an extensive period of years.

On the assumption that our interpretation is correct, it is recommended that the vesting requirements of section 202 be limited to apply only to future service credits, earned for service rendered subsequent to the adoption of the plan, even though adopted subsequent to the effective date of the act. To do otherwise would prompt most employers with limited means (which I submit includes most corporations) to adopt money purchase pension plans, or, alternatively, not give past service credits.

In section 211 of title II, part B, there is a requirement that the plan include a schedule of priorities, to be applied if the plan terminates. However, the priorities indicated, first, fail to give recognition to beneficiaries of deceased employees, where the plan calls for a preretirement death benefit, and, second, is ambiguous with respect to what constitutes a "retired employee." This is because both priorities 1 and 2 deal with retired participants, but priority 3 refers to those individuals with a vested interest who have not attained their normal retirement date. Therefore, it is suggested that the priorities be restructured as follows: (1) beneficiaries of deceased employees and retired participants (including employees who have retired by reason of total disability and/or pursuant to the early retirement feature of the plan); (2) all employees who have attained their normal retirement date and could have retired, but elected not to do so; (3) employees who could have retired early, but elected not to; (4) employees who have acquired a vested interest, and (5) all other employees.

It should, however, be noted that the inclusion of a priority schedule (whether in the form made part of the bill or as is alternatively herein suggested) could cause a violation of the Federal income tax regulations, wherein certain restrictions apply to a premature termination of a retirement program (as therein defined) and the amount of benefits that, and to whom they, can be paid.

In section 402 of title IV, it is stipulated that no coverage be afforded to any participant who owns more than 10 percent of the employer's stock. I believe that this position is totally inequitable and discriminatory and should be discouraged; instead, perhaps the insurance should be made applicable to all persons up to a prescribed level, and that all participants, irrespective of ownership, be treated uniformly. It is difficult for me to understand why a 10¼ percent ownership interest in an entity would deny one of a right which would be available to an individual owning but 9¾ percent of said entity.

It is occasionally deemed advisable to include in a pension or profit-sharing plan a provision for complete forfeiture by an employee if he is discharged for defined "cause," or, if within a prescribed period and area, he enters into competitive employment with the company. I trust that the ultimate bill will specifically provide for the continuance of this practice.

Under the Internal Revenue Code, there is presently a restriction applicable to the amount of deduction the corporation is allowed for contributions intended to amortize initial unfunded liabilities (referred to as the "initial supplemental liability"), which limitation is expressed as 10 percent annually of said initial sum. In that we are dealing with present values and interest assumptions, a 10 percent maximum amortization rate means that no income tax deductions would be afforded an employer to the extent that he decides to amortize this initial liability over a period of fewer than 12 to 15 years, depending on the interest assumptions selected by the actuary. It is therefore recommended that the necessary changes be made in the income tax law so as to permit an employer to more rapidly amortize any such liabilities, and that any such contributions be fully and completely income tax deductible.

In arriving at an equitable and reasonable mandatory vesting schedule, it is respectfully suggested that the subcommittee not focus only on that one aspect of the plan, but instead view the aggregate of all frills and features that might be included as part of a retirement program, for only then could a meaningful decision be reached relative to the presence or absence of a particular feature, and the cost and/or saving attributable thereto.

There are many features which, were they all incorporated as part of a pension plan, would yield highly desirable results. One such feature, of course, would be liberal vesting; others might include the presence of a survivorship feature, calling for a preretirement death benefit payable to an employee's spouse and perhaps other dependents. Then, too, there are features which contend with the threat of continued inflation, by, in one instance, gearing the benefits to a broad based equity portfolio and, in another, by calling for automatic adjustments in pension levels, based on a recognized consumer index, such as the consumer price index. Then, also, there are those voluntary actions taken by an employer to upgrade benefits for not only active, but retired employees as well, and a growing trend to employ a so-called final average compensation feature, which relates plan benefits to the highest level of earnings received by the employee from the employer.

Each of these features, undeniably, were they present, would enhance the value of the plan and, of course, each such feature has a cost associated with it. Thus, it is respectfully submitted that rather than focus on but one feature of a pension plan, namely that of mandatory vesting on a most liberal basis, instead a more reasonable vesting schedule be required, for otherwise compliance by an employer would be accomplished at the sacrifice of other features, which may have been equally valuable.

It must always be recognized that only so many dollars are available for retirement plans; to the extent that a portion of these dollars are allocated to the cost of one feature, fewer dollars are available for application to another. The ideal compromise would be to include as many features as possible, each of which would be designed within a framework of the cost that can be absorbed by an employer, and with respect to which, I am of the opinion that the vesting feature suggested by the administration, calling for an age-service combination of 50 is reasonable, and hopefully, it will be the decision of the subcommittee to modify its present posture and instead adopt the rule-of-50 concept.

To conclude on this point, I suggest that greater perspective be given to the total plan, rather than focus on a particular segment.

Then, too, it appears somewhat inequitable to require an employer offering a very liberal pension plan, with all of the frills included, to provide the same degree of vesting required of another employer offering a skeleton plan. Would it not be more equitable to limit whatever mandatory vesting is required to a prescribed, reasonable benefit, and that any benefits beyond such reasonable level be at the discretion of the employer? I believe that this approach would tend not to impede the adoption by employers of liberal benefits, which might be the case, were mandatory vesting required for the plan as a whole.

Finally, it is suggested that no action be taken on this bill, although in principle, I do support many of its features, until such time as the administration has had an opportunity to analyze data that the IRS is presently assembling on its new Internal Revenue Service form 4848 and 4849. This form has been newly devised by the Service for this purpose, and requests significantly more information than has ever previously been required.

In conclusion, I should like to restate my position, which is that any action taken by this committee which would be constructive and improve the pension system and the promise of payments to retired citizens should be supported, and I do support such action, provided, however, that any such legislation would not prompt employers to cut back on benefits under existing plans or fail to adopt new plans.

I thank you.

The CHAIRMAN. Senator Taft.

Senator TAFT. You are a practicing actuary?

Mr. SAVITZ. That is correct.

Senator TAFT. What requirements are there for being an actuary today?

Mr. SAVITZ. Well, in some States there has been legislation enacted setting forth what an actuary is. In other States, there are no requirements as to what constitutes an "actuary."

Senator TAFT. So somebody can move in from some other occupation and the next day purport to be an actuary?

Mr. SAVITZ. Presumably so. I think that in that vein I would like to submit that to my knowledge I have seen no evidence that abuses exist. I have seen abuses in the areas of portability of benefits, lack of vesting, fiduciary responsibility, and perhaps misuse of trust assets. I have never heard of an incident in which an alleged actuarial certification was given by a person who did not have sufficient competence.

But your point is well taken.

Senator TAFT. You mentioned no regulation of the various professions of similar nature. Security dealers are regulated under SEC.

Mr. LIPPMAN. In response to the last question, there is a danger in giving the Secretary the broad power relative to certification without any exacting standards or safeguards. We have situations where people have practiced actuarial science successfully for 10, 15, and 20 years, who perhaps might not meet the Secretary's standard or pass an academic examination. There are many competent lawyers and competent doctors who on any given day could not pass a State examination. Therefore, it seems to me that in delegating this responsibility to the Secretary, if that is the mind of the committee, there ought to be some safeguards for professionals who have established practices and who are highly regarded as actuaries and enjoy the confidence of their clients and have the respect of the profession. It is lack of safeguard which I think is quite troublesome.

Senator TAFT. When you talk about priorities, restructuring of them, are you talking about 100 percent priority or are you talking in effect about a marshaling of priorities?

Mr. SAVITZ. My reference to the term priority is within the framework of the bill, which deals with a 100-percent priority. As structured the bill gives the highest priority to retired employees, and then lesser priorities to persons falling within other categories, such as, early retirement, disability, and vesting. Each person falling within a preferred category is fully vested in his accrued benefit, that is to say that there would be 100-percent vesting of his accrued benefit.

Senator TAFT. There have been some plans that have been terminated on other bases.

Mr. SAVITZ. Yes; there are other approaches in use, particularly common among relatively small employers; however, the use of a priority system is widespread among larger employers. It is to be noted, of course, that, in the case of Studebaker-Packard, a priority system was in effect, under which certain employes were more fully satisfied with respect to their accrued benefits than others.

Senator TAFT. I think those are the only questions I have.

The CHAIRMAN. Thank you, Senator Taft. I just have one concern: Your suggestions to us that we consider changing the vesting approach, S. 3598, to the rule of 50. What are the considerations that lead you to the acceptance and advocacy of that approach?

Mr. SAVITZ. I think that the starting point must necessarily be the dollar sum that the employer can afford to contribute to a plan. This dollar amount will be sufficient to buy only so much in plan benefits. Within this framework it occurs to me that a priority should be given to the reasonableness of the benefits. Secondly, we should consider the potential erosion that inflation will have on this benefit amount, and the plan should be designed with this threat in mind; then consideration should be given to the presence of such other features as, survivorship benefits, early retirement benefits, and desirability benefits, and finally after we are reasonably satisfied with the presence and adequacy of each of the foregoing, consideration should be given to the presence of vesting. However, in my judgment, vesting takes the last of the various priorities which I have set forth. It should also be observed that a completely new problem is introduced were the vesting feature to be liberalized, which concerns the assumptions made by the actuary in developing his calculations applicable to employee turnover, for if vesting is introduced on a liberal basis, the turnover assumption must be modified or completely eliminated. This means that a given contribution will purchase smaller benefits than would otherwise be the case were a turnover assumption present. The absence of a turnover assumption results in the use of more dollars to provide fewer benefits. My preference would be to see a plan under which a given dollar of allocation would produce a reasonably adequate retirement benefit and for the plan to include reasonable provisions for death, early retirement and disability. Then, to the extent that additional dollars are available, greater attention would be given to vesting. If, however, I had unlimited dollars, then, and only then, would I feel completely comfortable in fully supporting the committees' liberal vesting feature.

The CHAIRMAN. Very clearly stated, and I appreciate it.

Senator TAFT. One other question. I think you mentioned a minimum wage requirement. I am troubled by this. We had one witness I think who had money paid in over a period of almost 15 years and with termination of the plan, those older had been in a much shorter period, paid in less or paid in less on their account, and benefited in termination to some extent from the plan, whereas he was cut off without anything. You really discriminate against the younger workers when you do that.

Mr. SAVITZ. Viewed somewhat differently, we must consider the fact that there are only so many dollars present in the plan at the time of termination. These dollars will either be used exclusively for the benefit of the old or exclusively for the benefit of the young or alternatively equitably prorationed among all individuals. My preference would be to first consider the plight of the aged, in that these are the individuals who, following termination of the plan and presumably termination of the business, would not be reemployable and therefore, I would prefer to provide as much of the asset for their benefit as possible. On the other hand, the younger employees, presumably, would be reemployable and would acqiure pension rights with their successor employers. Thus my concern is not necessarily one with equity, but instead with the practical workings of the employment market and the bias of employers in hiring superannuated employees.

Senator TAFT. He goes back into reemployment and starts in as a fresh man, in effect?

Mr. SAVITZ. We are talking about age. Senator, I said age 40, you see. I think that a person who seeks reemployment at age 40 would have potentially 25 years of employment. Therefore, during that period, he could reinstate a large portion of his previously forfeited benefit. On the other hand, it would indeed be difficult for a person who has but 15 years of remaining service to reinstate fully his forfeited benefit.

I think if we have only so many dollars being apportioned, it would be best in my opinion to allocate those dollars for older individuals than younger.

Senator TAFT. Thank you.

Mr. GORDON. Mr. Savitz, just to follow up on one question that Senator Taft initiated earlier, would you agree with me that there are at present no standards for regulation or licensing of actuaries, either by Federal or State laws or by any governmental body?

Mr. SAVITZ. No; not entirely. Some states have regulations which, in effect, define what the term actuary means and who may practice as an actuary.

Mr. GORDON. What states?

Mr. SAVITZ. Wisconsin and Illinois, I believe—Senator Taft might bear me out. Frankly, I do not have information as to which other states have similar regulations.

Mr. GORDON. Not very many of them?

Mr. SAVITZ. No.

Mr. GORDON. Is there any way you can see that an appropriate funding standard or funding regulation of pension plans, either as proposed in S. 3598 or any other bill that is pending containing such requirements, could be implemented without some type of Federal standards applicable to actuaries?

Mr. SAVITZ. Yes; I can see how that would not be necessary. This is because the bill itself requires the submission of ample actuarial data as a condition of registration. I further presume that this data will be analyzed to determine the reasonableness of the assumptions and/or methods.

I think that if you were to analyze your findings—and I feel more qualified to comment on smaller plans than larger plans—but if you analyze your findings, I think that you will find that the abuses with which you are principally concerned are not frequently found among smaller employers.

Mr. GORDON. We have evidence before the subcommittee of people going out and hanging shingles and calling themselves actuaries, and they are not actuaries at all. Are you suggesting on the basis of this so-called actuarial report to the Secretary of Labor, that somehow the Secretary of Labor is going to be able to discern, by looking at the actuarial assumptions that they have furnished, that these are authentic and relevant assumptions? Anybody could get a handbook of the Transactions of the Society of Actuaries and copy out turnover tables and interest rate assumptions and just send them on in.

Mr. Savitz. I think my principal concern is that the Federal Government would be establishing actuarial standards; as undoubtedly you are aware, there are organizations presently in existence which do administer examinations to determine the competence of their membership and one such organization is the American Society of Pension Actuaries, which as earlier indicated, administers a series of five separate examinations, each of which is designed to test the competence of the individual in each of the various areas likely to be encountered by a pension actuary in his client dealings.

Also a concern, and one which Mr. Lippman expressed earlier, is that there are individuals today functioning as actuaries who, by reason of their experience and demonstrated competence, can be considered as qualified actuaries. These individuals however, could be disenfranchised were they unable to meet the requirements prescribed by the Federal Government, assuming that the Government were to prescribe such conditions or delegate such authority to another body. Despite my concern, such standards were to be established by the Government or delegated to another body, I am of the posture that a "grandfather" provision should be considered to preclude such potential disenfranchisement.

However, on the other hand, I might feel entirely different were the bill to specifically itemize standards for actuarial accreditation. Presently, of course, this is not the case, in that the bill treats this matter in a rather broad and nebulous manner.

Mr. Gordon. Well, do you have any specific suggestions and recommendations in that regard?

Mr. Savitz. I would like to submit those.

Mr. Gordon. Thank you.

(At the time this publication went to press, the information referred to had not been submitted.)

(The prepared statement of Mr. Savitz follows:)

STATEMENT BY

SAMUEL J. SAVITZ

PRESIDENT,
AMERICAN SOCIETY OF PENSION ACTUARIES

To The

SENATE SUB-COMMITTEE ON LABOR:

On

S.3598: "RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT OF 1972"

Mr. Chairman, my name is Samuel J. Savitz. I am President of the American Society of Pension Actuaries (ASPA) and the remarks which I intend to make are contributed on behalf of ASPA.

ASPA is a non-profit organization and its membership consists of more than 600 persons who, principally, if not exclusively, are engaged in the design and administration of pension and profit sharing programs.

ASPA regularly conducts examinations and the present structure calls for a series of five separate examinations, covering such diverse areas as law, taxation, administration, planning and actuarial techniques related to retirement plans.

I should like to start by indicating that I am here largely in support of S. 3598, and that my purpose is to contribute toward the structure of an ultimate bill that would better serve the objectives of its distinguished sponsors, and the testimony which I shall deliver is offered out of personal experience, as well as recommendations submitted to me by members of ASPA.

It is my firm conviction that it is in the interest of all -- that is to say the industry, the membership, and the clients that I represent, and the citizenry that you represent -- for this ultimate legislation to be structured in an intelligent form that gives ample recognition to, not only the solution to present problems and inequities, but to those problems and inequities that might result from the proposed solution.

****

I. SPECIFIC COMMENTS

A. Section 104 of Title I, Part B extends coverage to practically all entities (excepting those specifically exempted) that sponsor plans covering more than 25 participants. If the term participant were not so broadly defined, the number used in establishing coverage would, perhaps, be reasonable but, in that the definition includes all employees that may have acquired a vested interest (even though no longer employed), it is conceivable that application of the bill would extend far beyond intent. Therefore, it is my suggestion that, within the framework of the present language, the number of participants required for purposes of coverage be increased to 50, or perhaps 100. Alternatively, it might be feasible to redefine the term participant to include only active members of the plan, and thereby exclude former employees that may have acquired a vested interest, as well as retired employees. The chief purpose of this proposal is to permit smaller employers to avoid what otherwise might prove to be the unduly high administrative cost of compliance.

B. In Section 201 of Title II, Part B, it is stated that the most stringent eligibility requirements permissible are six months of service and a minimum age 21. This appears to be unduly liberal and could serve to discourage the adoption of new retirement programs, and possibly the scaling-down of existing ones, particularly in the case of smaller employers. One reason for this belief is that it is typical in the case of smaller employers to determine first - not what constitutes a reasonable benefit, but instead to determine what dollar amount might be available to support an employee retirement program; then this dollar amount is used as the basis for designing the plan and, consequently, the benefit formula and the plan features are a direct outgrowth of this predetermined contribution. Moreover, to maximize the benefit, it is not uncommon to restrict the program to full-time personnel who are likely to remain with the company for an indefinite period. This, in turn, suggests that a minimum service, a minimum age, and/or perhaps, a maximum age (although for a different reason) requirement be stipulated, thereby tending to narrow the covered group and enabling the largest possible benefit for a given dollar amount of contribution.

Presently the Internal Revenue Code allows a minimum service requirement of up to five years, and the Income Tax Regulations specifically sanction the use of reasonable age requirements. I am not necessarily suggesting that the requirements presently made part of the Code and Regulations be those which will be establishedfor the purpose of the bill, for there is some reasonable argument as to whether these requirements are too stringent; however, it could also be argued, and perhaps more convincingly, that the maximum eligibility requirements proposed in the bill are far too liberal. I am of the opinion that a three-year service requirement and age 25 (or perhaps 30), and authority to impose a maximum age would be a more realistic approach. The need for a maximum age is quite apparent, for otherwise, many employers would be inclined to adopt money purchase pension plans, rather than fixed benefit plans. This, undoubtedly, would serve to the disadvantage of most concerned.

C. In Section 201 of Title II, Part B, a requirement is imposed applicable to the funding of "experience deficiencies" over a period of five years. In the case again of smaller employers, this may prove to be an undue burden and, therefore, it is recommended that such experience deficiency be satisfied within a ten-year period, and that the Internal Revenue Code be modified to specifically accommodate deductibility with respect to such experience deficiency.

D. By strict reading of Section 202 of Title II, Part A, it appears that the vested interest acquired after eight years of "credited service under includes past service benefits, and if so, could create problems of material proportions, and thereby discourage the adoption of fixed benefit pension plans by existing corporations (where past service is significant) or, alternatively, induce such corporations not to give past service credits. The reason is that to vest an employee with an accrued pension which includes accrued past service benefits would require the corporation to continue to make contributions for a since-departed employee over an indefinite period of years. And this is because, almost invariably, the cost for past service benefit credits are amortized over an extensive period of years.

On the assumption that our interpretation is correct, it is recommended that the vesting requirements of Section 202 be limited to apply only to future service credits, earned for service rendered subsequent to the adoption of the plan, even though adopted subsequent to the effective date of the act. To do otherwise would prompt most employers with limited means (which I submit includes most corporations) to adopt money purchase pension plans or, alternatively, not give past service credits.

E. In Section 211 of Title II, Part B, there is a requirement that the plan include a schedule of priorities, to be applied if the plan terminates. However, the priorities indicated fail to give recognition to beneficiaries of deceased employees, where the plan calls for a pre-retirement death benefit and, secondly, is ambiguous with respect to what constitutes a "retired employee". This is because both priorities 1 and 2 deal with retired participants, but priority 3 refers to those individuals with a vested interest who have not attained their normal retirement date. Therefore, it is suggested that the priorities be restructured as follows: (1) beneficiaries of deceased employees and retired participants (including employees who have retired by reason of total disability and/or pursuant to the early retirement feature of the plan); (2) all employees who have attained their normal retirement date and could have retired, but elected not to do so; (3) employees who could have retired early, but elected not to; (4) employees that have acquired a vested interest, and (5) all other employees.

It should also, however, be noted that the inclusion of a priority schedule (whether in the form made part of the bill or as is, alternatively herein suggested) could cause a violation of the

Federal income tax regulations, wherein certain restrictions apply to a premature termination of a retirement program (as therein defined) and the amount of benefits that, and to whom they, can be paid.

F. In Section 402 of Title IV, it is stipulated that no coverage be afforded to any participant who owns more than 10% of the employer's stock. I believe that this position is totally inequitable and discriminatory and should be discouraged; instead, perhaps the insurance should be made applicable to all persons up to a prescribed level, and that all participants, irrespective of ownership, be treated uniformly. It is difficult for me to understand why a 10-1/4% ownership interest in an entity would deny one of a right which would be available to an individual owning but 9-3/4% of said entity.

II. Comments of a More General Nature

A. It is occasionally deemed advisable to include in a pension or profit sharing plan provision for complete forfeiture by an employee if he is discharged for defined "cause", or if within a prescribed period and area, he enters into competitive employment with the company, and I trust that the ultimate bill will specifically provide for the continuance of this practice.

B. Under the Internal Revenue Code, there is presently a restriction applicable to the amount of deduction the corporation is allowed for contributions intended to amortize initial unfunded liabilities (referred to as the initial supplemental liability), which limitation is expressed as 10% annually of said initial sum. In that we are dealing with present values and interest assumptions, a 10% maximum amortization rate means that no income tax deductions would be afforded an employer to the extent that he decided to amortize this initial liability over a period of fewer than 12 to 15 years, depending on the interest assumptions selected by the actuary. It is, therefore, recommended that the necessary changes be made in the income tax law so as to permit an employer to more rapidly amortize any such liabilities, and that any such contributions be fully and completely income tax deductible.

C. In arriving at an equitable and reasonable mandatory vesting schedule, it is respectfully suggested that the Sub-Committee not focus only on that one aspect of the plan, but instead view the aggregate of all frills and features that might be included as part of a retirement program, for only then could a meaningful decision be reached relative to the presence or absence of a particular feature, and the cost and/or saving attributable thereto.

There are many features which, were they all incorporated as part of a pension plan, would yield highly desirable results. One such feature, of course, would be liberal vesting; others might include the presence of a survivorship feature, calling for a pre-retirement death benefit payable to an employee's spouse and perhaps other dependents. Then, too, there are features whichcontend with the threat of continued inflation, by, in one instance, gearing the benefits to a broad based equity portfolio and, in another, by calling for automatic adjustments in pension levels, based on a recognized consumer index, such as the Consumer Price Index. Then, also, there are those voluntary actions taken by an employer to upgrade benefits for not only active, but retired employees as well, and a growing trend to employ a so-called "final average compensation feature", which relates plan benefits to the highest level of earnings received by the employee from the employer.

Each of these features, undeniably, were they present, would enhance the value of the plan and, of course, each such feature has a cost associated with it. Thus, it is respectfully submitted that rather than focusing on but one feature of a pension plan, namely that of mandatory vesting on a most liberal basis, instead a more reasonable vesting schedule be required, for otherwise compliance by an employer would be accomplished at the sacrifice of other features, which may have been equally valuable.

It must always be recognized that only so many dollars are available for retirement plans; to the extent that a portion of these dollars are allocated to the cost of one feature, fewer dollars are available for application to another. The ideal compromise would be to include as many features as possible, each of which would be designed within a framework of the cost that can be absorbed by an employer, and with respect to which, I am of the opinion that the vesting feature suggested by the Administration, calling for an age-service combination of 50 is reasonable, and hopefully, it will be the decision of the Sub-Committee to modify its present posture and instead adopt the rule-of-fifty concept.

To conclude on this point, I suggest that greater perspective be given to the total plan, rather than focus on a particular segment.

Then, too, it appears somewhat inequitable to require an employer that offers a very liberal pension plan, with all of the frills included, to provide the same degree of vesting that is required of another employer that offers a skeleton plan. Would it not be more equitable to limit whatever mandatory vesting is required to a prescribed, reasonable benefit, and that any benefits beyond such reasonable level, to be at the discretion of the employer? I believe that this approach would tend not to impede the adoption by employers of liberal benefits, which might otherwise be the case were mandatory vesting required for the plan as a whole.

The CHAIRMAN. Our next witness is Mr. Henry B. Thielbar, member of the board of governors of the Investment Counsel Association of America, and a partner in the investment counsel firm of Stein, Roe, & Farnham.

STATEMENT OF HENRY B. THIELBAR, MEMBER OF THE BOARD OF GOVERNORS OF THE INVESTMENT COUNSEL ASSOCIATION OF AMERICA, ACCOMPANIED BY JURIS PADEGES, VICE PRESIDENT—LAW, SCUDDER STEVENS & CLARK, AND RAMSAY POTTS, COUNSEL TO THE ASSOCIATION

Mr. THIELBAR. Senator, I am Henry B. Thielbar, a governor and past president of the Investment Counsel Association of America, and a partner of the investment counsel firm of Stein, Roe & Farnham. Accompanying me are Mr. Juris Padeges, a member of the legislative committee of the Investment Counsel Association and vice president, law, of the investment counsel firm of Scudder, Stevens & Clark; and Mr. Ramsay Potts, counsel to the association.

Our statement is quite brief. I am going to read it to emphasize several points we consider most important.

Mr. THIELBAR. The association appreciates this opportunity to offer its comments on the proposals for pension reform as set forth in Senate bill S. 3598, "the bill." We are not expressing any views on the very important provisions dealing with minimum vesting benefits, standards of funding, Federal insurance and a voluntary system of portability. Because of the extensive experience of our members with the investment of employee benefit funds, our comments will be limited to the provisions amending the Welfare and Pension Plans Disclosure Act.

We are in complete sympathy with the objectives of the bill in this area in trying to strengthen the professional standards of persons involved in the administration and management of these large assets so important to many of the working population of the United States. Our members have recognized the need of such standards in their own work, and the association's standards of practice adopted voluntarily many years ago reflects this recognition. Our comments express our concern about the repercussions the bill's sweeping provisions are likely to have on sound business practices which are so essential to the administration and management of employee benefit plans.

SUMMARY OF ICAA COMMENTS

1. We welcome the bill's recognition of the growing practice of allocating duties among several managers of trusts—such as a bank trustee and investment counsel—and suggest further clarification.

2. We urge that the far-reaching prohibition on dealings with "parties in interest" be replaced by a requirement that these dealings be on a nonpreferential basis.

3. We suggest a review of the detailed reporting requirements and the provisions regarding private actions in light of their effect on the cost to the plans—and ultimately on the cost of their participants and beneficiaries.

4. We support the bill's phrasing of the prudent man standard so as to make clear its reference to the more sophisticated problems of employee benefit plans and to develop a single uniform standard.

The Investment Counsel Association of America was formed in 1937 by a group of investment counsel organizations, all of which were dedicated to the proposition that investment advice should be provided on a professional basis to clients and divorced from identifiable conflicts of interest. The first investment counsel firms were founded some 50 years ago for that precise purpose, to work exclusively for the investor and not for the issuer or marketmaker. Since the inception of the association, our principal objective has been to build professional standards similar to those of a lawyer, a doctor or an accountant, and to try to avoid situations in which our interests are at odds with the interests of our clients.

The principles governing eligibility for membership in the association contain solid professional standards. The association consists only of firms which are primarily engaged in rendering investment supervisory services on a continuous basis, are registered under the investment Advisers Act of 1940, and are entitled to use the term "investment counsel" under that act. The association was developed before there was an Investment Advisers Act and long before the Congress granted the Securities and Exchange Commission the power to issue rules and regulations under the act. The association reflected principles which the Congress later established in the law, with help and guidance, incidentally, from the association.

A statement of the current standards of practice is attached for your information—exhibit A. As you will see in articles I and IV of the standards of practice, our group has faced up to the complex nature of the sceurities business and has recognized the conflicts of interest inherent in it by requiring that neither we nor any person affiliated with us may have any broker or dealer ties or be involved in commercial banking relationships with portfolio companies. Moreover, members firms and their employees may engage in no personal security transactions in which there is an actual or potential conflict of interest with a client. Further, as stated in our standards of practice article IV, fourth paragraph:

> Member firms should prohibit the acceptance by their principals or employees of gifts, favors or services of material value from security dealers or others which could prejudice the rendering of impartial advice. Similarly, gifts or unusual favors from clients which might induce preferential treatment should not be accepted.

A list of the member firms is also attached—exhibit B.

INVESTMENT COUNSEL AND EMPLOYEE BENEFIT PLANS

Before proceeding to elaborate our views it might be useful to sketch briefly the usual services of our members to employee benefit plans. Investment counsel are serving these plans in a number of different ways, and the degree of involvement and the extent of responsibility of investment counsel varies from case to case.

At one end of the spectrum are arrangements under which investment counsel merely advises those having responsibility for investments—for example, the trustees, the pension committee or other entity having control over the plan's funds—and these persons then decide whether or not to accept this advice. Investment counsel may be requested to assist in the execution of the program so approved. At the other end of the spectrum are arrangements giving investment counsel full responsibility for investments. Transactions are carried out by investment counsel without prior consultation with the trustees, but prompt notice, of course, is given to the trustees after the transactions have been implemented.

Between these two are other methods as, for example, where investment counsel suggest broad programs, and transactions are then completed within a suggested program without further consultation.

SPECIAL TRUST ARRANGEMENTS

Sophisticated employee benefit plans are increasingly using procedures which combine the administrative expertise of leading banks with the services of investment advisory firms. Typically, in a so-called split power trust a bank is appointed as trustee but the entire investment responsibility is given to an adviser retained at the direction of the employer company. In such a case, the trust agreement relieves the bank of inevstment responsibility and in turn the adviser is not responsible for the actions taken by the bank. In recognizing this reduced responsibility, the bank can afford to charge less than its full trustee's commission.

Clear lines of responsibility are important for this arrangement to be available at an economic cost to the employee fund. We are gratified to see that the provisions against relieving fiduciaries from responsibility expressly permit allocation of specific duties or responsibilities among fiduciaries—section 15(f).[1] We suggest that this section be revised to make it clear that the prior approval of the Secretary of Labor is not needed where the division of responsibility is set forth in the trust agreement or other governing instrument.

PARTIES IN INTEREST

The prohibition against "fiduciaries" rendering services to a "party in interest"—section 15(b)(2)(G) of the act—will unnecessarily interfere with normal business practices. Instead of a flat prohibition we strongly urge that this section be amended to permit a "fiduciary" to render services to a "party in interest" so long as these services are provided on a nonpreferential basis. The reporting requirements with respect to "parties in interest" will enable the Labor Department to detect and correct abuses.

The impact of the proposed prohibiton would be especially far-reaching in view of the very broad definition of a "party in interest" in section 3(13) of the act as amended. As we read this definition it would include, among others, any of the relatives—as defined in section 3(14) of the amended act—of an employee of an employer whose employees are covered by the plan. Thus, apparently, it would include not only the president and other senior officers and their relatives but also the night watchman and his mother-in-law.

[1] References, unless otherwise indicated, will be to sections of the Welfare and Pension Plans Disclosure Act ("the act") as it would be amended by the bill.

The definition of fiduciary as "any person who exercises any power or control, management, or disposition * * * or has authority or responsibility to do so" with respect to any employee benefit assets—section 3(25) of the act—would presumably include investment counsel especially under arrangements where such counsel are charged with the responsibility for investments.

An investment counsel firm should not be flatly barred from advising the officers and employees of a company on their own personal investments just because the firm is the adviser to the company's pension fund; nor should the firm be barred from advising the company's profit-sharing trust as long as the adviser deals with these parties in interest on the same basis as with any other of its clients.

We realize that the act would authorize the Secretary of Labor to exempt fiduciaries or transactions from the proscriptions contained in the fiduciary standards section—section 15(b)(2)(I)—but we submit that the burden of making the necessary evaluations and distinctions in granting such exemptions will be too great for the limited resources and manpower of the Labor Department.

We also recommend that the definition of a "party in interest" be narrowed and clarified, for example, by limiting it to senior officers of a company, by omitting employees, and by defining "control."

EFFECT ON COSTS

It is important to balance the introduction of strict standards and the necessary enforcement provisions of the one hand against the resulting increase in cost on the other. These costs ultimately will be passed to the participants and beneficiaries and, therefore, will affect the amount of benefits they receive.

For example: the reporting section—section 7(b) and (c)—would vastly increase the amount of information required to be submitted to the Labor Department. We realize that an effective reporting system is necessary. But the flow of required reports can reach such proportions that it creates flood conditions in Washington and imposes large additional costs on the fund manager without commensurate benefit to the participants.

Another example of probable increased costs caused by the bill is the liberalized provisions on private actions by participants and beneficiaries. These costs are reflected in sharply rising insurance premiums thus adding to the advisor's overhead, which must be passed on to the client. The usual requirements as to amount in controversy and diversity of citizenship are waived for actions in Federal courts, and rules regarding service of process are liberalized—section 603 of the bill. Giving the court power to allow attorney's fees and costs of the action to any party and to require the plaintiff to post security are useful safeguards to protect pension funds and their managers from strike suits. We suggest that these safeguards be strengthened further as, for example, by requiring that the plaintiffs collectively have a significant interest—such as 25 percent—in the fund.

PRUDENT MAN RULE

We support the bill's attempt to impose uniform professional standards in the handling of employee benefit funds. It is important that these standards provide the latitude necessary to permit these funds to take advantage of available investment opportunities.

We are gratified that the bill phrases this standard in terms of "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"—section 15(b)(1)(B)—this makes clear that what is prudent is to be determined realistically in light of the size of the fund and its objectives. This is a salutary standard. Fiduciaries have long worried about the possibility of their actions being tested against standards developed with respect to small trusts or estates which are not realistic for large employee benefit trusts. For example, case law in some States may seem to prohibit, under the traditional prudent man rule, investments in foreign securities or in nonincome-producing property—such as growth stocks paying no current dividends—yet such investments may be appropriate and desirable for a large employee benefit trust.

We also support the provision in the bill—section 609(b)(1)—that the Disclosure Act as amended is to supersede any State law. This should insure that there will be a uniform Federal rule of conduct applicable to all fiduciaries handling employee funds, thereby avoiding the risk of different rules evolving in the different jurisdictions.

We suggest that section 15(c)(7) be clarified to make clear that the prudent man requirement does not override specific investment requirements or restrictions in the governing instrument. Perhaps the word "direction" should be broadened to "specific provision." For example, if a prudent investor at a given time would be 90 percent in equities but the trust agreement requires that at least 50 percent be in debt securities, the fiduciary should not be liable for a breach of duty for following the provisions of the trust agreement.

CONCLUSIONS

While supporting the objectives of the bill, we urge that the fiduciary standards provisions be modified as follows:

A. A standard of nonpreferential treatment replace the proposed bar on rendering of services by "fiduciaries" to "parties in interest";

B. The definition of "parties in interest" be clarified and narrowed;

C. The impact of the prudent man standard on provisions in the governing instrument be clarified; and

D. The reporting requirements and the private action provisions of the bill be reviewed in light of the resulting increased costs to the plans and their beneficiaries. We would be pleased to submit proposed language to implement these suggestions if the committee will give us the opportunity to do so.

By its nature, the problems of preferences are inherent in our business. It is essential, in our self interest as well as that of our clients, that conflicts not be allowed to arise and that various client interests be fairly and equitably resolved. This cannot be done by legislation. It must be done by us and by all professional fiduciaries who expect to stay in business.

The inhibition against giving favors to the president of an employee company is properly included under the party of interest provisions of the bill. However, whether he is a client or not is really immaterial.

Further, as we mentioned earlier, we would feel a strict technical reading of the act would prohibit the same adviser from advising both a pension fund and a supplementary profit-sharing fund of the same employer company. It could well be most desirable to have a single adviser who could correlate the two funds and work them together so that they supplement each other and complement each other. Lastly, the very broad definition of "parties in interest" coupled with the ban on all dealings could well cause serious operating problems. The cure to abuses should come through disclosure provisions at least in the areas in which we work.

For example, we may work for 10, 20, 30 such funds. Our stock trader or bond trader, let us say, is in a position of having to buy bonds. There is a situation wherein the market is sloppy, and there are some good cheap bonds around in the market. Our trader may approach five to 10 to 15, as many as possible, broker-dealers and ask for offerings. He will say he wants 500 from this firm, 500 from that firm. He will go around and check to find out who has some cheap bonds and what will they sell them for? He will check enough houses to get a consensus and buy the cheapest bonds offered.

Conversely, on the selling side, we take bids to see who will pay us the most. Now let us pull a name out of the hat. Salomon Bros. offers to sell as 500 bonds for an account at a good cheap price.

Our trader says we bought them. He assigns those bonds to one of the funds for which we are trying to buy bonds. Now it could well be that a partner in Salomon Bros. is a director, a "party in interest," of an employer company sponsoring the fund to which the bonds happen to be assigned. Our trader is not in a position to know who are all the "parties in interest" for people from whom he buys bonds in the market.

On the other hand, under the definition of the act as we read it, the fact that a partner of Salomon Bros. is a director, or "party in interest," of XYZ company should be known and is known. It is a matter of public knowledge. It can create a technical working problem that actually reacts to the disadvantage of the funds.

Furthermore and equally important, should we not buy the cheap bonds or sell at the high offering price for a certain fund because a partner of Salomon Bros. happens to be a director of the employer corporation? This is the kind of problem that we see in the operating area that is brought about by the broad definition of a "party in interest" with a strict ban on all dealings.

As we said earlier, we recognize that the act provides for exemptions. We hope that exemptions would be well administered, but we are concerned that the availability of exemptions would not help very much to solve the problem.

Mr. PADEGES. The only thing I would like to add is the point that a basic premise of these prohibitions against dealings between a "fiduciary" and a "party in interest" appears to be the desirability of preventing a "party in interest" from receiving preferential treatment, from getting services at a reduced preferential rate. We submit the standard of nonpreferential treatment which we suggest would be aimed much more directly at this very specific practice.

Senator TAFT. I appreciate that. Might it not vary with the circumstances though? I take it you are talking about a situation in which you are acting only as the investment counsel, not as an investment adviser to the trustee.

Mr. THIELBAR. No. I think it would apply in both cases. We frequently act on a discretionary basis—we act as a fiduciary.

Senator TAFT. You are in a fiduciary capacity, that is true. That is the point I am making.

Mr. THIELBAR. That is correct.

Senator TAFT. If you are in a fiduciary capacity, do you consider that a nonpreferential treatment is an adequate standard for the exercise of fiduciary capacity?

Mr. THIELBAR. Yes, sir.

Senator TAFT. Do you not think a trustee or fiduciary has a duty to be better than nonpreferential in the recommendation of his——

Mr. THIELBAR. Of course. I think as a definition, the trustee has to do all in his power to achieve the best result or the best price for his client or his beneficiary. Now in obtaining that, a preferential decision tends to be a very good standard, because we operate with several different types of provisions, one we call best market, best price provision. And the best price, best market provision always in our work tends to override any other consideration in carrying out a transaction. Now we call that in our terminology "nonpreference." So we are dealing in part in a matter of semantics as to what our definition of preference is and what you might also believe.

Senator TAFT. How do you view the limitation in the bill with regard to the percentage of investments and securities of the company involved, employer required, or other——

Mr. THIELBAR. We would think that a limitation is desirable and whether it is 5 percent or 10 percent or 3 percent I do not think is particularly pertinent.

Senator TAFT. Thank you very much for appearing here.

Mr. GORDON. Under this preferential rule or nonpreferential rule that you propose, how would you implement that without creating an administrative nightmare for the Secretary of Labor? In effect would not somebody have to decide whether or not a particular transaction or arrangement was preferential or nonpreferential? You have thousands, perhaps millions of these transactions that might take place. You would need some type of administrative mechanism.

Mr. THIELBAR. I would like to differentiate between the type of transaction that we engage in, that is, security transaction and others. We are closely regulated by the SEC at the present time.

Under SEC rule, every time an order is placed with a broker for any account, any broker order, my own order or any other order, we have to keep the following record and keep it for 5 years on each individual transaction.

First, who in our firm originated the idea of transaction.

Second, who approved it? Was this a discretionary approval based on someone in our firm or was this an approval that must be obtained or was obtained directly from the client?

Third, who placed the order? When was the order placed? What instructions, if any, were given the broker when the orders were placed; and, lastly, what is the disposition of the order? What change took place in the order? Was it canceled? Was it changed? Was it finally executed?

Furthermore, the practice developed of indicating on the order form the reason for using a specific broker-dealer occurred in the light of experience in periodic SEC examinations and the information requirements of the institutional investors study by the SEC several years ago.

We are able to determine from such orders the reason why the order goes to the specific broker. This data is not just put away in a drawer some place and left forever. It must be kept available for 5 years, and is subject to examination periodically by the SEC.

Now it is possible, of course, that there could be orders placed that are clearly in violation of the preferenced standard—I do not deny that this could well be. I think it would be difficult to establish a continuing pattern of it. And certainly anyone who had to maintain these records would do so at considerable hazard, if he were violating the preference rule.

I think what might apply in real estate or some other field clearly does not apply in the securities aspect of inverting. The examination and the control of the SEC at present, coupled with SEC disclosure requirements, gives a sizable degree of protection.

Mr. Gordon. In effect, you are saying your comments are really restricted to those individuals or firms acting in the investment field who are thoroughly regulated by the SEC?

Mr. Thielbar. Subject to periodic regulation by the SEC.

Mr. Gordon. One further clarification. You seem to have some problems with the notion that the instructions in the trust document might not control, and you seem to be concerned about that. There is a provision in the bill, section 15(b)(1), which says that a fiduciary shall discharge his duties with respect to the fund in accordance with documents and instruments governing the fund insofar as is consistent with this act.

Is it your position that that provision is not strong enough or what?

Mr. Padeges. Our concern is really with the interplay between this provision that your just read and the provisions of section 15(c)(4)—which says that the fiduciary is specifically permitted to engage in certain named transactions—and especially the provision in paragraph 15(c)(7) on page 76—which permits the trustee to follow a "direction" in the trust instrument insofar as is consistent with the specific prohibtions listed in section (b)(2) and, on the other hand, those of subsection 8 of section 15(c) which states that the fiduciary can take action pursuant to an "authorization" in the trust instrument only if such action is consistent with the provisions of the entire subsection (b).

It appears that he can follow an "authorization" only if it is consistent with the entire subsection and the entire subsection would include the prudent man rule. There is a question if the instrument says something that does not amount to a "direction," but is not consistent with the prudent man rule, and the fiduciary is following that provision or——

Mr. GORDON. Let me ask the question directly. Should the fiduciary follow a direction in the trust instrument which is inconsistent and known to be inconsistent with the prudent man rule?

Mr. PADEGES. The answer I think depends on what the prudent man rule means. When we use the phrase prudent man rule, we look at it as a standard which is an average standard, which may not necessarily be the proper standard for a very large employee benefit plan, so therefore in a very large employee benefit plan, for instance profit-sharing trust or pension plan, the trust agreement might very well provide that you can invest in a higher risk investment, as an example.

Technically, such an investment may not be consistent with a narrow interpretation of the prudent man rule, but from the point of view of the best interest of the plan, it may be very much in the best interest of beneficiaries and participants.

Mr. GORDON. Then the issue is really how the prudent man rule is going to be applied.

Mr. THIELBAR. A different standard might be applied to the profit-sharing fund, pension fund or different types of profit-sharing or pension funds.

Mr. GORDON. That gets to the heart of how the prudent man rule is going to be applied and interpreted in diverse number of situations. I do not take it you are suggesting that there should be in the bill a provision authorizing the trustee to follow out instructions in the trust instrument, which whatever the standard turns out to be, clearly violates the prudent man rule.

Mr. THIELBAR. Clearly if you had a provision in the trust instrument that the adviser or the manager should buy a high percentage of the Canadian mining stocks, he ought not to take the account. I mean he ought not to take the responsibility. I think that basically he has to make that initial judgment. Can he responsibly carry out his function with the instrument as is? But once he accepts that responsibility and once he concludes he can operate responsibly within the instrument, then I think the instrument has to govern. Do you not think that is correct?

Mr. PADEGES. I think the example that we indicated in our presentation points up the fact that the inconsistency with the prudent man rule may also be on the down side, so to say. The instrument may limit you to a much more defense of posture than a prudent investor might take under the conditions and opportunities that are available.

Senator TAFT. There are also circumstances clearly where if you ran into a conflict at a later time, you cannot always anticipate these conflicts when the account is taken, I presume and I think there are circumstances under which you would be required by your fiduciary responsibility to make application for the court for interpretation. I do not know if we have Federal jurisdiction or not, unless we provide for Federal jurisdiction here, which is a question I think the staff ought to address itself to.

Mr. GORDON. There is a specific provision in the bill which permits—it starts on page 86—State courts to assert jurisdiction for purposes of clarifying trust documents.

Senator TAFT. I know about the State courts. But clearly with all the other jurisdiction given to the Federal court, whether the Federal court should not have jurisdiction over the instruction of trustees under these plans.

Thank you all very much, gentlemen. We appreciate your testimony.

Our next witness is Eldon H. Nyhart. We appreciate your being here. I know my staff has been in touch with you and asked for information, which I think you provided at least in part as to cost and various approaches that we have before us. We would be delighted to hear your statement. We are somewhat in a time bind.

I have to be on the floor by two o'clock, but please read your statement or excerpt from it or comment as you please.

STATEMENT OF ELDON H. NYHART, PRESIDENT, HOWARD E. NYHART CO., ACCOMPANIED BY DARYL DEAN, DIRECTOR

Mr. Nyhart. I have with me Daryl Dean, my colleague, who is an officer of our firm, director of our firm, and a fellow of the Society of Actuaries as well as a member of the American Academy of Actuaries.

I am president of the Howard E. Nyhart Co. I am a lawyer. I have taught and lectured extensively.

Our firm represents approximately 1,000 employers of various sizes in the employee benefit area.

I would like the full text of my statement to be submitted for the record.

Senator Taft. It will be printed at the end of your testimony.

Mr. Nyhart. I will highlight it extemporaneously and cover certain things which I think are rather unique.

First of all, we feel that Senate bill 3598 falls short of accomplishing objectives of strengthening the private system, and we think it is too restrictive in others. First of all, it establishes an office of pension and welfare plan administration. This is an additional department requiring more manpower and expense at the Federal level and more reporting and administrative expense for each private plan. It is our suggestion that it is not necessary.

The Welfare and Pension Plans Disclosure Act requires complete and annual disclosure to the Secretary of Labor of the financial operations of private pension and profit-sharing plans. We feel if it is necessary, this could be strengthened, but a new agency or office is not necessary.

The Internal Revenue Service presently determines whether plans are designed and written in such a manner as to qualify for favorable tax treatment. If additional requirements are necessary, why we think that they could be handled and the penalty for failure to comply with new requirements would simply be disqualification of tax favored treatment of the plan. We think that those kinds of situations can be handled with little or no additional cost either at the Federal level or for plan administrators through an expansion of current reporting and enforcement procedures.

We feel that whatever legislation that there be should provide for no exceptions for union plans; no exceptions for small employer plans; no exceptions for plans for the self employed; and no exceptions for religious and charitable organizations. And most important of all, no exceptions should be made for plans already in existence on the date of the legislation.

In other words, while we feel proper legislation can be developed which will treat all plans alike, and we feel that portions of Senate bill 3598 would seem to violate some of these provisions of uniform application and simple but effective administration, and it does create administrative complexities by expanding reporting requirements, by exempting certain plans, by exempting from vesting provisions, accrued benefits under plans, by allowing a 3-year delay in compliance with vesting or funding requirements, if they are unduly burdensome and the like. The vesting and funding requirements of the bill include maximum eligibility requirements that an employer can require by allowing an employee to participate.

It requires participation upon the later of age 21 or 6 months service. We feel that an employee cannot be considered a permanent employee after meeting these requirements. We suggest that an employee could fairly be considered a permanent employee after 3 years of employment and age 25. We feel that these should be the required eligibility standards for an employee to participate in the plan.

Pension credit could be given for early years of employment before meeting these requirements, but the employer is relieved from the duty of keeping pension records for very short-term employees. Also—and I think this is significant and has not been covered to my knowledge very adequately—the bill makes no provision for what I consider to be an absolute necessity in adequate pension reform. That is with respect to employees hired at older ages. Many pension plans exclude employees hired after age 55 or 60 or some higher age. This practice would be allowed to continue under the bill, and we feel it should be. We should encourage mobility among older employees, not only by adding vesting under the pension when they leave, but by requiring that they participate in the plan of any new employer.

Now we should look at the funding problem. We feel that this can be overcome simply by allowing plans to require 10 years of participation for a full benefit. This is sufficient time for the employer to fund his benefit without a burdensome cost and yet does not eliminate employees from the plan entirely. When combined with minimum vesting provisions, this would add benefit security and encourage mobility among that segment of the work force who are near to retirement.

Now we feel also very strongly about the vesting schedule which is proposed by 3598. It seems to be a compromise, and not adequate. We feel that vesting should be weighted in favor of older employees as well as in favor of long service employes.

Second, we feel that any vested benefit should be stated in terms of an employee's full accrued benefit under the plan for all years of service with his present employer. There is no added benefit security under S. 3598 for employees in advanced age.

That bill vests only a percentage of benefits accrued after date the legislation is effective. We feel you can give credit for full accrued benefits under existing plans.

Third, consideration should be given to the employer's ability to fund for vested benefits. The employer's funding schedule should be tied to the concept that any employer could accept, and that he should be allowed 10 years of employee's participation to fully fund his benefits. This corresponds closely with our previous proposal of allowing an employer 10 years to fund benefits for older employees. So we propose the following:

Vesting should be required when employee's age plus his years of participation, after the date of this legislation, equals 50, but that his vesting be based on his full accrued benefit for all service, and that initial vesting percentage be 10 percent, increased by 10 percent for each additional year of participation. It is a slightly different twist, but I think it would allow us to have the same standards applied to existing plans as for plans to be adopted after the effective date of the legislation.

The proposed bill includes minimum funding requirements. It requires that normal service costs be met annually and unfunded initial liabilities on effective date must be funded over 40 years. We grant that this is not a strict requirement. We feel there is no purpose for it. It merely adds administrative headache to the regulating agency and to pension plan sponsors.

Now we feel the benefits can be made secure by guaranteeing upon termination of employment by vesting and also by guaranteeing them upon termination of the plan by some reinsurance system, so if we have reinsurance and we have vesting, we feel that no minimum funding requirements are necessary.

Another feature of S. 3598 is portability of vested pensions, whereby the value of vested pensions could be paid to a central portability fund and subsequently transferred to another fund or used to purchase annuity contracts from an insurance company. This feature, we feel, like minimum funding provision, is unnecessary. If a person has a vested pension, it is of little significance from whom he receives his payment. With adequate vesting requirements, portability loses its significance and should be elminated from the bill.

Administrative problems arise, and one example of this could be when the value to be transferred to the central fund for a certain vested pension is greater than the amount required to provide identical benefit to a trust fund or annuity contract.

Well, to go on, we should like to emphasize the positive feelings about some parts of this bill.

Senator TAFT. Let me interrupt to ask you about your statement that no minimum funding requirements are necessary. Is it possible to have reinsurance of a plan without having a minmum funding requirement?

Mr. NYHART. Yes, sir. We feel that if there is reinsurance of the difference between the vested accrued benefit and the amount funded under the present funding arrangementsand taking into consideration the present rules that IRS has set up and the requirements for restrictions against benefits paid out under 5717 rules, under early termination, we feel that so long as you only reinsure the accrued vested unfunded—accrued vested benefit under our suggestions, then minimum funding is not necessary other than what is required under IRS rules.

The bill requires that a certificate of rights be issued to each terminating participant who has vested rights. We believe this is absolutely necessary, and it was properly included in any pension reform bill. It further requires that insurance be obtained for any unfunded vested liability. Here we are suggesting the vested liabilities as we have outlined through a private pension plan termination insurance system.

These features have a great measure of security to employees' benefits without disrupting operation of existing plans. This seems to preclude any need for stating the order of priorities for distribution of assets upon plan termination which the bill includes. In other words, if we adopted our suggested vesting schedule and had reinsurance, we feel that the benefits that would be made available under any circumstances would be equal to or greater than the rights that he would have for—in the event of termination of the plan, would be similar to the ones he would be entitled to if he quit for any other reason.

In other words, what we are trying to do is make one vesting arrangement apply to the individual's right regardless of why he terminated, to plan termination, or individual termination for any other cause. The disclosure requirements of S. 3598 are well intended and serve to create effective control of the bill's provisions. They are a bit cumbersome and probably could be reduced if, as we suggested, the new Office of Pension and Welfare Administration is not established. The requirement involving disclosure of the plan's provisions to employees is sound and in fact already an integral part of most plans and administrative procedures.

Fiduciary standards of the bill are certainly in the interest of pension participants and we favor it. Now one thing we feel, and I understand that it is not within the scope of this bill, we feel that individuals should be encouraged to save for retirement. Otherwise, they may rely too heavily on the public system and employer provided retirement income. We feel ways that if private plans can now require up to 6 percent of employer contributions, plus allow additional 10 percent of voluntary contributions for private pension plan, then we feel that up to 16 percent of an employee's contribution to private plans should be deductible from the employee's gross pay.

The tax avoidance possibility is not great. It is a delay of the payment of tax. We feel it is advantageous to consider this.

In summary, we would like to present an outline of the provisions that we feel should be included in pension reform:

One, eligibility for coverage should be expanded to include all permanent employees, even older employees, with an allowance that a plan could require 10 years' participation for a full benefit. A permanent employee would be one who has 3 years' service and is 25 years old.

Second, minimum vesting standards should be weighted for age and service and should increase gradually. When a participant's age plus his years of participation, after the effective date of legislation, total 50, he would be 10 percent vested in his benefit accrued for all his years of service. Vesting would increase by 10 percent for each additional year of participation.

Third, the excess of vested liabilities over assets should be insured as provided in the present bill, but we feel that these vested liabilities should be in accordance with our different vesting schedule.

Fourth, the disclosure requirements of S. 3598 should be applicable, except they might be reduced to reflect that no new department or regulating agency would be established. They are completely appropriate as concerns disclosure of a plan's provisions to employees.

Fifth, that fiduciary standards would apply as drafted in the bill.

Sixth, either as a part of this bill or within the framework of the Internal Revenue Code employee contributions to private plans would be deductible after 16 percent of pay.

We feel that no new department is necessary. We feel that portability of benefits is not necessary. We feel that minimum standards, funding standards, over and above what those that are now required, are not necessary.

In regard to any and all of these provisions, it is significant that, one, no major changes should be made in the manner of regulating private plans. Second, all private plans should be treated alike—those in existence now and in existence in the future. Employees would receive the same benefit whether by termination of employment or by termination of the plan. Next, none of the features is redundant and each is essential.

Finally, each serves to meet the objectives which we have set forth, which is to safely expand private pension sector of our economy.

Gentlemen, thank you very much. I have appreciated the opportunity to express our views before your committee.

Senator TAFT. Thank you very much, Mr. Nyhart, for appearing here. At one point I believe in your testimony you indicated that you felt that the exemption in some plans of employees taking employment over a certain age should be eliminated?

Mr. NYHART. Yes. I think it should be. I think if you permit the employer a reasonable time to fund the benefit, it would be a small benefit, but it would be made available and a 10-year period we feel is reasonable time to fund that.

Senator TAFT. Do you not think that would militate against the retirement of older workers, the employment of older workers? Is not one of the incentives in employment of older workers the fact or at least—perhaps not incentive but at least not a disincentive that would otherwise exist, the fact that they would not have to be picked up by a pension plan?

Mr. NYHART. Theoretically at least under the present labor laws, they are not to discriminate against older workers.

Senator TAFT. I think your adjective is well chosen. I think practically the problem exists. I have so many complaints that I think it is quite a serious problem and one that we certainly have to take into consideration here. On the other end of the spectrum, do you see any discrimination against younger workers in not permitting them to get credit for service prior to 25?

Mr. NYHART. We would allow, when they did become eligible, and we think it is right and proper that a plan give credit for those years of employment prior to a specific age, if the employer wants to. But the problem is the ins and outs among temporary employees who have not established any permanency. We think it is just a bookkeeping problem that is not necessary to undertake.

We think funding need only start after a certain amount of permanency is established.

Senator TAFT. No other questions?

Mr. GORDON. Mr. Nyhart, one of your major proposals seems to be similar to that proposed by others here this morning, and that is that vesting be applied retroactively. That is to say that the bill would pick up preenactment service as well as post-enactment service. Do you have any idea at all as to what the costs would be in that regard? I think all the cost estimates that we have so far on both the administration's proposal and this proposal and Senator Javits' proposal, S. 2, are all based on picking up only post-enactment service.

Do you have any estimates?

Mr. NYHART. I would defer to my colleague who is a fellow of the Society of Actuaries and let him develop that.

Mr. DEAN. We do not have any specific figures. I can only state in generalities and compare our proposal to the Javits-Williams bill. Costs under the Javits-Williams bill would increase starting from zero on the date of the legislation and would probably level off at a peak amount, it may be 40 years when you have the full work force fully covered by the vesting provisions. At that time the cost of the Williams-Javits bill would be greater than what we propose.

However, our proposal would start with a gradual increase in cost, which increase for about 10 years and then level off.

In other words, it would increase more rapidly but stop sooner, so that we really cannot relate dollars and cents figures costs. We can only say that ultimately the Williams-Javits bill will cost more. Initially ours would cost more.

Mr. GORDON. Do you see any problem costwise in connection with your proposal for those employers who have plans with no vesting at the present time and have relatively mature work forces?

Mr. DEAN. The proposal itself is designed so that vesting increases at a rate of 10 percent per year. That is the maximum additional vesting for any one individual. Ten percent per year from the date of legislation. By eliminating some of the people who are vested—would be vested in the Williams-Javits proposal, cuts it back somewhere, but anyone who is, let us say over age 50, they will begin to vest immediately at 10 percent a year instead of the real rule of 50, which says that when age plus service is 50, you get 50 percent, there is a tremendous jump, if you are to apply that to the ful accrued benefit. If you apply a gradual 10 percent a year to the full accrued benefit, I do not think you are going to see a tremendous balk by the corporate society at the costs.

Senator TAFT. At this point, because we have a rollcall which I have to make, I am going to call the hearings to an end today.

Thank you again very much, gentlemen. I do think some of your suggestions are very interesting ones. I would appreciate it if we might leave the record open so that questions may be submitted in writing to you.

Mr. NYHART. Fine. We would be appreciative of that opportunity, and any other thing that we can do to further elaborate on our proposals, some of which we think are rather unique.

(The prepared statement of Mr. Nyhart follows:)

STATEMENT BY ELDON H. NYHART

BEFORE THE

SENATE SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND

PUBLIC WELFARE

CONCERNING S.3598, THE

"RETIREMENT INCOME SECURITY

FOR EMPLOYEES ACT OF 1972"

82-079 O - 72 - pt. 3 - 9

Mr. Chairman and Members of the Committee.

You are hearing today statements concerning a subject which is very dear to the working individuals and taxpayers of this country. The operation of our private pension system is increasingly becoming the subject of criticism by public-minded individuals. There is no doubt that this country's private pension system must be improved and strengthened to overcome the valid criticism it has received. Reform of our private pension system must first overcome its present inadequacies, but almost as important, these inadequacies must be overcome in a manner which encourages the continued growth of private pensions.

Any pension reform legislation can and should accomplish three broad objectives:

First - It should broaden the coverage of our working population under private pensions.

Second - It should add a measure of security to the pension benefits these employees have earned.

Third - It should result in greater individual savings for retirement to enhance the retirement income from public and employer programs.

These three objectives can be accomplished without the expense of significant additional involvement by agencies of the federal government. We can accomplish our objectives, and still assure compliance, by making only minor changes in the present reporting and enforcement procedures already established for private pension plans.

I should like to take this opportunity to outline to you ways in which Senate Bill S. 3598 falls short of accomplishing these objectives in some respects and is too restrictive in others.

Senate Bill S. 3598 establishes an Office of Pension and Welfare Plan Administration. This is an additional department requiring more manpower and expense at the federal level and more reporting and administrative expense for each private plan. An additional department duplicates the effort of regulating private plans presently shared by the Department of Labor and the Internal Revenue Service.

The Welfare and Pension Plans Disclosure Act currently requires complete and annual disclosure to the Secretary of Labor of the financial operations of private pension and profit-sharing plans. If additional legislation affects these or other operating procedures of such plans, it is only proper and consistent that the Secretary of Labor be responsible in a similar manner for administration and enforcement of the additional requirements. For instance, if plans are required to insure vested liabilities which are in excess of assets, proof of such insurance should be a part of the regular report required annually by the Secretary of Labor.

The Internal Revenue Service presently determines whether plans are designed and written in such a manner as to qualify for favorable tax treatment. Any federal pension legislation which requires specific provisions as a part of the plans themselves could easily be enforced by the I.R.S. Just as some special provisions are now required in order to qualify a plan for favorable tax treatment, so, also, could additional provisions be required, such as vesting provisions or limitations on which employees can be excluded from coverage. The penalty for failure to comply with new requirements would simply be disqualification of the plan for favorable tax treatment - a significant matter for most plans.

Little or no additional cost would be involved either at the federal level or for plan administrators through an expansion of current reporting and enforcement procedures.

I believe that any pension legislation should be consistently applicable to all private pension plans:

- no exceptions should be made for union plans,
- no exceptions should be made for small employer plans,
- no exceptions should be made for plans for the self-employed,
- no exceptions should be made for plans administered by religious organizations
- and most important of all, no exceptions should be made for plans already in existence on the effective date of the legislation.

All private plans should be treated alike if we are to have effective reform; all private plans must be treated alike if we are to avoid the cumbersome administrative complications which could discourage the growth of private pensions; and all private plans must be treated alike if we are to avoid discriminatory loopholes in the law.

Senate Bill S. 3598 would seem to violate these principles of uniform application and of simple but effective administration. The Bill creates administrative complexities by expanding reporting requirements, by exempting certain plans, by exempting from vesting provisions the accrued benefits under existing plans, by allowing a 3-year delay in compliance with vesting or funding requirements if they are unduly burdensome, and by providing exceptions to funding the required contributions if an employer cannot meet the requirement. Adoption of this Bill, as it is now drafted, could have a discouraging affect on the adoption of plans and the strengthening of the private pension sector of our economy.

The Vesting and Funding Requirements of S. 3598 include maximum eligibility requirements that an employer can require before allowing an employee to participate. It requires participation upon the later of age 21 or 6 months service. What purpose can such strict requirements serve? An employee cannot be considered a permanent employee after meeting these requirements. To include all employees in a plan after such requirements is tantamount to having no eligibility requirements at all. Private Retirement programs should be created for the benefit of employees who may be considered by the employer to be reasonably permanent, unless more liberal requirements are negotiated through collective bargaining. Employers should not be required to fund benefits for employees who have not demonstrated the permanent nature of their employment. I feel, generally, that an employee has established his permanence after 3 years of employment and age 25. These should be the required eligibility standards for an employee to participate in a retirement plan. Pension Credit can still be given for the early years of employment before meeting the requirements, but the employer is relieved of the duty of keeping pension records for very short term employees.

Furthermore, the Bill makes no provision for what I consider to be an absolute necessity in adequate pension reform - that is with respect to employees hired at older ages. Many pension plans exclude employees hired after age 55 or age 60, or some other higher age, in order to keep the employer cost of providing pension benefits down. This practice would continue to be allowed under this Bill. It should not. We should encourage mobility among older employees; not only by adequate vesting under the pension plan they leave, but by requiring that they participate in the plan of any new employer. There is something to be said in favor of employers' reluctance to hire older employees if they must enter into costly funding for his retirement income. This can be overcome simply by allowing plans to require 10 years participation for a full retirement benefit. This is sufficient time for an employer to fund his benefit without a burdensome cost and yet does not eliminate the employee from the plan entirely. Permission for plans to have maximum age exclusions should be eliminated. A full pension could be allowed after 10 years of participation. When combined with minimum vesting provisions this would add benefit security and encourage mobility among that segment of the work force near retirement.

The Vesting Schedule proposed by S. 3598 seems to be a compromise between several previous bills, none of which was adequate. It provides 30% vesting after 8 years of service and 10% for each additional year of service. Why 30% and why 8 years?

This portion, more than any other part of pension legislation, must have a purpose. It must be designed to meet the objective of providing reasonable termination benefits without an undue cost burden. There are several concepts that automatically suggest a vesting provision somewhat different than the one in S. 3598.

First, vesting should be weighted in favor of older employees, as well as in favor of long-service employees. I believe that the shortness of an employee's service until retirement is as important as the length of the time since he was hired. These criteria are met by setting the time of vesting in terms of the sum of age and years of participation in a plan. When an employee's age plus his years of participation total 50, I believe vesting should begin.

Secondly, any vested benefit should be stated in terms of an employee's full accrued benefit under the plan for all years of service with his present employer. There is no added benefit security under S. 3598 for employees now at an advanced age. That bill vests only a percentage of the benefits which are accrued after the date legislation is effective. Viewed from the eyes of a 60-year old employee with 30 years of service, it is misleading to title this Bill - "Retirement Income Security for Employees Act". Little retirement income security is provided the present working generation by vesting only benefits earned after the effective date of legislation.

Thirdly, consideration should be given to the employer's ability to fund for vested benefits. Little is given in the provisions of S. 3598. The employer's funding schedule should be tied to the concept that any employer could accept and should be allowed 10 years of an employee's participation to fully fund his benefit. This corresponds closely with the previous proposal allowing an employer 10 years to fund a benefit for an older employee.

Now, in light of the above, just what vesting provisions should be required:

- so adequate weight is given to age as well as service,
- so the present older working population is not ignored,
- so employers can fund for vested benefits on a regular basis?

We propose the following: That vesting be required when an employee's age plus his years of participation after the date of this legislation, equals 50; that his vesting be based on his full accrued benefit for all service, and that the initial vesting percentage be 10%, increasing by 10% for each additional year of participation.

The proposed Senate Bill S. 3598 includes minimum funding requirements. It requires that normal service costs must be met annually and initial unfunded liabilities on the effective date must be funded over 40 years. While this is not a strict requirement by any means, there seems to be no purpose for it. It merely adds an administrative headache to the regulating agency and to pension plan sponsors. No benefit security is added by minimum funding requirements if vesting is required and if the unfunded vested liabilities must be insured. How can benefits be any more secure than to guarantee them upon termination of employment (by vesting) and also to guarantee them upon termination of the plan (by insurance). I recommend that there be no minimum funding requirements on the basis that it serves no useful purpose.

Another feature of S. 3598 is portability of vested pensions whereby the value of vested pensions could be paid to a central portability fund and subsequently transferred to another fund or used to purchase an annuity contract from a life insurance company for the participant. This feature, like the minimum funding provision, is unnecessary. If a person has a vested pension it is of little significance from whom he receives his payment. With adequate vesting requirements, portability loses its significance and should be eliminated from this Bill. Administrative problems arise with a central portability fund when the value to be transferred to the central fund for a certain vested pension is greater than the amount required to provide an identical benefit through a trust fund or an annuity contract.

My negative attitude regarding S. 3598 is only with respect to those provisions I already discussed. I should like to emphasize my positive feelings about some other parts of this Bill.

This Bill requires that a certificate of rights be issued to each terminating participant who has vested rights. I believe this is absolutely necessary and is properly included in any pension reform bill.

It further requires that insurance be obtained for any unfunded vested liabilities through a Private Pension Plan Termination Insurance Program. These features add a great measure of security to employees' benefits without disrupting the operation of existing plans. This seems to preclude any need for stating the order of priorities for distribution of assets upon plan termination, which the bill includes.

The Disclosure requirements of S. 3598 are well-intended and serve to create effective control of the Bill's provisions. They are a bit cumbersome and probably could be reduced if, as I suggested, the new Office of Pension and Welfare Plan Administration is not established. The requirement involving disclosure of the plan's provisions to employees is sound and in fact is already an integral part of most plans' administrative procedures.

The Fiduciary Standards of this Bill are certainly in the interests of pension participants. While most fiduciaries now operate well within these standards, it is wise to require that all of them do so. Again, this meets one of the basic objectives of pension reform - to make benefits more secure.

I have criticized some portions of this Bill and praised others and with good reason in both instances. But, there is a very important objective which the Bill does not meet. S. 3598 provides absolutely no additional incentive for individual savings toward retirement. This is an important factor which can have a definite impact on whether pension reform is a positive measure or is negative. Although, perhaps, not within the scope of this Bill, individuals must be encouraged to save for retirement, otherwise they rely too heavily on public and employer-provided retirement income.

The most effective means of encouragement is to give tax deductions for individual savings for retirement. This is not entirely a tax loss to the federal government, but merely a tax deferal. Retirement income from individual tax deductible savings would be taxable when received as retirement income, thus placing it on an equal basis (tax-wise) as employer contributions to pension plans. Presently, private plans can require up to 6% employee contributions, plus they can allow an additional 10% voluntary contribution by the employee. It is my suggestion, therefore, that employee contributions to private plans be deductible up to 16% of the employee's gross pay.

In summary, I should like to present an outline of provisions that should be included in pension reform:

First - Eligibility for coverage should be expanded to include all permanent employees (even older employees) with an allowance that a plan could require 10 years participation for a full benefit. A permanent employee would be one who has 3 years service and is 25 years old.

Second - Minimum vesting standards should be weighted for age and service and should increase gradually. When a participant's age plus his years of participation (after the effective date of legislation) total 50, he would be 10% vested in his benefit accrued for all his years of service. Vesting would increase by 10% for each additional year of participation.

Third - The excess of vested liabilities over assets should be insured as provided in S. 3598.

Fourth - The Disclosure reauirements of S. 3598 would be applicable except they might be reduced to reflect that no new department or regulating agency would be established. They are completely appropriate as concerns disclosure of a plan's provisions to employees.

Fifth - The Fiduciary Standards of S. 3598 would apply, as drafted.

Sixth - Either as a part of this Bill or within the framework of the Internal Revenue Code employee contributions to private plans would be deductible up to 16% of pay.

Last, but not least, several items would not be included because they appear to be unnecessary. These are:

- a new department to regulate and enforce the Bill
- portability of vested benefits
- minimum funding standards

With regard to any and all of these provisions, it is very significant that:

- no major changes should be made in the manner of regulating private plans,
- all private plans should be treated alike,
- employees would receive the same benefit whether by termination of employment or by termination of the plan,
- none of the features is redundant and each is essential,
- and, finally, each serves to meet the objectives initially set forth while encouraging the growth of private plans.

Gentlemen, I thank you for this opportunity to present my views. I hope they are helpful.

Senator TAFT. Thank you very much. The meeting is adjourned.

(Whereupon at 2 p.m. the subcommittee was recessed, to reconvene at 9:30 a.m. on Thursday, June 29, 1972.)

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT, 1972

THURSDAY, JUNE 29, 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 9:40 a.m., in room 1202, New Senate Office Building, Senator Harrison A. Williams, Jr., chairman, presiding.

Present: Senators Williams, Pell, Eagleton, Javits, Schweiker, and Taft.

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

The CHAIRMAN. The subcommittee on Labor will be in session.

We have had 6 days of hearings on this legislation. This is our last full day of hearings, and it is most fitting that our witnesses today come from labor leadership. This is really the keystone day of our hearings on this vital legislation.

Before I introduce Mr. Biemiller and President Abel I will turn to my colleagues, Senator Javits and then Senator Schweiker, for opening remarks on this historic day of the end of formal hearings on this legislation.

Senator JAVITS. Mr. Chairman, no one welcomes this day more than I. It is the culmination of 6 years of work and marks a capstone of the close collaboration between the chairman and myself and other members of the committee.

I am especially gratified that labor has fully awakened to both the inadequacies of the private pension system and the legislative means for correcting it. I think this is evidenced by the testimony of the great labor federation through our former colleagues, Mr. Biemiller, and the testimony of one of the truly great unions, not only in our country but throughout the world, through its very distinguished president, Mr. I. W. Abel. I am looking forward with great interest to hearing the views of both the federation and the steelworkers.

The CHAIRMAN. Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman.

First I would like to say I am pleased to be here on the last day of the hearings. I compliment the chairman, Senator Williams, for his leadership in this area, as well as Senator Javits. I am proud to be a cosponsor of their bill.

I want to say that the leadership of Mr. Biemiller, of the federation, and Mr. I. W. Abel, of the steelworkers—and I see a good many of my

82-079 O - 72 - pt. 3 - 10

Pennsylvania steelworkers here—was extremely instrumental in stirring up grassroots interest in this whole pension effort.

We owe a debt to both of these great leaders for their interest. I am pleased to be here along with the other senators.

The CHAIRMAN. Thank you very much, Senator Schweiker. I think the record should reflect at the outset that we changed our meeting room this morning from the regular Senate Labor Committee room to the Appropriations Committee room which is about five times the size, to accommodate an overflow group of concerned citizens from many unions. Probably most of those present are from the Northeast. We certainly welcome all of you to this hearing, and we look forward now to the statement of Andrew J. Biemiller, who is director of the Department of Legislation of the AFL-CIO.

STATEMENT OF ANDREW J. BIEMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION, AFL-CIO, ACCOMPANIED BY RICHARD SHOEMAKER, ASSISTANT DIRECTOR, SOCIAL SECURITY DEPARTMENT, AND KENNETH A. MEIKLEJOHN, LEGISLATIVE REPRESENTATIVE

Mr. BIEMILLER. Thank you, Mr. Chairman. I am accompanied today by Mr. Richard Shoemaker, assistant director of our social security department, and Mr. Kenneth A. Meiklejohn, one of our legislative representatives.

We appreciate this opportunity to appear before you to present our views with regard to S. 3598, the Retirement Income Security for Employees Act, which has been introduced by you and Senator Jacob Javits, and most of the other members of the Senate Committee on Labor and Public Welfare.

The purpose of S. 3598 is to broaden and strengthen the rights of participants and beneficiaries in employee welfare and pension benefit plans. The bill proposes to accomplish these purposes by establishing minimum Federal standards of vesting and funding for pension plans and by establishing a private pension plan termination insurance program to protect the vested pension benefits of employees against loss caused by the bankruptcy of their employer. S. 3598 would also establish minimum standards of fiduciary conduct for persons occupying positions of trust in any health, welfare, or pension plan. Such standards would include the prudent man rule for evaluating the conduct of trustees with regard to investments and other financial transactions of employee benefit plans.

Mr. Chairman, the AFL-CIO supports minimum Federal standards for employee pension benefit plans. The principles which we believe should be included in any legislation establishing such standards were set forth in a resolution on "Proposals for Federal Legislation to Regulate Health, Welfare, Pension and Profit Sharing Plans" which was adopted by the Seventh Constitutional Convention of the AFL-CIO in December 1967. The views set forth in this resolution continue today to express the principles and policies of the AFL-CIO with respect to legislation in this most important field. I would like to ask that this resolution, a copy of which is attached to my statement, be incorporated in the record as part of my testimony.

The CHAIRMAN. It certainly will be inserted at the end of your testimony.

Mr. Biemiller. I would also like to read a portion of it into the record at this point, as follows:

While the issue of fiduciary responsibility relates to health and welfare plans as well as to private pension and profit-sharing plans, the vast aggregates of money in pension and profit-sharing plan reserves present special problems. At a minimum, serious conflicts of interest may arise where employers directly or indirectly control both the assets of a pension or profit sharing plan and a business enterprise in which they can be invested without regard to the interests of plan participants. Seventy-seven percent of all pensions and profit-sharing plans are unilaterally administered by employers, 20 percent are jointly administered through a joint labor-management board of trustees and only 1 percent are administered by unions.

Where retirement benefits under private pension and profit-sharing plans originally represented a relatively modest supplement to social security, some plans now provide a retirement annuity greater than a worker can expect to receive from the OASDI program. Private pension and profit-sharing plans provide, therefore, a significant and growing part of the retirement income expectations of workers.

Unfortunately, these expectations too often do not materialize. Some employers have failed to administer pension and profit-sharing trusts for the exclusive benefit of the beneficiaries and have used plans reserves for corporate expansion and for other corporate purposes. There is some question whether state trust laws, which greatly vary in their provisions, are sufficiently applicable to pension plans which are unilaterally administered by the employer. Many workers fail to qualify for a pension because of their inability to meet length of service or vesting requirements established under private pension and profit sharing plans. Workers have also lost their rights to a pension because of business failures, mergers and acquisitions.

Because of business failures, as well as plant shut-downs in firms continuing to operate, a small but significant proportion of employees covered by private pension plans have lost not only their jobs but also their earned rights to pensions. Others have been similarly victimized when their employers have been delinquent in making previously stipulated contributions to pension funds thereby seriously jeopardizing the soundness and stability of the trust. Still others have lost their pension rights when runaway employers, often encouraged by plant piracy through tax-free industrial bonds, have moved their operations to other communities.

In contrast to Social Security, pensions financed under the private system involve inherent risks which are not applicable to the nearly universal public Old Age and Survivors Insurance Program. Under Social Security, OASDI credits continue to accrue to the employee regardless of the frequency of his job changes. Social Security taxes are held in one pooled trust fund for the exclusive benefit of the beneficiaries. It is a soundly financed system backed by the credit of the United States. The goal of an adequate retirement income for most working people would best be met by substantial improvements in Social Security that would truly meet the retirement needs of American workers. Private pension plans can significantly supplement, but they are not a substitute for, an adequate social security system. Private pension plans will therefore continue to play an important role in the aspirations of American workers for an adequate retirement income.

The problems outlined by the 1967 Convention are still with us today. This is why we welcome the opportunity of presenting our views on this important legislation.

During the past few years a number of bills to improve and strengthen the reporting requirements of the Welfare and Pension Plans Disclosure Act, to impose standards of fiduciary responsibility on administrators of health, welfare, and pension plans and to establish minimum Federal standards of vesting and funding and a reinsurance program to protect the interests and benefits of employees participating in such plans have been introduced in the Congress, and periodic hearings have been held before the interested committees of Congress. In our opinion, S. 3598, which represents the results of the studies and hearings accorded these various legislative proposals, contains substantial improvements over any of the other bills we have seen thus far. S. 3598 contains the following provisions which we have long advocated. In the earlier bills one or more of these provisions were generally lacking.

1. The Department of Labor would administer the law. This is important because the legislation concerns itself with employee benefit plans. It therefore seems axiomatic that the Secretary of Labor should have the responsibility for administering the law.

2. The bill rightly limits the authority of the Secretary to conduct investigations into the affairs of employee benefit plans without a showing that there is reasonable cause to believe that a violation of the law is taking place. The broad investigatory powers of the Secretary under the Landrum-Griffin Act have been used to conduct "fishing expeditions" with no substantive evidence that any violations of the law would be revealed. This authority under the Landrum-Griffin Act has resulted in the harassment of honest union officials to no useful purpose. We oppose extension of such authority to employee benefit plans, and therefore support the investigatory provisions of S. 3598.

3. S. 3598 would also preempt State laws covering employee benefit plans. Many, if not most, employee benefit plans cover workers in many States. The administrative cost of complying with many State regulatory agencies would be most burdensome if this provision were not included in any bill reported out by this committee.

While S. 3598 is, in our opinion, the best bill before the subcommittee, we believe it could be further improved. We have the following suggestions which, if adopted, would further the objectives of the legislation and improve the possibility of early enactment of the bill.

Title II of S. 3598 establishes standards of vesting and funding for pension and profit-sharing plans. In our opinion, insufficient distinction is made in the bill between single and multiemployer plans. This is particularly true for the vesting standard which provides that 30 percent of the accrued pension rights of a beneficiary be vested after 8 years of service with an additional 10 percent each year thereafter until 100 percent vesting is attained after 15 years of service. Although we cannot cite any definitive study that proves the point, it is our contention that the proportion of workers who can expect to ultimately receive a pension is much higher among multiemployer plans than it is among single employer plans even where there is a substantial difference in the vesting requirement as between the two types of plans.

The reason for this is that employees continue to accrue pension benefits in a multiemployer plan as they transfer jobs from one employer to another. Many multiemployer plans are national in scope. The International Ladies' Garment Workers Union, the International Typographical Union, the Bakery and Confectionery Workers, the Marine Engineers Beneficial Association have national programs as do many of the building trades such as the Sheet Metal Workers, the Roofers, the Laborers and the Electrical Workers. Other unions such as the Amalgamated Clothing Workers, the Carpenters and the Operating Engineers have worked out reciprocity agreements between their local area multiemployer plans so that their members accrue pension credits wherever they may work.

As early as 1968, the Monthly Labor Review of the U.S. Department of Labor reported that "At least half of the members of multiemployer plans are either in plans which are national in scope or in regional plans which permit reciprocity." Since then, reciprocal agreements have expanded.

It is our concern, therefore, that mandating a single vesting standard for both single and multemployer plans will inhibit the highly desirable movement toward reciprocity between multiemployer plans.

The 1967 convention resolution on employee benefit plans was adopted by the AFL–CIO after an indepth study of the problem was conducted by a special committee of the AFL–CIO executive council. This subcommittee was under the chairmanship of I. W. Abel, president of the United Steelworkers of America. The subcommittee was assisted by two technical committees. Many meetings were held. It was the conclusion of the special subcommittee that single and multiemployer plans were quite different and that standards that might be appropriate for one would not be appropriate for the other.

The 1967 convention resolution stated:

> The pension credits of workers covered by a multi-employer plan are portable as between different participating employers. Whether financed by employer contributions, joint contributions or solely out of union dues, such plans provide continuing coverage for workers remaining in the plan's jurisdiction regardless of where they work. Moreover, the bankruptcy of one employer in a multi-employer plan does not affect the solvency of the pension trust. Thus, a multi-employer plan continues to protect the rights to benefits of workers who may lose their jobs because of the shutdown or failure of their participating employer but who continue to be covered by the plan through employment with another participating employer. Because of these built-in safeguards in multi-employer plans, standards of vesting and funding required for single-employer plans are not appropriate for multi-employer plans. . . .
>
> *Resolved:* The AFL–CIO favors the inclusion in private pension plans of adequate and appropriate vesting and funding provisions. To provide adequate safeguards to workers covered by single-employer plans we favor Federal legislation establishing minimum requirements of vesting and funding. Because multi-employer plans, whether financed by employer contributions, joint contributions or solely out of union dues, contain built-in safeguards for the pension rights of workers covered by them, any such legislation should exempt multi-employer plans.

The vesting standards outlined in the bill appears to us to be an attempt to bridge the fundamental difference between single and multiemployer plans. As such, however, the standard is not strict enough for single-employer plans and too strict for multiemployer plans. We urge a 10-year vesting standard for single-employer plans and exemption of multiemployer plans.

We recognize that two single employers might form a multiemployer plan for the purpose of evading the vesting and funding standards of the bill. We suggest that the definition of a multiemployer plan be more carefully drawn than it is in section 3(32). The definition of a multiemployer plan in S. 2, introduced by Senator Javits, would, in our opinion, be more appropriate than the definition in S. 3598.

Title IV establishes a plan termination insurance program to insure beneficiaries of private pension plans against loss of their vested benefits when their plan is terminated. The program guarantees such rights for an annual premium not to exceed .2 percent of a plan's unfunded liability for vested benefits, with certain limitations.

The AFL–CIO strongly endorses this insurance program. As stated in the 1967 resolution—

The AFL–CIO re-affirms its policy position in favor of pension reinsurance adopted in the 1963 and 1965 Conventions and calls upon Congress to pass legislation providing at reasonable cost protection to workers against the loss of pension rights.

However, we are disappointed that S. 3598 would only protect the earned retirement credits of workers after enactment of the bill. As we read the bill, this would leave uninsured all accrued pension credits of all workers in all plans in existence today. Many older workers would have no protection of benefit rights accrued prior to enactment of the bill. Only younger workers entering the labor force after the bill is enacted would have the assurance of receiving their full pension. We therefore urge that title IV be amended to insure all pension credits earned before as well as after the date of enactment.

Although not included in title IV, section 217(e)(1), (2), and (3) would also appear to have special significance in relation to the bill's proposed reinsurance program. This provision is new and not included in any other bill.

The purpose of the section would be to make a multi-employer plan whole were one or more employers to withdraw from the plan with the result of causing a significant reduction in the rate of aggregate contributions to the plan. We strongly support this provision.

We very much favor section 405 making employers liable for reimbursement to the insurance fund for insurance benefits paid out where such employers are not bankrupt. We also urge, however, that employers should be required to accord amounts due welfare and pension plans the same priority as wages under the Bankruptcy Act. As stated in the 1961 convention resolution on "Payments Due Welfare and Pension Plans a Priority Under the Bankruptcy Act.:

The AFL–CIO from its very inception has not only voluntarily sought to establish standards for the administration of these funds, but supported and continues to support legislation which is designed to conserve the assets of welfare and pension plans for the men and women for whose benefit they are intended. It is for this reason that we now favor the adoption of legislation which would serve to accord these payments to welfare and pension plans the same priority under the Bankruptcy Act that is now accorded direct wage payments made to workers. These payments to the welfare and pension plans from the assets of bankrupt employers not only serve to further the financial soundness of these programs, but more important, can serve to provide workers, and often times their dependents with the protection so vital to their peace of mind during a period when there is a loss of income, resulting from loss of jobs.

Such a provision would, in our opinion, make the insurance program more viable as it would prevent employers from establishing pension plans in anticipation of bankruptcy for the purpose of collecting insurance.

Title V of the bill amends the Welfare and Pension Plans Disclosure Act to accomplish the following:

1. Setting forth responsibilities applicable to persons occupying a fiduciary relationship to employee benefit plans, including a "prudent man" standard.

2. Adding to the reporting requirements in order to disclose more significant information about plans and the financial transactions engaged in by those controlling plan investments and operations.

3. Barring from responsible fiduciary positions all persons convicted of certain criminal offenses.

Existing law is clearly inadequate to provide protection of the interests of such employees. Section 302 of the Taft-Hartley Act purports to provide certain safeguards in the interest of beneficiaries of jointly administered health, welfare, and pension plans. Whether or not these safeguards are adequate, and lawyers do not agree as to this, it is clear that these safeguards do not apply to plans under unilateral administration.

It is also clear that while the common law of trusts as it is recognized in most States—requiring a trustee to carry out the purposes of the trust, act in good faith and exercise as much care and diligence as a prudent man would exercise in dealing with his own money—offers further protection, in practice this is not all certain. For example: (1) the plan may not be established as a trust; (2) the trust may be established only as a funding medium. In such cases the courts have leaned toward the view that an employee-beneficiary has contractual rights enforceable against the employer, but not as a beneficiary of the trust; (3) conventional trust law is generally not applicable to employer administrators who are not technically "trustees".

Another nonlegalistic difficulty is that few of those covered by these plans have the legal or financial knowledge required to discover breaches of trust.

For these reasons, the AFL–CIO favors a Federal fiduciary statute, enforceable through the Federal courts, which would give participants, beneficiaries, or their representatives and the Secretary of Labor the right to sue for appropriate remedies if the statute is violated.

Hence, we very much favor title V with the exception that we believe the list of crimes enumerated in section 15(h) is far too broad and would, in effect, bar many honest and conscientious labor officials from acting as a trustee of a health, welfare or pension plan. Our attorneys advise us that a person could be barred from holding a responsible position with a trust for having been convicted of participating in a civil rights demonstration in front of a courthouse or of disobeying a court injunction to cease picketing in a labor-management dispute.

Obviously, there are very sensitive points to organized labor, and we urge that section 15(h) be redrafted to apply primarily to violations of law relevant to the issues of fiduciary responsibility.

As indicated, we very much favor title VI because it lodges the primary responsibility for enforcement of the law with the Federal courts.

In conclusion, Mr. Chairman, we hope the subcommittee will carefully consider our suggested changes toward the goal of enacting a practical and workable bill that will protect the interests of the beneficiaries and our members in the private pension system while at the same time not unduly inhibiting the future growth of pension plans.

The CHAIRMAN. Thank you very much, Mr. Biemiller. We are more than grateful for this statement. I would certainly commend the AFL–CIO for its pioneering work in this whole area to bring an additional measure of economic security to private pension plans. You in your convention resolutions running back to 1963, 1965, 1967, espoused many of these ideas which I believe are incorporated in this bill.

Your statement suggests some changes that I will advocate in the Williams-Javits bill. Your last point particularly, listing as crimes the kind of activities you described, such as demonstrations, is particularly pertinent.

I would like to turn to Senator Javits before we continue further discussion.

Senator JAVITS. Mr. Chairman, I thank you. I wish to explain that I am managing on the floor with someone else the so-called poverty bill, and as a ranking member of the committee have to be upstairs to mark up a bill for the Consumer Protection Agency, all at the same time, so I hope that Mr. Abel and his members will understand if I simply am not to be here physically.

To deal with your problems, Mr. Biemiller, first, for your support I thank you very much. It symbolizes the fact that labor has now recognized that pension plans can be a major guarantee against the difficulty in later years. We want the AFL-CIO to join us in this, and I am very glad to see this, as I am sure, are Mr. Abel and the steelworkers.

I am troubled about your feeling that multiemployer plans should be exempted for two reasons. One is a legal question as to whether we have any right to discriminate, if we are going to provide for some vesting at the end of 8 years and full vesting at 15 years, or if we went to a higher standard. Are we not in a position where we would be discriminating against the worker in the multiemployer plan if we left him out.

I say that, Mr. Biemiller, and then I hope you will comment, because we have received thousands of letters indicating that this has simply touched the nerve of American workers in a way which is unparalleled.

Interestingly enough many of these letters relate to multiemployer plans. If you will allow me, I would like to read one for the record. I can put a whole stack of them in the record—and you are welcome to examine the thousands of them.

Here is a worker who writes me and says the following—I am not going to read the preliminary material. He says:

> The bill has merit. May I state my views briefly. Belonging to a parent national union that claims they have no jurisdiction as regards local union pension funds, one local union of which I was a member for 34 years, and assessed for that length of time for pension benefits if I retired after 20 years, but a clause inserted states I must return to that local to receive that benefit.
>
> After 34 years I moved from that state, secured employment in New York. After working another 15 years in the latter state I retired, but this local also had a 20 year clause, also I was assessed 15 years for pension benefits.
>
> So you see I paid into local pension funds for 52 years, and at the present time I am not entitled to any benefits from either of the two locals except the former if I rejoin that group out of state.

Maybe there are some mitigating circumstances in the man's contract, the union situation, et cetera, but the important point is, as far as we are concerned, that if we are going to legislate, do we have any right to legislate discriminatorily in respect of individual plans as against multiemployer plans?

You yourself say a single employer can sometimes wreck a multiemployer plan. That is why you want the insurance to extend to it and therefore should that not be just as true for the worker in the multiemployer plan?

That is my question.

Mr. BIEMILLER. Mr. Shoemaker.

Mr. SHOEMAKER. Senator Javits, I think as we pointed out in our testimony there is a growing trend toward reciprocity among multiemployer plans.

In the instance you refer to in the letter I think that we are day by day taking care of this situation. As a matter of fact, I have in my possession an unpublished study which indicates that 65 percent of the employees in multiemployer plans are in plans that provide some reciprocity.

I think that in a relatively short time you will see the kinds of problem you outlined become much less acute.

Senator JAVITS. You used a phrase, Mr. Shoemaker, which reminds me of why we are passing this legislation. You said, "day by day." This morning while I was shaving I heard this song from Godspell, "Day by Day."

We are trying to reform this whole system because we do not want "pie in the sky," we want it now. [Applause.]

I appreciate that, but this is hardly the way to conduct a hearing. Seriously, we want no demonstrations.

Mr. BIEMILLER. May I add just one word, Senator, to what Mr. Shoemaker has said.

Senator JAVITS. Certainly.

Mr. BIEMILLER. As I think you are aware, the most vociferous supporters of the theory that multiemployer plans should be exempt come from the garment trades, the maritime trades, the building trades, all of whom have various kinds of multiemployer plans, and who insist that they have built-in vesting and funding that will protect their people.

I assume that your technical people will be in touch with our technical people, and I would suggest this is the area in which this matter should be thrashed out.

Senator JAVITS. I think you are right, Mr. Biemiller, and we will do our utmost to do it. But I hope that also the AFL–CIO will encourage them to come part of the way to meet us. Personally I feel strongly that we should not exempt multiemployer plans, but we should shape the legislation to accommodate them.

These are great unions with great plans, far ahead of everybody else, so I am all for it, but I believe that a basic protection, a bill of rights for the American worker in respect to pension plans, will have to include adequate protection for everyone. But we will be more than accommodating in trying to do two things:

1. Give them an opportunity to conform; give them plenty of time—I would not try to push them in such a way as to jeopardize the great things they have done.

2. Try to conform to their needs. You have pointed out one thing, entitlement to a lower premium rate because they are a better risk in terms of insurance. I thoroughly agree with that. So we will try.

Also, Mr. Biemiller, if we have any technical questions we would like to get the federation's view on, may we submit written questions to you?

Mr. BIEMILLER. We would be very happy to answer such questions.

Senator JAVITS. One final thing and then I shall be through. On the matter of insuring pension credits prior to the date of enactment of legislation, that interests me greatly, and I would like to see it done, but do you not believe—perhaps Senator Schweiker could answer this—it will have to be conditioned upon the fact that these credits are reasonably funded; in other words, that you would not expect us to insure risks which were simply on the faith and credit of the contracting company.

Mr. SHOEMAKER. I would say—this gets into a very technical question—that the present standards of Internal Revenue for normal cost plus interest only funding would provide adequate protection to a multiemployer plan even if, as I indicated, one or two employers go out of business.

I think a funding standard that we currently have under IRS regulations would be adequate not only to protect the plans themselves but also to protect the reinsurance funds.

Senator JAVITS. But would it be a good protection in the law?

Mr. SHOEMAKER. They are standing by themselves essentially.

Senator JAVITS. So you would make a distinction in that regard between multi- and single-employer plans, but you would exempt neither?

Mr. BIEMILLER. Correct.

Mr. SHOEMAKER. Correct.

Senator JAVITS. One last point, I thoroughly agree on the bankruptcy, that is, making welfare and pension plan contributions a priority under the Bankruptcy Act.

The underlying theme of our legislation is that pension and welfare funds are as much earnings as that which is paid to the worker in his envelope every 2 weeks. The bankruptcy aspect does not go in here—it is another committee and another body—but certainly it is a very important thing to Senator Williams and myself and Senator Schweiker and Senator Taft.

Mr. BIEMILLER. Just to keep the record straight, the labor movement has consistently argued ever since we had any kind of voice that they are deferred wages. This is no new concept to the labor movement.

Senator JAVITS. That is very true.

Lastly, I think there is a good deal to your point about a certain selectivity relating to the type of criminal offenses which would disqualify a trustee. Any one of us might be convicted on some charge, so I thoroughly agree with that.

The CHAIRMAN. Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman.

Mr. Biemiller, I just want to refer to one of your comments on page 7 of your testimony.

Senator JAVITS. Excuse me. May I ask unanimous consent that this sheaf of letters concerning multiemployer plans received from workers be made a part of the record.

The CHAIRMAN. They will be made part of the record.

(The information referred to follows:)

EXAMPLES OF LETTERS RECEIVED BY SENATOR JACOB K. JAVITS

CONCERNING LOSS OF EMPLOYEE BENEFITS IN MULTI-EMPLOYER

UNION PENSION PLANS.

April 6, 1971

Hon. Jacob K. Javits

Dear Sir:

You are to be congratulated on your efforts to remedy many of the inequities which exist in Pension Plans throughout the country.

I was a member of Local with the City District Council for $35\frac{1}{2}$ years and at age 65, found the work too strenuous and applied for a pension in September, 1969.

My membership record is as follows:

	[in years]
June 11, 1923 to July 13, 1930	7
July 27, 1942 to date	$28\frac{1}{2}$
Total	$35\frac{1}{2}$

With this record I assumed that I would qualify for a pension. My application was denied because I did not work for a contributing employer during the years 1956 and 1957.

Being unable to pursue this type of strenuous work, I find it very difficult to manage on social security alone. A pension, which I so rightfully deserve, would be very helpful at present.

I wish you much success in your endeavor to help us unfortunates who have fallen into this desperate situation.

Very truly yours,

____

April 15, 1971

Senator Jacob Javits

Sir:

I am a former member of the ______ Union for 38 years. For the past 9 years I worked in California for the ______ Union for which I receive $30.

The 30 years I put in the ______ Union, Locals ______ and ______ respectively. They claim no reciprocal agreement. I have already written you and every one in the upper echelon connected with the union and they keep passing the buck. I am now 69 years of age and sadly in need of my pension. Things are bad and we cannot survive on social security and the $30 pension. I know how hard you have been fighting for us and I hope before I die, life will be a little easier.

I read the article in the Los Angeles Times and I am grateful and hopeful something will come of this.

Thank God for men like you. Oh I forgot to mention we are former residents of New York City and we were with you all the way.

I sincerely hope my prayers will be answered.

Thank you.

Sincerely,

______

April 2, 1971

Senator Jacob K. Javits.

Dear Senator:

May I have several copies of your bill that has been introduced in the Senate relative to guarantee pension rights for vested assessments after five years.

Believing the bill has merit now denied those retired, of benefits actually due them; and that your bill should include a "portability" clause covering all 50 states, if same is not already inserted.

May I state my case briefly:

Belonging to a parent national union, that claims they have no jurisdiction as regards local union pension funds.

One local union of which I was a member for 34 years and assessed for that length of time for pension benefits if I retired after 20 years, but a clause inserted states I must return to that local to receive that benefit. After 34 years I moved from that state and secured employment in New York.

After working another 15 years in the latter state I retired, but this local also had a 20-year clause, although I was assessed 15 years for pension benefits.

So you see I paid into local pension funds for 52 years and at the present time I am not entitled to any benefits from either of the two locals, except the former IF I rejoin that group, out of state.

Surely both locals should be covered by insurance laws guaranteeing benefits, regardless of what state they lived in upon retirement, and should be retroactive to the date of that retirement.

Thanking you for introducing such a wonderful bill, and hoping it becomes federal law in all 50 states, so future retirees are not forfeiting pensions actually due them.

Sincerely,

P.S. From the above you can judge why I wrote you previously for action on a World War I pension. Seems I get nothing no place!

December 4, 1971

Senator Jacob K. Javits

Dear Sir,

This is a letter telling about my pension plan. I belong to ______ A.F.L. This is the _______ Local __ of Milwaukee, Wisconsin. I was initiated into local __ in 1939 and all of my working life I have paid my union dues and I have proof of this. Eighteen years ago I was working for the ______ here in Milwaukee, when I had a personality clash with a supervisor and I was fired. This company ____ (and I'm sure the company will deny this) black-balled me so that I could not get a job in a union shop. My union could not or would not help me. I took a job in a non-union shop and continued to pay union dues while I was there, which was 5 years. After 5 years I was able to get back into a union shop where I am still working, the _____ and I am in my 13th year. About 6 years ago our union negotiated a pension fund. I have faithfully paid my dues for 32 years, 1939-1971, and now the union says that because I worked in a non-union shop for 5 years, I lost my pension rights and credits prior to my present employer. The pension fund is paid by the employer and I have as much money credited to my account as anyone else, and now the union wants to take away 19 years of credits from me because I was forced to work in a non-union shop for 5 years. The union gladly took my union dues for those 5 years through. I feel cheated.

Can the union do this to me?

Can you help me?

Thank you for your time,

____

March 27, 1972

Senator Jacob Javits
Senate Office Building
Washington, D.C.

Honorable Sir:

In connection with remedial legislation prepared by our Labor and Public Welfare Committee, I wish to relate the injustice suffered by my above-named client, who is a member of the _____ Industry Health and Welfare Fund, __________, New York, N.Y. 10016, and has now reached the age of 65 years.

Although Mr. ____has since 1928 devoted substantially all of his working lifetime to _______ service and employment, except for three years when he was in the service of his country during the Second World War, an attempt is being made by the Administration of the ____ Industry Pension Fund to deny him a pension.

The apparent reason for the denial of a pension to Mr. ________ is that he had a break in service for a period exceeding three calendar years. This break of service apparently for the reason that Mr. ______ did not have sufficent earnings in those years despite the fact that Mr. ______ has worked in this industry in every year since 1928 except for his war time service to his country.

Would you kindly look into this matter, and let me know whether present or proposed laws will afford any protection to my client.

Very truly yours,

March 3, 1972

Senator Jacob Javits
Washington, D.C.

Dear Senator Javits:

I am pleased with your sponsoring a bill for reform as to Private Pension Plans. The workers of this country certainly require it.

As you are well aware, hundreds of thousands of workers will never receive their pensions, due to the various gimmicks that are inserted in those plans.

There should be a vested interest for every worker, because it is supposed to be part of his benefits while working.

I personally know of a dozen men who after working 20 years or more will never receive a penny.

It is absolutely appalling that Congress should be dragging their feet for such a long time about so important a piece of legislation that concerns every working person in this country.

I am now in one of those unfortunate situations where by my firm is going out of business.

Unless I get a position within a 4 month period in the same line and the same Union Local, I lose 27 years of benefits because my employment must be continuous until I reach the age of 62 or 65.

Looking forward to immediate action.

Sincerely,

____

March 19, 1972

Senator Jacob K. Javits
The Senate Labor Subcommittee

Dear Senator:

Here is an example of the way the ______________ has worked for me.

I've worked in the   industry for thirty (30) years.
18 years for a   in Seattle, Washington
12 years for a   in San Diego, California

August, 1971, at the age of 61, I retired, thinking at the time, that I had enough years in the industry to qualify me for a pension. But my application was turned down, because of their pension fund laws. Their argument was that the 18 years I worked for the Seattle   was disallowed, because I was a member of the   Union.

The 12 years I worked at the San Diego _______ was under the __________ Union. Even though I was doing the same type of work in both Seattle and San Diego _________, the __________ would not count the 18 years in the Seattle _______.

All that money that has been paid to those pension funds on my behalf from my employers, is lost for me. But maybe if enough of us would write and tell of our predicament, there can be come kind of laws passed, that would guarantee help for the men and women, who will be retiring in the future. For me I'm afraid I've been had, unless you people back there in Washington, can help me.

Yours truly,

____

January 6, 1972

Honorable Jacob Javits
Senate Office Building
Washington, D.C.

Dear Senator Javits:

The concern over workers' pensions has been much in the news of late, and while not your constituent, I am mindful of the great efforts you are making toward effective control and reform of poorly and often dishonestly administered pension plans. Since I am affected in a drastic way, I am writing you for advice and assistance.

I am a member of the Union, and had 15½ years of pension credits before taking a withdrawal card. Three years later I reinstated and have earned an additional 6½ years. Now, under the Union's ruling, if I work until I am 65, (1978) even though I will have 29 years in covered employment and have been a member in good standing for 35 years, I will not be eligible for a pension.

The Union contends that by taking a withdrawal card, I lost all previous credits, and since credits are not accumulated after the age of 65, I cannot qualify no matter how long I work. The ____ companies contribute to the pension fund for every day I work, and with 22 years of credits, I am ruled ineligible at any age; yet the officials of the Union recently changed the monthly maximum pension of $725.00 and substituted one half the monthly wage, which would allow the officials to retire on $1,300 to $1,500 per month.

It is grossly unjust to use a technicality to deprive a member of pension benefits. No doubt you have received many such complaints, and I would much appreciate advice as to what I can do, not only on my own behalf, but the many others in similar situations.

Respectfully,

____

April 10, 1972

Senator Jacob Javits
Washington, D.C.

Dear Senator Javits:

I am writing to you concerning a problem which I am faced with. I truly hope you could help me and advise me accordingly.

I am 77 years of age. I am a _______ and worked in the industry during the years of 1926 to 1954. In 1954 the _____ industry was very slow and I had no employment. During these years I paid my dues to the _____ Union.

In December of 1954 I had an opportunity to work in the imitation _____ industry, which is affiliated with the ________ Union. I was compelled to join this union.

I have paid my dues diligently and I am a member in good-standing in both unions.

When I left the _____ industry I was 59 years old and I was not eligible for retirement. Now I must work 20 years in the _____ to be entitled for retirement benefits. At the present time I have 18 years credited towards by retirement fund. I am anxious to retire at the present time, but I find that I am not entitled to any benefits from either union.

After working as a __________ in both unions for 46 years I feel I should receive some retirement benefits.

I sincerely hope that you will consider my predicament and you will be able to assist me in obtaining my retirement fund which I believe is justly deserved.

Thank you very much for your consideration in this matter.

Very truly yours,

____

Dec. 1, 1971

TO: Senator Jacob Javits
Washington, D.C.

Dear Senator:

I have never written letters to anybody before, or needed or asked help from anyone. I know, however, that you are fighting for the pension rights of retiring workers who find themselves cheated out of the money they workerd for all their lives. I want to give you my case as an example of the sad state many people find themselves in.

I have lived in this country for the last 23 years, after having arrived as a survivor of German concentration camps. When I arrived here I took a job in a ____ facotry for $5.00 per week. I worked myself up ____________ and earned $150.00 weekly. This is my 20th year with the union (______)

The firm which I have worked for the last 10 years went out of business in September, 1969, and since then I am unable to find a job. I was offered a few non-union jobs but the Union says if I take it I will lose my 20 years membership, all benefits (health) and pension rights. I cannot collect any more Social Security checks, have no husband to rely on and I am 60 years old. I could retire in 2 years but the rule is that I have to retire from a Union job to be able to collect the 55 Dollars per month for which I have been paying all these years.

I am worrying myself sick becuase I have to live off the little money I have saved up for my old age and there is very little chance to land a job even with 23 years of experience. I know a lot of people in the same predicament who have lost all, or will soon lose their pension rights because they are unable to find Union jobs to retire form, although they have worked the required 20 years. Please continue your fight because you are the only hope we have.

They should let women retire at 60, or if not, aa least freeze the 20 years worked and let it be valid when someone reaches retirement age.

Please do what you can!

Very truly yours
your constituent

____

November 21, 1971

Honorable Jacob K. Javits
110 E. 45 Street
New York City

Dear Sir:

About 3 or 4 months ago there was an article in the New York Daily News about lost pensions, continuity etc. for a ______ belonging to local ____.

My husband, also a ______ has been in the same union for 34 years and he looked forward to retirement next year when he would be 62 years of age. It seems that for the lean years during the last war he was sent out of town to work because of work being scarce in the city, he was never told by his boss or the union about payment towards his pension benefits, and now after investigating he was told because he worked out of town he lost the continuity and he is short by 4 years, which means he will have to work that many years more. I feel that this is very unfair; who was at fault at that time. My husband doesn't know, he just assumed everything was in order. I felt somehow if I wrote to you about it something could be done. My husband is not alone in this situation, it seems that there are hundreds and hundreds like him, men who have worked so hard all these years and have nothing to look forward to at their retirement age.

Thank you for any advice you may offer.

____

January 10, 1972

Honorable Senator Jacob Javits

Dear Sir:

I have read where you are trying to pass some legislation on vested rights for pension for union workers who at one time left the trade for a few years and then returned to the union.

I have belonged to the Local No. since 1945. This union instituted a pension plan in 1954 requiring a covered worker to work consecutively until retirement at the age of 65 years or 20 years.

In 1957 I left this industry for about 5 years returning in 1961 or 1962 and since then I have worked in a union shop as a covered member.

I expect to retire at the end of 1972 at the age of 67 years.

I'm told by this union that I will not receive any pension since I left the industry for a few years.

Since the employers'contribution to the pension fund on my behalf was considered as part of my fringe benefits instead of a salary increase when our contract was signed, I feel that I should get a pension prorated for the years that I was covered. I was a good earner and the amount contributed by the employers for me was considerable.

There are many people that are in the same predicament that I am.

Please advise what we could do to collect our due. The union officials keep on telling us that maybe some day this injustice will be corrected, but since I expect to retire at the end of 1972 I hope that I won't be cheated of what's due me.

Kindly do advise me as to my rights. Thank you for a prompt reply.

Yours very truly,

April 22, 1972

Honorable U.S. Senator Javits

I have a problem concerning my pension. I belong to the _______ Union, District Counsel ____, New York. I am a good standing paid up member for 25 years continuous, never had to be reinstated and I always kept my union book. Years from 1948-1955 I was employed and employer paid welfare and pension for me towards the fund. In 1956 until 1964 I worked out of New York City but no contributions were paid towards the welfare and pension fund. In the year 1965 I was back in New York City and received a job through the union which paid towards the welfare and pension fund up to present date. I am considering to retire by the end of this year, I inquired at the union regarding my pension and they said you have enough years paid in but being you were not paid for 8 years you lose your credit. Therefore you only have 8 years credit towards your welfare and pension fund. Therefore you can't receive pension.

Please Senator, advise me what I can do or is there any way you can help me to get this straightened out before November, 1972 as I am not feeling good as I have emphezyma and find it very hard to continue working.

Thank you,

____

March 20, 1972

Dear Senator Javits:

I am a construction worker, who has been out of construction since November 18, 1969. I am now a superintendent of an apartment building. I was told by the Mayor's Committee on Exploitation of Workers that you Senator, have a bill before the Senate in regards of union benefits that men cannot obtain, because of legal union rules prohibiting these men from obtaining what is rightfully theirs. In my case the claim from my welfare union office, is that I have to have ten straight years of steady work. In my case I have nine; in all (25) twenty-five years. Senator my plea is that these rules be retroactive to the many men who are elderly and had put in substantial years in the construction of this great city.

I feel like many Americans that this is unfair and deceptive. I have $2,700.00 dollars which is rightfully mine, from my pension that is barred to me. They say the money will just lay in the unions welfare office. Hoping to hear of some ray of hope and perhaps maybe from you.

Yours in hope,

____

P.S. Thanks ever so much in officiating my daughter's return to the WAVE's. I will be every humble. Thanks again.

March 13, 1972

My dear Senator Javits:

The enclosed clippings from the Chicago Tribune is a common example how unions are constantly involved in schemes that involves kick backs on loans running into millions of dollars in the United States.

The ____________ Union has a pension fund in excess of $800 million dollars and no guaranteed pension for workers. Instead they have gimmicks in their by-laws which excludes most workers for getting a pension. There are thouaands of workers in the past who worked for several years with money contributed by their companies for their pension but because of various reasons these workers never returned and the unions kept their pension money where I believe since the workers did not receive any benefits this money should have been returned to the employer. This is fraud on the unions part for not returning this money to the company. Someone in Washington should start questioning these union officials on this matter.

We must have portability to switch from one union or local to another along with our pension. Also our service in the compnay must be frozen for our pension in case of lay-offs or other unforeseen reasons. Get tough with these union people don't budge an inch.

Respectfully yours,

____

P.S. I thank you for everything you are doing to get pensions for every one. Because of one break after 17 years in the _____ I had to start over again in 1965. A member for 25 years of ____ with no chance for pension. Help us. Union officials won't.

May 15, 1972

Senator Jacob Javits

Dear Sir:

I am writing you in regards to your reform bill on pensions.

This is my experience. I joined ______ in St. Louis, Missouri in 1945. In a year or two I moved to San Francisco, California and transferred to the _____ local there. It was a small local there, not many shops to work in there so to live I had to work in shops that were not union. I kept my union dues paid or took out a withdrawal card for a few months. When the union started the pension fund the payments were added to our union dues.

I had a hard time getting work in union shops. The shops would hire me through the busy season then lay me off. One place hired me through the season but laid me off. The boss finally told me he wanted to keep me but he had to lay me off but couldn't tell me why. Anyway I had to take a job out of the union as I could not refuse a job and still draw unemployment but the next busy season I went back in the union shops. Each time I was out of the union I had a withdrawal card which the union told us would hold our pensions. In all I paid at least 20 years of dues. I never had a fine or anything against me except the refusal of paying ~~the~~ into the election fund which was against the law for the union to do.

The union in San Francisco is still doing this. They have so many Chinese, Mexicans and other people who do not understand English and so afraid of losing their jobs. They collect thousands of dollars in dues and fines and funds, and the pension fund but very few collect the pensions. This friend of mine who refused to pay the election fund has finally begun to collect a partial pension after 2 years of writing letters and trying to collect. Me, they don't even answer my letters. I'm retired on Social Security and have no money to spend on trying to collect. Even if I had the money I do not know who to or how to go about it.

I sure hope your bill passes. Especially about the unions. They have millions of dollars in funds. And the _____ is one of the richest.

Do you know of anybody that I could write to see if they could help me in any way?

Thank you,
Your supporter

____

(Recewed 11-30-71)

Senator Javits of New York State

Dear Sir:

I have been in Local ___ Union of San Diego, California for eight years. Recently I joined the ___ Union here in San Diego, Local ___ this last August, 1971. Of course I had to resign from the ___ union. I have been paying into a pension fund these eight years. Although I have not always worked steady, I probably have paid about two thousand or more dollars out of my pay check for my old age retirement. They tell me that I don't get any of this now that I have quit the union. I figure since they took it out of my pay check, I should get all of it. I told them that they could transfer it to local ___ for me; so it could be used for my old age fund with the _____. They will not do this either. Both unions are in the A.F.L.- C.I.O. and I see no excuse for them not transferring the money to the new union. I feel what they are doing is outright stealing. And I believe it to be unconstitutional. It hinders my freedom of movement by penalizing me economically.

Law suits are expensive for people like me against a powerful labor union. I would like to see law made so this cannot happen. Maybe there should be legal help for people like me. Law suits usually end up favoring the person with the most money.

Sincerely yours,

____

P.S. I paid taxes on the retirement money that I am not getting.

March 3, 1972

Senator Jacob K. Javits
United States Senate
Senate Office Building
Washington, D.C.

Dear Senator:

I want to take this time to thank you for introducing the bill in the Senate pertaining to Labor Unions and Pensions.

I have worked for _________, a subsidiary of _________ Industries in New York City for the past 19 years and have been a member of local ____ of the ______________________ for the same time.

I have just been informed that the company is going out of business in the next few weeks. If I do not continue working for a company in local ______, as a salesman only, I stand to lose everything which has been paid into the pension fund for me.

I wish you good luck with the bill and hope you can correct the unfairness of the situation.

Sincerely yours,

____

January 31, 1972

Senator Jacob Javits
Senate Office Building
Washington, D.C. 20510

Dear Senator Javits:

Since you are currently leading the fight in the Senate to reform pension programs, I would like you to consider union pension reform in your deliberations.

My exact meaning can perhaps best be amplified by detailing the plight of my mother, a 65 year old lady who has to work for a living and will have to continue to do so into the indefinite future.

My mother works for an _____ manufacturer in Brooklyn, N.Y. and earns about $2.25 an hour. Her company, like many others of its kind , has no formal pension program, but the ____________, AFL-CIO, the union to which she must belong, does have a pension program. As with many company pension programs, the pension is an all or nothing situation, with the major requirement being employment and union membership for at least 20 years.

My mother returned to work about 13 years ago when my father died and additional family income was necessary. Now that she should be looking forward to retirement, there is insufficient money available. With a union pension and social security, she would possibly have enough to live on. However, in order to qualify for this pension she would have to keep working for another seven years or until she is 72 years old. And at that point there would be no guarantee that the union pension fund would be sound enough to provide an assured source of income.

Therefore, in your proposed pension reform activities could you please consider including pension vesting rights for employees who receive their pension from their unions, rather than directly from their employers.

Sincerely yours,

____

(Received 3-22-72)

Senator Jacob Javits

I'm sending you this copy of a letter that my husband had filed for a pension one year of March, 1971.

He was working for the ___ for seventeen years and that was from Sept. of 1954 until April 30, 1971. After I got this letter I call them up and they told me that he cannot get it because he did not have 15 years of Pension Credit. When he was working and they will give him day off they don't count it. In return I told her that it was not him to home it was _____ to lay them off for a few week.

Your truly

____

March 16, 1972

Dear Member:

The Trustees of the _________ have examined your application for a pension, and regret the necessity of having to advise you that you do not qualify under the rules of the Plan.

The reason you do not qualify is as follows:

ARTICLE II, Section 6 (b)

> "An employee shall be entitled to retire on an Early Retirement Pension if, at retirement he has Pension Credit totaling at least 15 years."

Sincerely yours,
The Board of Trustees

March 15, 1972

The Honorable Jacob K. Javits
c/o Senate Building
Washington, D.C.

Dear Sir:

I would like to inquire as to the progress being made on the status of private pension plans, and what is being done about it.

I was employed by a Company for 13 years, and was hopeful of getting 15 years vested interest in the (UNION) pension plan. The Company was sold in September, 1971, and I was told at the time that I had accumulated 13 years, which would preclude my getting a pension.

I am 60 years old, have been looking for another job with a construction company and since construction in the State of California is not what it was in the past, I have found it extremely hard to get anyone to talk to me about employing me. I am presently working for a Company that has no pension plan for non-jobsite workers.

I have read various articles in the papers regarding the work you are doing in regard to the various pension plans, and it is my hope that people who have worked at least 10 years will not be denied a pension.

I have no wish to have to apply for welfare in my old age, I am a dyed in the wool Republican, and don't want relief in any form, although I hope to get this pension, since I have devoted 13 years to the best interests of the Company I worked for. Social Security, as good as it is, will not permit me to live even in the modest manner I have been living in.

My husband and I have raised two daughters, helped both our families financially, and are still helping some of them. I realize we could have saved several thousands of dollars by not doing so, but I am glad that we could help them.

I feel sure that there are thousands of people interested in the work you are doing, and the things you are trying to accomplish for them.

Could you give me an idea of the progress you have made, and when you think the matter might be solved? I would appreciate it very much.

Sincerely,

____

December 9, 1971

Honorable Jacob K. Javits
The U.S. Senate Building
Washington, D.C.

Dear Sir:

I heartily concur with you and support your pending bill to protect American workers' pension plans by legislating vesting rights for each worker.

You might find the following case of interest to you:

I have been a member of the ______ Union, with Headquarters at ______, New York, N.Y., since 1941. With the dwindling U.S. Merchant Marine approaching the vanishing point , I have been laid -off three times this year (1971) from three different vessels. I've got 19½ years of sea-time credits towards a pension after 20 years with the ______ and due to unilateral and arbitrary changing of qualifying rules by pension trustees, I'm in danger of losing my rights to any pension whatsoever. I have no vested rights even though approximately 10% of my salary increase since 1966 has been withheld and deposited into the pension fund.

Would you recommend that I bring suit against the trustees to recover some portion of the pension? What suggestions would you give me?

Respectfully,

______

(Received 4-10-72)

Dear Senator Javits,

I recently read an article of yours on union pensions and your investigation into pension plans in general. Perhaps you would be interested in my case and advise me to my rights and who I should see about it. We never took legal action because anyone we asked about it told us we would lose anyhow, and we could not afford to take the chance. For five years my wife felt we should try something but, until I read your article I felt it was useless. I know of at least one other man who faced this problem, for he called us last winter and asked if we had tried to get our money. So, here is my story.

In 1963 I joined the ________ Union. I paid into the pension fund, which was taken from my salary, from 1963 to 1967. In 1967 my employment took me into the ________ district often. Shortly after I got clearance and transferred into the ________ union. This was the same union group, ____________. At this time I saw my previous business manager _____ and asked about my pension fund. He informed me that I had lost it and nothing could be done. I asked if instead of giving me directly the money if it could be transferred to the _____ Union as they also had the pension plan. The answer was no.

I feel this money was paid on my behalf by my employer and is rightfully mine. It amounts to approximately $1500 taken from my paycheck for me, yet is not mine. I received from this not one dime, not a transfer of it, nor any pension supplement later. It is just gone. It is my money so how can I lose it completely? I have saved all my records of deductions for this period so can give proof that this ts the amount, and that I had payed in this much. Everyone advised me that it would cost me more, so I saved all the papers and waited in hopes something would come up so that I could receive it.

If this happens all the time, how much is these pension funds ending up with in clear profit of others money? Why it is impossible to get your money (for it is your money) paid by you for every hour you work? If you can advise me I would appreciate it, and am sure others in this area would also benefit. Four years I paid into this only to lose it because I transferred. Surely this is not fair. I wait for your correspondence. Please answer even if the answer eould be a negative to us.

Respectfully,

____

November 29, 1971

Dear Honorable U.S. Senator Javits:

I have a problem wonder if you could help me.

I lived in Bayonne, N.J. and worked CIO ________ for 17½ years. Before then I worked for CIO ________ Some time I must have over 20 years in CIO when I asked for benefits because rather than put my aged mother on charity in a home I moved here. They told me that I had to work 20 years in ________ one time at a meeting I heard we would get a part of full benefit if we didn't put in 20 years. Yet when I was forced to quit they denied it, told me to move to Utica, New York, closest shop they had around here, which couldn't be done.

Why can't the union give me credit for the time I worked for the other branch? It was all CIO.

I could use that $50 a month as I will be 59 years old soon and don't get pension of any type.

Yours truly,

____

December 11, 1971

Senator Javits
Washington, D.C.

Dear Mr. Javits,

The reason I am writing to you is because I know you are strongly in favor of a pension reform bill. I hope you clobber the Labor Unions first because they are the worst offenders.

My employer paid in a pension for me to the ____ for 16 years and since he went out of business April 8th, they pocketed that money because they require you be in for 20 years.

Now all I would expect is 4/5 of the monthly payment. That money was put in there <u>for me</u> and why should they be entitled to keep it?

Thanking you kindly,

____

January 3, 1972

His Hon. Senator Jacob K. Javits

Dear Senator:

I have been asked to write to you in reference to pension plans. I am 59 years old and was told by my president of Local ______ that I will not be able to get a pension even though I will have 22 years service in the _____ industry. I have had 8 years at ______ and 14 years in the ______ at the age of 65 which means I have 7 years with my present company and I have 6 years more to go making it 13 years and 8 years and still not able to apply for a pension, just social security and I was told you are trying to pass a bill with ten years since a person can have a pension providing he reaches the age requirement so if you pass such a bill I know you will have a lot of men that are in the same circumstances so I say I think it would be a very important bill, I might add I also am a republican Committeeman for 37 years. At present I am in District 83 in Cheektowga, New York, so I hope you can help some of us unfortunate fellows that have had some tough breaks.

Thank you for your cooperation.

____

April 14, 1972

United States Senator Jacob K. Javits

Dear Sir:

Recently I read an article in the newspaper here in California about the abuse of pensions which you were going to investigate.

I am a construction worker and belong to ______ Local Union ____ here in Sacramento, California for 14 years.

A construction worker has to travel a lot when his home local doesn't provide work for them. I have worked in various local unions for the past 25 years. I recently checked about my pension time in Local ____ here in Sacramento and was told that I didn't have any pension time in, as I had lost all rights to one.

The point is, who is getting all this pension money that is being paid into these pension plans.

I would like to see a bill passed through congress, whereby all pension money paid in for a construction worker would be sent back to the workers home local union, instead of going into some corrupt Business Agents bank account.

I enjoyed the interview you had with the Senator from Colorado. Please keep up the good work for the sake of the United States.

Sincerely,

____

May 12, 1972

Dear Senator Javits,

I am a constant voter for you everytime you ran for office as far back as when you were even Attorney General of New York and you lived in Washington Heights and was going to join your political club at one time, but you moved out of the district, etc.

I am a member of the ______ Union, Local ____ of New York City at ________ New York City for 21 years now, previous being a member of other mother or sister locals in New York City, Local _____, Local ____ who were to transfer our pension and Welfare Be efits to the Local Union who absorbed the members in an affiliation of said Locals. I have worked and worked many times being out of work due to sickness, closing of business etc, buildings being demolished and etc. Paid in from the employers fund towards the Pension Fund at one I am told by the Administrator of Local ____ AFL the mother union being in Cincinnati, Ohio called the ________ Union which I wrote to and they never answer me and the other old timers like myself who have $2\frac{1}{2}$ years credits of working time towards a pension or disability pension and cannot get it after so many years of sweat and labor and dues was paid in. I am over 70 years of age a member of the union _______ for 34 years and am without a dime in pensions to me. Can't get any work as I am aged, have arthritis and pay disability dues to the local union Local ____, New York City at $\frac{1}{2}$ rate \$3 a month and cannot collect or get a dime. So why can't he at least get the money paid in towards a Pension Plan when he worked etc. to help us out in our old age. The law you are trying to pass should cover the members who are short a few years towards their pensions etc. and not lose it all.

Best wishes,

____

January 18, 1972

The Honorable Jacob Javits
United States Senate
Capitol Hill
Washington, D.C.

Sir:

Sometime ago, you introduced a resolution regarding "PENSION PORTABILITY". That was last year in around January, 1971. I was wondering if you have backers to pass that into LAW soon! Is there a possibility to have that Law passed this year of 1972?

I am writing this not only for myself but thousands of others who are in the same category as myself who lost pension rights due to the break in service thus losing over 13 years of pension rights which I have earned from 1943 to 1956. During the break I had to retire my book for 15 months under advise by my family Physician to stay ashore to take care of my ailing wife and children and after my wife and children got well, I went back to sea to work again from 1958 up to now but from 1958 to 1972 I have to my credit only 14 years which is still 6 more years to make the 20 years as required by our union. If the law that you are now trying to pass is approved by congress, and add my sea time,I could have to my credit for pension now 27 years which is more than the 20 years requirement.

Do you think Sir that your sponsored resolution has a chance to become a LAW before the end of 1972? I would appreciate very heartily if you could advise me at your convenience the possibility of passing that "PENSION PORTABILITY" which you sponsored last Year. I know that you have been doing your best to help us poor people and I hope that you will try hard to protect us from the unlawful abuses of Unions and other companies who denied us pensions after several years of service.

Thanking you very much for this request or inquiry and hoping to hear from you at your earliest convenience about the possibility of passing your sponosred Pension Portability, I remain

Yours very respectfully,

____

(Received 2-25-72)

Dear Senator Javits,

I have been in the ____ Union Local ___, New York since 1935. Leaving the factory to go into business for myself until 1963 I returned to work in a shop covered by the Union plan requiring 20 years coverage at the present moment I am 62 years of age. It may be physical impossible for me to meet this requirement. I wonder if it is possible for me to receive something on a pro rate basis. There are many workers in my trade in the same situation.

Respectfully yours,

____

May 3, 1972

Dear Senator Javits,

I am trying and praying that your vesting pension fund bill goes through.

My husband is seventy-one years old and has thirteen years in with his _____ Union, Local ____ in Manhattan. They give a partial pension after fifteen years of service.

However, this year the Union officials have informed my husband that only those years count toward a pension in which the worker has been employed a minimum of 1200 hours annually.

My husband earned less than $2000 last year through them and by this scale has missed out a few other years.

As things look now, he could pay union dues until he is ninety and still not collect a penny in pension benefits.

As my husband was previously self employed and lost his business due to family illnesses, he is not collecting any other pension funds, only social security.

As we are poor people, even this small amount due him would be a welcomed relief.

Please do all you can to push this bill through. Thank you.

Respectfully yours,

____

(Received 1-24-72)

Dear Sir and Hon. Senator Javits:

I am writing to you as a former resident of New York City, and I am asking your help in this hopeless case with my Union. As a member of ______ for 30 years, I was taken sick in 1937, I moved to Florida for my health, and it got worse. I transferred to a Union here but I could not work. I had arthritis and a heart condition, so I applied for a disability pension and I was turned down twice. I was informed by the Union to apply for Social Security disability, that I would be considered if and when I received it. On receiving social security disability I applied for a Union pension again, and this is the answer I have received. I ask you in all fairness, is this the way we old folks are to be repaid for our long hard years at work paying our dues and doing what we are told to do by our Union and that we are to berewarded in this fashion, when we are sick or too old. I don't know what I can do at 61 years of age, after 30 years the Union tells me that I don't have the qualification or the pay in time, after 4 years of application and run arounds. The reward we old people get is not the American way, we are ignored in our appeals, we can't protest, or who can we protest to. Mr. Javits, I know you are a busy man, but for the sake of justice and humanity will you please help me. I just don't know where to turn for help. It is hard to live on social security and pay doctor bills. I hope you can find some time to help me and may God bless you.

Thank you. I am respectfully yours,

____

April 1, 1971

Dear Senator Javits:

I have read with great interest an article in today's News pertaining to an investigation on pension plans and the unjust by-laws used by the unions to retain this pension money when one leaves the union before retiring.

I am in such a predicament at the present time. I have been with _____ Local _____ for the past 18 years and have been paying pension to the local union. I have decided to move to Florida for my wife's health I belong to an International Union and have requested a transfer. A transfer card will be given to me to work in Florida, but I was told by Mr. _____ of Local _____ that all of my pension money will remain with the Local. I am told it cannot be carried over to any other local. I am 49 years of age and have given my best years of work while in this union. It hardly seems fair to start all over again, especially since the dues and assessments paid to my local by both me and my employer supported this international union.

Since I have no other alternative and the union refuses to give me any of these funds or transfer them, I am asking you to help me in this matter, if possible or refer me to who ever can assist me.

Thanking you in advance, I remain

Very truly yours,

____

October 7, 1971

Hon. Jacob K. Javits
U.S. Senator New York

Dear Sir:

I have been employed in the _____ Industry in New York for 18 years, in _____ Local _____ Union.

On account of too many slack seasons I obtained a job in the Liquor industry and a member of _____ Union for 13 years.

I stopped working 5 years ago, and cannot get one cent of pension.

Respectfully yours,

____

Senator Schweiker. You favor the adoption of legislation which would serve to accord these payments to welfare and pension plans the same priority under the Bankruptcy Act that is now accorded direct wage payments made to workers.

I would just like you to expand a little on that. I am very interested in that. I think it is a good position.

I see some of my good friends from a Steelworkers local in my home area, Montgomery County, are here. We had a very sorrowful experience in Conshohocken with one of the industries, the Lee Tire Co., where people were just wiped out, and we are soon going to hold hearings in Philadelphia on the Horn & Hardart Baking Co., where financial failure was the ruination of the pension plan.

While our bill does protect workers' pensions in some way under the terms of reinsurance, I think we ought to expand on this bankruptcy point a minute, because I think it is a very good one. Would you comment on the present law and how you would change it.

Mr. Meiklejohn. There is no law as far as I am aware, Senator Schweiker, on this point. We would be glad to look into the matter and give you an answer, if that would be satisfactory.

Senator Schweiker. You are saying there is not law now; that is the trouble?

Mr. Meiklejohn. That is the trouble, yes.

Senator Schweiker. I think if you would give the committee a letter, with a copy to me, I would appreciate this, because I would like to follow that out.

We are covering it in another way under our bill, but we do not provide for what happens in the bankruptcy case.

Mr. Biemiller. You may remember, Senator, several years ago I think while you were still in the House the garment trades, particularly, were very concerned about some bankruptcy problems that they had run into.

There were some hearings held, and I am sure we can dig up the material you are looking for.

Senator Schweiker. I think it is very true, and I think here it is appropriate to say that a person who in essence has to depend on what the employer or the economic conditions of that company are for all his livelihood, after he invested the 20 or 30 years, is a gross inequity and one of the abuses that we are trying to cover.

I would like to cover this loophole, and I think it is good to point it out. If you will send it to me, I will appreciate it.

Mr. Meiklejohn. We will be glad to send it.

Senator Schweiker. That is all I have.

The Chairman. Senator Taft.

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

Mr. Biemiller, with regard to this vesting question, taking your position and assuming that the committee would not go along with exemption of the multiemployer plans, what do you think of the vesting requirements in the bill? What do you think of them as compared to other possible suggestions, such as what Senator Schweiker mentioned?

Mr. Shoemaker. I think we indicated our position, that we would like to see a vesting standard of 10 years for a single employer plan.

With regard to the rule of 50 it appears to us it would in effect discriminate against older workers. That is one concern to us. Obviously an employer is going to be very leery about hiring somebody over 50 years of age when he knows that under the administration's bill, for example, the person would be vesting benefits in 3 years.

Senator TAFT. Do you feel we should have a minimum age requirement for vesting plans to start? We had one complaint from a witness in Cleveland the other day at the hearings that I held there where a man had worked for 14 years, but he was not 40 yet when he was terminated.

Do you think we ought to have some requirement of that sort or not?

Mr. SHOEMAKER. I think for the single employer plans it should be based strictly on service and not on any age requirement.

Senator TAFT. I felt we were discriminating against the younger workers in that particular case.

Mr. SHOEMAKER. In that particular case I agree; yes.

Senator TAFT. I do not think I have any other questions.

The CHAIRMAN. Senator Pell.

Senator PELL. Thank you, Mr. Chairman. I congratulate you and Senator Javits for moving ahead in this field.

I believe that many workers are not aware of the inequities that exist. In my own State when I sought to have a public hearing regarding this, I found it difficult to find witnesses who would testify to the existing inequities.

Your efforts to bring this to the public mind, to focus on the inequities of the present pension systems, is commendable.

As I understand it, Mr. Biemiller, you support this bill with the exception that there should be more provision, as Senator Schweiker brought out, for priorities given to those moneys that are due from pension plans that go bankrupt, and also that you think multiemployer plans should be excluded.

Would that be a rough summary of your view?

Mr. BIEMILLER. That is a good summary; yes, Senator.

Senator PELL. Thank you.

The CHAIRMAN. Thank you very much.

Mr. BIEMILLER. Thank you, Senator. May I just add one word in addition to what we have already said?

We, too, are delighted that you and your associates are going ahead with a vengeance—I mean a vengeance, and I hope you keep it up—to straighten out some of the inequities that do exist in many plans, in order to protect the workers so that they can finally realize the benefits that they are supposed to have under some plans that have been very, very poor.

We are proud, by and large, of the job that we have done where we do participate in plans, as the Senator has suggested, but we know there are places where workers need protection, and God bless the Senators who are working on this matter.

The CHAIRMAN. We are going to get it done with your help, we know it. Thank you.

(The prepared statement of Mr. Biemiller with attachments follows:)

STATEMENT OF ANDREW J. BIEMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, BEFORE THE HOUSE WAYS AND MEANS COMMITTEE ON H.R. 12272, THE ADMINISTRATION'S PENSION PROPOSAL

May 11, 1972

Mr. Chairman, on behalf of the AFL-CIO, I wish to thank you for the opportunity to present our views on H.R. 12272, the Administration's pension proposal. While the Administration bill does address itself to establishing Federal standards of vesting, the provisions relating to income tax deductions for individuals and for the self-employed have far more impact on federal tax policies, the economy and the distribution of wealth in the United States than they do for pension reform.

In fact, we regard the Administration proposal as simply a new tax loophole for the wealthy under the guise of pension reform.

There has been a remarkable consistency about the Administration's economic and tax policies which are making the rich richer and the poor poorer. Let me cite just a few of the new loopholes that have been initiated by this Administration:

1) A new depreciation system, officially called the Asset Depreciation Range (ADR) system -- speeds up by 20 percent the tax write-off allowance for business machinery and equipment.

2) The 7% investment tax credit.

3) A new provision which empowers U.S. companies to funnel their exports through subsidiaries -- known as Domestic International Sales Corporations -- wherein the tax on one-half of their export profits is deferred, perhaps indefinately.

The above measures afford tax relief primarily to wealthy corporations. The "Individual Retirement Benefits Act of 1971," the Administration's pension proposal, would afford tax relief primarily to wealthy individuals, and huge tax subsidized profits to private insurance companies, banks and mutual funds.

The bill provides that individuals may take an income tax deduction amounting to 20 percent of earned income up to a maximum of $1500 per year for sums set aside for an individual retirement plan. But as a practical matter the plan has little value to those with low incomes.

To determine who will benefit from this proposal, the Committee might consider these questions:

How many families with an earned income of $5,000 per year can save $1000?

How many with a $6,000 income can save $1200?

How many families with a $7,500 income can save $1500?

How many families with an annual income of even $10,000 can save $1,500 in this time of sky-high living costs?

Now, ask the same question for those with annual earnings of $15,000, $20,000, $50,000 and up. Clearly, the percentage of families which will be able to take full advantage of this deduction will rise with income. Thus, the effect of this provision will be extremely regressive, benefiting all the rich who wish to take advantage of it and none of the poor.

Even if a family of four could save $1,000 out of a $5000 income their income tax would be reduced by $98. Thus, the Federal government would be subsidizing the retirement savings at the rate of 9.8%. The same family of four earning $10,000 would save $285 in taxes and the Federal government would be subsidizing their retirement plan at the rate of 19%. The $50,000 family of four would recoup 48 percent of their retirement contribution or $720 in taxes. The Federal subsidy to the retirement savings of individuals at various income levels is summarized in Table II.

But that is not all. A worker with a $5,000 income even if he could take full advantage of this legislation could save only $98.00 in taxes. In contrast a wealthy investor who made $200,000 from clipping coupons and received a $5,000 consulting fee could save $700.00.

At the same time this program is being advertised as "helpful to older workers" when clearly only a very small percentage of them can even anticipate saving enough to provide for their future security.

Thus, the proposed legislation is class legislation. The rhetoric from the Administration does not deceive us nor do we believe it will deceive this Committee nor the public. In this connection, we wish to present certain facts that relate to the ability of low and middle income families to save.

In 1970, according to the latest survey of the U. S. Bureau of the Census, median family income in the U. S. was $9,867. Half of all families were below this amount; half were above.

Nevertheless, for that year:

1) The U. S. Bureau of Labor Statistics reported that an income of $10,664 was considered the standard for a moderate budget for an urban family of four -- and no savings were included in such a budget.

2) Some 25.5 million persons, or 12.6% of the nation's families, were below the poverty income threshold which, according to official government estimates, required an income of $3,968 for a family of four in 1970.

3) Among families with only one wage earner, only one out of every four families had incomes of $12,000 or above.

4) Only one out of six black families achieved the $12,000-and-above mark, and for families headed by a woman only one in ten attained that level.

Who, therefore, will benefit from the enactment of H.R. 12272?

We have stated that the Administration is making the rich richer and the poor poorer. We recognize that this is a serious charge but the facts amply support our contention.

Between 1960 and 1968, for example, the Census Bureau data shows that there was a modest but nevertheless real and continuing trend of improvement in the way in which the shares of the nation's income were flowing. Over that period, the bottom 20% of the nation's families increased their share from 4.9% of income to 5.7% while the share of the top 20% declined from 42% to 40.6%. This trend came to an abrupt halt in 1968. Between 1968 and 1970 the portion of the nation's income received by the lowest 20% dropped to 5.5% while the top 20% increased its share of the nation's income from 40.6% to 41.6%.

The detailed data are shown in Table I which I have attached to my statement.

And of course these figures do not tell anywhere near the whole story, for huge chunks of the income of the very wealthy are not counted. The Census figures for example do not consider capital gains as income -- and on top of that, the IRS only taxes such income at half the rates which apply to the income of a wage earner.

The new proposed loophole would accelerate the trend toward distributing more of the nation's income its wealth and its tax resources to the well-to-do.

H.R. 12272 would also raise deductable limit on pension contributions made on behalf of the self-employed from 10 percent of earned income up to $2,500 per year to 15 percent of income up to $7,500. The AFL-CIO opposed the original Keogh bill as a tax avoidance program and we oppose the expansion of this tax loophole now. The main beneficiaries of this program have been doctors and lawyers and not proprietors of "mom and pop" groceries or other small businessmen.

If a doctor goes into practice at age 35 and saves $7,500 for 30 years, he will have not only a tax shelter for his savings over this period but also a tax savings on the interest earnings on his account so that by age 65 he will have accumulated the tidy sum of $592,950 assuming 6 percent interest on his savings. While this is somewhat short of making every doctor a millionaire upon retirement, the estimate ignores any capital gains that might accrue under a Keogh retirement plan.

Even more than the individual tax deduction, the threefold increase in the present maximum deduction for the self-employed would benefit only high income individuals. It also, like the individual tax deduction, is extremely regressive.

These new tax gimmicks will greatly benefit the wealthy who can afford to take advantage of them. As Secretary-Treasurer Lane Kirkland of the AFL-CIO stated when the Administration first announced its proposal:

> "For the average man, the President's pension proposal is an exercise in deceit. It promises much but it will deliver nothing for today's elderly and nothing in the future for those whose income is below $10,000 a year.
>
> "It is a bonanza for banks, insurance companies and mutual funds--another raid on the federal treasury to benefit the wealthy."

While we favor national standards of vesting for single employer plans, we have serious reservations with regard to the "rule of 50" which would be required under H.R. 12272. This rule would vest one-half of an employee's accrued benefit when a combination of his age and his years of service totaled 50 years. In order to avoid placing a cost burden on business, employees within 5 years of retirement would not be covered.

This vesting standard could easily result in discrimination in employment against older workers. The annual cost required to fund a pension benefit for a person at or near age 50 is very high, and many employers would be unwilling to underwrite this cost.

For single employer plans, we favor a vesting standard of 10 years. Multi-employer plans should be exempt from this standard because employee pension credits are portable as workers move from one employer in the industry or trade to another. As stated in the 1967 AFL-CIO Convention Resolution on health, welfare and pension plans:

"The pension credits of workers covered by a multi-employer plan are portable as between different participating employers. Whether financed by employer contributions, joint contributions or solely out of union dues, such plans provide continuing coverage for workers remaining in the plan's jurisdiction regardless of where they work. Moreover, the bankruptcy of one employer in a multi-employer plan does not affect the solvency of the pension trust. Thus, a multi-employer plan continues to protect the rights to benefits of workers who may lose their jobs because of the shut-down or failure of their participating employer but who continue to be covered by the plan through employment with another participating employer. Because of these built-in safeguards in multi-employer plans, standards of vesting and funding required for single-employer plans are not appropriate for multi-employer plans. Therefore, be it

RESOLVED: The AFL-CIO favors the inclusion in private pension plans of adequate and appropriate vesting and funding provisions. To provide adequate safeguards to workers covered by single-employer plans we favor Federal legislation establishing minimum requirements of vesting and funding. Because multi-employer plans, whether financed by employer contributions, joint contributions or solely out of union dues, contain built-in safeguards for the pension rights of workers covered by them, any such legislation should exempt multi-employer plans."

The AFL-CIO is opposed to the creation of new tax loopholes for the wealthy. Enactment of this class legislation would reduce taxes for the rich and result in further shifting the tax burden to low and middle income Americans. Last year, before this Committee, President Meany noted that "America needs genuine tax reform" and that "the U.S. Treasury must be used in the public interest to build a better America for all Americans, not as a trough for private greed and private gain." That is our position and that is why we urge this Committee to reject H.R. 12272.

TABLE I

Percent of Aggregate Income Going to Families
1960-1970

	1970	1968	1966	1964	1962	1960
Lowest 5th	5.5%	5.7%	5.5%	5.2%	5.1%	4.9%
Second 5th	12.0%	12.4%	12.4%	12.0%	12.0%	12.0%
Middle 5th	17.4%	17.7%	17.7%	17.7%	17.5%	17.6%
4th 5th	23.5%	23.7%	23.7%	24.0%	23.7%	23.6%
Highest 5th	41.6%	40.6%	40.7%	41.1%	41.7%	42.0%
Top 5%	14.4%	14.0%	14.8%	15.7%	16.3%	16.8%

Source: U. S. Bureau of the Census; Current Population Reports, Series P-60, No. 80: "Income in 1970 of Families and Persons in the United States."

TABLE II

Effect of Tax Changes

H. R. 12272

(Married Couple with 2 Dependents)*

Wage or Salary Income	1972 Tax	Tax Under H.R. 12272	Tax Reduction	% of Pension Contribution paid for through Tax Relief
$ 5,000	$ 98	$ 0	$ 98	9.8%
6,000	245	70	175	14.6
7,500	484	245	239	15.9
10,000	905	620	285	19.0
15,000	1,820	1,490	330	22.0
25,000	4,240	3,820	420	28.0
50,000	13,100	12,380	720	48.0

*Assumes: (1) Tax burden based on Personal deductions equal to 10 percent of Income, the low-income allowance or standard deduction, whichever is higher and

(2) Each tax payer takes full advantage of pension deduction.

The CHAIRMAN. Now we have the honor to hear from Mr. I. W. Abel, president of the United Steelworkers of America. We welcome you back before our Labor Subcommittee, Mr. Abel. I hope you feel as at home here as we feel with you.

STATEMENT OF I. W. ABEL, PRESIDENT, UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, ACCOMPANIED BY BERNARD KLEIMAN, GENERAL COUNSEL; BERNARD GREENBERG, PENSION INSURANCE DEPARTMENT; JACK SHEEHAN, DIRECTOR, LEGISLATIVE DEPARTMENT; AND MURRAY LATIMER, ACTUARIAL CONSULTANT

Mr. ABEL. Thank you, Mr. Chairman. My name, as you have stated, is I. W. Abel, and I am appearing here as president of the United Steelworkers of America.

Joining me at the table are Mr. Murray Latimer, our actuarial adviser; Mr. Bernard Kleiman, our general counsel; Mr. Jack Sheehan, our legislative representative; and Mr. Bernard Greenberg, our expert in our insurance and pension department, and as you can see, several hundred members and pensioners of the United Steelworkers of America who have come to the city of Washington this morning to lend to this testimony their interest and concern that prevail among steelworkers for this important legislation.

I appreciate, Mr. Chairman, this opportunity to appear here today and testify on a matter of extreme interest and concern to our union, our union's members, and their families. As you may well know, adequate pension legislation is a priority objective of the United Steelworkers of America.

Before proceeding with my remarks, I want to state that I have had our actuaries and pension experts prepare a detailed statement on Senate bill 3598, which we have filed with your committee, and my remarks will attempt to summarize this statement, plus make some general comments with respect to the overall problem.

I want to also congratulate the 15 of the 17 members of the subcommittee—both Republicans and Democrats—who have joined in bipartisan sponsorship of Senate bill 3598. This is in the tradition of earlier Senators who have sponsored and enacted legislation to protect American workers from exploitation, unsafe working conditions and economic insecurity.

As has been the case with similar legislation in the past, opposition to Senate bill 3598 has developed from an unusual combination of forces. It is perhaps understandable that opposition has come from certain bank officials, financial officers of companies, actuaries, and business organizations. It is more difficult, for me at least, to understand the opposition of some labor organizations to the proposed Retirement Income Security Act. I believe this opposition from these labor organizations is poorly thought through and not in the interests of working people.

The major opposition to Senate bill 3598 is the same stand-pat opposition that in the 1930's fought such social legislation as the Wagner Act, social security, the wage and hour law, and public housing. It may be dim in the memories of the younger persons in this audience today, but it is deeply etched in my mind that much the same groups that opposed Senate bill 3598 were also opposed to the New Deal legislation that today is a bulwark against depression and social chaos.

This Nation no longer has the time to wait until a new depression strikes to find the incentive to enact legislation protecting rights of working people. The hundreds and thousands who have been affected by pension fund failures, are only the tip of the iceberg. The failure to protect and guarantee pension funds and pension rights is building a potential social tragedy of terrible dimensions.

We have but to observe the people's reaction to unfair taxes to realize that each unsolved social problem becomes an increment added to every other social problem; and when the sum of all these unsolved problems becomes an intolerable load, the people's reaction may not always be reserved and orderly. Our union believes that the protection and guarantee of pension funds and pension rights are basic to the future security of workers and the Nation.

I cannot stress too strongly the need for action in protecting and guaranteeing the pensions of workers. In our union alone—we have had firsthand experience with the terrible personal tragedies caused by the termination of pension plans.

I hasten to assure you this is not a pleasant experience.

Increasing imports and their devastating effect on the jobs of American workers also underscores the need for action in this area. Union after union has felt the impact of the flood of imports as plant after plant has been forced to close down, wiping out thousands upon thousands of jobs.

In the 5-year period from 1966 through 1970 this country lost 1.4 million jobs because of imports and gained 500,000 jobs because of exports. Thus, the total job loss for the 5-year period was 900,000. When you translate a trade deficit into human terms, you are talking about food on the family table, money for the doctor, clothes for the children. And when you add the loss of pensions to that, you are talking about additional fear and want and privation.

I realize fully well that this is a highly technical and complex area, but as one who knows from personal experience the great need for such legislation, I cannot emphasize enough the urgency for action.

Although our union endorses and supports the basic purposes of the Retirement Income Security Act, we wish to offer some suggestions to strengthen what we believe to be deficiencies in the proposed bill. Our suggestions are intended to strengthen the bill and enable it to better serve its stated purposes.

The proposed legislation demonstrates that capable men of good will, who seek solutions to one of the most complex problems of our day, can devise a solution to the problem, as Senator Williams has put it, "to guarantee retirement security for the worker and to encourage the continued growth and expansion of private pension plans."

I wish to praise the efforts of Senators Williams and Javits and the other members of the committee in developing the present bill which attempts to preserve a balance between Federal regulations and private initiative.

In a sense the problem the Senate faces in determining what should be the minimum standard for operation of all pension plans is the same problem it must resolve in discussing minimum wage legislation, industrial safety and health standards, levels of social security and other similar legislation.

On the one hand, the regulatory laws should not be so extensive and demanding as to leave little or no room for collective bargaining or other private initiatives. On the other hand, a law should not be so weak that it does little, if anything, to solve the social injustice or inequity it seeks to remedy.

Delegation of authority to the Department of Labor: With respect to delegation of authority to the Department of Labor, our union believes the proposed establishment of an office of Pension and Welfare Administration in the Department of Labor is a wise and effective step. The administration of pension plans involves both economic and labor relations aspects. It is sound public policy to assign administrative functions relating to labor problems to the Labor Department.

In the administration of the Fair Labor Standards Act and other minimum standards legislation, the Department of Labor has always maintained a reputation for effectiveness and integrity. If the functions of this bill were assigned to a department having no other responsibilities concerning labor relations, the functions could not be handled as well as they could by the Labor Department.

The administration, including the Secretary of Labor, has proposed that the policing of pension plans be assigned to the Internal Revenue Service. The administration believes that high standards of pension administration can be achieved by giving or withholding IRS approval of pension contributions and pension trusts for tax purposes.

We believe tax incentives are a weak and ineffective tool to compel proper standards of pension plan benefits and funding. Tax incentives are irrelevant to the problem of pension plan protection.

The approach of Senate bill 3598 is sound in that it calls for the establishment and enforcement of minimum standards of administration, funding, vesting and pension termination protection. These functions can best be established and enforced by an administrative agency rather than a tax agency.

We commend the subcommittee for proposing that the office of Pension and Welfare Plan Administration be made part of the Department of Labor, and we strongly endorse this proposal.

Pension vesting (sec. 202): I am filing with the subcommittee a statement containing detailed suggestions on various provisions of Senate bill 3598. But in my prepared remarks I do want to comment briefly on these suggestions.

On pension vesting, we believe the proposed vesting provision does not go far enough. The vesting schedule under the proposed bill has two basic elements: (1) it operates only with respect to service on or after the effective date of the act; (2) vesting commences partially with the eighth year of service and by annual increments of 10 percent becomes fully effective after 15 years of service. The proposed schedule, if enacted immediately, would not fully protect workers until a full generation after enactment because such protection would apply only to service from the date the bill becomes law. Workers would not receive any credit for time worked before the legislation becomes effective.

Mr. Chairman, publicity on this legislation has led workers to believe that the Federal Government is about to protect them against the loss of pension rights where either their employment or their pension plan is terminated. It is not difficult to imagine the terrible shock of workers who would find that the legislation, if enacted as proposed, did not protect most of the time they had worked.

We recognize the arrangement that unless some minimum requirement of service for vesting is adopted, huge amounts of record-keeping may be created although the Federal social security system has demonstrated that it can keep total employment records on all the Nation's workers.

If vested rights are to be granted only after there has been a reasonable attachment to an employer, we believe the rule should require no more than 5 years of service in the case of voluntary quits or discharges. In addition, the rule should provide that all years of service after 5 years should be vested in full and not by increments on an annual basis.

In the case of involuntary breaks in continuous service resulting from layoffs, disability, or permanent shut down, no minimum period of service should be required for a deferred vested pension right. In such involuntary breaks in service all periods of service, regardless of length, should be credited toward the worker's pension at his retirement.

Continuous service guidelines: The vesting section of the bill governing whether covered service must be continuous delegates the duty to establish standards to the Secretary of Labor. But the bill does not clearly indicate the legislative intent that should guide the Secretary of Labor in the establishment of these standards.

A general definition of continuous service should be included in the bill. We believe that hours worked should be part of the definition of covered service and that plans based on lifetime hours worked should be considered as equally acceptable as those that credit service on some annual basis.

The major, if not exclusive, consideration of the Secretary of Labor in establishing such standards should be only to prevent pension provisions designed to evade the law or to obtain unjustifiable benefits from the insurance fund.

Pension costs: Pension costs will undoubtedly be increased by the enactment of compulsory pension vesting. But the costs involved in legally establishing vested rights may be compared to the costs involved in raising minimum wages or abolishing child labor. When these costs are measured against the social justice achieved, they are small indeed and should not be considered as a bar to legislative action.

Credited service prior to the bill's enactment: Every major pension negotiation in this country since World War II has provided for crediting all service prior to the start of the pension plan. Thus, even employees at retirement age on the effective date of a new pension plan were immediately eligible for a pension based on their total service from the time they were hired. This has also been true for improvements providing for increased benefits. Unless past service is credited in new pension plans, long-service employees would be entitled to few or no benefits if they are at retirement age or close to retirement age.

Yet, this is what Senate bill 3598 would do since it credits only future service for the purpose of compulsory vesting and termination insurance. This is like proposing that minimum wage legislation should not apply to the current work force—only to employees hired in the future.

What we are advocating is that where pension plans exist or will be negotiated all past credited service recognized by the plans should also be recognized by the bill for the purposes of vesting and termination insurance.

Proposed procedure in the event of plan termination: The proposed bill is silent on the procedure to be followed when a pension plan terminates and there is not enough money in the pension fund to cover immediate and deferred pension benefits. Where insurance is payable, we believe the logical first step would be to transfer the terminated fund to the pension benefit insurance fund. Such a transfer would accomplish a number of practical purposes:

1. The problem of when the insurance fund takes over would not arise.

2. Administrative problems would be centralized initially.

3. The transfer of pension funds, and assets, will allow the insurance fund to become operative immediately with respect to existing plans and with respect to service credited prior to passage of the legislation. This is one of the most crucial points before the subcommittee.

Cost of plan termination insurance: If our pension experience in the Steelworkers were applied to industry generally, we estimate the deficit in terminated pension plans—when combined with our proposal on the use of employers' assets—would range between $50 million and $100 million a year. This is a very reasonable cost for eliminating the nightmare confronting the workers of this Nation.

Recovery (sec. 405): We believe the recovery provision should be strengthened in two ways. It should provide that upon the effective date of the legislation all provisions of a pension plan limiting pension liability just to the pension fund's assets should be declared null and void.

Secondly, the insurance fund should be entitled to recover from the firm's assets the difference between the actuarial value of the vested benefits and the value of the pension fund transferred to the insurance fund. This should be done before any payments are made from the pension benefit insurance fund, and after the plan's pension fund has been transferred to the insurance fund.

Assets of the company: Pension plans are different from other employee benefits because of two special characteristics of pensions: (1) Pensions are payable only after an employee ceases to work; and (2) pension plans usually acquire substantial unfunded liabilities.

We believe it is important to establish by legislation the principle that an employer is not absolved from meeting the obligations of a pension plan when it is terminated and when assets are less than liabilities.

When an employee is hired, he is not told that he may be paid a decent wage, that he may have a safe place to work, that he may eventually be paid a pension. The new employee is hired on the basis of certain absolute conditions of employment. In fact the government already has established minimum standards for many conditions of employment. But at the present time it has not established standards for the retirement of workers.

It is our position that an employer who terminates his pension plan when all liabilities are not fully funded should be in no different position than someone who quits his job while owing someone else some money. If he has money in the bank, or other sources of income, he is expected to continue to meet his obligations. We believe an employer has the same duty to meet his obligations to pay the pension benefits due to his employees. During his lifetime on the job, the worker has contributed to the creation of the assets owned by his employer. The worker, therefore, has the right to look to those assets, as well as the pension fund, to pay the retirement benefits he has earned.

The legislation before you should provide that if a pension fund cannot fully meet the obligations of a terminated plan, the employees should be entitled to enough of the employer's assets to make up the deficiency. The legislation also should specify that a successor employer to the terminating employer is as fully responsible for the payment of benefits as the original owner.

Most, if not all, responsible employers accept what we are proposing as perfectly normal. It is not unusual for a company negotiating a new pension agreement to assume pension obligations larger than what the initial contributions to the fund will cover. In such cases, the difference is made up from the company's treasury until the fund is large enough to assume the total obligations of the pension provisions.

Our pension agreement with the United States Steel Corp. is typical of the general philosophy of most of our pension agreement. Under that agreement the corporation and our union agree that the benefits of the plan "shall be provided by the company or caused to be provided by the company."

Also, in the case of United States Steel, the company "is free to determine the manner and means of making provision for funding and paying the benefits" of the pension agreement. Thus, in any termination involving United States Steel, the company's assets are pledged if the pension fund is inadequate to pay all benefits.

We must accept the twin principles that every company must fund its pension obligations prudently, and if the pension fund—despite such sound procedures—is inadequate, the company's assets must meet the deficiency. Any other approach would make pensions subject to a kind of roulette: If the employer guesses the life expectancy of his operations and the liabilities correctly, pensions would be paid; otherwise, they would be paid only in part, or perhaps not at all.

Termination insurance is feasible: In earlier testimony before the House Ways and Means Committee, Mr. Kenneth L. Houck of the Bethlehem Steel Corp. raised some questions on the feasibility of insuring pensions. Mr. Houck asked, "should the program be designed against someone making a thoughtless promise or to cover the bankruptcy of a business or seriously declining operations; or to insure against someone making a decision to discontinue operations for any reason?"

These are serious questions with which the legislation must contend, and we believe the proposed legislation goes only part way to overcome the implications of Mr. Houck.

We believe the benefit levels that the legislation proposes to insure are reasonable, at least at the beginning. We believe the next step to insure fiscal responsibility is a minimum funding obligation. Then, after a prudent funding program is established, the company's assets should be assigned to cover any unfunded liabilities when the plan is terminated. The most effective means to guard against "thoughtless promises" would be for each company to carry on its books a legally binding note acknowledging pension obligations as a debt to be paid in full.

In order to encourage the investment of American funds abroad, the Government insures such investments against seizure by foreign governments although it cannot predict when the investments might be seized.

I ask, Mr. Chairman, should we be less eager to protect the pension benefits of American workers whose rights are threatened by equally unpredictable plant shutdowns?

Mr. Houck's question about insuring "thoughtless promises" implies there are pension plans that provide unreasonably high benefits. We are unaware of any pension plans that provide excessive benefits. Pension benefit levels are based on earnings before retirement and are, therefore, self-limiting.

Mr. Houck's fears about "thoughtless promises" most certainly cannot be applied to the basic steel industry, or any other industry within our union's jurisdiction. We have yet to negotiate with any employer who did not first have to be convinced that what he was agreeing to was consistent with the pattern in his own industry or area.

Our private pension system is a major element in the maintenance of industrial peace. We seek positive ways of strengthening that system. We think responsible companies and company officials should support our efforts with constructive proposals of their own, rather than seek out questionable obstacles and try to make them impossible to overcome.

Mr. Houck also pointed out that pension insurance is unlike Federal bank deposit insurance because it does not protect existing assets. We do not argue that there are no differences in insurance coverage. Life insurance is different from fire insurance. It is the difference in the object being insured that requires different types of insurance.

Assessment and premiums for pension benefit insurance: A problem that has troubled union negotiators for many years is the great variation in actuarial estimates of cost. For the sake of proper administration, the legislation must require that the determination of unfunded liabilities be based on actuarial standards, assumptions, and methods established by the Secretary of Labor. Then, uniformity will have been obtained among all employers, and an unnecessary area of labor dispute will have been eliminated.

Pension funding. A sound pension funding formula should create a pension fund large enough so that if contributions to the fund were to stop on a permanent basis, the fund would provide all the benefits accrued by the workers to the date the payment stopped.

It seems to us that a first approach to the funding policy problem should be a requirement that enough money should be contributed to the pension fund during the service of the average worker to pay him his pension for life after retirement. But if the average age of a company's employees is 45 years, and the average retirement age is 65, 40-year funding would, in many cases, fail to produce adequate assets. If the legislation is to be effective, authority should be granted to the administrative agency to require contributions adequate to meet all obligations.

Current practice in several large American industries provides for newly created pension liabilities to be paid off over 30 years. We know of no evidence that a 30-year funding standard has adversely affected the ability of any employer to stay in business or to compete successfully.

Certainly the experience in our neighboring country of Canada, which presently requires 25 years with a gradual reduction to 15 years, which has demonstrated no decline in the establishment or improvement of such plans.

How pension costs increase can be illustrated by the pension reports of Bethlehem Steel. Pension payments increased from $699,503 in 1931 to $4,181,184 in 1951 and to $67,502,535 in 1971. If one looks back to 1931 and thinks what the effect would have been if the funding provisions of S. 3598 were in effect at that time, with the advantage of knowing the problem in 1972, it is evident that 40-year funding is inadequate.

Voluntary portability: It is difficult to see what benefits would result from the proposed portability program under Title III of the legislation. Our union is an advocate of portability, and I am proud to say that portability is a part of the pooled pension plan of the industrial union department of the AFL–CIO. We recognize, however, that portability is only possible if the participants are all members of a single, pooled pension fund in which actuarial assumptions and actual experience are applied the same to all plans. Since no such pooling is contemplated in S. 3598, the proposed portability program is impractical.

However, if vesting and pension protection are achieved, the worker will be assured of his pension benefits whether he receives them ultimately from one employer or a number of them.

For the time being, at least, this subject should be left to collective bargaining. We urge that the proposed portability provision be dropped since it serves no useful function, and does not add anything to retirement income security.

PENSION PLAN OPTIONS (215)

The proposed legislation would permit employers with plans in existence, which do not provide for vesting, to keep such plans in effect. But the bill would require such employers to establish an additional plan that would meet the vesting requirements of the legislation. Apparently, it is intended that a plan without vesting could make the change to vesting without additional cost. This would be accomplished by requiring that contributions to the new plan be made at a rate not less than the contributions to the old plan.

Exactly how this is to be accomplished is not clear, since new employees will all be compelled to participate in the new plan.

But if the principle of equality of contributions between plans could be made to operate, employees covered by the new plan would have a different level of benefits than the employees without vesting in the old plan.

We have recognized that compulsory vesting will add to the cost of pension plans. A plan that seeks to add vesting to its benefits without any increase in contributions can do so only by reducing other benefits of the plan. Such a plan, therefore, transfers the cost of vesting from the employer to the employees, and this would inevitably lead to serious labor-management disputes.

In order for the proposed two-plan system to work, it is necessary to offer employees an alternative to the old plan. An alternative cannot be some undefined benefit level plus vesting. The proposed two-plan system would be an administrative nightmare since a new alternative benefit—not requiring any change in pension contributions—would have to be a guess subject to change later.

Our experience in Canada, where we are the largest industrial union, convinces us that the cries of doom if vesting is required are without foundation. If public policy mandates vesting of pensions, the provision should apply uniformly to all covered employers on the same date. We oppose the proposed two-plan system and urge its deletion from the bill.

CONCLUSION

In conclusion, Mr. Chairman, many areas of this Nation's economic life affect employers and employees where industry and labor cannot solve their problems by themselves. In these areas there must be a cooperative venture of government, industry, and labor. We subscribe to the belief that to the greatest extent possible, free collective bargaining should be the primary method for the resolution of labor-industry problems. But in the pension security area, as in others, no amount of negotiating between companies and unions at a time of pension termination will create a pension fund sufficient to cover liabilities where no such fund exists.

Secretary of Labor Hodgson displays a general hostility to the idea of mandatory funding and pension termination insurance and suggests that congressional action be delayed until an updated study "on the extent of benefit losses under pension plans which are terminated" can be concluded at the end of this year.

We wonder whether any amount of further study can change Mr. Hodgson's opinion that 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. I submit that no amount of studying can throw light on the reasonableness of the Secretary's policy position.

Mr. Hodgson's position parallels the position of the National Association of Manufacturers which, in testimony before the House Committee on Labor in 1971, said that compulsory funding would slow down normal pension plan improvements while discouraging the establishment of new plans.

I can only repeat what I have said in response to the NAM position:

> This statement is totally illogical, if not downright silly. If pension promises can be paid only if the accruing liability is funded, how can anyone urge the Government to permit or encourage the establishment of plans which are almost certain not to pay their benefits? The failure to establish such new plans is no more to be regretted than the failure to establish banks and insurance companies which intend to operate without proper reserves.

The United Steelworkers of America and other unions at the bargaining table and in the legislative halls have done as much or more to create pension retirement income than has any combination of employers acting independently. If Mr. Hodgson believes extension of the private pension system is praiseworthy, he should recognize the contributions of the union movement to this cause. Because we have been so active in this effort, we, more than anyone, know the obstacles to pension security through the theory of economics preached by some witnesses before your committee.

By all means let us encourage the expansion and liberalization of private pensions. But let us make sure the private pension system retains its integrity so that the faith of the people in that system will not be destroyed. The Government can do this by helping the private pension system to deliver all the benefits it has promised to the millions of people who rely on these benefits to achieve a decent standard of living in retirement. Pension insurance is essential for the continued existence of the private pension system.

In conclusion, I want to express my appreciation again for this opportunity to testify on a subject of such great importance to the workers of America. I also would like to repeat my plea for urgent action to protect and guarantee the pensions of the millions of workers who, after a lifetime of work, are entitled to security and dignity in their golden years. This is one of the most current vital needs of workers.

You have seen proof of that here today. The guarantee and protection of workers' pensions will stand as another landmark piece of social legislation that will give workers an added measure of human dignity. Thank you.

[Applause and standing ovation.]

The CHAIRMAN. Thank you very much, President Abel. You have been applauded not only by the committee but by this whole room, we appreciate your testimony. It has been the final thrust we need in these formal hearings.

I will turn first to one of your great Senators from Pennsylvania, Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman.

Unfortunately my Armed Forces Committee is voting out the $20 billion military procurement bill, so I asked Senator Williams if I could go out of turn.

I wanted to add my comments to what I felt was President Abel's very comprehensive and forthright stand, cogently responsive to the needs of all the American workers.

I spoke several years ago, as you may recall, at your legislative conference in Pittsburgh where pension reform was the topic. I appreciate the leadership effort you have made, and I signed one of the first petitions your people had circulated. I simply say I appreciate the leadership your organization, and you particularly, Mr. Abel, have given, and am very pleased to have your thoughts which will certainly be taken into most careful consideration when we mark up the bill. [Applause.]

The CHAIRMAN. Senator Pell.

Senator PELL. Thank you, Mr. Chairman.

I would like to join in commending the Steelworkers on the leadership they have shown in this area. There are many unions which are reluctant, timid, and scared as we move into this field of pension investigation. It required the leadership of one strong union to remove some of these fears. All that the committee and the Congress is after is to try to help the individuals who are really now—perhaps being cheated is too strong a term—but in many places workers do not even realize how their pension is jeopardized. This is the worst thing of all.

Your leadership has helped a great deal in allaying the fear of other unions. My own consciousness of this problem was first aroused in a similar hearing some years ago when the United Mine Workers was being asked to testify on the subject.

You have done a tremendous amount to help secure general support for reform and displace the public image of unions as all in the UMW mold.

I have two questions. In connection with the Canadian experience, as I understand it, in Ontario and in Quebec; and three other provinces, for the last 7 years they have had legislation similar to that which the committee is putting forward and that it has worked fairly successfully.

You touched on this in your testimony. I was wondering if you felt that you had anything further to add on the Canadian experience, as to why we should perhaps not look at that more closely than we have as a committee.

Mr. Abel. Up to date, Senator, we find the action in Canada quite in line with our thinking, and that the action in Canada has not, as some people predicted, detoured the development of pension programs and improvement of programs.

As I pointed out in my statement, we are the largest union in the neighboring country of Canada, and we deal with the largest corporations and some of the smaller ones.

We do have good pension programs, just as we have in the States, and those programs now are protected.

The funding requirements, as I pointed out, at present are 25, but we are talking here of 30-year funding, and they will be reduced in the next several years.

I am just not exactly sure, off the top of my head, of the time element, but year by year this is to 15-year funding.

It has not been any deterrent to the pension expansion program in that country.

Senator Pell. I think the point you brought forward in your testimony is important and should also be widely known, because when you can cite an example of success of what is proposed here and I think that also removes objections.

I was interested in your thoughts concerning the fiduciary role in these pension plans.

Do you feel that the 10 percent provision, that no more than 10 percent of the proceeds of the fund can be invested in the corporation where the individuals work is a correct one? Do you think it should be more? Do you think it should be less?

Mr. Abel. We certainly think it should not be more than 10 percent. We would like, of course, that there be as little as possible or no investment in the employer's own company.

Senator Pell. That would be my thought.

Mr. Abel. I would make this point, Mr. Chairman. We have on occasions found that our entire pension fund was invested in the corporation or the company's own assets and stock. We certainly do not subscribe to that.

Senator PELL. That is outrageous. It is often used to drive the price of the stock up, as you know.

Mr. ABEL. That is right.

Senator PELL. Do you have any views as to the pattern of investment? Should we have a great emphasis on common stock, the prudent-man-rule dictate, or do you think the prudent-man-rule is correct?

Mr. ABEL. I think the prudent-man-rule should apply. I would say that we do not advocate it with our employers, in our own instance—and we are an employer as well as a labor union. In fact, we are a large employer by standards of employers. We have in the United Steelworkers of America more than 1,400 people on our payroll, and we provide a pension program for them.

To give you an example, the funds of the United Steelworkers' pension program now are in excess of $40 million. All of that is invested in Government securities. We do not go out of the Government securities.

We certainly do not say that our employers should exercise this kind of policy themselves, but I think the prudent-man-rule should apply.

Senator PELL. In that case it would seem to me, in view of the galloping inflation that we have been having for the last few years, the prudent-man-rule would dictate that these funds be removed in great part from Government securities and put in common stock.

Mr. ABEL. That is true in some respects, but by the same token I would remind you that the Government is a bit more generous in recent years than it has been in the past, and we receive returns of 7, 7½ and 8 percent on some of our Government investments. That is much better than 2½ percent which we contemplated when we went out.

Senator PELL. But you have no capital appreciation.

Mr. ABEL. That is right, we do not achieve any capital appreciation, nor do we risk the capital losses that many pension funds endured in the last few years because of the reversal of the inflationary movement.

Senator PELL. This reminds me of an exchange with Walter Reuther some time ago; he was somewhat of the same mind. I thought it was a good idea to put more of this money into the Nation's industrial stocks and less into the bonds, but there have been so many bad experiences I see your reasoning here.

Another question along this line, do you think the moneys you have in the investments should be invested with a view to social purposes? In other words, should you put a percentage that you allocate into housing, for those who are less well off than the average, or for other social purposes in our own country, or that you should not invest in securities from South Africa, et cetera? What would be your view on that?

Mr. ABEL. We do endorse this kind of support, Senator, although I should point out that in our dealings with our employers and our pension arrangements we rely solely on the employer providing the pensions, handling the funds, making the investments. That is their only obligation under our plan.

We do talk to them from time to time to encourage their support of various housing programs and that sort of thing. Yes, we do endorse it.

The CHAIRMAN. Senator Taft.

Senator TAFT. Thank you, Mr. Chairman.

Thank you, President Abel. You read a very excellent statement.

Do you have any comment on the proposed exemption that Mr. Biemiller was talking about of multiemployer plans?

Mr. ABEL. Yes, I do. I find myself not in agreement with Mr. Biemiller's position, nor the position of a number of our sister unions. I certainly feel personally—and I have tried to advance my thinking within the councils of the AFL–CIO along this line—that all employees, all workers, are entitled to this kind of protection.

I think that multi-employer funds can fall by the wayside as well as single-employer funds. I would cite as an example the needle trades.

With the tremendous expansion of foreign imports and the impact that these imports have had on the needle trade industry, I think this points up the need for this kind of protection.

The best efforts of a number of these employers cannot compete against the kind of competition they are getting from Taiwan and Hong Kong and places of that kind.

So they could very well—I hope they do not—find themselves out of business as a result of the impact of foreign imports.

Senator TAFT. As to this matter of employer's assets being liable in the event of inadequate funding at the time of termination of a plan, would not a sound compulsory reinsurance plan avoid that problem, make it unnecessary?

Mr. ABEL. Yes; I would assume it would. In the event it would not, we do feel strongly the company's assets should be utilized to meet this obligation, just as they are now utilized to meet a wage obligation.

Senator TAFT. I really feel it is preferable because it seems to me your suggestion is perfectly equitable as far as I can see. If pension benefits are negotiated, they certainly ought to be fulfilled. But I can see a problem on bankruptcy, of the marshaling of assets and secured liabilities, and how they would relate to your proposal.

Mr. ABEL. Our feeling, Senator, is that it should perhaps follow along the lines presently used at the Federal Deposit Insurance Corporation. Certainly, where a bank is closed the assets of that bank are immediately seized or utilized to liquidate the bank's indebtedness. Then what is left is another story. It is along this line that we are thinking.

Senator TAFT. You do not think there ought to be a first call on the insurance fund—it ought to be a first call against the company's assets?

Mr. ABEL. It is first the company's obligation, and the first call, in our judgment, should be on the company rather than on transferring the company's responsibility to the fund.

Senator TAFT. We have had some witnesses, President Abel, who felt that the private pension system really should be abandoned in favor of an expansion of social security. I gather from your testimony that you are strongly in disagreement with that point.

Mr. ABEL. Very much, sir. Certainly we are strong supporters of social security and, as you know, we are always advocating improvements, but it is our thinking that social security was designed for and does achieve what some people are new advocating. Our private pensions are supplements to social security. There is this business of some people wanting to avoid this step now, by saying that the answer to the problem is to make mandatory all companies providing private pensions—this is not the answer to the problem at hand. Social security already does that.

Senator TAFT. Thank you very much.

Mr. ABEL. May I say, Senator Taft, I have been following reports on your hearings, and, as an old member of your State of Ohio, I want to take this occasion to commend you for the work you have been doing and your interest in advancing this problem that we have.

Senator TAFT. Thank you very much. We have had one rather difficult case relating to your union of which I believe you are familiar. It is a very tragic situation.

Mr. ABEL. This demonstrates fully the kind of problem we are facing.

Senator TAFT. We had one man of 76 years who had worked 40-some years at Columbus Malleable and was cut off with a small termination payment.

The CHAIRMAN. Thank you very much. Mr. Abel. We have been called to vote. I wonder if while we are over there you would perhaps like to address your friends here who have gathered in such numbers.

Mr. ABEL. We thank you very much, and while we have made other arrangements, perhaps we might take advantage of your offer, Senator.

If I may impose for just a moment further on the committee's time, a number of the members of the committee have mentioned the numerous letters they have received and the petitions regarding this. We have this morning with us the president of Local Union 1463 of Ambridge, Pa., Mr. Ken Campbell, and Vice President Emil Kabat, who have taken upon themselves as two individuals the task of securing support for this legislative effort.

They have with them this morning, secured from all over the United States, the signatures of some 140,000 workers—not just steelworkers but workers in all craft, all industries, all unions. They would like, Mr. Chairman—and we would appreciate it—if at this time President Campbell might present to the committee these petitions that they have brought along, representing 140,000 signatures of workers across the country.

The CHAIRMAN. Yes. Why do we not have Mr. Campbell and you gentlemen come up here. We will gather around. This is a real petition to the Congress. This is encouraged under the Constitution, and certainly encouraged by this committee.

We do appreciate it. This is an expression across our country of our need to pass this legislation.

I wonder if we could return to the court order that we have had.

Senator Pell and I wanted to have legislative caucuses with people who are here from our respective States. Those who are here from Rhode Island and New Jersey, please await our return from the floor.

CONCLUDING STATEMENT OF HON. HARRISON A. WILLIAMS, JR., A U.S. SENATOR FROM THE STATE OF NEW JERSEY, ON S. 3598 AND RELATED PENSION LEGISLATION

This concludes our hearings before the Senate Labor Subcommittee with respect to the Retirement Income Security for Employees Act of 1972, S. 3598, and related pension bills now pending with the committee.

During these 2 weeks of hearings by the subcommittee, we have heard testimony from numerous individuals, experts, and organizations, representing virtually all private sectors having a vital interest in pension legislation. Much of this testimony has been comprehensive and constructive and of assistance to us. Some of the views expressed contain much merit and these have been accompanied with offers to assist the subcommittee in its consideration of this legislation. The subcommittee appreciates this cooperation in the formulation of final legislation.

Neither Senator Javits nor I has made any claim that the reforms in the Retirement Income Security for Employees Act, S. 3598, provide perfect solutions to resolve the shortcomings of the private pension system. However, as many witnesses have testified and agreed, this legislation, while not without areas for improvement, is a thrust in the proper direction to achieve effective and meaningful reform. It does represent our joint efforts, and together with those other Senators who have cosponsored the bill, we believe it does attempt to correct specific deficiencies and inadequacies which have been identified.

Although some testimony presented was intended to minimize the findings of the subcommittee resulting from its detailed study, these findings of the existence and recurrence of inadequacies inflicting irreparable losses upon our workers cannot be denied. However, it is understandable that there should be divergent views for reform, many of which deserve serious deliberation by the subcommittee.

Essential reform through pension legislation must be feasible and effective, and even more importantly, must be directed to the elimination of the problems plaguing American workers. It is our sincere belief that this is reflected in the provisions of S. 3598. We believe it is imperative for the Federal Government to prescribe minimum Federal standards to protect the pensions of workers. Their cries and pleas for assistance can no longer ignored. Congress has the obligation to respond to workers and to help them achieve pension reform.

Among the testimony presented before this committee, there has been an expression of fear that pension legislation will stifle pension growth. We believe it will not. As we are committed to pension reform, we are also committed to legislation which will spur the growth of private pensions and still retain flexibilities within the system which are essential for economic and social development.

Limitations of time did not permit the subcommittee to hear all the persons and organizations who wished to testify. However, although unable to hear the testimony, the subcommittee has urged that their views, statements and recommendations be submitted to the subcommittee for consideration and inclusion into the record. These are assured that each will be given serious deliberation.

We are resolved that legislation which will ultimately come from this committee will reflect the considered views of all concerned and affected by it. The bill which will emerge from the subcommittee will embody the best of judgments in order that it may succeed to produce retirement income security for all American workers. Congress must act, and soon.

As I have indicated, the record will be kept open for a reasonable period of time to permit the submission of additional views or statements on the merits of this legislation.

At this point I order printed all statements of those who could not attend and other pertinent material submitted for the record.

(The material referred to follows:)

THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

JUN 9 1972

Dear Mr. Chairman:

This is in reply to your request for the views of the Treasury Department on S. 3598, 92d Congress, the "Retirement Income Security for Employees Act". This bill would establish vesting and funding requirements for certain private pension and profit-sharing plans; it would establish a voluntary portability program for vested pensions; it would establish a program of insurance for termination of private pension plans which are not fully funded; and it would establish disclosure and fiduciary standards relating to the administration of private pension and profit-sharing plans.

As you know, last December the President made several recommendations for new legislation in the private pension area. Two bills, S. 3012 and S. 3024, which would implement these recommendations are now pending in the Senate. (Two companion bills, H.R. 12272 and H.R. 12337, respectively, are now pending in the House of Representatives.) S. 3012 would amend the Internal Revenue Code to establish minimum standards for vesting of all qualified pension and profit-sharing plans. It would also permit employees who are not covered by qualified plans or who are covered by qualified plans which provide inadequate benefits to deduct amounts saved for their retirement and to exclude the earnings on these amounts from their gross income. S. 3024 would amend the Welfare and Pension Plans Disclosure Act to establish a Federal fiduciary standard for administration of private plans and to improve the disclosure of relevant information to participants in these plans. In addition, at the direction of the President, the Treasury Department and the Labor Department are now engaged in a study of the termination of private pension plans to gather the data regarding the extent of benefit losses, which we believe necessary in order to formulate sound Federal policy regarding funding requirements and termination insurance for private pension plans.

The Treasury Department strongly supports the enactment of S. 3012 and S. 3024 and believes that at the present time there is not sufficient data to deal effectively with the problem of pension plan terminations. Therefore we are opposed to enactment of S. 3598.

We would like to comment especially on the differences between the vesting standard contained in title II of S. 3598 and the vesting standard proposed by the Administration. After considerable study of the existing situation regarding vesting we concluded that the most pressing problem in this area is that faced by the older employee who terminates employment without vested rights in the pension plan sponsored by his employer. Our study indicated that 40 percent of pension plan participants age 45 or older do not now have vested rights and that 26 percent of pension plan participants age 55 or older do not have vested rights. These individuals if they terminate their employment do not have a sufficient opportunity to accrue a reasonable pension with a new employer or to provide an adequate retirement income by his own savings. For this reason we believe that a vesting standard should be directed at dealing with the problem of these employees who do not have the same opportunities as younger individuals to avoid the harsh impact of the lack of vesting. The Rule of 50 will accomplish this objective; our studies indicate that over 90 percent of all plan participants age 45 or older will be at least 50 percent vested under our proposal. For this reason we believe that it is preferable to the provisions contained in section 202 of S. 3598, which require no vesting in any case until the employee has 8 years of service with the employer.

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

Sincerely yours,

Frederic W Hickman

Frederic W. Hickman
Deputy Assistant Secretary

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

JUN 2 1972

JUN

BY SPECIAL MESSENGER

RECEIVED
MAY 6 1972
Labor & Public
Welfare Committee

Honorable Harrison A. Williams, Jr.
Chairman, Committee on Labor
and Public Welfare
United States Senate
4230 New Senate Office Building
Washington, D.C. 20510

Re: S. 3598

Dear Mr. Chairman:

In response to your request for a report on the above bill I enclose a memorandum of the Commission's comments, together with four additional copies.

Since you requested that our report be submitted no later than June 2, 1972, time has not permitted advance clearance of it with the Office of Management and Budget. We are, however, submitting it to that office simultaneously with its submission to you and will inform you promptly of any advice we may later receive concerning the relationship of our views to the Program of the Administration.

Sincerely yours,

William J. Casey
Chairman

Enclosures

MEMORANDUM OF COMMENTS TO SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE FROM SECURITIES AND EXCHANGE COMMISSION ON S. 3598, 92d CONGRESS, "RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT"

June 2, 1972

Summary Analysis of the Bill

This bill which is some 88 pages in length would confer on the Secretary of Labor the duty and responsibility to implement and administer programs and provisions in the bill designed to improve and coordinate the establishment and operation of private employee pension and welfare plans and provide for enforcement of its provisions through administrative and judicial remedies.

Aside from findings and declaration of Congressional Policy, and the definitions of terms, the bill consists of seven titles, as follows: TITLE I which provides for administrative organization and creation of an Office of Pension and Welfare Plan Administration in the Department of Labor, and spells out coverage, exemptions and registration requirements for such plans; TITLE II which provides for vesting and funding requirements for all registered plans; TITLE III which provides a voluntary pension portability program; TITLE IV which sets up a program for private pension plan termination insurance; TITLE V which provides disclosure and fiduciary standards; TITLE VI which provides for enforcement of the Act by the Secretary of Labor as well as through private litigation by plan participants and beneficiaries; and TITLE VII which establishes effective dates for various provisions of the Act.

82-079 O - 72 - pt.3 - 14

Scope of SEC Comments

Although TITLE VI is similar in some respects to the enforcement provisions contained in certain of the federal securities laws which are administered and enforced by the Securities and Exchange Commission the other titles in this Act, except for TITLE V, relate to matters concerning which this Commission has no particular experience or expertise. This comment will accordingly be confined largely to the disclosure and fiduciary provisions contained in TITLE V, though an addendum is attached to this comment which discusses certain aspects of the Commission's recent Institutional Investor Study and which may prove helpful in your consideration of S. 3598. Much of the material contained in this addendum is not in the nature of direct comment on S. 3598, as such, or on any of the specific provisions contained in it. Portions of the addendum do, however, relate to the disclosure requirements of TITLE V of the bill and to the Institutional Investor Study Report recommendations in that area. Such requirements are accordingly discussed in relatively brief fashion in this memorandum.

Disclosure Requirements Under TITLE V

In the main the disclosure requirements are found in Section 504 through 507 and are cast in the form of extensive amendments of and additions to the disclosure requirements of the Welfare and Pension Plans Disclosure Act as last amended. Many of the new requirements appear to be salutary both in terms of adequately informing plan participants and their beneficiaries and in terms of affording the Secretary data which is pertinent to his surveillance of such plans. Some of the newly-required disclosures will also be significant in terms of market impact of securities holdings and trading in the portfolios of pension funds which are, of course, a major type of institutional investor.

Without any attempt at exhaustive listing of all the new disclosure requirements contained in the bill, a few of them should perhaps be mentioned briefly as being among the more significant ones:

1. Within 90 days after the Act becomes effective or within 90 days after the establishment of a new pension plan, a comprehensive description of the plan must be published in the manner stated in the bill, the description must be "written in a manner calculated to be understood by the average participant" and it must describe not only the plan itself but the procedures for presenting claims and pursuing remedies under the plan.

2. Each plan administrator must secure annually a certified independent audit of the employee benefit fund and the opinion and comments of the auditor covering financial information required to be included in the annual report of the administrator must also be made a part of such report.

3. The annual report must include, among many other things, a statement of assets and liabilities and receipts and disbursements, the details of all compensation paid by the plan including the amount, the person to whom paid, his relationship to the employer or employee organization and any other position he holds with any party in interest, a schedule of all investments of the fund at year end showing cost and value of each security and showing aggregate amount by "type" (as defined therein) of all purchases, sales, redemptions and exchanges of securities and certain additional more detailed

(continued)

3. (continued) information whenever a portfolio security transaction or a lease or purchase or sale of property or a loan by the fund involves a "party in interest" (as defined in the bill) or exceeds either $100,000 or 3 per cent of the fund. The annual report must also contain specified disclosure as to the type and basis of plan funding, the number of participants both retired and not retired who are covered by the plan, the amount of all reserves or net assets and actuarial data and assumptions including a copy of the most recent actuarial report.

4. Both the plan description (including all amendments) and the annual reports must be filed with the Secretary who shall make copies available for public inspection. The plan administrator must also make copies available at its principal office for examination by all participants and beneficiaries, together with copies of all underlying documents including any bargaining agreement, trust agreement, contract, or other instrument covering the establishment or operation of the plan. The administrator must also furnish each participant with a summary of the plan's important provisions "written in a manner calculated to be understood by the average participant" (i) upon his entry under the plan, (ii) upon major amendment to the plan, and (iii) every three years starting January 1, 1975. Complete copies of any of the above-mentioned documents must also be made available by the administrator to any participant or beneficiary who so requests in writing but the administrator may make a reasonable charge for such complete copies of documents under governing regulations promulgated by the Secretary.

While not all of the new disclosure requirements contained in the bill are of a type with which the Commission is familiar from its administration of the federal securities laws, to the extent that they are of that type, the Commission commends them as extensive improvements over such requirements in the present Welfare and Pension Plans Disclosure Act. Indeed, a substantial part of these requirements accord with recommendations previously made by the Commission. During the 91st Congress the Commission was asked both by the Bureau of the Budget to comment on a Department of Labor draft bill and by the General Subcommittee on Labor of the House Committee on Education and Labor to comment on H.R. 1046, each of which bills would have amended the Welfare and Pension Plans Disclosure Act. In both instances the Commission's comments contained suggestions which are now incorporated, in substance at least, in the subject bill. In fact, the Commission's views in this area had been expressed even earlier in its comments on S. 1024 during the 90th Congress. More recently the Office of Management and Budget asked for our comment on S. 2 which was introduced in the First Session of the present Congress. While that bill and S. 3598 are identical in many respects, the latter improves on the former in the area of disclosure, particularly in requiring summaries of the plan to be furnished to each participant as stated in paragraph 4 above.

<u>Fiduciary Standards Under TITLE V</u>

The fiduciary standards which would be imposed by S. 3598 are contained in Section 509 of the bill. These standards are much more pervasive than those set forth in the present Welfare and Pension Plans Disclosure Act and in some respects are even more extensive than those contained in the Investment Company Act of 1940 as recently amended by Public Law 91-547, approved December 14, 1970. Some of the more noteworthy fiduciary standards provisions may be briefly described as follows:

1. Every employee benefit fund must be established pursuant to a trust agreement setting forth its purposes and the detailed basis on which payments are to be made into and out of it and such fund shall be deemed to be a trust for the exclusive purpose of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

2. Fiduciary duties shall be discharged solely in the interest of the participants and beneficiaries with "prudent man care" and in accordance with the underlying documents governing the plan.

3. Except as the Secretary may provide exemptions by rule or regulation, a plan fiduciary is prohibited from leasing, buying or selling property from or to any party in interest, dealing with the fund for his own account, representing any other party or act on behalf of any party with any adverse interest, loaning money or other assets, furnishing goods or services or permitting the transfer of fund property to anyone known to be a party in interest and from maintaining fund assets outside of the United States unless "indicia of ownership" remain subject to a United States district court.

4. Except in the case of profit-sharing and related plans, the investment of any plan fund in the securities of the employer corporation or in control corporations of the employer shall not exceed 10 per cent of the value of the assets of the fund.

5. Any fiduciary "who breaches any of the responsibilities, obligations, or duties" imposed by the Act shall be personally liable for any resulting fund losses and must restore to the fund any profits made through use of the assets of the fund. In this connection joint fiduciaries are liable for the misdeeds of each other unless they have objected in writing to them and have promptly filed their objections with the Secretary.

6. No person convicted of any one of a long list of crimes set forth in Subsection (h) may serve any employee benefit plan in any of the capacities stated in that Subsection for a period of five years subject to the authority of the Secretary to grant exceptions if "not contrary to the purposes of this Act."

7. All investments and deposits of the fund and all loans from the fund must be made in the name of the fund or its nominee, and no employer or officer or employee of the fund and no labor organization, or officers or employees 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."

As noted earlier with respect to disclosure requirements several of these fiduciary standards are patterned rather closely after recommendations made by the Commission incident to bills dealing with these same subjects in both the 90th and 91st Congress and the Commission regards them as salutary provisions which would materially strengthen the fiduciary standards contained in the present law.

Suggestions for Other Provisions Which Might be Included in S. 3598

The Commission suggests for your consideration four provisions which might add to the effectiveness of the bill:

1. A "custodian" requirement similar to that contained in Section 17(f) of the Investment Company Act of 1940 as amended by Section 9(a) of the Investment Company Amendments Act of 1970 (Public Law 91-547, approved December 14, 1970) under which fund securities, documents evidencing other investments and cash (except that needed for operating purposes but not in excess of the fidelity bond covering it) would be required to be kept in the possession of an official custodian as defined and limited in the Act.

2. A provision against the plan engaging in joint transactions with parties in interest patterned after Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder [17 CFR 270.17d-1], except upon advance approval of the Secretary under standards designed to prevent unfairness or overreaching.

3. Enlargement of the bar against persons serving pension funds in the various capacities set forth in new Section 15(h) to be added by Section 509 of the bill to include persons who have been enjoined

(continued)

3. (continued) by a federal court from acting in the capacities set forth in Sections 9(a)(2) and 9(a)(3) of the Investment Company Act. Conviction of any crime described in Section 9(a)(1) of the Investment Company Act is already included in Section 402(h) of the bill as a ground for being barred and injunctions under (a)(2) and (a)(3) would seem to present equally logical and closely related grounds for disqualification.

4. Section 502(a) of the bill would add further definitions to Section 3 of the Welfare and Pension Plans Disclosure Act including in paragraph (18) a definition of the term "separate account" which is cast in terms of an account "established or maintained by an insurance company," but the term "insurance company" is not defined. This may present the possibility of pension plans assets being kept in separate accounts of foreign insurance companies which might not be subject to adequate governmental regulation in this country. The Investment Company Act definition of "insurance company" (Section 2(a)(17)) which requires that such a company be "subject to supervision by the insurance commissioner or a similar official or agency of a State" might be helpful in that regard. Section 509 of the bill would add a new provision (Section 15(b)(2)(I)) to the Act which may be intended to cover this situation. If so, the legislative history of this provision should be developed in a manner which makes this point entirely clear.

Conclusion

For the reasons indicated in the foregoing comments, the Commission favors the disclosure and fiduciary standards provisions in TITLE V of S. 3598, either with or without the additional provisions suggested immediately above, but expresses no position on the remainder of the bill.

Addendum to SEC Comments on S. 3598, 92d Congress, Reflecting Related Aspects of its Institutional Investor Study

The Commission's recently completed Institutional Investor Study deals in some respects with problems at which S. 3598 is directed. The Study Report, submitted to the Congress on March 10, 1971, was the culmination of an effort by the Commission and the Study's staff of economists and attorneys to provide concrete statistical evidence of the extent and impact of institutional investment, including its effects on "the maintenance of fair and orderly securities markets . . . the stability of such markets . . . the interests of the issuers of . . . securities and . . . the interests of the public. . . ." 1/

One of the primary reasons for conducting the Study was the Congressional recognition of existing gaps in publicly available information about many types of institutions, including employee pension and benefit funds. 2/ The Study was expected to help fill

---

1/ Section 19(e) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(e). The Study was authorized by Joint Resolution of the Congress and approved by the President as Public Law 90-438 on July 29, 1968. The Study Report was published as H. Doc. No. 92-64 (92d Cong., 1st Sess.).

2/ H.R. Rep. No. 1665 (90th Cong., 2d Sess.) 3.

these gaps and to suggest more permanent ways of facilitating necessary information flows to institutional beneficiaries, corporate investors and government policy-makers.[3]

Analysis of Employee Benefit Plans

The Study treated corporate pension and other employee benefit plans as a major type of investment portfolio.[4] The primary focus was on the characteristics and operations of the plans as investment vehicles. Thus, the Study's data do not speak to those provisions of S. 3598 which are designed to regulate the substantive rights of participants in benefit plans, such as vesting of benefits, funding of benefits, pension portability and pension reinsurance.

3/ See, generally, appendix to Ch. I of the Study.

4/ Chapter VIII deals generally with pension-benefit plans. Since the investment portfolios of such plans are frequently managed by other financial institutions, they are also the subject of discussion in chapters dealing with investment advisory complexes (chapter IV), bank trust departments (chapter V) and insurance companies (chapter VI). The distribution and characteristics of holdings of various institutional portfolios, including those of self-administered employee benefit plans, are examined in chapter IX, and the relationships between institutions (including self-administered benefit plans) and portfolio companies are analyzed in chapter XV of the Study Report.

The Study found that employee benefit plans have become an increasingly important factor in equity investment. Over the five-year period from year end 1964 to year end 1969, common stock holdings of multiemployer pension-benefit plans grew by 94.5 percent, while those of other types of corporate pension-benefit plans grew by 53.6 percent. Total assets of these plans grew by 64.6 percent and 31.2 percent, respectively, over the same period. [5] One major reason for the growth of common stock holdings--relative to total assets--was the interest of plan administrators and managers in increased investment return, or "performance." This phenomenon--which was by no means limited to employee benefit funds but extended to other institutions as well--is also reflected in the common stock turnover and activity rates of employee benefit plans. Corporate plans increased their annual common stock turnover rate from 7.5 percent in 1965 to 17.2 percent in 1969, with an increase of 5.1 percent between 1966 and 1967. Multiemployer plans increased their turnover rate from 5.1 percent in 1965 to 8.7 percent in 1968 and 14.4 percent in 1969. [6]

5/ The growth of state and local government retirement systems was also remarkable. These funds increased their total assets during the five year period by 61.4 percent, and their holdings of common stock increased by 266.4 percent.

6/ State and local government retirement systems increased turnover rates from 3 percent in 1965 to 11.7 percent in 1969.

Yet another aspect of the developing performance orientation of employee benefit plans was an increased tendency to retain more than one investment manager for the plan--that is, to split up the portfolio for management--and to switch from one manager to another. Although bank management of plans predominated, 7/ self-management and investment adviser management appeared to be increasing. The Study examined the costs incurred by benefit plans for investment management, and found that older accounts, accounts holding greater numbers of issues, accounts with higher turnover rates and accounts managed by investment advisers tended to have higher advisory fee rates. Internal management was often chosen because of a belief that this might be less costly than external management.

As in the case of other institutional types, the Study found that investment assets in employee benefit plans were concentrated in relatively few such plans. There are about 200,000 tax exempt plans in existence according to Internal Revenue Service records; of these, about 33,000 filed reports with the Department of Labor under the Welfare and Pension Plans Disclosure Act (which excludes plans covering less than 26 employees). Ninety large companies (having 135 pension-benefit plans, which in turn were divided into 371 separately managed accounts) held assets valued at about $47.2 billion as of June 30, 1969, or about 46 percent of the total assets held by all pension-benefit plans in the country. The plans of the

---

7/ Management of the bulk of benefit plan investment assets was found to be concentrated in relatively few institutions. Four banks managed 37 percent of all noninsured accounts covered by the Study.

nine firms having the largest pension-benefit plan assets held assets valued at $24.7 billion. The common stock holdings of these nine firms' plans aggregated $16 billion. Equity investments were heavily concentrated in New York Stock Exchange stocks.

Although pension-benefit plans are large and growing investors in corporate equities, their potential influence on portfolio companies is muted by two factors. First, many plans are managed by external advisers, such as banks or investment companies, so that the benefit fund is not directly involved in the affairs of the portfolio company through voting or otherwise. Second, the proportion of outstanding stock of any one company held by a self-administered benefit plan is likely to be quite small, 8/ particularly as compared with the holdings of bank trust departments (which, of course, may include investments being managed for benefit plans). There are, however, some benefit plans--particularly profit sharing plans--which invest substantially or exclusively in the shares of the founding or sponsoring employer company. In these cases, the benefit plan may hold a very significant portion of the company's outstanding shares. Benefit plans appear generally to support management through voting on proxy matters; they are unlikely, in general, to participate informally in corporate decision-making.

8/ Chapter XV contains data on the proportion of common stock of a large sample of publicly held companies held by all self-administered portfolios, including pension-benefit funds.

<u>Initial Conclusions and Recommendations of the Commission</u>

In its letter of transmittal submitting the Study Report to Congress, the Commission made several proposals designed to improve the flow of information to Government agencies and to the public about the securities holdings of and trading by all types of institutions, including employee benefit funds. The letter also suggests the need for additional regulation in certain areas. Throughout the letter the Commission stresses the need not only for improved reporting by and regulation of institutions, but for <u>comparable</u> treatment of such institutions.

One of the primary benefits that may flow from the Study is a new perspective of the role of institutions of all types and a delineation of the extent to which the regulatory requirements applicable to each of them should be uniform. As indicated in its transmittal letter, the Commission expects to consult with other federal and state authorities in an effort to achieve a rationalization of institutional regulation.

<u>Regulatory Powers of Secretary of Labor</u>

S. 3598 would create in the Department of Labor an Office of Pension and Welfare Plan Administration headed by an Assistant Secretary of Labor, under supervision of the Secretary of Labor. Under Section 101(b) of S. 3598 the Secretary of Labor would have broad rule-making powers, including the power to adopt rules prescribing "reasonable limitations on actuarial assumptions, including, . . . interest rates, mortality, and turnover rates." The Secretary of Labor could also prescribe . . . "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 the Act. Section 101(d) would require the Secretary of Labor, prior to promulgating rules or regulations, to "consult with appropriate Federal departments and agencies with a view to avoiding unnecessary conflict, duplication or inconsistency in the rules and regulations which are applicable to such plans under other laws of the United States."

Disclosure of Institutional Holdings and Transactions

The provisions of Title V of the Act, relating to improved disclosures by employee benefit plans, are directly responsive to many of the concerns expressed by the Institutional Investor Study Report and by the Commission in its transmittal letter accompanying the Report.[9/] Furthermore, since the proposed legislation requires the Pension Commission to consult with other regulatory agencies, such as this Commission, regarding the implementation of such disclosures, the possibility of creating a comprehensive scheme of institutional reporting and regulation is enhanced.

9/ Study Report, vol. 1, pp. X-XI, 26-27; vol. 3, pp. 991-994. The Commission was particularly concerned that benefit plans did not report their holdings of and transactions in the securities of specific companies--with minor exceptions. S. 3598 would require such reporting on an annual basis.

In its transmittal letter, the Commission recommended that gaps in information flows about the scope and impact of institutional investing be eliminated by amendment of the Securities Exchange Act of 1934 to provide the Commission with general authority to require reports and disclosures of security holdings and transactions from all types of institutional investors, including employee benefit funds. As the Commission noted:

> "Such authorization would permit the Commission . . . to obtain continuing data for public disclosure and for the production of statistical data or aggregates, to the extent that it deems such data necessary or appropriate."

As an alternative to general legislative authority to promulgate disclosure rules for institutions, the Commission recommended modification of existing reporting requirements in the Exchange Act to encompass institutional holdings and transactions involving securities as to which the institution had either beneficial ownership--the present test--or investment management.

These recommendations contemplated that the Securities and Exchange Commission, as the agency charged by Congress with the broadest regulatory responsibilities over the public securities markets, would serve as a central depository for information about securities holdings of and transactions by all types of institutions. Under the Commission's proposals, all institutions, including benefit funds, would report to the SEC. The data reported would then be available for use by all other regulatory agencies, including the Secretary of Labor, and, to the extent appropriate, by the public. As an agency already receiving thousands of reports regarding securities holdings and transactions from individuals and corporations as well as institutions, the SEC would appear to be the logical focal point for adoption, receipt, review and dissemination of broader institutional disclosures about their investments in securities.

Of course, disclosures as to matters other than securities holdings and transactions would not be made to the SEC, but only to the particular agency concerned with regulating the reporting institution. Thus, the Secretary of Labor might receive most of the disclosures of the type set forth in Title V directly from the benefit plans, but could agree to accept reports made to the SEC in lieu of the stated disclosures as to securities holdings and transactions. 10/ It would appear that arrangements of this kind could be developed under the broad authority which would be delegated to the Secretary of Labor under Section 101 of S. 3598.

10/ The SEC would probably wish to require information on securities transactions--purchases and sales--on a more frequent periodic basis than the annual reports provided for in Title V of S. 3598. Instead of requiring employee benefit funds to file separate reports with the SEC and the Secretary of Labor, the funds could file with the SEC reports of securities transactions and holdings; this information would then be made available to the Secretary of Labor as frequently as desired.

Disclosure of Institutional Policies Toward Corporate Management

The Commission recommended in its transmittal letter for the Study that institutions state their policies on involvement in corporate affairs so that both portfolio companies and institutional beneficiaries might be informed of this important aspect of institutional investment management. The disclosures would encompass, for example, procedures for considering proxy materials, any general policy regarding supporting corporate management, any general policy of abstaining from voting, any general policy on voting for or against (or not voting on) certain types of proposals, any general policy of participating or not participating in corporate takeovers, and any policies regarding business relationships, personnel relationships and informal participation or consultation with portfolio companies in corporate affairs. As the Commission noted:

> "This type of public disclosure would focus the obligation of institutions to act in the interests of their beneficiaries and lead to their setting up procedures for systematic attention to questions of stockholder voting."

The Commission believes that these types of disclosures should apply to employee benefit plans, both self-administered and externally managed. The spirit of S. 3598, particularly in its stress on the fulfillment of fiduciary obligation in Title V, would seem to accord with disclosures of policies toward portfolio companies. Such disclosures may be particularly important where the benefit plan purchases substantial amounts of stock in the employer company, since the benefit plan may then be used as a means of perpetuating the control of existing corporate management.

It is not entirely clear whether the Secretary of Labor would have adequate authority to require disclosures of the type suggested, although the broad language of Section 101(b) of S. 3598 appears to suggest that it would. It is less clear that these disclosures could be made available to participants in benefit plans or to the general public.

Disclosure of Investment Risk and Calculation of Performance Fees

As previously noted, employee benefit plans, like other institutions, have become increasingly performance conscious. This has led to competitive pressures on investment managers which, in turn, have induced these managers to assume higher levels of risk on behalf of their beneficiaries. The Institutional Investor Study was able to develop methods for identifying separately that portion of investment return attributable to general market movements and that portion attributable to the portfolio's particular volatility. The Commission concluded that "improved disclosure of investment returns, portfolio volatility, and short-term trading (that tends to accompany high volatility portfolios) is needed from the managers of most types of professionally managed portfolios."

The Commission also suggested that investment advisory fees which provide an incentive for superior performance should (1) provide penalties for sub-standard investment performance that are symmetrical with rewards for superior performance,[11] and (2) be based upon volatility adjusted investment returns.

Section 101(b) of S. 3598 would give the Secretary of Labor power to prescribe limitations on "interest rates, mortality, turnover rates, and other matters . . . ." It is not clear whether such authority would extend to limitations on fees paid to the investment managers of employee benefit plans, although it would seem clearly desirable that the Secretary have such powers. In any event, we believe that employee benefit plans should be subject to the requirement of adequate disclosure of investment returns based upon appropriate adjustment for volatility. In this way, the participants, as well as the Secretary of Labor, would be advised of the extent to which the plan's investment assets were being subjected to varying degrees of investment risk.

Conclusion

The Commission is generally in accord with the underlying philosophy of improved disclosure for employee benefit plans embodied in S. 3598. If the bill were enacted we would hope to have the opportunity to discuss the specific form and content of such disclosures with the Secretary of Labor with a view to coordinating them with the disclosures of other types of institutional investors with which this Commission is concerned.

11/ Such symmetrical treatment is now required for investment advisers under the Investment Company Amendments Act of 1970.

EXECUTIVE OFFICE OF THE PRESIDENT
COST OF LIVING COUNCIL
WASHINGTON, D.C. 20507

JUL 7 1972

SENATOR WILLIAMS N.J.
JUL 8 11 34 AM '72

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

Re: S. 3598 - Retirement Income Security for Employees Act

Dear Senator Williams:

Mr. Rumsfeld has asked me to reply to your letter requesting comments on S. 3598 now pending before your committee.

Our staff and the legal staff of the Pay Board have reviewed the bill and determined that there is a reasonable basis to believe that the proposed legislation would have an impact requiring consideration under the stabilization program.

The proposed legislation would apparently increase employer costs in the form of higher retirement benefits. While the Pay Board has developed regulations relating to pension plans, it has not considered increased pension plan costs mandated by Federal legislation and the treatment of such increased costs in its development of the "qualified benefits standard" (§201.58 of Title 6 of Code of Federal Regulations).

The proposed legislation could require increases in payroll costs above those anticipated and above the level allowed under existing stabilization program regulations. Productivity improvement encouraged by more adequate pension benefits may not be high enough to fully offset the costs.

Should such legislation be enacted, the potential problem could be relieved administratively either by Council action exempting increased costs resulting from such legislation or by Pay Board action liberalizing the qualified benefits standard to provide for such increases without a diminution of increases presently deemed "reasonably consistent" with objectives of the Economic Stabilization Program.

Any potential impact on inflation could be monitored. If it created additional inflationary pressures then offsets could be considered among other elements of payroll costs.

The Office of Management and Budget has advised that it has no objection to the submission of this report to the Committee.

Sincerely,

J E Mullaney

Joseph E. Mullaney
General Counsel

UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

SENATOR WILLIAMS N.J.
JUN 15 1972 10:44 AM '72

JUN 9 1972

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

Dear Senator Williams:

The Atomic Energy Commission is pleased to respond to your letter of May 12, 1972, requesting our comments on S. 3598, a bill "[t]o strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans."

We support the general objective of improving the private pension system because of the immense social and economic benefits which we believe would result. In support of this objective, the Administration has submitted bills to the Congress which have been introduced as S. 3012 and S. 3024.

Although the Commission has no direct programmatic interest in the subject of private pension plans, we do have an indirect interest in such plans. As you are aware, the Commission's major facilities are operated under contracts with private corporations on cost reimbursable bases. As a result, we become intimately involved in private pension plans for financial and labor relations reasons. This experience leads us to concur in the need for legislation in this area.

We would, however, defer to the views of the Departments more directly concerned with respect to the specific provisions of S. 3598.

The Office of Management and Budget has advised that there is no objection to the presentation of this report and that enactment of S. 3012 and S. 3024, the Administration's pension reform proposals, would be in accord with the program of the President.

Sincerely,

John A. Erlewine

Deputy General Manager

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

SENATOR WILLIAMS N.J.
JUN 10 9 50 AM '72

8 June 1972

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

Dear Mr. Chairman:

Reference is made to your request for the views of the Department of Defense with respect to S. 3598, 92d Congress, a bill "To strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans."

The purpose of the bill is stated in its title.

Within the Executive Branch, the Departments of Labor and the Treasury principally concerned with the subject matter of the bill. Accordingly, the Department of Defense defers to those Departments as to the merits of S. 3598. We would note however, that the Administration has proposed two bills to the Congress, S. 3012 and S. 3024, to carry out the Presidents recommendations on private pension plans presented in his message of December 8, 1971.

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

Sincerely,

J. Fred Buzhardt

J. Fred Buzhardt

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C.. 20410

JUN 15 1972

RECEIVED
JUN 19 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:

Subject: S. 3598, 92d Congress (Williams, et al)

This is in response to your request for our views on S. 3598, a bill "To strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans."

The bill would, among other things, establish requirements relating to the vesting of benefits and funding of private pension plans. The bill also includes provisions which would establish a Federal program to insure plan participants against loss of vested benefits resulting from plan termination.

The President, in a message to the Congress on December 8, 1971, proposed a 5-point program to strengthen and stimulate the future development of the private pension system. Administration bills to implement that program have been submitted to the Congress and have been introduced as S. 3012 and S. 3024.

Since the questions involved are primarily the responsibility of the Departments of Labor and the Treasury, the Department of Housing and Urban Development defers to those Departments with respect to S. 3598.

The Office of Management and Budget advises that there is no objection to the submission of this report to your Committee, and that enactment of S. 3012 and S. 3024, rather than S. 3598, would be in accord with the program of the President.

Sincerely,

/s/ Richard C. Van Dusen

for George Romney

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUN 8 1972

Honorable Harrison A. Williams, Jr.
Chairman, Committee on Labor
and Public Welfare
United States Senate
4230 New Senate Office Building
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your requests of December 21, 1971 and September 15, 1971, respectively, for the views of this Office on S. 3024 and S. 2486, bills entitled the "Employee Benefits Protection Act."

S. 3024 is identical to draft legislation submitted to the Congress by the Labor Department on December 8, 1971, to carry out the recommendation made by the President in his message of the same date on Private Pension Plans for protecting American workers against abuse by those who administer pension funds. In that message, the President stated:

> "Most of these funds are honestly and efficiently managed. But on occasion, some are not. By requiring administrators to manage such funds exclusively in the interest of the employee beneficiaries, the proposed law would provide a Federal remedy against carelessness, conflict of interest, and a range of corrupt practices.
>
> The proposed law would also broaden reporting and disclosure requirements and strengthen investigatory and enforcement powers."

The President noted that he had first requested action in this field in March of 1970 and that he was resubmitting this legislation in slightly revised form so that it would be even more effective. S. 2486 is almost identical with the Administration's earlier proposal and, accordingly, we support enactment of S. 3024 in lieu of S. 2486.

Another legislative proposal was also submitted to the Congress last December to implement the President's pension reform program. That proposal, introduced as S. 3012, is currently pending in the Senate Finance Committee. It would provide tax deductions to encourage independent savings toward retirement, allow more generous tax deductions for pension contributions by self-employed persons, and require the vesting of pensions using a "Rule of 50."

We strongly support enactment of S. 3024 and S. 3012, which would be in accord with the program of the President.

Sincerely,

(signed) Wilfred H. Rommel

Wilfred H. Rommel
Assistant Director for
Legislative Reference

TESTIMONY OF SENATOR VANCE HARTKE (D.-IND)

BEFORE THE

SUBCOMMITTEE ON LABOR

Mr. Chairman. As a long time advocate of pension reform, I am most pleased to see the progress that this Committee has made in an area that has long been neglected. A pension means the difference between retirement with dignity and problem-free leisure time or spending the senior years burdened with financial obligations that cannot be met without assistance. I know that the Finance Committee will benefit from your work as we move to examine the panoply of programs for retirement income.

The time has come when we must make a careful examination of the kinds of retirement systems that are beneficial to the people who contribute to them throughout their working life. At the present time, older Americans draw from a wide range of income sources such as social security, public retirement plans, private pension systems, personal savings and investments, as well as continued limited employment. A host of new proposals for retirement income are being put forward for consideration. One such program is advocating a mandatory decentralized system that promises the worker and the contributor not only fully-funded, vested benefits, but considerable control over the investment policies pursued by the fund to which he is contributing. Canada and Great Britain have moved to reform and integrate their private pension systems into a more comprehensive system of retirement income, while, in this country, we have continually expanded the coverage of Social Security as private pension systems have grown.

There are changes that must be made. Currently, the most pressing need for change is in the area of Federal reinsurance for private pension plans.

I. Failure of Private Plans

The problem arises where a pension plan has incorporated a binding promise to pay an employee upon retirement, but does not have sufficient funding to meet all the plan's obligations. When a plant closes or moves, the worker is often left with little or nothing in the way of a pension fund. What I propose in my Senate bill, S. 1993, is a self-financing plan of Federal re-insurance.

The need for such legislation has grown in concert with the private pension system itself.

In 1940, private retirement plans covered 4.1 million employees. In 1950, this coverage had jumped to 9.8 million. By 1960, it was 21.2 million, and by 1965 it was well over 25 million eligible workers. During the same period, assets generated by the plans rose from $2.4 billion in 1940 to more than $12 billion in 1950, $52 billion in 1960 and $85.4 billion in 1965.

Today it is estimated that close to 27 million workers are covered by pension plans and their combined assets exceed $100 billion, or more than four times the assets of the Federal Old Age and Survivors Insurance Fund.

This rapid growth of private pension plans from 1940 to 1970 can be attributed to a number of factors. Among these are the continu: industrialization trend, the favorable tax treatment afforded to pension plans, the expanded influence of the American labor movement, and the special economic conditions which prevailed during World War II.

The continued vigorous growth in the absolute number and the worth of pension plans, has made the problem of pension plan failure increasingly serious. Between 1950 and 1965, 4300 pension plans were terminated. These plans covered 225,000 employees. On the average, approximately 20,000 workers a year had their pensions affected by plan failures. A study conducted by the Bureau of Labor Statistics indicated that there was a "marked upward trend" in the frequency of pension plan terminations during this 1950 to 1965 period. The Bureau of Labor Statistics attributed this uptrend to the dramatic increase in the number of plans. It is predictable, therefore, that the number of plan failures will continue to increase with the creation of new plans. But, as yet, there is no protection -- I repeat, no protection -- for the worker who is unfortunate enough to be with a company which fails and leaves him with no pension benefits.

My own interest in this problem dates from 1964 and the failure of the Studebaker Corporation's pension program. When Studebaker closed its doors in South Bend, Indiana, the workers pension plan had $25 million in assets, but there were more than 10,000 employees who had a claim on that amount. Of that number, there were 4,000 workers between the ages of 40 and 59 with at least 10 years of experience -- sufficient to give them vested rights under the Studebaker plan -- who received only 15 percent of the equity they had invested in the program. An additional 2,900 workers received absolutely nothing on their investment.

The tragedy of Studebaker is but the most striking example of a problem which is as pressing today as it was in 1964. A recent United Auto Workers study of failed plans showed that 39 percent of the workers covered by these plans received no benefits at all.

Today's economic uncertainties fairly well guarantee that there will be a dramatic upturn in the number of pension plan failures in the next few months. In the absence of some system of pension plan insurance, it is certain that the workers affected by these most recent failures will have their pension expectations for the future severely compromised.

II. The Hartke Solution -- Federal Reinsurance

Since the Studebaker closing, I have introduced legislation in successive Congresses, designed to meet the problem. This legislation establishes a Federal insurance program which would be self-financing through premiums assessed on the unfunded liabilities of all eligible pension plans. A pension plan would be eligible for this Federal insurance protection only if it met present qualifying requirements of Section 401 of the Internal Revenue Code. These are the same requirements which determine the eligibility of pension funds to tax exempt status.

a. Uniform premium on Unfunded Liability

The legislation provides that every eligible pension plan shall pay a uniform premium based upon the unfunded obligations of each insured fund, but in no case will this premium exceed 1/2 of one percent for each dollar of unfunded obligations. The Secretary of Labor, whose

Department is given general jurisdiction over the reinsurance program, is given general authority to set the premium rate. The program is placed under the direction of the Secretary of Labor since his department is charged with the protection of workers' interests and already collects detailed annual information on assets, costs and actuarial liabilities under the Pension and Welfare Plans Disclosure Act. It is recognized that close cooperation will be required with the Internal Revenue Service which would impose the sanction of disqualification on plans which do not participate in the program and which could make a plan ineligible for the reinsurance program if it failed to satisfy minimum funding standards established by IRS.

b. <u>Initial Treasury Loan</u>

My legislation authorizes the Secretary to borrow money from the Treasury for the establishment of a reinsurance fund. It is not contemplated that this initial Treasury loan should have to exceed $10 million in amount. This loan would then be repaid as soon as sufficient incoming premiums are received from covered pension programs.

Since this reinsurance plan is underwriting the benefit levels set forth in each insured plan, the amount of the unfunded liability in individual funds would be determined on the basis of a set of standard actuarial assumptions and procedures. These actuarial assumptions and procedures would be determined by the Secretary in cooperation with an expert advisory council established for this, as well as other, purposes. It is anticipated that these actuarial standards will not unduly deprive pension fund trustees of flexibility in the management of a plan's liability.

c. Provision for Partial Termination

When the employer has not gone out of business, but has closed a plant or reduced the work force, continued funding of the past service liability may become such a burden so as to jeopardize the existence of his remaining operations. To protect the rights of both terminating and continuing employees in this situation, this legislation provides sufficient flexibility so that, where there is a partial termination determined in accordance with present IRS regulations, an appropriate portion of the assets could be allocated to the terminating employees. The Federal Reinsurance Program would then pick up any additional liability on behalf of those employees. The employer would continue operation of his plan, with the remaining assets, on behalf of the continuing employees.

It should be clearly understood that insurance of pension credits for those not yet at retirement age would not mean that the pension reinsurance system would be liable for immediate payment upon a plan's failure. Rather, payments would only be made when the individual worker reaches retirement age. This guaranteed delay in the payment of pension benefits under the reinsurance system further ensures that the insurance premium established by the Secretary of Labor will be adequate to meet even short-term fluctuations in the rate of plan terminations.

d. Priorities for Beneficiaries

If by some chance, however, the premium set by the Secretary proved inadequate, this legislation establishes a series of priorities for protection of benefits. The highest priority would go to those who have already retired and who are receiving a pension and to those who are eligible to retire under the terms of their plan and who have attained normal retirement age. Next in line for consideration would be those who

82-079 O - 72 - pt. 3 - 16

are eligible to retire by virtue of having attained the age specified in the plan for early retirement. If early retirement is not provided, age 60, the usual age for early retirement, would be used. Finally, reinsurance would be provided for all other pension credits in an order to be determined, if necessary, by the Secretary on the basis of expert advice.

This brief analysis was meant to show that my proposal directly meets the numerous problems created by pension plan failures but is not so technical that it will deprive pension funds of needed flexibility.

I am pleased to see that the reinsurance concept has been included in the Committee bill. Although it constitutes a definite advance over the present state of neglect, this particular approach to reinsurance leaves out several desirable features of my own plan.

The Committee bill mandates a premium for the first three years of the reinsurance program and thereafter leaves it to the discretion of the Secretary subject to Congressional disapproval. In my view, this sets the initial premium at an arbitrarily low level of 0.2 percent of the vested unfunded liabilities and provides no upper limit for the Secretary's discretion. The Hartke approach provides flexibility in setting rates from the start with a ceiling rate of 1 percent of vested unfunded liabilities.

My approach offers protection for all vested rights. The Committee proposal would only offer protection to vested rights acquired after the insurance program went into effect.

Both the Hartke and the Committee approaches would limit the amount of benefits payable under the insurance scheme to the lesser of $500 or a stated percentage of past earnings. In the Committee proposal, the protection is computed as 50 percent of the average yearly pay for the five years prior to plan termination. The Hartke approach promises 80 percent of the average of the past five highest salary years.

But I do not mean to dwell on the differences between my own approach and that which the Committee has chosen to follow. We stand together on the urgent need to get a Federal reinsurance law for private pensions on the books.

Critics of the pension reinsurance concept have claimed that a pension reinsurance program, with its additional cost to management, would stifle the growth of private pension plans. I think this is clearly incorrect. The enormous increase in the number of plans since 1940 with a parallel increase in their worth, is indicative of their tremendous popularity. A proposal which would better guarantee that these plans will not disappoint the expectations of those they are supposed to benefit, should not materially hinder their expansion.

Of late, it has become fashionable for these same critics to argue that pension reinsurance proposals are not needed because the number of pension plan terminations is "insubstantial." I believe this argument is likewise flawed. As I have indicated, more than 20,000 workers a year -- on the average -- have their pensions affected by plan failures. I do not consider this to be insubstantial. I do not consider this to be minimal. I <u>do</u> consider it to be wrong.

It is for that reason that I have introduced S. 1993. Less than two years ago, I was impressed by the speed with which the Congress acted to protect the pension benefits of those who would invest in the stock market. I hope that it will not do less for the average American worker whose future security depends upon the strength of his pension.

# # #

PRIVATE PENSION LEGISLATION

Statement by

U.S. SENATOR ROBERT P. GRIFFIN

Before the

Senate Subcommittee on Labor

Thursday, June 29, 1972

Mr. Chairman, I appreciate the opportunity to testify before the Subcommittee on one of the most important legislative issues to come before this Congress. After numerous studies, including a thorough and extensive study conducted by your Subcommittee, the time has come for Congress to take action and to respond affirmatively to the demonstrated need of workers for more effective protection of their pension rights.

It is a sad fact of life that nearly one out of every four retired persons is living on an income below the poverty line. Liberalized social security benefits can do much to correct this situation, but the social security system cannot shoulder the entire burden.

As the 1971 White House Conference on Aging concluded in its final report: "Social Security benefits provide a basic protection which should continue to be improved but which can be augmented through private pension plans."

Unfortunately, according to a report of the Social Security Administration last year, only one out of every five social security recipients receives private pension benefits. This situation exists despite the fact that over 30 million American workers are covered by private pension plans and over $130 billion has accumulated in private pension fund assets.

Clearly we have a case where there is not enough bang from the pension buck.

Mr. Chairman, I believe most Americans believe in the work ethic and would rather be working than on welfare. But if all that remains at retirement are empty promises and an economic prison, the work ethic will soon dosintegrate.

In recent months, I have received many letters from disillusioned workers who are handed an empty platter after years of faithful service. Whatever the reason for not receiving a pension, the unfulfilled expectation justifiably leaves a bitter taste and very often a permanent economic scar.

The plight of these workers reminds me of the Biblical story of Jacob who toiled for seven years for a girl he did not love. It took him another seven years to reap his reward.

I suspect that many American workingmen would be happy if they could be assured a full pension after 14 years of labor.

A couple of months ago, a story appeared in the Detroit FREE PRESS describing the anguish and anger of a Clare, Michigan, worker who saw 20 years of service under a pension plan go down the drain when his employer shut down operations. In the words of this man, "it just doesn't seem right. That was my money that went into the pension fund. If I hadn't put it there, I would have had it in wages." I would appreciate having the entire text of this article from the April 24, 1972, edition of the Detroit FREE PRESS inserted in the hearing record following my statement.

It is certainly true that some, if not all, of an employer's contribution to a pension plan would go to increase wages in absence of the plan. Since workers do give up current wages for income security at retirement, is it too much to ask that they be given a reasonable assurance of receiving a pension when their working days are over? I think not.

Mr. Chairman, as you may know, I have introduced two bills affecting private pension plans. S.2485, which was referred to the Finance Committee, would establish minimum vesting standards and a reinsurance program for pension plan terminations. S.2486 is pending before this Committee and would establish fiduciary standards for pension plan administrators, require much better disclosure of the terms of pension plans to workers, and provide workers with the opportunity to enforce their rights in court.

Although S.2485 is not before your Committee, there are several significant features of this legislation which I believe are worthy of inclusion in any bill reported by this Committee.

First, the bill would establish a 10-year minimum vesting standard. A substantial number of plans already meet this standard and would incur no additional cost. Teh Federal standard should not be less than what many plans currently provide.

Furthermore, a plan which has been in existence for less than 10 years on the effective date of the act would have to meet the 10-year vesting standard either five years after the effective date or after the plan had been in existence for more than 10 years, whichever is later.

All plans established after the effective date of the act would not have to meet the 10-year standard until after the plan had been in operation for more than 10 years. But in any event such a plan, as well as plans described in the preceding paragraph, would have to provide at least 15-year vesting.

Existing plans more than 10 years old would have five years after the effective date of the act to meet the 10-year rule; but during those five years the plan would have to conform to the 15-year requirement.

These phase-in provisions should assure that no plan is faced with a high initial cost impact. If severe problems still exist, the Secretary of the Treasury would be authorized to grant a temporary variation from the vesting requirements with respect to certain plans or categories of plans where the new rules might impose severe cost burdens on the employer.

Second, the proposed vesting standards would apply to service before as well as after the effective date. Older employees should not be penalized by discounting past service. These individuals are currently in the greatest danger of losing pension benefits.

Third, my bill would eliminate any "continuous" service requirement. Thus, a worker who participates in a plan for 10 years has a vested right despite the fact that there may have been breaks in employment during his tenure with the employer. Such breaks in employment, whether for disciplinary or other reasons, should not lead to the forfeiture of a worker's right to his pension.

Fourth, my bill would provide complete insurance protection for all types of pension plan terminations. It would apply even to certain partial terminations in order to assure full protection for all workers and to protect the integrity of the insurance fund.

Fifth, the insurance program in S.2485 would cover not only all terminations but also all losses of vested benefits. If Congress decides to provide insurance protection for workers' pensions, it must go all the way and provide total protection. There is no evidence that an insurance fund, financed through reasonable premiums paid by each plan, cannot cover all losses. In fact, some have argued that the incidence of pension plan terminations and pension losses is so small as not to justify the creation for insurance program.

While I cannot accept that conclusion, I do believe the initial premium rate of 0.2 per cent of the unfunded vested liabilities of a plan, as provided for in S.2485 and other pension proposals, will be adequate for the foreseeable future. Furthermore, this rate as applied to the current total vested liabilities of all plans will require annual premiums averaging only one-half of one per cent of current annual contributions to pension plans.

Sixth, Title II of my bill establishes the principle of employer responsibility for any deficiency in the pension fund on termination. This responsibility would be met by the purchase of insurance from a proposed Pension Benefit Insurance Corporation (PBIC) in the Treasury Department and by payment of any deficiency in the event of a voluntary termination or in the event of an involuntary termination where the unfunded vested liabilities are uninsured.

Where the plan termination is due to a businesss failure or financial difficulty, the insurance alone would cover all losses of vested benefits.

In the event of a voluntary termination, the employer would be liable for the full amount of any unfunded vested liabilities. Thus, in the case of an employer who would prefer to transfer operations of a domestic plant overseas, it hardly seems unreasonable to require him to foot the bill for benefits to retired workers, as well as to protect those with vested rights who have not yet reached retirement age.

The PBIC would pay any claims arising from a voluntary termination, but then would have recourse against the employer for recovery of such payments. In this way, the rights of workers would be protected in the event of a planned termination, whether voluntary or involuntary.

By making the employer liable to pay for losses due to a voluntary termination, the bill contains a powerful incentive to encourage adequate funding. In this way, the bill would operate to provide more worker protection with less government regulation than is the case with respect to other bills pending before Congress.

Seventh, recognizing the fact that the risk of termination could be significantly different as among various categories of pension plans, my bill would authorize the PBIC to establish risk categories for various types of plans. Accordingly, variations from the standard premium rate would be established where justified.

This provision offers another means for encouraging better funding by poor risk plans.

Finally, title III of S.2485 establishes the Pension Benefit Insurance Corporation, a wholly owned government corporation within the Department of the Treasury. The corporation would have sole responsibility for administering the insurance program and would be managed by a Board of Directors consisting of the Secretaries of Treasury and Labor and three Directors appointed by the President with the consent of the Senate. One of the three appointed Directors would have to be a representative of labor and one a representative of management.

A considerable amount of pension plan expertise already exists in the Treasury Department where the Internal Revenue Service has long been required to determine whether a pension qualifies for favorable tax treatment. While it is true that the Labor Department has had responsibility for administration of the Welfare and Pension Plans Disclosure Act, I believe that combined tax and insurance provisions should be administered under one department so as to provide more coherent, less burdensome regulation.

In regard to the provisions of S.2485, Mr. Chairman, I read with interest the testimony of the President of the United Auto Workers, Mr. Leonard Woodcock, before your Subcommittee on Tuesday, June 27, 1972. Mr. Woodcock emphasized the need for Federal vesting and insurance requirements and urged several specific proposals.

For instance, the UAW leader recommended:

(1) that pension insurance be effective no later than January 1, 1974;

(2) that insurance cover loss of vested benefits earned before the enactment of pension reform legislation; and

(3) that a worker's service and benefits accrued before enactment of legislation be covered by the Federal vesting standard.

All of these proposals are incorporated in my legislation, and they represent essential ingredients for an effective pension reform bill.

Mr. Chairman, the other bill before your Committee, S.2486, would protect against the improper use of pension funds by administrators and trustees of pension plans. The track record of the UMW illustrates very forcefully the need for such legislation.

In addition, the bill would require meaningful disclosure of the terms and conditions of a pension plan. One of the biggest problems to date is that workers either do not have access to all the information regarding their pensions or the information they do receive is a nightmare of fine print and other incomprehensible details.

The bill would permit not only Federal regulators but also workers to bring suit in Federal court to enforce the provisions of the bill. The record of the Federal Government in enforcing laws protecting American workingmen leaves much to be desired.

Finally, both S.2485 and S.2486 would apply to plans covering 15 or more employees, Present pension disclosure laws apply only to plans with 25 or more employees.

Pension protection is needed by all employees. In fact, it is likely that more problems may exist among small plans and new plans than among the larger, well established pension plans. For instance, a 1965 Labor Department study of pension plan terminations indicated the median number of workers covered by terminated pension plans was 13.

If it is administratively feasible, I would be in favor of minimum Federal vesting standards and insurance for all private pension plans regardless of the number of employees.

Since there is not much disagreement over the need for legislation to establish fiduciary standards and beef up reporting and disclosure requirements, it makes good sense for Congress to act as quickly as possible in this area. Of course, I would hope and strongly urge that final action be taken this year on comprehensive legislation to protect private pensions.

Mr. Chairman, the time for action has come. Through your efforts and those of the senior Republican on this Committee (Mr. Javits), action is being taken. Considering the inertia in bringing about voluntary reforms in this area, it is important to maintain the momentum that has already been achieved and to get Congress to take decisive action.

Thank you.

STATEMENT OF STANLEY L. KING, JR.,
ASSISTANT VICE PRESIDENT, HUMAN RESOURCES DEVELOPMENT,
AMERICAN TELEPHONE AND TELEGRAPH COMPANY
on S. 3598

SUBMITTED TO THE SUBCOMMITTEE ON LABOR
of the SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

June 29, 1972

Mr. Chairman; Members of the Subcommittee; this statement is submitted in my capacity as Assistant Vice President, Human Resources Development of the American Telephone and Telegraph Company on behalf of the 22 Bell System companies, the names of which are attached to this statement.

I regret that I did not have an opportunity to appear before this distinguished committee. However, I appreciate being afforded the privilege of submitting this written statement on S. 3598, the "Retirement Income Security for Employees Act."

We agree with Chairman Williams' remarks of May 11 of this year that "Only with a combination of secure private pensions and social security can a worker look to the twilight stage of his life without the fear of financial insecurity." We would add, however, that we feel that as a supplement to social security and pensions, people should be encouraged to provide some individual savings for retirement. Encouraging the individual to serve the general good by making prudent provision for his own welfare is fundamentally sound and tends to advance the well being and strength of communities and the nation.

The private pension system is vital to the nation. As Section 2(a) of the bill recognizes, private pension plans "are intrinsically woven into the working and retirement lives of American men and women;" and "such plans and programs have become firmly rooted into our economic and social structure." The impact of any federal legislation in this field must therefore be to strengthen and encourage the growth of this private system.

We believe that it is appropriate for Congress to enter the field of pension regulation to establish minimum standards and that the establishment of reasonable minimum standards will not burden the expansion of the private pension system. We also believe, as Senator Javits said recently in his statement delivered at the Sixth Annual Conference on Employee Benefits, that "if regulation is to be of any real help, it must be feasible, fair and efficient" and that "we can develop a fair, feasible and efficient system of private pension plans, and of private pension plan regulation."

S. 3598 contains a number of proposals which we support, and our views and comments, which we hope will be helpful to this Committee, are offered in the spirit of cooperation.

In brief, our position on S. 3598 is as follows: (1) We endorse the disclosure and fiduciary provisions, with certain suggested clarifications and exceptions. (2) We support the principle of mandatory minimum vesting criteria. As to the particular criteria, while the vesting rule of S. 3598 and the "rule of 50" in S. 3012 would be approximately similar in cost impact upon us (13 to 15 million dollars annually), the rule of 50 would have more beneficial effect in meeting employee needs and desires for pension security. (3) We believe that the basic funding requirements of the bill are "fair, feasible and efficient," but the 5-year period for required liquidation of "experience deficiencies" is too brief. (4) The portability program, even though voluntary, would present serious problems for plans that elected to join. Also it could deliver to participants who might use it considerably less retirement income than they would receive from deferred pensions under their employers' plans. (5) S. 3598 does not address itself to the millions of workers not covered by any pension plan who have no retirement income security to look to except social security. We know that the Chairman and members of this Committee share this concern, and we are hopeful that any legislation enacted by the Congress will make some

82-079 O - 72 - pt. 3 - 17

provision for this group of workers, perhaps along the lines found in S. 3012. (6) We feel that plan termination problems merit the further study now being conducted by the Treasury and Labor Departments. There could be many plant closing situations which would not be aided by the proposed insurance, and on the other hand there are other approaches which may be more "fair" and more "feasible" in meeting some of the needs. (7) In general, S. 3598 confers more discretion upon the Secretary of Labor in the administration and operation of pension plans than is desirable.

Before discussing the reasons for these views it would be appropriate to briefly outline some of the salient provisions of the Bell System Pension Plans.

Bell System Pension Plans

Each of the companies I speak for has a pension plan identical in essentials with the others. Each plan is funded independently of the others and the trusts are administered by trustees selected by the respective companies. These companies have an aggregate of some 1,008,000 regular employees, all of whom without exception participate on an equal basis in these pension plans. Over the years some 205,000 persons have retired from these companies on service or disability pension, and at present there are some 134,000 pensioners who are receiving pensions at an aggregate annual rate of $426,270,000. Annual contributions by the companies to pension funds are now running at an aggregate rate of $1,100,000,000.

No pension funds can ever revert to the contributing companies. Moreover, the companies are committed to payment of all vested benefits in the event of discontinuance of the plans, whether or not amounts in the pension funds are sufficient.

The Bell System plans include provision for early retirement if age and service requirements are met, and also provide for full vesting of certain pension rights payable at age 65 for those who are 40 or more years of age and have 15 or more years of service.

The principal provisions of our pension plans are outlined in another attachment to my statement.

TITLE I - ORGANIZATION

Powers Conferred on the Secretary of Labor

S. 3598 would establish a new office under the Secretary of Labor for pension regulation and would confer on the Secretary extensive new regulatory power.

It is quite appropriate for the Secretary of Labor to be given regulatory authority to enforce the expanded federal requirements to be legislated in the area of pension plan disclosure and pension fiduciary requirements. It may be argued also that the Secretary of Labor should be involved, in addition to the Internal Revenue Service, in the process of approving pension plans and pension plan amendments, since there are many requirements in the bill which would tend to shape pension plans toward federally determined social ends.

However, as to another area of regulation of pension plans in which the Internal Revenue Service is already engaged, namely the imposition of required minimum and maximum annual pension funding, the concurrent involvement of the Secretary of Labor would involve duplicate government effort and policing of financial operations. This would tend to cause confusion and hardship to employers seeking to properly and efficiently manage the increasing problem of financing employee benefits.

The bill gives to the Secretary the authority to determine if funding requirements are met to waive or defer funding requirements, to regulate actuarial assumptions and to decide when an amendment is to be considered a new plan for purposes of past service funding. We believe that actuarial assumptions should be left to the actuaries responsible for certifying funding requirements and that plan administrators should have the option of determining whether an amendment shall be considered a new plan for funding purposes. These actuarial assumptions and funding decisions would be monitored through established auditing procedures of the Internal Revenue Service.

TITLE II - VESTING AND FUNDING

Vesting

We agree that vesting of private pensions after a reasonable period of time is sound policy, and sufficiently in the public interest as to make a federal minimum standard appropriate.

While our plans provide for full vesting after 15 years of service, they do differ from S. 3598 in that there are no gradations of vesting prior to the fifteenth year and there is a 40-year age requirement. Benefits other than earlier vesting have had priority in our recent bargaining with various labor unions but we do not oppose a reasonable federal requirement for a vesting floor.

In establishing a minimum vesting rule, Congress should keep in mind that pension plans, being voluntary, can be inhibited by imposition of mandatory cost or other burdens. But we do not believe that the vesting rule of S. 3598 would produce any insupportable cost or increase of turnover.

In my testimony before the House Ways and Means Committee, we endorsed the rule of 50, contained in H.R. 12272 and S. 3012, as a vesting minimum. It is our view that the rule of 50 is desirable for several reasons. First, it would provide earlier benefits for the older group which needs and wants them most, whereas S. 3598 tips the scale too much in favor of the youngest group. Second, and most importantly the rule of 50 gives the older worker more assurance of getting a full pension. For example, under S. 3598 an employee starting at age 55 who leaves at age 62 because of poor health would not receive any pension benefits. (Neither could he qualify for insurance under S. 3598 if the pension plan terminated.) Whereas, under the rule of 50 he would be fully vested. Moreover, under the vesting rule of S. 3598 any workers starting after age 57 would not receive a pension when the mandatory retirement age is 65.

Third, the rule of 50 also has appeal in many cases for younger workers, in that it provides more rapid vesting than the rule of S. 3598. For example, a person employed at age 34, would vest to the extent of 50 percent, at age 42, under the rule of 50. (This, however, assumes participation in the plan immediately upon employment as is provided under Bell System plans.) The same person would, under S. 3598, also vest at age 42, but only to the extent of 30 percent of accrued benefits. The vested benefit under the rule of 50 is at that point 66 percent greater.

And finally, to look at the impact from a viewpoint of worker mobility over a long period, a worker presently age 34 could, under the rule of 50, change jobs three or four times before retiring, and still retain vested benefits each time. Moreover, the worker would probably have greater retirement income than under the vesting rule of S. 3598.

I know that Senator Javits and many other members of the Congress have been very concerned that the rule of 50 may discourage the hiring of older workers. As one of the nation's largest employers, we feel that we have experience to offer in answering this question. We would not be discouraged from hiring older persons because of the rule of 50.

We cannot and do not discriminate on account of age in hiring. Indeed, from our experience employees hired in their middle years are far more likely to stay on to retirement than those hired at younger ages, where the turnover is greater.

Scope of Benefits Which Vest

We believe that the intent of the bill is to impose minimum standards for vesting of an employee's pension, that is, an annuity for the employee. We do not believe the proper purpose is to pay to former employees all the ancillary benefits which continuing employees receive. However, the scope of the "normal retirement benefit" subject to vesting is not clear in the bill. We feel that benefits other than pensions, such as the death benefit which is payable to eligible beneficiaries of Bell System pensioners (but is not payable to beneficiaries of former employees receiving deferred pensions), should be excluded by the letter of the law rather than left to the discretion of the Secretary. Further, in calculating what is to be paid, the bill authorizes the Secretary by rule to determine a portion of some hypothetical "prospective benefit." We urge that the bill be amended to specifically limit the accrued benefit to a pension for the separated employee, determined in accordance with the plan.

Age for Payment of Pension

We interpret the proper intent of the bill to require payment of a pension to a separated employee (who has a vested pension right) when he reaches the age at which he would have had to retire, had he continued in employment. Under the Bell System plans separated employees with vested rights now do become eligible for their deferred pensions at this age, which is 65. However, the bill defines "normal retirement age" as the normal retirement age under the plan, but not later than age 65. If the normal retirement age "under the plan" is determined to be the earliest age under the plan at which retirements occur without actuarially discounted benefits, which is a definition sometimes used by the Internal Revenue Service, then the age for paying deferred pensions under Bell System plans would be 55.

Under our plans the employee who stays with a Bell System company must meet a 20-year service requirement to retire with a service pension earlier than age 65. If employees could leave the company and also have the right to a deferred pension payable at age 55 instead of age 65, the pension payments for deferred pensions would be more than doubled, even apart from the effect of the additional incentive for employees to leave upon attaining a vested benefit. The cost would be great, and in fact such an interpretation would impart a different and we trust unintended character to Title II of the bill. We believe that is not intended, but we feel the bill should state that eligibility for payment can be deferred to age 65 or that the plan may define the "normal retirement age" within that limit.

Effect on Qualified Savings Plans

One other possibly unintended result might affect our Bell System Savings Plan for Salaried Employees. Under this plan our salaried employees have the opportunity to voluntarily save a percentage of their salary on a regular and long-term basis. This plan is not a retirement plan but is a thrift plan. However, it would seem to fall under the S. 3598 definition of a "profit sharing retirement plan."

Under our plan savings are supplemented through company contributions. If an employee resigns or is terminated, he receives all of the money in his account except that attributable to the company's contribution made during the current year and each of the two preceding years. If an employee retires or dies, he or his estate receives the full amount including the company's full contribution. Under this plan there is a separate vesting schedule for each year of contributions. The employee may elect to defer distribution until retirement.

The vesting provisions of S. 3598 could be interpreted to adversely affect this plan. Once the employee becomes vested with respect to his pension he would also be immediately vested as to the employer's contribution to the savings plan for the class year. A specific exception should be made in the bill to exclude this type of plan from the vesting requirements of S. 3598. Since vesting is so rapid under this type of plan (within three years under the Bell System plan) an employee would normally be vested in a very large percentage of the total benefits long before he meets the vesting requirements of the bill. Deferring vesting in the employer's contributions to a "thrift" or savings plan for a short period after the contributions are made will not contravene the policy of S. 3598.

Funding

We believe firmly that if an employer or union makes a promise to its employees or members that they will receive a pension, reasonable steps should be taken to fulfill that promise. This should be accomplished through prudent funding.

Our companies have for many years believed that pension plans should be funded. Each Bell company started a pension fund in 1927 into which funds sufficient to provide pensions in the amount stated in the plans have been regularly and irrevocably paid. Our pension funds presently contain 9.2 billion dollars. None of the pension funds can ever revert to the contributing companies.

Funding of current service costs and 40-year funding of past service liabilities as proposed in S. 3598 is minimal. It is consistent with Opinion 8 issued by the Accounting Principles Board of the American Institute of Certified Public Accountants. The Bell companies are funding over a shorter period which we feel is consistent with sound actuarial practice, in our case.

The provision requiring special payments to liquidate "experience deficiencies" within five years is in our judgment unduly burdensome. The purpose of 5-year funding of so-called experience deficiencies is to require prompt funding action to reflect departures of experience from assumptions. The language "experience deficiency" may, however, erroneously suggest that there is a real shortage in the funds, and this could create misunderstanding by employees and the public. The term "actuarial loss" is more appropriate.

Under another provision of the bill, "surpluses" may be used to increase benefits or to decrease costs. If there really were a significant documented surplus, the Internal Revenue Service might not permit deductions of prior employer contributions. The idea that each deficiency or surplus should be immediately corrected by adjustment of cost or benefits implies a precision or foresight to the basic actuarial assumptions that does not exist.

In a proper funding program we would expect to go through periods when there are actuarial gains and through other periods when there are losses. We do not believe that contributions should be materially decreased during temporary periods of gains or materially increased during temporary periods of losses.

The effect of this provision of the bill would be erratic and would have an extremely adverse economic effect on our companies, and no doubt on other companies. For example, very rapid pay increases in our companies in recent years would have forced additional contributions of over 450 million dollars under this provision of S. 3598, over the past five years and more than 100 million would have been required for 1970 alone.

Funding, therefore, should be on a more stable, longer range basis. When actuarial losses occur for several years funding should be adjusted accordingly over the long range and also when actuarial gains occur for several years the long range funding should be adjusted.

If the shorter range treatment of gains or losses is to be accepted at all, it should be only considered an alternative and the funding period should be much longer than five years. Moreover, current tax laws do not contemplate such funding over periods of less than 12 or 13 years.

TITLE III - VOLUNTARY PORTABILITY PROGRAM

Although voluntary, the portability program which would be established by this bill is in our judgment unsound. It would cause a number of very serious problems for pension funds which joined, and would in our view offer no real benefit to plan participants.

Pension funds would be required to remain more liquid, hampering their full investment potential. If a pension fund pays out the actuarial equivalent for people who are vested and leave, it impairs the security of the people who stay. The provision for benefits for those who leave the plan would need to be higher, and the level of benefits for the persons who stay in the plan would have to be decreased, unless additional contributions were made. This result would be ironic, to favor workers who leave a company at the expense of those who stay on to retirement.

An even more aggravated problem would appear for those plans which are not "fully funded." If a plan is 50 percent funded, and a participant leaves, receiving the full actuarial equivalent of a vested benefit, the fund backing the expectations of the remaining employees is reduced to even less than 50 percent. The smaller companies which have been considered the most logical participants in a portability program would be most damaged by such a drain of funds.

In our view the disadvantages necessarily attending portability far exceed the one single advantage which portability adds to vesting, namely, that the transferee can look to the portability fund if the plan he left is discontinued with assets insufficient to provide his full benefit, and he may get a better break than those who remain.

There is of course the question of whether any employers will apply to participate in the portability program, in the light of these and other problems. There has been testimony in these hearings that a similar program in Canada has not been used. To establish an institution which will not be viable is to raise false hopes and engender discontent.

In short, we feel that when adequate vesting is coupled with funding, portability is not needed, and for the reasons outlined, the portability program in this bill would be against the best interests of the working men and women of this nation.

TITLE IV - PLAN TERMINATION INSURANCE

Pension plan terminations present a complex of tax, social and fiscal problems which are not yet well understood, and they are appropriately undergoing study by both the Treasury and Labor Departments.

One troublesome area, for example, is the question of "partial termination" of pension plans, with distribution of assets to participants according to the plan's termination provisions. These partial terminations sometimes occur and sometimes do not occur in cases of plant shutdowns. In the case of a plant shutdown where the pension plan does not terminate, "termination" insurance would not help laid-off workers.

At present under certain circumstances contributions can be recovered in cases of an "actuarial surplus" upon a pension plan termination. Consideration should be given to making pension contributions truly irrevocable. "Insurance" is not needed in those cases where assets are subject to pension claims and are more than adequate to cover them.

If the Congress determines to enact a plan termination insurance program, we believe it should be understood that the "insurance" provision in the bill is not insurance in the ordinary sense of the word. The "risk" is that the employer's business will not prosper to the extent needed to accumulate full pension funding, and that the employer or his creditors will decide to terminate the plan or the business.

More prosperous companies will be called on, through the governmental process, to pay the pensions of the less prosperous companies. If only those who have "exposure" and choose to pool this "risk" are covered, it may be "insurance" in a sense, but if some are required to pay whether or not they have exposure, then the money transfer arrangement is essentially a tax, and the tax burden should be spread as would be most fair for a tax.

TITLE V - DISCLOSURE AND FIDUCIARY STANDARDS

Fiduciary Responsibility

The highest standards of honesty are absolutely essential in the administration of pension funds. We have for a number of years felt that federal standards of fiduciary responsibility for pension and welfare administrators and trustees over and above those now existing would be constructive. In March of 1968 our Company submitted a statement to the House Committee on Education and Labor in support of the fiduciary responsibility requirements of H.R. 5741 and

H.R. 6498 which were then under consideration. Congressional action in this area is in our judgment long overdue.

Disclosure Requirements

We also support reasonable disclosure requirements, and we feel that most of the requirements of S. 3598 in this respect are reasonable.

However, the bill requires 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." Under the plans of the Bell System companies, and under many other noncontributory plans, all employees are participants from the moment of hiring. During 1971, there were more than 113,000 participants who terminated service under Bell System plans. The overwhelming majority of these separations were resignations, and most of them occurred in the first two years of service, going down to as little as one day of service. As Senator Javits aptly pointed out in his remarks to the Senate on May 25, "the turnover rate of casual or transient workers is the highest - close to 90 percent."

82-079 O - 72 - pt.3 - 18

Under the bill, we would be required to compute and report to the Secretary "the present value of such benefits forfeited" by this group of largely transient workers. Such statistics would be meaningless and misleading. They would present the erroneous impression that the plans have liabilities which are not funded, whereas, in reality these liabilities do not exist since there are in fact no benefits forfeited by these nonvested short term workers. Moreover, calculation of such statistics would present nearly insurmountable conceptual difficulties.

Another burdensome requirement is contained in the definition of "party in interest." Under the definition of the bill there would be millions of parties in interest for Bell System plans, which would present a "nightmare" of uncertainty for plan administrators. We think the definition of party in interest should be amended or that only known parties in interest should be referred to in the other requirements.

In summation, the impact of any federal legislation in the area of private pension plan regulation must be to strengthen and encourage the growth of the private pension system. Establishment of reasonable minimum standards for vesting and funding, and additional fiduciary responsibility and disclosure requirements would not in our judgment burden the expansion of this system.

Vesting standards, however, should place emphasis on the needs of older workers, who require the security of vesting the most. Moreover, the scope of benefits which vest should be limited to a deferred pension annuity payable only to plan participants, and plans should be allowed to defer payment of such pensions to age 65. Also the bill should be amended to specify that the vesting provisions are not applicable to savings or thrift plans.

As to funding, the provision requiring special payments to liquidate "experience deficiencies" would impose a severe economic burden on most companies. Over a five-year period it would have cost the Bell System companies more than 450 million dollars. We urge that this provision be deleted from the bill.

We urge that the portability and plan termination provisions in S. 3598 not be enacted for the reason we have stated.

Finally, we are disturbed by the provisions providing for the reorganization of the Department of Labor and particularly the authority of the Secretary to determine actuarial assumptions, and by the duplication which would result from the Secretary of Labor assuming functions now administered by the Treasury Department.

Stanley L. King, Jr.

Stanley L. King, Jr.

BELL SYSTEM COMPANIES

American Telephone and Telegraph Company

The Bell Telephone Company of Pennsylvania

Bell Telephone Laboratories, Incorporated

The Chesapeake and Potomac Telephone Companies

Cincinnati Bell Inc.

Illinois Bell Telephone Company

Indiana Bell Telephone Company, Incorporated

Michigan Bell Telephone Company

The Mountain States Telephone and Telegraph Company

New England Telephone and Telegraph Company

New Jersey Bell Telephone Company

New York Telephone Company

Northwestern Bell Telephone Company

The Ohio Bell Telephone Company

Pacific Northwest Bell Telephone Company

The Pacific Telephone and Telegraph Company

South Central Bell Telephone Company

Southern Bell Telephone and Telegraph Company

The Southern New England Telephone Company

Southwestern Bell Telephone Company

Western Electric Company, Incorporated

Wisconsin Telephone Company

Principal Provisions of Pension Plans of Bell System Companies

Eligibility Requirements - Age and Term of Employment

	Eligibility Requirements: Age		Minimum Years of Service
SERVICE PENSION	65	and	15
	55	and	20
	50	and	25
	Any Age		30
DISABILITY PENSION	Any Age		15
DEFERRED SERVICE PENSION (VESTED)	40	and	15

ANNUITANT'S PENSION

Automatic - Surviving spouse of active employee who died while eligible for a service pension.

Elected - Surviving spouse or parent designated by employee when retiring on a service pension.

Pension Amounts

Service Pensions -

- 1% of the employee's average annual rate of pay for the highest paid 5 consecutive years of employment for each year of employment through the month of his 55th birthday and 1.5% for each year of employment after the month of his 55th birthday.
- If retirement occurs before age 55, the pension is discounted 0.5% for each month that retirement precedes age 55. If the Committee determines that retirement is because of total disability, the pension is not discounted.

Disability Pensions -

- Same formula as for service pensions with no discount if retirement is before age 55.

Minimum Pensions -

While pensioner is under age 65 with term of employment of 20 years		$100
While pensioner is age 65 or older, and term of employment is	20-29 years	$135
	30-39 years	$140
	40 years or more	$145

Exceptions - These minimum amounts are proportionately reduced for employees retiring on service pension with less than 20 years' service at age 65 and may not apply in the case of part-time employees or for disability pensions where service is less than 20 years. (Minimum amounts are not applicable for a person receiving a deferred service pension.)

Annuitant's Pension -

- An employee eligible to retire with a servicc pension may elect to have the pension amount reduced by an actuarially calculated amount in order to provide 1/3 of the reduced amount to an annuitant - either a spouse or a parent. This election is available up until 90 days prior to actual retirement and once made cannot be revoked.
- Automatic - In the event of death prior to retirement of an employee eligible to retire, the surviving spouse shall receive the annuitant's pension as if the employee had elected the option and retired on the date of death.

Deferred Service Pension (Vesting) -

- An employee who is at least 40 years of age, with at least 15 years' service and who leaves the business on or after June 1, 1969 for any reason except retirement on pension, has a "vested" right to a deferred service pension payable upon application at age 65.
- The minimum pension provisions do not apply nor do the provisions for death benefits or annuitants' pensions.

Administration

- The Plans are administered by Employees' Benefit Committees composed of 5 persons appointed by the Boards of Directors. The larger companies also have departmental or area benefit committees which exercise certain delegated administrative powers within their separate departments or areas. An Employees' Benefit Committee has final authority under the Plans, and an employee may appeal to it any decision of the other committees.
- Although all Plans were established by Company action, Union agreements have contained provisions relating to them since the late 1940's. The Union can and does submit grievances of individual employees as to treatment under the Plans, and it bargains with the Company on changes therein.

Financing

- From 1913 until 1927 the plans were financed on a pay-as-you-go basis by the companies. The pension plans were first funded in 1927 to make advance provision for service pensions under irrevocable trust arrangements, and in 1964 another trust fund, termed the "Second Pension Fund", was set up by all companies to provide for certain death benefit payments.
- There are currently 65 Pension Funds managed by 57 separate banks and 11 investment advisors.

Statement Submitted by Morton D. Miller, President-Elect, American Academy of Actuaries in Connection With The Retirement Income Security for Employees Act of 1972
S. 3598

This statement of the Academy is directed to Section 101(b)(1) of the Bill. The Academy welcomes this section as recognizing the necessity for establishing standards and qualifications for persons performing actuarial services for registered pension plans.

The determination of the amount required to finance the deferred benefits under a pension plan and the periodic measurement of the solvency of a pension fund are uniquely actuarial responsibilities. It is important that both the administrators of pension plans and the plan participants be adequately informed as to the financial soundness of the pension plans in which they are involved.

The American Academy was incorporated in April, 1966 under the Illinois General Not For Profit Corporation Act. Prior to the formation of the Academy, there were four nationally recognized actuarial bodies in the United States: the Society of Actuaries, the Casualty Actuarial Society, the Conference of Actuaries in Public Practice and the Fraternal Actuarial Association. Full membership in these bodies was evidence of competent actuarial skill, but there was no recognition either by the Federal Government or by any of the States of the profession of actuary. Any person could therefore so designate himself and the public had no assurance of his professional qualifications. The Academy was formed in order to provide a vehicle for professional recognition of all qualified actuaries. There were some fully qualified practicing actuaries not members of any of the four actuarial bodies and these have been admitted to membership in the Academy on evidence of professional competence. The membership of the Academy at present is over 3,100.

The purposes for which the Academy was organized are set forth in the Articles of Incorporation as follows:

(a) To advance the knowledge of actuarial science, which had its origin in the application of the doctrine of probabilities to human affairs and from which life insurance, pension plans, casualty insurance, and other analogous institutions derive their principles of operation;

(b) To encourange the consideration of all monetary questions involving, separately or in combination, the mathematical doctrine of probabilities and the principles of interest;

(c) To promote education in actuarial science and the interchange of information among actuaries and among the various actuarial organizations;

(d) To establish, promote and maintain high standards of conduct and competence within the actuarial profession.

To implement these purposes, the Academy has set up standards of qualification for membership requiring the passing of examinations in actuarial mathematics and insurance principles along with practical experience in responsible actuarial work.

As befits any profession the Academy has a set of Guides to Professional Conduct and a copy of these Guides is attached and made a part hereof. Actuarial practice covers a wide field and the members are reminded of their responsibilities and limitations in 1(b) of these Guides:

> "The member will bear in mind that the actuary acts as an expert when he gives actuarial advice, and he will give such advice only when he is qualified to do so."

These Guides are supplemented by Opinions as to Professional Conduct and these are set forth in the Academy's 1972 Year Book (pp. 156-163).

Further the Bylaws of the Academy empower the Board of Directors to enforce standards of discipline as set forth in Article VIII entitled "Resignation and Discipline of Members", a copy of which is attached and made a part hereof.

The Academy appreciates the opportunity of submitting this statement in connection with this important proposed legislation.

For the information of the Members of the Committee a copy of the 1972 Year Book of the Academy, which includes a list of members, is enclosed.

July 26, 1972

BYLAWS
OF THE
AMERICAN ACADEMY OF ACTUARIES (THE ACADEMY)

(A CORPORATION ORGANIZED UNDER THE ILLINOIS GENERAL NOT FOR PROFIT CORPORATION ACT)

AS ADOPTED APRIL 29, 1966 AND LAST AMENDED JANUARY 10, 1970

- - - - - - - - - - - - - - - - - - -

ARTICLE VIII
RESIGNATION AND DISCIPLINE OF MEMBERS

SECTION 1. *Resignation.* Any member who is not in default in payment of dues and against whom no complaints or charges are pending may at any time file his resignation in writing with the Treasurer and, when accepted by the Board, it shall become effective as of the date it was filed. Notwithstanding the foregoing, the Board may in its discretion permit the resignation of a member against whom a complaint or charge is pending. The Board, on written application of any member who has resigned, may reinstate such member subject to such conditions as it may prescribe.

SEC. 2. *Discipline.* The Board, at any meeting attended by at least one-half of its members, shall have the power to consider and take action, as herein provided, with respect to all questions which may arise as to the conduct of a member of the Academy in his relationship to the Academy or its members, or in his profession, or in the practice thereof, or affecting the interests of the actuarial profession. The Board may, on its own initiative, investigate and take action with respect to any such question, and may also receive and hear any complaint relating to the conduct of a member preferred in writing and subscribed to by a member.

In the course of dealing with questions and complaints relating to the conduct of members, the Board may appoint, from among the members of the Academy, committees and boards vested with the powers specified herein:

a) Investigating committees empowered to investigate questions and complaints and to prefer charges against a member.

b) Prosecuting committees empowered to prosecute charges against a member at hearings before the Board or a disciplinary board.

c) Disciplinary boards empowered to hear evidence relating to questions and complaints and to make findings with respect to such evidence.

The procedures for such committees and boards shall be prescribed by the Board. The Board may retain counsel for the assistance of the Board and of committees and boards appointed by it.

In any hearing before the Board or a disciplinary board, a member proceeded against shall have the right to appear personally and by counsel, to be informed of the nature and content of the question or complaint, to examine the evidence presented, to examine adverse witnesses, and to present witnesses and evidence in his behalf. Any member preferring a complaint may appear personally and by counsel. Witnesses called in the course of hearings involving conduct shall vouch for the truth of their statements on their word of honor.

In all proceedings under this Section, the Board shall decide, directly or upon review of the findings of a body appointed by it, whether or not misconduct has occurred. If the Board finds that misconduct has occurred, it may warn, admonish, reprimand, suspend, or expel the member, provided that no order reprimanding, suspending, or expelling a member shall be issued except after a hearing before the Board or a disciplinary board.

A member against whom an order of suspension or expulsion has been rendered shall, upon application to the Board within thirty days thereafter, be entitled to appeal to the members attending a meeting upon the following conditions:

a) All rights and privileges of membership shall be suspended during the pendency of the appeal.

b) The notice of appeal shall be in writing and shall stipulate that the appealing member consents to the mailing to the members of a transcript of the evidence and copies of exhibits in the form approved by a majority of the Board.

c) The appealing member shall, within ten days after an invoice of the amount due is sent to him, deposit with the Treasurer the cost of transcribing and printing the transcript of the evidence and copies of any and all exhibits.

In the event the decision of the Board shall be set aside, the Treasurer shall return to the appealing member the amount of the deposit. Otherwise the deposit shall be retained by the Academy.

In the event of an appeal to the members the decision of the Board may be affirmed, modified, or set aside by the vote of a majority of the members present and voting at a meeting of the Academy.

The Board may, in its discretion, reinstate to membership at any time a member suspended or expelled under this Section, provided, in the event the suspension or expulsion had been affirmed by the members, the reinstatement shall not take effect unless and until confirmed by a vote of a majority of the members present and voting at a meeting of the Academy.

Except as otherwise provided, all proceedings under this Section shall be deemed confidential and kept secret. The Board, however, shall notify the members of their action in all instances in which the Board orders the suspension or expulsion of a member. Such notification shall not be given until the time to appeal has expired or, in the event of an appeal, until a majority of the members present at a meeting of the Academy have voted in favor of suspension or expulsion. At the same time notification is given to the members, the Board may also give notice of such suspension or expulsion to such newspapers or journals as it may select.

In the event of subsequent reinstatement of the member, the Board shall give notice of such action to the members of the Academy and to any newspapers or journals previously advised by the Board of the member's suspension or expulsion.

GUIDES TO PROFESSIONAL CONDUCT

(Issued by Authority of the Board of Directors, November, 1969)

Professional conduct involves the actuary's own sense of integrity and his professional relationship with those to whom he renders services, with his employer, with other members of the profession, and with the world at large. In all these relationships every member of the profession is concerned with his own behavior and, as the good name of the profession is the concern of all its members, with the behavior of his colleagues.

In order to assist the Board of Directors and the Academy in achieving the objectives of the Academy and, more importantly, to guide members of the Academy when they encounter questions of professional conduct as actuaries, the following "Guides to Professional Conduct" have been prepared by order of, and approved by, the Board. As is true of codes of ethics generally, these Guides deal with precepts and principles only. They are not precise rules and are subject to interpretations in relation to the variety of circumstances that occur in practice. Any member wishing advice regarding the application of these Guides to a particular set of facts is urged to consult the Chairman of the Professional Conduct Committee.

1. *Professional Duty.*

   a) The member will act in a manner to uphold the dignity of the actuarial profession and to fulfill its responsibility to the public.

   b) The member will bear in mind that the actuary acts as an expert when he gives actuarial advice, and he will give such advice only when he is qualified to do so.

   c) The member will not provide actuarial service for or associate professionally with any person or organization where there is an evident possibility that his service may be used in a manner that is contrary to the public interest or the interest of his profession or in a manner to evade the law.

2. *Relationship of the Actuary to His Client or Employer.*

   a) Matters will be so ordered that all concerned are clear as to who is the member's client or employer and in what capacity the member is serving his client or employer.

b) The member will act for each client or employer with scrupulous attention to the trust and confidence that the relationship implies and will have due regard for the confidential nature of his work.

c) The member will recognize his ethical responsibilities to the person or organization whose actions may be influenced by his actuarial opinions or findings. When it is not feasible for the member to render his opinions or findings directly to such person or organization, he will act in such a manner as to leave no doubt that he is the source of the opinions or findings and to indicate clearly his personal availability to provide supplemental advice and explanation. If such opinions or findings are submitted to another actuary for review, either he or the other actuary will be available for supplemental advice and explanation.

3. *Nature of the Actuary's Responsibility to His Client or Employer.* In any situation in which there is or may be a conflict of interest involving the member's actuarial service, whether one or more clients or employers are involved, the member will not perform such actuarial service if the conflict makes or is likely to make it difficult for him to act independently. Even if there is no question as to his ability to act independently, he will not act unless there has been a full disclosure of the situation to all parties involved and the parties have expressly agreed to his performance of the service.

4. *Calculations and Recommendations.*

a) The member will customarily include in any report or certificate quoting actuarial costs, reserves, or liabilities a statement or reference describing or clearly identifying the data and the actuarial methods and assumptions employed.

b) The member will exercise his best judgment to ensure that any calculations or recommendations made by him or under his direction are based on sufficient and reliable data, that any assumptions made are adequate and appropriate, and that the methods employed are consistent with the sound principles established by precedents or common usage within the profession.

c) If, nevertheless, a client or employer requests the member to prepare a study which in his opinion deviates from this practice, any resulting report, recommendation, or certificate submitted by him will include an appropriate and explicit qualification of his findings.

5. *Advertising and Relations with Other Members.*

   a) The member will neither engage in nor condone any advertising or other activity which can reasonably be regarded as being likely to attract professional work unfairly, or where the tone, form, and content are not strictly professional.

   b) The member will conduct his professional activities on a high plane. He will avoid unjustifiable or improper criticism of others and will not attempt to injure maliciously the professional reputation of any other actuary. He will recognize that there is substantial room for honest differences of opinion on many matters.

6. *Remuneration.*

   The member will make full and timely disclosure to a client as to all direct and indirect compensation that he or his firm may receive from all sources in relation to any assignment the member or his firm undertakes for the client.

7. *Titles.*

   The member will use a designation dependent upon elective or appointive qualification within the Academy, such as "President," "Member of the Board of Directors," or "Member of the Education and Examination Committee," only when he is acting in such capacity on behalf of the Academy.

Statement of
American Pension Conference
to the Subcommittee on Labor
of the
Senate Committee on Labor and Public Welfare

This statement is submitted on behalf of the American Pension Conference which is composed of more than 800 professional and technical personnel engaged in the development, installation, administration, and funding of retirement plans. The Conference is directed by a Steering Committee elected by the membership of the Conference, assisted by an appointed Committee on Legislation which prepared this statement.

S. 3598, the "Retirement Income Security for Employees Act", covers many topics and some in considerable detail. A careful reading of S. 3598 shows the need for some editing to clarify some of the provisions and more study to test and improve the technical accuracy and feasibility of others. Also, it is possible that certain parts of the Act could be deleted as having no practical value. An example of this is Section 215 -- the Optional Election to Divide Pension Plan. Furthermore, there is substantial uneasiness at having so much of the Act, particularly as it applies to the special problems of fixed-contribution multiemployer plans, left to the Secretary to create through regulation. However, the purpose of this statement is not to deal with these matters of detail and construction, but to concentrate, and briefly, on the principal proposals.

We believe that vesting of pension benefits is desirable and should be more widespread. However, in our opinion, the mandatory vesting provision in Title II of S. 3598 places too much emphasis on benefits for service at a young age. The benefits accrued during an individual's early years of employment when his earnings are low are, in our economy, unlikely to be of much value by the time he reaches retirement age. Alternatively, we suggest the "rule of 50" in HR 12272 or some variation thereof makes more sense as a mandatory provision and can be accommodated more readily within the structure of existing plan provisions. Furthermore, it is more helpful to the individual who enters a plan at a mature age when retirement benefits are of more concern. The vesting provision now in S. 3598 would add considerably to the recordkeeping expense of any plan. Much more appropriate would be to require recognition for vesting purposes of service rendered before the effective date of the legislation, especially after the attainment of some minimum age, such as 40, and possibly for only a portion of the prior benefits accrued after such time.

Closely related to the vesting provision are the six months and age 21 eligibility requirement, and the remarkably unusual requirement of Section 202(b) that, for the most part, service with the employer need not be continuous. The eligibility requirement of three years and age 30 in HR 12272 seems more appropriate as a general minimum. The 202(b) requirement would seem to make it necessary to maintain a record of anyone who was ever covered by the plan, however, briefly, on the possibility that he might reenter. The expense impact of this provision must be apparent. Also, it is not clear how the liability of the plan on account of possible reentries would be actuarially calculated.

The funding requirements of Title II seem to be related to the accrued liabilities produced by the actuarial method and assumptions employed for ongoing plan calculations. We urge, instead, that funding requirements be related to those for benefits vested on the mandatory basis, the same standard as proposed for the plan termination insurance pro-

82-079 O - 72 - pt. 3 - 19

gram. A 40 year amortization period seems reasonable as a minimum standard.

The portability provisions of Title III seem to propose the establishment of complicated administrative provisions to carry out a voluntary arrangement which would not, in any event, accomplish anything which can not be effected without these provisions. We see no practical purpose for these provisions.

The plan termination insurance program of Title IV is really an effort to rescue the plans of employers whose businesses fail, by taxing other plans. It is going to be difficult to make this work. It would seem advisable to delay this program until the Secretary has accomplished the substantial task of registering plans and achieving compliance with the other provisions of the Act, and more study has been given to the feasibility and desirability of this very technical and complex program. If everything is to attempted at once, it is possible that a tremendous new agency will be created at great expense. (An example of the additional work is illustrated by Section 108 of this Act. The Secretary is going to receive, no doubt in a variety of shapes and sizes, a vast number of certificates which he must maintain on file.)

Some of the time periods for filing in the Disclosure section of Title V are very short, especially in view of the requirements to be met by the material filed.

The American Pension Conference would welcome the opportunity to be of service in the continuing development of specific provisions of proposed pension legislation.

* * * * * * * * * *

STATEMENT OF ROBERT J. MYERS, PRESIDENT, SOCIETY OF ACTUARIES,
TO SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE
June 10, 1972

The Society of Actuaries is a professional organization of actuaries who are engaged primarily in the fields of life insurance, health insurance, and pensions. The Society's predecessor bodies were founded in 1889 and 1909 and merged into the Society in 1944. The Society now has over 4,000 members, the vast majority of whom are practicing in the United States and Canada. The Society was the largest of the four American actuarial organizations that, in 1965, took action to form the American Academy of Actuaries as a vehicle embracing all qualified actuaries in the United States, a first step toward accreditation of actuaries and the official recognition of the profession.

The Society's objectives are to advance the knowledge of actuarial science and to promote the maintenance of high standards of competence and conduct within the actuarial profession.

We appreciate this opportunity to file a statement with respect to S. 3598, introduced by Senator Harrison A. Williams, Jr. on behalf of himself and thirteen other senators.

S. 3598, the Retirement Income Security for Employees Act of 1972, is comprehensive legislation affecting private pension plans in the United States. Among other things, it provides minimum and required standards of funding and calls for actuaries to play a major role in the determination and implementation of such standards. The legislation makes explicit reference to actuaries and actuarial determinations no less than 28 times, and there are many other places where reference is implied because of the role and work of actuaries under private pension plans.

The Society of Actuaries recognizes both the importance of this proposed legislation and the vital role actuaries would perform in its implementation if enacted. In this regard, the Society was honored to have Senator Williams as our featured speaker at our specialized meeting on pensions in New Orleans on March 20.

The Society is not expressing any opinions with respect to the substantive policy issues raised by S. 3598. However, members of the Society's Committee on Pensions are prepared to discuss, within the special professional competence of actuaries, any technical, actuarial matters that will arise as the Committee on Labor and Public Welfare proceeds in its consideration of this legislation. For this purpose, the Society offers to the Committee and its staff the services of our Committee on Pensions. They can be made available through contact with Mr. James A. Attwood, Senior Vice-President, Group Operations, Equitable Life Assurance Society, 1285 Avenue of the Americas, New York, N. Y., 10019 (telephone 212-554-3761), who is Chairman of our Committee on Pensions.

Robert J. Myers
Robert J. Myers
President

THE MEAD CORPORATION

STATEMENT AND RECOMMENDATIONS ON SECTION 508, TITLE V OF S.3598 - "RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT" (WITH RESPECT TO PERMITTING LEASING TRANSACTIONS INVOLVING AN EMPLOYER, WITH PROPER SAFEGUARDING UNDER PROPOSED NEW SECTION 15 OF THE WELFARE AND PENSION PLANS DISCLOSURE ACT)

Section 15 (c) (4) permits the fiduciary to purchase securities of the employer (or a specified related corporation) with a limit, under the circumstances specified, of 10 per centum of the fair market value of the assets of the fund. On the other hand it prohibits various other transactions with the employer except that the Secretary of Labor may by rule or regulation provide for the exemption of any fiduciary or transaction from all or part of such proscriptions when the Secretary finds that to do so is consistent with the purposes of the Action and in the interest of the fund and its participants and beneficiaries. Among such proscriptions is a lease of property of the fund to the employer ("...a party in interest"). There would seem to be no greater reason for permitting the fiduciary to purchase securities of the employer for no more than adequate consideration than to lease property to the employer at a fair rental. It should be just as permissible for the fund to own the property and lease it to the employer as for the fund to provide money (through the purchase of securities) to the employer for purchase of the property. Lease of property is clearly distinguishable from the other transactions proscribed in the section both on the basis of the common nature of such transactions and by the simplicity of determination of fairness of the rental. Accordingly, it is submitted that the 10% permission granted by the Bill for investment in securities of the employer should be modified to include leases and/or securities within an aggregate limit of 10%. Accordingly, it is recommended that the following language be added as clause (C) at the end of Section 15 (c) (4):

> "(C) leasing property of the fund to a party in interest or investing in securities of a corporation which leases property to a party in interest; Provided, That the rental is no less than an adequate rental; Provided further, That if an employee benefit fund is one which provides primarily for benefits of a stated amount, or an amount determined by an employee's compensation, an employee's period of service, or a combination of both, or money purchase type benefits based on fixed contributions which are not geared to the employer's profits, no such lease or investment in securities shall be made subsequent to the enactment of this amendment by a fiduciary of such fund if the cost of such property or of such securities, when added to (i) the cost of property of the fund already so leased and the cost of securities

already held of a corporation which leases property to a party in interest and (ii) the cost of securities described in (A) of this subsection 15 (c) (4) already held, exceeds 10 per centum of the fair market value of the assets of the fund."

There are also some lease transactions which are, by their nature, self-policing as to any possible abuse; namely, those where the investment by the fiduciary is a small percentage of the total cost of the property and the other ("outside") investors (who provide the balance of the cost of the property) have an interest in the fairness of the rental paid by the employer. Following is recommended language for an additional provision of proposed Section 15 (c) (4) (C) permitting such a type of self-policing transaction. It is couched in terms of ownership of the property by a corporation since this is the simplest form to describe but the language could obviously be broadened to cover transactions where the property was otherwise held if this were deemed desirable by the Congress:

"except that such 10 per centum limitation shall not apply to securities, not exceeding 10 per centum of the fair market value of the assets of the fund, of a corporation of which the cost to the fund was an amount less than 15% of the aggregate consideration received by such corporation for all its securities theretofore or thereafter issued and outstanding at the date of the determination of such 15%, and the only business of such corporation is the leasing by such corporation to a party in interest of property owned by such corporation at a rental adequate to pay the dividend and sinking fund requirements of its securities."

Albert H. Sealy
Counsel for and Secretary
of The Mead Corporation

STATEMENT

OF

BUREAU OF SALESMEN'S

NATIONAL ASSOCIATIONS

515 Peachtree Palisades

Atlanta, Georgia

TO THE

SENATE LABOR SUBCOMMITTEE

U.S. SENATE

ON

S. 3598

THE

RETIREMENT INCOME SECURITY

FOR EMPLOYEES ACT OF 1972

July 14, 1972

WASHINGTON, D.C.

STATEMENT OF
BUREAU OF SALESMEN'S NATIONAL ASSOCIATIONS

Re: S. 3598

This statement is submitted on behalf of the Bureau of Salesmen's National Associations to express the views of approximately 40,000 salesmen in the apparel industry respecting S. 3598, the proposed "Retirement Income Security for Employees Act of 1972."

The Bureau appreciates this opportunity to comment upon the proposed legislation and to express its gratitude for the efforts of this subcommittee to protect the rights of participants in employee benefit plans. We are well aware of and familiar with the problems in this area and are highly interested in all the pension-related legislation now pending before the Congress. While our concern extends to all such pending legislation, we most strongly support proposals such as S. 3598 which would protect the interests of employees by placing minimum safeguards and controls upon pension plans.

As an organization representing in large measure employee-salesmen, the Bureau is vitally concerned with the increasing frequency of pension plan failures, the inadequacy of protection of employees' vesting rights and the various other abuses which have received public attention in recent years. Within this context, we would suggest that these problems be viewed in historical perspective. When the great depression of the 1930's greatly weakened the United States economy it also injured millions of the workers in its grasp by destroying or substantially impairing the few rights then available to them under pension plans. At the present time, our economy is in the slow process of recovery from its most recent recession, and the current wave of employee losses through forfeiture of pension plan rights suggests the need for governmental concern and curative legislation.

Accordingly, the Bureau suggests that prompt Congressional action is needed to assure today's worker that his rights to economic security -- which he has earned -- will be available to him upon his retirement or other termination of employment. We do not believe that individual employer-employee negotiations or control by state authorities will adequately serve this purpose. Experience has shown that this approach can only create a patchwork system of ineffective and employer-oriented protection. The responsibility for solving the great and complex problems in this area thus falls to the Congress. S. 3598 represents an attempt to provide those solutions and for this reason the Bureau wholeheartedly endorses the philosophy of that bill.

Our society prides itself on the mobility of its work force. This fact in and of itself suggests several reasons why prompt legislative attention is necessary in this area:

1. In the absence of reasonable vesting rights, a salesman who has spent many years with an employer may be deterred from changing jobs, however beneficial to himself a new job opportunity may be. A salesman may receive nothing if he terminates his employment before attaining retirement age. This stifling effect is contrary to the desirable policy of employee mobility.

2. Individual salesmen-employees, particularly those who, for whatever reason, change jobs frequently, are in a poor bargaining position to demand the establishment of a pension plan, and cannot now establish a plan of their own in an employee status (the so-called "pensionless employee" discussed below).

3. The ineffective patchwork of state legislation presently existing acts as a further deterrent to work

force mobility, for an employee will often lose whatever rights he does have upon moving into another state. This situation and the resultant lack of uniformity demonstrates the need for Federal legislation to provide effective protection and certainty of rights among employees.

4. The voluntary portability provision of S. 3598 would establish an important method for combining pension benefits and preserving them until retirement age.

Problems of "Pensionless" Employee

The Bureau respectfully takes the position that any bill purporting to remedy the deficiencies of the current law on retirement programs should address itself to the problem of the employee for whom no pension or retirement benefit of any type is provided by the employer. Tax benefits for retirement savings should be granted to all taxpayers, and not merely those who are fortunate enough to benefit from an employer-initiated program. Tax benefits should not be granted only to those employees powerful or persuasive enough to obtain such benefits. Accordingly, the Bureau strongly encourages legislation, such as contained in H.R. 12272, allowing individual employees the opportunity of creating individual retirement plans. The encouragement of retirement savings, by means of certain tax benefits, should be as fully granted to the creator of an individual program as it is to the participant of one created by an employer.

It is suggested that the success of such relief, and the accompanying economic independence, is to a large extent dependent upon major educational and promotional efforts on the part of the government. In addition, since many of the participants in such a program would be relatively unsophisticated in terms of tax deferral, the plan should be cast in as uncomplicated and simple a manner as possible. The Bureau submits that the creation of an individual retirement plan should be as easy as opening a savings account. In keeping with this recommendation of simplicity, the Bureau recommended in a statement presented to the House Ways and Means Committee on H.R. 12272 on May 11, 1972, that the only limitation on contributions to individual plans be a flat amount of $2,500 where there is no employer contribution, and $1,500 if there is. In expansion of this concept in oral testimony before that Committee we requested and request here " . . . equality of treatment for the corporate employee, the pensionless employee, and the self-employed. Whether the limitation be $2,500 or whether it be $7,500 we see no reason to discriminate in withdrawal benefits, in fines imposed, or dollar amount."

Of the various pension reforms contained in S. 3598, the Bureau wishes at this time to address itself primarily to the concepts of vesting and funding. This is not to indicate that we are unconcerned with termination rights, fiduciary responsibility, reinsurance and the myriad other problems presented and dealt with by S. 3598. Rather, the Bureau would only suggest that the inseparable concepts of funding and vesting are the most critical needs, as they provide a basis for effective protection of the employees covered by these plans.

Funding

Basic minimum funding requirements should receive the highest priority in any pension reform legislation, for these problems relate to the very existence of a pension plan. Without funding, any other provisions relating to vesting and fiduciary responsibility are necessarily illusory, for an unfunded plan has no practical existence and there are no assets to be protected on behalf of the employee. An unfunded pension plan places the employee at the mercy of the employer's credit. If the business should fail, or if the managers should simply determine that it is impractical to continue, the employee must stand in line with other creditors of the business, unless adequate funding requirements are imposed.

The Bureau submits that this is an unconscionable situation. The employment relationship is one of reciprocal trust carrying with it many mutual responsibilities and dependencies. A major responsibility of the employer is to pay to the employee the full compensation due him. In the modern business world, with its emphasis upon fringe benefits, the pension plan has become an integral part of that compensation. If the employer does not make proper contributions to the plan, the employee has not received his compensation. He is being told, in effect, "I will pay you sometime in the future -- if I am still here and if I am able to." The resultant erosion of the employee's financial security places the burden of this economic and social problem upon the persons least able to bear such burdens.

In a very practical sense, practices of this type are dangerous for the employer as well. If the funding of a plan is deferred for an extended period, the actual liabilities may, when they become due, be so large that payment at that time jeopardizes the solvency of the business. The results of these circumstances are detrimental to all concerned.

Accordingly, the Bureau commends the mandatory funding provisions of S. 3598 and strongly submits that this subcommittee should, in fact, decrease the period provided in S. 3598 over which past service costs may be funded. This is especially so, as statutory requirements tend to become the norm, and forty years may postpone too long the funding of such obligations.

The Bureau recognizes that a more stringent funding requirement might, in certain cases, impose a hardship, and thus agrees with the provisions of the bill permitting variances. It is suggested, however, that the grounds on which variances may be granted should be more fully set out in the bill rather

82-079 O - 72 - pt. 3 - 20

than relying on a grant of regulation making power to the Secretary. Variances should not be granted if they, in fact, have the effect of nullifying the bill's funding provisions.

The Bureau is in full agreement with the provisions of the bill providing Plan Termination Insurance for the protection of employees who, through no fault of their own, are victimized by the failure of an employer who has not funded his accrued pension plan liability.

Vesting

Unless and until an employee's interest in a pension plan becomes vested, his "rights" under the plan are illusory and amount to nothing more than an expectancy. If the employee should leave his employment prior to full vesting, the employer contributions toward his employee's benefits become available for use in reducing the employer's future obligations to the plan with respect to the remaining employees. Thus, the employer realizes a financial gain from employees leaving before full vesting, particularly if full vesting is achieved only at normal retirement date. The Bureau believes that this situation points up the need for minimum vesting standards.

An employee is encouraged to view his pension plan as a portion of his compensation, and, more importantly, as providing some degree of financial security. In this latter respect, the existence of a pension plan serves as a disincentive to the accumulation of individual retirement savings for the reason that the pension plan is viewed as providing the security he would otherwise be required to provide on his own. Without reasonable and well-defined vesting requirements, this expectancy may never be realized. This situation is both dangerous and unjust.

Some may contend before this subcommittee that vesting, as well as funding, is more properly a matter for individual negotiation between the employer and the employee or his union. To some extent this may be persuasive, but the present lack of effective protection demonstrates the shortcomings inherent in this approach. The present shortcomings result from a number of reasons, ranging from the relative bargaining positions of the parties to the customary lack of sophistication on the part of the employee or his representative. These factors are of particular significance in the case of our members because many apparel salesmen are faced with the necessity of dealing with employers on an individual "one-to-one" _ad hoc_ basis, which places them at a decided disadvantage. The undesirable results created by a lack of effective vesting will continue to exist until the present approach is supplemented and corrected by Federal legislation.

The Bureau is in complete agreement with the provision in this bill which states that vesting requirements imposed by this act should be looked upon only as _minimum_ standards necessary for the rudimentary protection of the employee. Within this basic and minimum standard, the Bureau believes ample room remains for bargaining and negotiation between workers and their employers.

Portability

The Bureau considers portability to be an important aspect of a sound employee retirement system. The provisions of this bill providing voluntary portability are commended as a good first step toward such a goal.

Conclusion

The long process of study and research which has culminated in S. 3598 (and similar legislation), presents the 92nd Congress with a unique opportunity to act before the problems in this area become insuperable. What is needed is not a system for punishing or confining the employer, but rather, a reasonable set of minimum standards designed to provide the employee with presently existing security in place of a mere expectancy which may or may not achieve fruition. The Bureau believes that the efforts of this subcommittee have been constructive, for the current proposals would create a system of controls which is both effective and workable.

A potentially dangerous situation results from employees' lack of awareness that their pension rights are fully dependent upon the success and continued existence of the employer. To many employees, this fact becomes sadly apparent under circumstances in which anticipated benefits fail to materialize. The past abuses and the bitter disappointments of many employees demonstrate the need for more effective safeguards in this area. You, Mr. Chairman, and this subcommittee have taken a leadership role in curing these problems. We applaud your efforts and, for the reasons outlined above, urge you and your colleagues to continue toward enactment of these much needed measures. The Bureau is grateful for this opportunity to make its views known, and stands ready to assist in any manner possible.

Respectfully submitted,

BUREAU OF SALESMEN'S NATIONAL
ASSOCIATIONS

By: Marshall J. Mantler
Marshall J. Mantler,
Managing Director

WRITTEN STATEMENT OF THE CORPORATE FIDUCIARIES
ASSOCIATION OF ILLINOIS WITH RESPECT TO S.3598
WILLIAMS-JAVITS PENSION REFORM BILL

[redacted]

INTRODUCTION

The Corporate Fiduciaries Association of Illinois (formerly Corporate Fiduciaries Association of Chicago) has been in existence for about 50 years and currently has a membership of 65 banks and trust companies throughout the state.

Through meetings and correspondence the Association affords its members the opportunity for discussion and consideration of questions and problems affecting such companies in their fiduciary capacities.

One of the standing committees of this Association is the Employee Trusts Committee. At the present time there are ten members on this Committee and they represent the largest trust departments in Illinois. This Committee meets on a regular basis to discuss the various problems that arise in this field.

Naturally current and pending legislation, both state and federal, concerning employee benefit trusts is of prime importance to this Committee since its members in their fiduciary capacities represent such a large segment of the private pension system.

The following data illustrates the size and scope of the plans administered by the banks and trust companies represented on the Committee:

They act as trustee or agent for approximately 4,000 employee benefit plans having assets in excess of $11 billion. Each year approximately $236 million is disbursed to 116,000 individuals covered under the various pension plans. In addition, 57,000 individuals were paid $116 million from profit sharing plans in 1970. Since many of the pension and profit sharing plans have provisions allowing for disbursements to terminated and retired employees on a direct basis, the total payments under these plans is probably twice the amount disbursed by the corporate trustees. The institutions represented by this Committee have administered employee benefit plans for themselves and their customers for almost 75 years. The oldest pension plan managed by our institutions dates back to 1899 and the oldest profit sharing plan to 1916.

The private retirement system has shown fantastic growth in the last twenty years. Assets are currently estimated at approximately $150 billion held in several hundred thousand separate accounts. It is not unusual that with such rapid growth the private retirement system is not perfect. Abuses have come to light which all responsible fiduciaries abhor. However, we do wish to point out that employee benefit funds managed by independent banks and trust companies have been relatively untouched by scandals and "horror stories".

Professional corporate trustees are well aware of the fiduciary nature of employee benefit funds, and of their responsibility to employee beneficiaries. While employee benefit trusts may be considered a relatively recent innovation, the trust business, per se, has a long history of development. Banks and trust companies have managed trusts for over a century, and have developed a broad background and great expertise in this area. Undoubtedly many of the current pension plan problems could have been avoided if an experienced corporate trustee had been acting. In an earlier study made by this Committee (see report "Selected Material on the Private Pension System"), it was pointed out that the Congress stipulated that the trustee of a self-employed individual's employee benefit trust (HR-10) must be a bank. Perhaps corporate employees should be entitled to the same protection.

The current members of the Employee Trusts Committee are primarily administrators of plans of our customers. As such, we have been exposed to the broadest possible range of employee benefit plans and the problems encountered over the years in the operation of these plans. Two members of the Committee are attorneys specializing in the legal aspects of these plans.

The Committee has reviewed S.3598 and we respectfully submit this written statement setting forth our comments and recommendations.

EMPLOYEE TRUSTS COMMITTEE
OF THE
CORPORATE FIDUCIARIES ASSOCIATION OF ILLINOIS

John W. Cooper, Chairman
Vice President, Harris Trust and Savings Bank
111 West Monroe Street
Chicago, Illinois
(312) 461-2575

Robert H. Clements
Vice President, Continental Illinois National Bank & Trust Company of Chicago
231 South LaSalle Street
Chicago, Illinois
(312) 828-2301

Richard F. Condon
Vice President & Trust Officer
The Naperville National Bank and Trust Company
Naperville, Illinois
(312) 355-8800

Benjamin C. Homola
Vice President, The First National Bank of Chicago
One First National Plaza
Chicago, Illinois
(312) 732-4236

Randle E. Johnson
Vice President & Trust Officer
The First National Bank of Elgin
6-8 South Grove Avenue
Elgin, Illinois
(312) 697-1100

John A. Kapel
Vice President, LaSalle National Bank
135 South LaSalle Street
Chicago, Illinois
(312) 443-2000

Robert Krogman
Investment Officer, Chicago Title & Trust Company
111 West Washington Street
Chicago, Illinois
(312) DE 2-7700

James W. Penn
Vice President, American National Bank and Trust Company of Chicago
33 North LaSalle Street
Chicago, Illinois
(312) 661-5120

D. Quigg Porter, Jr.
Vice President, The Northern Trust Company
50 South LaSalle Street
Chicago, Illinois
(312) FI 6-5500

Lee E. Whitcomb
Vice President-Personal Trust
National Boulevard Bank of Chicago
400 North Michigan Avenue
Chicago, Illinois
(312) 467-4100

S.3598

Comments and Recommendations on Title I
Organization

In his statement introducing S.3598, Senator Williams stated that at least eight executive agencies have some authority over the operations of private pension plans. The Bill now gives additional authority to the Department of Labor and the Bill itself requires further reporting and does not require the Secretary of Labor to utilize the facilities or services of other agencies or to provide for the filing of a single report under this Act and the Welfare and Pension Plans Disclosure Act. Senator Williams stated: "The great goals of reform legislation must be to guarantee retirement security to the worker, and to assure the continued growth and expansion of private pensions." Disregarding the fact that employers will be discouraged from increasing benefits or establishing new plans because of added costs arising from vesting and reinsurance, employers, even if they could afford the added costs imposed upon them by this Bill, will be reluctant to set up new plans because of further governmental reporting requirements. Substantial costs are incurred by employers in the filing for Forms D-1, D2, 2950, 4848, 4849, etc., forms with the S.E.C. and the rendering of tax advice to participants in order to comply with proposed Income Tax Regulations. If Congress is truly interested in pension reform and the continued growth of the private retirement system, we strongly urge that we have reform in Federal administrative authority over the private system. Let's eliminate the need for eight executive agencies to exercise control. One definition of "reform" is "to make better by putting a stop to abuses or malpractices, or by introducing better procedures, etc." So, let's introduce better procedures by eliminating duplication of reports, controls, etc. and not confuse the picture even further as this Bill does in some cases. For example, this Bill sets forth transactions which fiduciaries are prohibited from making, but so does Section 503(b) of the Internal Revenue Code. In one case, the Secretary of Labor will issue rules and regulations relating to prohibited transactions and so will the Secretary of Treasury. Is this reform?

We concur with the policy adopted by the American Bankers Association which provides, among other things, that the ABA continues to suggest that if Congress decides that a government agency or agencies must be given investigatory and enforcement powers with respect to employee benefit plan provisions or the handling of employee benefit funds, such regulatory powers should be granted to a specialized agency within the Treasury Department subject to the general supervision and direction of the Secretary of Treasury or to a newly established independent agency, in which event all powers and duties now held by various government agencies should be transferred to that agency.

Section 101(a)(4)(B) deals with the Secretary's power to make an investigation when he has reasonable cause to believe such an investigation may disclose a violation of the Act. In the case of banks and trust companies, the duty of assuring compliance with the new law should be left with the banking agency.

Pursuant to Section 101(b)(2) of the Bill a fee will be charged to the employer to register his plan. How will this encourage the growth of the private retirement system?

We recommend that the authority of the Secretary of Labor to prescribe rules and regulations should not apply to general or specific interpretations of the prudent man rule set forth in Section 509 of this Bill. We are concerned that non-professional trustees will be seeking rulings before taking any action and a new body of trust law could evolve. Professional corporate trustees will judge for themselves what is prudent and what is not. The final decision as to whether an act is prudent or not should be subject to judicial review and decision and not to the Secretary of Labor.

In order to avoid duplication of functions among Government agencies, the first "may" in Section 101(e) should be changed to "shall" to make it a requirement upon the Secretary to cooperate with other agencies. Also, the word "may" in Section 106 should be changed to "shall" to require the Secretary to provide for a single report under this bill and the Welfare and Pension Plans Disclosure Act.

The summary of the bill states that plans covering self-employed are exempt but Section 104 (b)(3) seems to exempt such self-employed plans if no common-law employees are covered. If such a plan covers five common-law employees, is it covered under the bill or would it be exempt under 104(b)(4)? This needs to be clarified.

Why are plans covering less than 26 participants exempt from vesting, funding and termination insurance? Isn't a long term employee of a smaller employer entitled to the same protection as are employees of a larger employer? An employee's needs will be the same whether he works for a small or large employer. A smaller employer could be exempt from certain reporting requirements but the employees should still be entitled to the other protections afforded employees of large companies. How can it be explained to an employee that he need not be vested just because his employer employs less than 26 people? Surely the "horror stories" about lost pension rights will not disappear unless employees of <u>all</u> employers with pension plans are covered by the basic vesting provisions.

Also, why are plans administered by religious organizations exempt from vesting standards? The needs of the employees of such organizations are the same as any other employees.

The federal and state retirement systems are exempt from Titles II, III and IV of this bill. Obviously, it is felt that government taxing powers obviate the need for funding government pension plans although private plans will be forced to fund. We wish to point out that the private pension system is far better funded than public systems in general. Future generations will be forced to pay (through increased current taxes) for the pensions of government employees who, in many cases, enjoy pension benefits far in excess of most private plans.

The six month period for registering a plan in Section 105(b) is unrealistic. Rules and regulations will not be issued for some time after the enactment of the bill and it would be impossible for employers to comply.

S.3598

Comments and Recommendations on Title II
Eligibility, Vesting and Funding

Eligibility requirements call for service no longer than six months or age greater than 21, whichever occurs later. Most companies experience the greatest degree of employee turnover within the first three years. Requiring the enrollment of all employees after six months of service will create much additional paper work, particularly in profit sharing plans, which will be entirely unproductive for those employees who leave within three years. Such a short period of employment will not provide the base for a meaningful retirement benefit. Accordingly, we recommend that the service requirement for eligibility be restated as no more than three years at a maximum.

Mandatory funding and vesting may tend to discourage employers from establishing new pension plans. Legislative mandatory rules and requirements in these areas will tend to interfere with collective bargaining and the freedom to individualize plans. If funding is such a concern, perhaps the Internal Revenue rule should be changed to allow funding of past service liability at more than the present limit of 10% per year.

It is obvious that for employers whose pension plans do not have short vesting periods and are not fully funded, the vesting and funding, as required by the Act, will entail additional costs. The amount of the additional costs will vary from plan to plan, depending upon the extent of the required change from their present position of vesting and funding. In some cases the additional cost can be substantial, while in other cases it may be minimal.

It is not our intention to judge the social need for a minimal requirement of vesting and funding--this is for Congress to decide. However, the proposed legislation of required vesting and funding is in effect a forced amendment to the pension plans of many employers, and for them will entail involuntary additional costs of doing business. Therefore, we believe that prior to the effective date of the law, employers should be given the opportunity to assess the costs of such changes and to adopt alternate benefit plans if they find that the changes required by the new law are unacceptable to them.

The provisions of Part C of Title II permitting an "Optional Election to Divide Pension Plan" is a step in this direction. For the employer who can accept the additional legislative cost of vesting and funding on future service, this provision may be adequate. Employers who have no negotiated labor contract but who find the additional legislative costs unacceptable, can still exercise the option of terminating their present pension plans and adopting less expensive or different types of employee benefits, such as profit sharing or thrift plans. But employers who have negotiated contracts with labor representatives will generally not have open to them, until the termination of their current labor contract, the option of discontinuing their present pension plan if they find the additional legislative costs of vesting and funding to be unacceptable. They are committed to continue their present plan and by the proposed law will, in effect, be required to accept the costs of accelerated vesting and funding, at least until their current labor contracts expire.

For the foregoing reasons we urge that vesting and funding provisions of the bill should be given a future effective date which will give employers an opportunity to determine and assess the effect of the additional costs of required vesting and funding, and to take such action to adjust their benefit plans as they feel necessary.

We have the following additional specific comments with reference to the vesting and funding provisions of the bill:

(1) Section 211(a) appears to be a mandatory payment priority upon the termination of any benefit plan, whether or not the plan specifies other priorities. These are essentially the same priorities as were existent in the Studebaker Company Pension Plan and will have the same effect as existed when the Studebaker Company ceased to do business. There will not be much of anything left for the shorter service employees in the case of terminations of most plans which are not fully funded. Further, it is not clear that employees' own contributions, either mandatory or voluntary, have priority in the order of distribution upon termination. It is recognized that the reinsurance provisions of the bill are aimed at eliminating the inadequacy of the funding at the time of such termination, but it should be noted that terminations by employers which are brought about by reason of their being unable to accept the costs of the new vesting and funding, and which result in the termination of their plans prior to their becoming subject to the Act, will not be insured under Title IV of the Act.

(2) The proposed Act, in Section 215 (b)(2) requires that if the employer elects to divide his pension plan into two parts, the contributions to the new part must be <u>at a rate</u> not less than those made to the continuing plan. This seems to be a very vague provision and should be clarified. It is not clear whether the computation of such rate is on the basis of an increase in the percentage of funding, or on the basis of total funding to date or on some other basis.

(3) The heading for Part C "Optional Election to Divide Pension Plan" seems to limit the application of this part to pension plans but the text of this part in the bill does not limit the application to pension plans.

(4) Provisions of Section 202 (a)(2) of the proposed act giving the Secretary of Labor the right by regulation to provide for the final disposition of plan assets when beneficiaries cannot be located or ascertained within a reasonable time, should be altered so that it does not give him the right to escheat benefits to the government. In the case of profit sharing benefits, the plans normally provide for distribution thereof among the other participants of the plan, and that is appropriate because the plan was set up to benefit them, and not the government. In the case of pension benefits, specific amounts are not normally segregated into separate accounts for particular employees or pensioners; therefore, any benefits from the inability to make the given pension payment should remain in the fund and be available for paying other pensioners. Of course, if an eligible pensioner is later found, then his pension should necessarily have to be paid from the fund.

(5) Under Section 211(a) required priorities of payment under discontinued plans is specified. Many plans contain specific provisions for priority of such payments. We see no reason for the substitution of a priority by law when the matter is covered by the plan itself. Additionally, the proposed statutory provision seems to us to be inappropriate because it is unfair to the shorter service younger employees as indicated in our comments above.

(6) Special consideration should be given to certain profit sharing plans which are commonly known as "class year plans". Typically under these plans a relatively rapid rate of vesting applies, but it applies separately with respect to the funds accumulated under the plan during each year of the plan's operation. In most of such plans vesting occurs within a period of ten years or less (usually five years) after the close of the plan year. Imposition of the vesting rules outlined in S.3598 will introduce unnecessary complications for these plans without any compensating benefits.

S.3598

Comments and Recommendations on Title III
Voluntary Portability Program for Vested Pensions

We don't believe a need has been shown for such a program and are of the opinion that the establishment of such a program would give rise to unnecessary expense to taxpayers.

Section 303(b)(3) provides for depositing funds of the Voluntary Portability Program in savings accounts. Section 406(d) provides moneys of the insurance fund may (not shall) be invested in U. S. obligations. Why the difference?

While we don't necessarily recommend this, another approach to a portability program could be the use of U. S. Retirement bonds. Upon termination of employment with vested rights, an employee could elect to have the value of those rights used to purchase a special Treasury bond which either could be redeemed in full at age 59 1/2 as in the case of HR-10 plans or paid over a period of years by submitting payment coupons to the Treasury. The bonds would have to be fully redeemed at a certain age to eliminate the possibility of escaping estate taxes. The administration (and related costs), of such a program would be practically non-existent. There would be no central fund, no depositing or transfer of funds and no bookkeeping records by the employer. The employee would have possession of the bonds and the employer need not notify him of his benefits sometime in the future or keep track of him. Such a program would also assist the Treasury in the sale of bonds. This program would seem to be a better approach than that set forth in Title III - and should be explored. Of course, provision would have to be made that the employee would not be taxed at the time the bonds are purchased.

The bookkeeping records required by Section 305(1) would be monumental and horrendous. If a member plan agreed to accept amounts from employees covered under 100 other member pension plans, individual records would have to be maintained for those 100 employees showing the value of their vested benefits plus new benefits. Records under profit sharing could also be difficult. If the transfer is from a contributory plan to a non-contributory plan, or if the employee made a pretermination withdrawal from the plan, will the new employer have to reconstruct or obtain records from the transferring plan so as to comply with the income tax regulations computing and taxing a future distribution as capital gains or ordinary income? In view of the present and most complex problems raised by the proposed income tax regulations, we can't conceive of a plan being willing to accept funds from another plan.

What is the gist of Section 305(1) and who determines whether credits purchased in a member plan have at least an equivalent actuarial value as the amounts transferred? If two profit sharing plans are involved, no actuarial values are involved. If a transfer is made between a pension and a profit sharing plan, the problems are increased.

Section 305(2) provides for the purchase of an insurance contract at age 65. What if the former plan allowed alternate methods of distribution such as a lump sum or installments or the commencement of payments at an earlier age? Will an employee under such a plan agree to participate in the portability program?

It should be noted that many employee benefit plans provide for payment of a vested benefit to terminated participants upon attainment of retirement age. Mandatory vesting will obviously increase the number of participants who will be entitled to benefits when they reach retirement age. If a member of the work force has been employed by several different employers during his career, he will receive benefit checks from each employers' pension plan. Therefore, why the need for portability? Why reduce the present flexibility of payments inherent in each private plan and cause the creation of another government bureaucracy for no basically sound reason?

S.3598

Comments and Recommendations on Title IV
Plan Termination Insurance

At this time we cannot endorse the concept of plan termination insurance. A compelling reason for reinsurance of pension benefits has not been established. As trustee of thousands of employee benefit trusts since 1899 with assets in the billions of dollars, we have encountered very few situations where the proposed insurance would have been needed.

Also, we understand that a Labor Department survey found that one-tenth of one percent of workers are affected by pension plan terminations. We don't believe that the survey stated that those workers lost all benefits. We question the advisability or need of another agency with its attendent increase in costs where so few workers actually stand to lose all pension benefits. Also, if Titles I, II and V of the Bill are enacted that one-tenth of one percent should shrink. The cure should not be worse than the disease. Why enact insurance legislation which will discourage both the adoption of plans by employers who do not now have them or an increase in benefits to those employees presently covered? The reinsurance program would probably have an adverse effect on a substantially greater number of employees than those affected by plan terminations.

Of all the proposed pension legislation, reinsurance without the facts and figures to back it up looms as one of the most objectionable of the proposed laws. This feature has to discourage the establishment of new plans. New plans will obviously have the greater unfunded liabilities and therefore the greater amount of premiums to pay. Considering the entire pension universe, would it not make more sense to have premium dollars applied instead against unfunded, vested liabilities or for an increase in benefits?

It seems much more reasonable to get the facts before barging ahead in the difficult area of reinsurance. If the need can be established without an adverse effect on the continued growth of plans and increases in benefits, the facts produced would give some meaningful direction to legislation.

S.3598

Comments and Recommendations on Title V
Disclosure and Fiduciary Standards

With respect to Section 509 of the bill dealing with fiduciary responsibility we agree with the concept that all persons handling employee benefit funds have a fiduciary responsibility to the covered employee and that remedies should be available for breaches of such fiduciary responsibility. However, the definition of "fiduciary" set forth in Section 502(a) should be broadened to include investment counsellors who give advice. Many individuals acting as trustees of employee benefit funds rely upon the advice of investment counsellors employed by them believing that such counsellors recognize the terms of the trust agreement and the responsibilities of a trustee. We do not believe that the definition of "fiduciary" includes an investment counsellor who does not direct the trustee to make investments or does not execute the orders but renders advice to the company or company-appointed committee which in turn, acting upon such advice, directs the trustee to make investments. The investment counsellor, in such cases, is not technically exercising any "power of control, management or disposition" with respect to the fund. While it is true that in such situations the company or committee is a fiduciary, it should be made clear that the investment counsellor is also a fiduciary. With the current emphasis on investment performance, companies are employing investment counsellors as investment experts, hopefully expecting a high return on invested funds. The company officers will, as a practical matter, rely either exclusively or almost exclusively on the advice of the investment counsellors. The company will not pay a fee for advice and then ignore it. Therefore, the definition of "fiduciary" set forth in Section 509 should be enlarged by adding the following words after the word "disposition:"

"or renders investment advice for a fee or other compensation, direct or indirect,"

The suggested addition of Section 15(a) to the Disclosure Act provides that the trust agreement shall set forth the purpose of the fund and the detailed basis on which payments are to be made into and out of such fund. Since most retirement programs consist of two separate documents - a plan and a trust agreement, and the plan usually sets forth the purposes of the plan and the basis on which payments are to be made into and out of the fund as set forth in the definition of "Profit-sharing-retirement plan" in Section 3(15), we recommend the words "written document" be substituted for the words "duly executed trust agreement" in the first sentence of Section 15(a).

There appears to be an inconsistency between the second sentence of Section 15(a) and Section 15(b) (1) (A). 15(a) provides the fund shall be held for the exclusive purpose of (1) paying benefits and (2) defraying expenses. However, 15(b) (1) (A) doesn't mention expenses and uses the word "solely" rather than "exclusively". Also, to avoid inconsistency with Section 401(a) of the Internal Revenue Code which also uses the word "exclusive" and Regulations issued thereunder, we suggest Section 15(a) (1) (A) be changed to read as follows:

> "(A) for the exclusive purposes of (1) providing benefits to participants in the plan and their beneficiaries and (2) defraying reasonable expenses of administering the plan provided, however, others including, but not limited to, employers, parties in interest, fiduciaries, and administrators may derive incidental benefits."

Section 15(b) (2) prohibits some investments which could be beneficial to the fund. Also, that section is inconsistent to some degree with Section 503(b) of the Internal Revenue Code which sets forth prohibited transactions. Prohibited transactions must be reported on Form 990-P and therefore it appears 503(b) is sufficiently broad enough and clear enough to be substituted for 15(b) (2) in most respects and it is recommended that 15(b) (2) be rewritten as follows:

> "(2) Except as permitted hereunder, a fiduciary shall not -
>
> (A) enter into any prohibited transaction as set forth in Section 503(b) of the Internal Revenue Code and in Income Tax Regulations issued thereunder by the Secretary of the Treasury or his delegate;
>
> (B) lease or sell property of the fund to a fiduciary individually or lease or purchase on behalf of the fund any property known to be property of the fiduciary;
>
> (C) in his individual or any other capacity act in any transaction involving the fund on behalf of a party adverse to the fund or to the interests of its participants or beneficiaries;

(D) furnish goods, service or facilities
of the fund to any person known to
be a party in interest."

While it appears the above suggested change together with other sections of the bill would more than adequately cover the interests of the employees, if 15(b) (2) is not changed as we suggest, then other changes are recommended.

Many trusts have, in the past, leased property to the employer and the rate of return to the trust has been good, all to the advantage of the employees. Such advantageous investments should not be prohibited. It must be kept in mind that a prohibited transaction under 503(b) of the Internal Revenue Code leads, among other things, to the disqualification of the tax-exempt status of the trust and loss of deduction of employer contributions. Therefore, the lease of property to the employer in an arms-length transaction cannot result in a diversion of income or principal to the employer which would be a prohibited transaction. Also, a fiduciary must act prudently and if such investments are imprudent, the fiduciary should dispose of them. If Sections 15(b) (2) (A) and (B) are retained, at least the investments already in existence on the date the bill is enacted should not have to be disposed of. Such a forced disposition at more or less a distress sale could cause irreparable damage to the very employees the bill is intended to protect. Also, the bill should permit compliance with terms of leases entered into before enactment of the bill.

Section 15(b)(2)(C) is too vague and should be eliminated or re-written as suggested in the rewrite of 15(b)(2) as set forth above. The same holds true for Section 15(b)(2)(B).

A literal reading of Section 15(b)(1)(E) would appear to preclude a trustee from receiving as trustee the sale price (consideration) from a sale of a trust asset. This certainly is not intended and therefore, this section should be clarified, perhaps by adding the words, "for his own personal account" after the word "consideration".

A literal reading of Section 15(b)(2)(G) would appear to prohibit a bank from furnishing commercial services to the employer and since (G) is covered by 503(b) of the Internal Revenue Code, we suggest its deletion or as a minimum, a rewrite as follows:

"(G) furnish from the fund goods and services
or facilities of the fund to any person known
to be a party in interest,"

Although Section 15(c)(4)(A), dealing with the purchase of employer securities, reads differently from other bills dealing with the same subject, we still have comments with respect to this subject. The first portion of that subparagraph clearly imposes no limitation on the percentage of company securities which can be purchased in profit sharing, stock bonus, thrift or similar plans. The two sentences preceding the last sentence of that subparagraph appear to be inconsistent with the first portion, since they impose a limitation on certain profit sharing, stock bonus, thrift and similar plans. Also, those two sentences confuse us further unless it is intended (as we think it is) that a distinction be made between a plan which requires that all or a portion of the fund be invested in company securities and a plan which does not require such investment but the plan or trust agreement explicitly permits investment in company securities. Where the plan requires such investment, the last sentence of 15(c)(4)(A) places the trustee in an impossible situation. If the trustee doesn't purchase the securities he must under the terms of the trust agreement, it could be said that he would be breaching his trust and would be liable for any losses sustained by reason of not following the terms of the trust agreement. If, on the other hand, he does purchase the securities as directed and the investment does not meet the prudent man rule, he is in violation of the Act. He is damned if he does and damned if he does not.

While Section 15(b)(1)(C) may be said to relieve the trustee from liability for purchasing stock when the trust agreement so requires, the last sentence of 15(c)(4)(A) and Section 15(c)(8) provide the trustee must act prudently. Having in mind the objectives of these profit sharing and stock bonus plans, there would seem to be no compelling reason for requiring the securities in such plans to meet the test of the prudent man rule, particularly since the employees would be on notice that the fund is to be invested largely or entirely in the company's securities.

This point, as well as the apparent inconsistency between the first portion of this subparagraph and the two sentences preceding the last sentence of this subparagraph should be clarified.

It appears that the word "from" should be added at the end of the first phrase in Section 15(c)(4)(B).

Section 15(f) permits allocation of specific duties and responsibilities among fiduciaries and also agreement of indemnification, but we wonder why it would be necessary to have an agreement of indemnification. It appears to us that if certain duties are allocated to one fiduciary, the other fiduciaries should be relieved of liability for those duties by the bill itself. The agreement of indemnification may not necessarily protect the fiduciary if the other party to such agreement cannot meet its obligations under the agreement. It is one thing to say you have no liability and another to say you may be indemnified. Therefore, we would recommend that 15(f) be rewritten as follows:

"(f) No fiduciary may be relieved from any responsibility, obligation or duty under this Act by agreement or otherwise; provided, however, nothing herein shall preclude any agreement allocating specific responsibilities, obligations or duties among fiduciaries in which event such a fiduciary to whom certain responsibilities, obligations or duties have not been allocated shall not be liable either individually or as a fiduciary for any loss resulting to the fund arising from the acts or omissions to act on the part of another fiduciary to whom such responsibilities, obligations or duties have been allocated."

Section 15(h) prohibits any "person" from serving as a fiduciary of or consultant to any employee benefit plan for 5 years after conviction of certain specified crimes. By definition the word"person" includes corporations. As it reads, Section 15(h) could put a corporate fiduciary or insurance carrier completely out of the retirement fund business possibly through the fault of a single employee. This is too harsh a penalty. Other penalties are imposed and also banks and trust companies are subject to stringent audit controls. We would suggest that a new sentence be added to 15(h) to read:

"For the purposes of this section, the term 'person' shall not include any bank, trust company or insurance carrier which is subject to Federal or state regulation."

We agree that participants should receive worthwhile information to enable them to clearly understand their rights to benefits and in order to determine whether they have to take any steps to protect their interests. However, too much detailed reporting and information would tend to confuse most people and in addition, would be costly and burdensome to compile. For example, Section 506 on page 60 requires reports of all loans. The information required could involve an enormous amount of work resulting in great cost with little or no value to the participants. We suggest that no listing of Section 15(c) (5) loans (participants' loans) be required. This suggested change in reporting was received favorably by the Internal Revenue Service and its revised Form 990-P, effective December 31, 1971, eliminates the need to report in detail all participants' loans.

Also, with respect to Section 506, we suggest the deletion of the figure of $100,000 wherever it appears in that section. The $100,000 figure does not relieve administrators of large funds from much reporting. That figure could be substantially less than 3% and we believe the 3% figure would still accomplish what the bill has in mind.

Section 506(d) requires a detailed statement of commissions. We see no worthwhile purpose served by including brokerage commissions paid for the purchase or sale of marketable securities through registered dealers and would like to see that as an exception to reporting commissions.

Section 506(d) which sets forth subsection 8 of Section 7 of the Disclosure Act dealing with collective trust funds should be re-written to permit banks to comply by filing with the Secretary of Labor a copy of the annual report of the collective trust fund. In our opinion, no real worthwhile purpose is served by having literally hundreds of accounts reporting the same receipts and disbursements and assets and liabilities to the Secretary. The annual report of the collective trust fund is audited by outside public accountants and should suffice for the purposes of the Act.

S.3598

Comments and Recommendations on Title VI
Enforcement

Sections 603 and 604 provide that civil actions may be brought in any court of competent jurisdiction in the district where the plan is administered, where the breach took place or where the defendant resides or may be found. This gives rise to the possibility of a fiduciary having to defend actions in a court far removed from his principal place of business. It would be unduly burdensome and costly for a fiduciary to be sued in any jurisdiction where the plan is administered, which possibly could mean any location where the employer had employees covered under the plan. Therefore, we recommend that the words "....the plan is administered, where the breach took place or where...." be deleted from Section 603 and 604.

Section 605 (a)(1) authorizes the court in its sole discretion to allow a reasonable attorney's fee and costs of the action to any party. In order to avoid nuisance cases and ill-founded class actions, we suggest that only successful parties should be entitled to attorney's fees and court costs.

If the suit is not successful, it should be kept in mind that attorney fees and costs would be charged to the fund thereby penalizing the participants covered under the plan. Therefore, we recommend that the section be rewritten as follows:

> "Section 605 (a)(1) - allow a reasonable attorney's fee and costs of action to any successful party."

STATEMENT OF
ASSOCIATION OF AMERICAN RAILROADS
BEFORE THE SUBCOMMITTEE ON LABOR OF THE
SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE
ON S. 3598,
THE RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT OF 1972

The Association of American Railroads, on behalf of its member railroad companies, submits the following statement with respect to S. 3598, the Retirement Income Security for Employees Act of 1972.

The railroad industry has a large number of pension plans with a wide variance in types, benefits and coverage, illustrating the flexibility of approach which is presently available to industry. These plans have been adopted by various railroads to meet specific problems and needs. All of them, of course, would be affected in some degree by enactment of S. 3598 or other proposed legislation regulating private pension plans.

In discussing the regulatory proposals contained in S. 3598, we believe that certain basic principles should be kept in mind.

In the first place, there appears to be no dissent from the view that the present private pension system is an invaluable supplement to the federal programs of old age benefits and annuities, and that it is desirable to foster the maintenance and growth of the private pension system.

Secondly, it is obvious that unnecessary and overly zealous regulation of the private pension system can lead only to discouraging its growth, and, carried too far, may lead to its extinction.

It is submitted, therefore, that the Congress should approach each step of the regulation of private pensions with the greatest of care, and take each step only when the evidence is convincing that the step will be beneficial to the entire system and will foster expansion of private pensions.

Turning to the specific provisions of S. 3598, the first point for consideration is the proposal to establish a new agency in the Department of Labor, charged with administration and control of private pension plans. We see no justification for the establishment of such a new agency, with the sweeping powers granted by S. 3598 to the Secretary of Labor and presumably to be exercised by the new agency.

The bill by Title I would establish elaborate machinery empowered to enter into every phase of private pension plan operation, and, we fear, designed to induce conformity and rigidity in the area of private pensions. For example, under Section 101(b)(1) the Secretary is authorized to establish standards and qualifications for the actuaries serving private pension plans. However, at the same time, Section 101(b)(3) authorizes the Secretary to set limitations on actuarial assumptions used by such actuaries. It would seem clear, therefore, that the actuaries who may be certified as meeting the Secretary's standards will necessarily be those who accept his actuarial limitations, which may in some respects be unacceptable to some well qualified and conscientious actuaries.

All of this not only threatens the continued independence and flexibility of private pension plans but also ignores the existence and availability of a considerable body of expertise in the pension plan field -- that of the Internal Revenue Service, which administers the already rigorous qualifications which plans must meet for IRS qualification, and does so in a way which nevertheless recognizes the need for flexibility in approach which is essential to the growth and survival of the private pension plans.

None of the objectives of this bill require the establishment of a new government agency for its attainment. Any of these objectives -- if found necessary and favorable to pension plan growth -- can be made a prerequisite for IRS qualification of plans. Expanded reporting and disclosure requirements, fiduciary standards, court remedies for plan participants can all be provided, if needed, without a new agency and the over-regulation of the private pension plans which clearly would follow its establishment.

Title II, Part A of S. 3598 establishes strict vesting requirements for all plans (although Part C provides an option for severance of now existing plans into "new" and "continuing" plans, with the vesting requirement applicable only to the "new" plans). All studies of private pension plans have shown a marked increase in the number containing vesting provisions. We feel that any rigid requirement for early vesting, such as the graduated vesting effective after eight years service which would be imposed by S. 3598, may well present an obstacle to the growth and expansion of private pension plans. Although well established and well funded existing plans may find the cost of the present proposal not unreasonable, the cost to other plans, particularly to unfunded plans, or to plans considered for adoption after enactment of such a requirement, may well lead to the termination of some existing plans and failure to establish new plans.

Adoption of the proposed vesting requirement would also destroy some of the flexibility of the existing system. When a plan is established, the principal focus of attention is normally the older worker, and the setting of adequate retirement benefits for him. Other refinements and benefits, such as vesting, are generally added at a later date as the plan matures and its funding or the employer's finances permit. Any form of vesting prior to normal retirement age is an additional cost to the plan, and enforced early vesting for all plans may well reduce the amount of pensions which can be provided for retiring workers, particularly under new plans, or eliminate the possibility of adoption of such features as disability retirement benefits.

We feel that the need for a fixed standard for early vesting is questionable. This proposal, like all proposed requirements which increase costs, should be carefully examined in the light of its effect on the ability of plans to include other and possibly more desirable benefits, and on their ability to provide adequate pensions for retiring workers, as well as on the growth of the private pension plan system.

Part B of Title II of S. 3598 establishes funding requirements. Generally speaking, it requires current payment into a fund of current ("normal") service costs, annual payments of equal amounts necessary to cover "initial unfunded liability" over a 40-year period, and annual payments of equal amounts to cover "experience deficiencies" over a five-year period as such "experience deficiencies" are determined.

While the proposed funding requirements are more reasonable than prior proposals in this area, there are certain matters which we would like to bring to the Subcommittee's attention.

In the first place, the Internal Revenue Service presently requires tax-qualified pension plans, as a minimum, to be funded to the extent of payment of current costs plus interest on any unfunded prior service costs as of the date of plan establishment. Employer payments for current costs are deductible in full, but there is a 10 percent annual limit on the deductibility of payments to fund prior service costs. If a plan fails to meet the IRS funding standard, and there is no business necessity to justify the funding deficiency, IRS may treat such failure as a plan termination and require full vesting of benefits as of the date of such termination.

It is obvious that if all pension plans are required to be funded, all employers with plans will seek tax qualification of their plans and will be subject to the above existing funding requirements. Consequently, it is submitted that an alternate and better approach to the funding problem, for all plans, may be to modify present IRS requirements to permit more rapid funding, e.g., by increasing the limits on contributions which may be tax deductible with respect to costs other than the current plan costs. Such an approach would in our opinion be better suited to the stated purposes of this proposed legislation than the provisions of Title II, Part B.

Secondly, we question the advisability of requiring all pension plans to be funded. Although we do not question the desirability of funded plans, it seems certain that enactment of this proposal will result in the termination of numerous existing unfunded plans, because of the inability of employers to meet the funding costs in addition to the payment of current benefits to retired workers. Enactment may also postpone or totally prevent the establishment of new plans, since many plans are first established on a non-funded basis, with funding following when the economic condition of the employer permits. Before this or any funding proposal is adopted, it should be carefully studied as to its effect on the maintenance and growth of the private pension system.

Finally with regard to funding, adoption of such requirements seem inevitably to embody the regulation of actuarial standards, methods and assumptions referred to above in the discussion of the broad powers proposed for the Secretary by S. 3598. Such regulation will result in conformity and loss of flexibility in the handling of pension funds which may well increase the costs of pension funding. Furthermore, such regulation and enforced conformity may well lead to overly restrictive regulation of the investment policies of pension plans, further adding to funding costs. We therefore urge considerable restraint and careful study before the present federal regulation of pension plan funding is changed by the Congress.

Title III of S. 3598 would establish a voluntary portability program for vested pensions. A plan registered under the Act may apply for membership and become a member plan. Thereafter a participant in a member plan who leaves his employment prior to retirement may request transfer, to a fund established by Section 303 of the Title, of an amount equal to the current discounted value of his vested rights. The fund, after setting aside amounts needed to meet withdrawals, is to be deposited in interest-bearing accounts in insured banks or savings and loan associations. Withdrawals are to be made by the Secretary (1) to purchase credits for the employee if he becomes a participant in another plan and so requests, or (2) to purchase single premium life annuities for participants attaining age 65.

So long as the program is in fact voluntary on the part of pension plans, it would appear that the proposal is unobjectionable. But there appears to be no demonstrable need for the program, and membership in the program would be costly to pension plans and undesirable to them.

Preliminarily, it should be pointed out that Section 301(b) appears to give the Secretary considerable control over whether this program is voluntary or involuntary. This is because the application for membership in the program is to be "Pursuant to regulations issued by the Secretary." In the absence of any specific provision, such as one providing for application for membership in the program by the administrator of a plan, this could be construed as authorizing application for membership on behalf of a plan by, for example, a small percentage of its participants, or by a labor organization representing participants in an employer plan. It is recommended that if membership in the program is to be purely voluntary, the language of Section 301(b) be clarified to eliminate this potential problem.

Where vesting provisions are embodied in a pension plan, the participant in the plan who leaves employment prior to retirement is entitled to receive a pension based on his vested rights when he reaches retirement. His pension check comes from the plan in which he earned vested rights. To preserve those rights, there is no need for transfer of the rights to some other plan or fund. Conceivably it may be argued that the transfer makes his rights to a pension more secure, but the same argument would support some sort of transfer for those participants who remain in employment until retirement. Actually, there seems no basis for giving this theoretical preference to employees who do not remain in service until retirement.

Furthermore, the membership of a plan in the program would increase the cost of the plan, possibly substantially if many participants on leaving employment request transfer of the value of their vested rights.

First, it should be noted that the special fund established under Section 303 of Title III is to be invested only in interest-bearing accounts in banks and savings and loan associations. This means that the fund will be limited to a return far below that of pension funds which are privately administered and can be invested to produce higher income and capital gains. The result, apparently, is that the transfer from the private plan fund to the Secretary's fund would involve an actuarial calculation of "current discounted value" and a payment greater than the "current discounted value" if the amount necessary to cover the vested rights remained in the private pension plan fund.

Similarly, in any transfer from the Secretary's fund to another private pension plan, if the full amount originally transferred, plus interest, were paid over to the second plan, it is probable that the amount so paid would be greater than that necessary to give the participant the vested pension earned under the first plan. This would give the employee leaving service before retirement and joining a second plan a clear and discriminatory preference over employees who remain in a private pension plan until retirement, and at a considerably greater cost to the plan than if it retained the "current discounted value" of the employee's vested rights and paid the pension directly to him at retirement.

Secondly, plans generally provide that if an employee with vested rights leaves service before retirement, his rights extend only to the receipt of a pension upon reaching retirement age. If he dies before retirement, his estate or beneficiary is entitled at most to a return of any employee contributions, with interest, but not to payment of company contributions made on his behalf. The provisions for transfer under the proposed portability program would appear to remove irrevocably from a pension fund the employer contributions which, if retained in the pension fund, help to keep it actuarially sound and reduce funding costs. The result will inevitably be a substantial increase in the cost of funding private pensions.

Incidentally, nothing in Title III indicates what disposition will be made of a payment to the Secretary's fund if the participant for whose account the payment is held should die before retirement. If it is intended that the full amount of both employer and employee contributions be paid over to the employee's estate or beneficiary, this again would be a clear discrimination in favor of the left service employee as against those who remain in employment until retirement.

For the above reasons, membership in the voluntary portability program would be costly to a private pension plan and may be discriminatory as between participants in the pension plan. It is again requested that this Subcommittee give the most careful consideration to whether the adoption of such a program would be beneficial to the private pension plan system.

Title IV of S. 3598 would establish a Private Pension Plan Termination Insurance Program to insure participants and beneficiaries against loss of benefits derived from vested rights arising from plan termination. The insurance is limited to benefits based on rights earned after the effective date of the Act and is also limited in dollar amount. Financing of the program comes from uniform assessments on all plans to cover administrative costs, and annual premiums at uniform rates based on the amount of unfunded vested liabilities subject to the insurance.

This proposed insurance is, in our opinion, not demonstrably needed in the private pension plan system. It cannot reasonably be compared to federal bank deposit insurance, which insures assets in being, rather than the future contributions under a pension plan. It places the burden on all pension plans to meet the costs of thoughtless and unattainable promises made by employers, of business failures, of discontinuance of business operations for any reason. Normally an insurable risk is one which is beyond the control of the insured, but here the pension expectations insured are determined by the insured employer.

Furthermore, it is felt that the existence of such a program is likely to encourage the granting of unsound pension benefits. It is obvious, of course, that the premium payments required will drain off from pension funds monies otherwise available for the payment of benefits. The added costs, particularly for new plans, may well discourage the establishment of private pension plans or lead to decisions to give no benefits for service prior to plan adoption, a decision which would substantially reduce the benefits for the older workers at the time of plan establishment.

Determination of the unfunded liability on which the insurance premiums would be based under this proposal would apparently again bring into play the Secretary's power under S. 3598 to set standards for actuarial assumptions. Fair application of the insurance proposal would seem to require a fixed standard for determining the unfunded liability of all plans, thus affecting the flexibility of the present private pension plan system and imposing conformity which could well stifle the growth of private pension plans. Additionally, such a program might well require strict government control of the investment policies of pension plans, a step which would undoubtedly increase their cost.

It is submitted here again, that the insurance proposal is one which requires the most serious consideration by the Congress as to its impact on the private pension system.

Titles V and VI of S. 3598 respectively amend the Welfare and Pension Plans Disclosure Act to require more detailed disclosure by private plans and to establish fiduciary standards for pension fund trustees, and contain enforcement provisions.

These titles embody provisions essentially the same as those proposed in S. 3024, introduced by Senator Javits on behalf of himself and others on December 14, 1971.

We certainly have no objection to, and in fact support requirements to report the type of information needed to ensure honest administration of pension plans on a sensible basis. We ask only that the Congress exercise care to avoid burdensome reporting requirements which could prove costly to private plans and have no real value in connection with the purposes of the disclosure act.

For example, Section 506(f)(7) of Title V would amend Section 7(e) of the Welfare and Pension Plans Disclosure Act to require, among other things, annual reports of the present value of any benefits forfeited by participants who terminated service under the plan during the year. This proposal could prove very costly to plans, since it would apparently require continual actuarial valuations, and it is submitted that requirements of this nature should receive the careful scrutiny of the Subcommittee before their adoption.

We have no objections to the establishment of proper fiduciary standards for plan trustees, nor to the enforcement provisions of Title VI. It is strongly urged, however, that if legislation is adopted granting the Secretary of Labor the sweeping powers proposed in S. 3598, provisions should be incorporated which make clear that before issuing the regulations contemplated by Title I and other parts of S. 3598, the Secretary is required to hold hearings, and that his regulations are subject to appropriate court review.

In closing, we wish to point out to the Subcommittee that while the private pension plan system does not claim perfection, it has worked well and is of tremendous value to our country. Private pension plans have shown tremendous growth subject to the regulation of the Internal Revenue Service. It is to be hoped that in an effort to perfect an already thriving system, measures are not taken by the Congress which will impede continued growth of private pension plans or threaten their survival.

July 13, 1972

Council of Profit Sharing Industries

ECONOMIC UNITY

SUITE 722
CHICAGO, ILLINOIS 60606

20 NORTH WACKER DRIVE
(312) 372-3411

July 20, 1972

STATEMENT OF COUNCIL OF PROFIT SHARING INDUSTRIES
WITH RESPECT TO S. 3598
FILED WITH THE SUBCOMMITTEE ON LABOR
OF THE
SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

The Council of Profit Sharing Industries, 20 North Wacker Drive, Chicago, Illinois 60606 (hereinafter referred to as the "Council") hereby submits comments on S. 3598 (The Retirement Income Security for Employees Act.)

General

The Council is a non-profit association of employers having a common interest in profit sharing and the belief that it offers a solution to industrial strife and the means for maintaining the free economy of this country. Almost every type of industry in America is represented by its members. More than 1,400 employers, employing in excess of 1½ million employees, are presently members of the Council.

The Council is concerned primarily with profit sharing plans and trusts. At the outset it must be observed that except for the vesting requirements of Title II and the proposed additional disclosure which would be required by Title V, the Bill would have little effect upon the profit sharing plans of its members.

For the most part, these plans are deferred profit sharing qualified under the Internal Revenue Code. Under such plans the participant is not promised a specific monthly payment upon his retirement, death, disability or other termination of employment. All qualified profit sharing plans are administered under a trust and employer contributions thereto are allocated to the participating employees in a non-discriminatory manner, usually upon the basis of compensation. The benefit payable to a participant upon termination of employment will depend upon the then value of the amounts standing to his credit in the trust. Since the benefit promise is in terms of the amount contributed and the increment thereon, it is apparent that funding is no problem. Accordingly, the funding requirements of Title II of S. 3598 and the termination insurance requirements of Title IV are of no immediate concern to members of the Council so far as their profit sharing plans are concerned.

Many members of the Council also have qualified pension plans. In the interests of such members, the Council is concerned with the proposed establishment of a Federal system of insuring pension benefits under Title IV. This feature of S. 3598 would change the present laws under which pension plans have operated and have far-reaching effects on pension plans for many technical reasons which others have outlined to the Committee. The Council feels that it would be premature to enact legislation at this time because there are insufficient facts on which to act intelligently. The subject raises a number of complicated questions which must be answered.

In this connection, it is noted that President Nixon has recommended a study of the subject by the Labor Department and the Treasury Department which is due to be completed by the end of this year. There is no particular urgency for legislation and at the very least the results of the study should be known before Congress takes action.

Specific Comments

Turning to the provisions of the Bill which affect profit sharing, the following suggestions are made:

(1) Organization (Title I)

The present Federal Welfare and Pension Plans Disclosure Act places the administration of the Act under the Department of Labor. Title I of the Bill continues to place the administration and enforcement of the Act in a newly created Office of Pension and Welfare Plan Administration in the Department of Labor headed by an Assistant Secretary of Labor.

The Council believes that with the greatly expanded duties and powers under the Bill, that the administration and enforcement should not be placed under the Department of Labor. The administration of the Act requires certain expertise which has been acquired by departments other than the Department of Labor. Accordingly, the Council recommends that the administration and enforcement of the Act be placed under another existing independent and impartial agency or department.

(2) Eligibility (Title II, Sec. 201)

The Bill would prohibit any plan from requiring as a condition for eligibility a period of service of more than six months.

This rule would be particularly onerous on profit sharing plans because the vast majority require a period of service in excess of six months before the employee is eligible for participation. (Some pension plans have no eligibility rule for service prior to participation, but all require a rather substantial period for eligibility for benefits at retirement.) The primary objection to Sec. 201 of the Bill is that it would require the inclusion of many employees who are employed on a temporary basis or hired for a trial period only. Such employees probably lack the training or experience necessary to contribute to the success of the company. There is no justification for such an employee sharing in the profits on the same basis as the more experienced employee.

The Council recognizes, however, the desirability of prohibiting plans from imposing an unreasonable eligibility period before an employee is allowed to participate. Accordingly, it is suggested that Section 201 of the Bill be revised to allow a plan to require a period of not in excess of three years of service as a prerequisite for participation or the anniversary date under the plan after completing three years of service.

(3) Vesting (Title II, Sec. 202)

The most striking characteristic of vesting under pension and profit sharing plans is the fact that there are so many different standards for vesting. The obvious explanation is the fact that private plans have been allowed to develop in a climate of flexibility which has allowed each employer to tailor its plan to the needs of its employees.

At the present time, there is no statutory requirement for vesting in profit sharing accounts. However, under the administrative rules currently followed by the Internal Revenue Service, qualification of a profit sharing plan is generally refused unless the plan contains a vesting schedule which will prohibit the possibility of discrimination in favor of the officers and highly paid employees. The reason for the administrative rule in the case of profit sharing is simply to avoid such discrimination which is prohibited by the Code and forms the keystone of almost all the requirements imposed on tax qualified plans. For example, where an employer has a relatively stable labor force, a longer period of vesting is permitted than where employees turn over rapidly.

The Council recently conducted a survey of vesting provisions in plans of its members and found that approximately 80% of the plans of its members responding to the survey provide for full vesting after a period of participation of 10 years or less. This is not to suggest that a rule of 10 years vesting should be substituted for the vesting rule proposed in the Bill. It does indicate that the great majority of profit sharing plans provide liberal vesting.

In view of the many different vesting provisions found in existing profit sharing plans, most of which already vest benefits more rapidly than the formula proposed in the Bill, we suggest the Bill should not impose one rule for all plans. The Bill should allow alternative rules for vesting which would, on the whole, be just as liberal but which might not vest in quite the same way proposed by the Bill.

There is a particular problem with a type of profit sharing plan known as a "thrift" or "savings" plan under which an employee elects to contribute a portion of this compensation and the Company matches it. Contributions are generally invested in Government bonds, company stock, or both. These plans provide for vesting with respect to each annual contribution of the employer and usually vest over a relatively short period (such as five years) with respect to each annual contribution. The proposed vesting would obviously destroy the basic concept of these plans.

The Council, accordingly, recommends that the Bill be amended to take cognizance of the thrift or savings plans and allow them to operate under a special rule.

(4) Disclosure (Secs. 501-507)

We approve those principles of the Bill which would require plan administrators to advise employees of the basic provisions of the plan and their rights to vested benefits thereunder. As a matter of fact, this principle is followed by the vast majority of members of the Council as a general practice without the coercion of State or Federal law.

We do, however, have serious misgivings as to the necessity and wisdom of that portion of the Bill which would amend the Welfare and Pension Plans Disclosure Act to require additional information to be filed with the Department of Labor. Under the present Act the plan administrator is required to supply a sizable volume of information in annual reports. The expansion of the Act to incorporate Federal fiduciary standards may justify requiring administrators to file more data than has been required in the past. It is submitted, however, that the expansion of disclosure should be concerned with the areas where the transgressions have occurred and have led to the necessity of creating Federal fiduciary standards. In other words, disclosure should be expanded only with respect to those transactions between the trustees and the parties in interest.

When Secretary of Labor Hodgson testified before the Subcommittee on Labor on June 20, 1972, he referred to prior testimony before Congress by his predecessor, the present Secretary of the Treasury, Mr. George Shultz, and relied upon it to support his own remarks on S. 3598. It is clear from the testimony given by Secretary Shultz and the material filed by him that the problem of fiduciary responsibility and disclosure originated in those transactions which were between parties in interest.

When Secretary of Labor Shultz testified before the General Subcommittee on Labor of the Committee on Education and Labor of the House of Representatives on April 16, 1970, he made the following statement:

> "It is common knowledge that the impetus for these fiduciary amendments derives from the disclosure of improper practices and self-dealing on the part of persons charged with the management of certain welfare or pension funds. The number of plans involved is by no means very large (although the true extent of abuses cannot be readily ascertained), but the abuses involved have been serious and have pinpointed the lack of adequate safeguards and remedies in this area. A more detailed description of some known abuses that have occurred is provided in the appendix to this statement. Some abuses have been uncovered by Congressional hearings; others have been revealed from a variety of sources."

The Appendix filed with the Secretary's statement outlines 22 cases of pension, profit sharing and welfare plans where abuses have or may have been uncovered. This is infinitesimal compared to the approximately 200,000 pension and profit sharing plans approved by the Internal Revenue service through 1969.

Aside from the numbers involved, the real significance of the 22 cases lies in the fact that in at least 19 of them a party in interest was involved. From the brief description of the other three cases, it would appear that the provisions of the pending Bill prohibiting persons convicted of certain crimes from acting as fiduciaries or the requirement of an annual audit would effectively deal with the situation. We submit, therefore, that the legislation should concentrate on correcting the evils in the areas where they exist. This can be done by expanding the present reporting requirements of the Welfare and Pension Plans Disclosure Act to reveal greater details with respect to party in interest transactions. These transactions should be subject to close scrutiny under the light of public disclosure. If a plan were required to file the massive detailed information proposed by S. 3598, we feel that any transaction which might be questionable is apt to be buried under a mountain of documents which have no meaning to plan participants and which are too voluminous for adequate inspection by the Secretary of Labor.

We feel that new disclosure legislation to meet the problem should follow the approach of H.R. 1046 of the 91st Congress. At the same time, we suggest that those provisions of S. 3598 which require explanation of plans and rights to plan participants be retained.

In the event the Subcommittee does not agree with the Council and decides to act on the disclosure provisions of S. 3598, we strongly urge the following changes be made before it is reported to the full Committee:

(1) The Bill would amend Section 7(b)(2)(A) of the Welfare and Pension Plans Disclosure Act to require a listing of each separate security held by the trust. We do not believe that such listing would be of any value to the average plan participant. The individual is interested in how much is standing to his account in the profit sharing trust, rather than the underlying securities on which his interest is computed. We doubt the details would be of any meaning to him.

Accordingly, we suggest that the data sought under Section 7(b)(2)(A) should be confined to showing "the aggregate cost of the securities". A corresponding change should be made in Section 7(b)(3) of the Bill.

(2) The Bill would amend Section 7(b)(2)(B) of the Welfare and Pension Plans Disclosure Act to require details on transactions not involving securities which are over $100,000 or 3% of the trust fund. The principle of these limitations seems to be to avoid burdensome details on small transactions. We are in agreement but suggest that the limit be expressed in terms of the higher of $100,000 or 3% of the fund. Even though a transaction may exceed $100,000 it is of little significance if it represents a small fraction of the total fund.

(3) Section 7(e)(7) and (8) of the Welfare and Pension Plans Disclosure Act as the Bill would amend it would vest a considerable amount of authority in the Secretary of Labor. At this point we feel that the legislation should specify the information rather than leave it to the Secretary of Labor. It is questionable whether the Department of Labor has the facilities or personnel to properly deal with filings under the present Act, let alone handling the mountains of material which would result if S. 3598 were adopted without change.

(5) Fiduciary Standards (Sec. 509)

The Council endorses the concept of there being legal standards for the conduct of fiduciaries of pension and profit sharing plans. We believe that profit sharing trusts should be managed and administered for the exclusive benefit of employees and that fiduciaries should be held to standards of conduct in accordance with time-honored principles of trust law. Moreover, we believe that the vast majority of profit sharing trusts are operated in accordance with such principles. We do not condone those trusts which are not so operated.

For the most part, the provisions of Sec. 509 of S. 3598 are acceptable to the Council and we endorse them. It is noted, particularly, that the Bill recognizes the well established practice of investment of profit sharing trust assets in the stock of the employer corporation. This is a desirable feature of profit sharing because of the sense of proprietary interest it instills in the employee. The Council strongly recommends the retention of these provisions of the Bill.

There are, however, some refinements we would like to suggest for your consideration:

The Council feels that the legislation should recognize that the ultimate test of fiduciary performance depends upon whether or not a transaction is fair and reasonable under all of the circumstances. Transactions which meet these requirements may be in the best interests of the plan participants notwithstanding the fact that they involve a party in interest. As already noted, Section 15(c)(4) of the Welfare and Pension Plans Disclosure Act as amended by the Bill recognizes this with respect to investment in securities of the employer corporation but not in the case of investment in other types of property.

On the same basis, the Bill should recognize the propriety of a similar exception for certain other transactions between profit sharing plans and employers. This is especially true where the use of the plan funds is in a secured transaction, so that the plan has an extra degree of protection in the event of the employer's financial difficulty. It is all the more true in light of the provisions of the Bill which establish a Federal prudent man test of fiduciary duty, prohibit exculpatory clauses relieving trustees of liability for failure to comply with that test, require adequate disclosure of the plan's dealings, and provide suitable remedies if a breach of trust occurs, including personal liability on the part of the breaching trustee and access to the Federal courts.

Preservation of the basic concept of profit sharing plans and adequate protection for the employee members are not mutually exclusive goals. Both are readily obtainable by use here of the technique frequently used by Congress -- imposition of reasonable restrictions, rather than flat prohibition. For example, Sec. 503(b) of the Internal Revenue code, which deals with charitable and similar tax-exempt organizations, introduces the concept of "prohibited transactions" but invokes that concept in terms of requiring only "adequate security," "reasonable rate of interest," and "adequate consideration in money or money's worth."

Conclusion

The Council supports the objectives of S. 3598, especially those provisions which would protect the interests of employee participants. However, the Council believes that S. 3598 does not provide sufficient flexibility for the expansion of profit sharing which has proved so successful in the past as an employee incentive device and as a method of providing for retirement security.

The Council believes that the enforcement of the bill should not be placed in the Department of Labor. It urges that the proposed six month eligibility requirement be extended to a period of at least three years. With respect to vesting, the Council believes that profit sharing plans presently vest under reasonable standards and that if it is deemed necessary to impose any mandatory vesting requirements, that such requirements should provide for flexibility and alternatives which would not interfere with the orderly administration of profit sharing plans.

The Council supports the establishment of Federal fiduciary standards. At the same time it recommends modification of Title V of S. 3598 to permit transactions which are in all respects fair and reasonable, notwithstanding the fact that a party in interest is involved. Further, the Council urges that the reporting of detailed data with respect to the financial operations of the plan be modified to apply only to party in interest transactions.

The provisions of S. 3598 with respect to funding and insurance do not adversely affect the Council, but, since the problems which are involved are far-reaching, the results of the Labor and Treasury Department study of plan terminations recommended by President Nixon should be considered before legislation on this involved subject is enacted.

Respectfully submitted,

S. D. Noble

S. D. Noble
President

mc/

COMMENTS OF

Joseph A. Beirne, President

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO

ON S. 3598, THE PROPOSED

"RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT OF 1972,"

August 4, 1972

The Communications Workers of America, AFL-CIO (CWA), supports S. 3598, the "Retirement Income Security for Employees Act of 1972," now under consideration by the Senate Committee on Labor and Public Welfare. This Union's position is that the protections envisioned in S. 3598 are necessary for the pension rights of many millions of American workers who will retire from the labor force.

The stepped-up tempo of life during recent years has increased the levels of economic uncertainty of most of our people. This is particularly reflected in the increasing levels of employee turnover in most sectors of American industry. Markets and job opportunities change so rapidly that there has been a drastic increase in the need for more and easier mobility on the part of all working people.

While in general it has become easier for people to move from place to place and from job to job, they must often do so at the sacrifice of their future retirement income. Many times a worker will pass up the opportunity for a better job because he has reached the point where "he has too much invested" in his present job.

But perhaps the greatest tragedy of all is that for one reason or another the average worker will probably never cash in on his company pension plan. A study conducted by this Committee revealed that of 36 pension plans covering 2,900,000 workers, only 8% of those workers have received pension benefits since 1950. If this holds true, under most of these plans about 70% of the workers will forfeit their pension rights because they will change jobs. Still others lose out on their pensions because the companies are closed, or sold, or go bankrupt through mismanagement or misfortune.

And while hundreds of thousands of workers are being deprived of their pensions, pension plans and their assets continue to grow at a rapid rate.

There are now about 35,000 pension plans in operation throughout the United States covering some 30 million workers - nearly half the American labor force. The assets of these pension plans have experienced an astonishing growth over the last two decades; they represent the largest body of virtually unregulated assets in the United States. These assets have increased from $12 billion in 1950 to $135 billion today, a leap of more than 1,100% in 22 years. This vast reservoir of money is now growing at a rate estimated at $10 billion annually.

The money is there, but the worker who made it all possible and supposedly for whom it is intended is not getting it. We know, because members of our Union have been systematically deprived of their pensions for years.

CWA represents 550,000 people in collective bargaining. A very large proportion of these people work for the Bell System. The Pension Plan for the Bell System, which covers approximately one million employees, has been in existence since 1913. Yet, only after strenuous negotiations in 1968 were we able to persuade the Bell System to include any vested rights to pensions for terminating employees in their pension plan. A terminating Bell employee now has a vested right to accumulated pension if he had more than 15 years of service and was over age 40 at the time of his termination.

But, 50% of the Bell employees have five years of service or less. Turnover is so high that only a fraction of present employees will ever qualify for such vested rights. In our bargaining, we find that the cost of providing this vested right to Bell employees is an infinitesimal fraction of the gross cost of the Plan. The figures with which we work range from .45¢ to .6¢ per hour, or about .15% of payroll. Most Bell System employees with 15 years of service remain until retirement.

The large number of employees who terminate before 15 years of service have no protection at all. The present level of annual benefits being paid out for retirees under the Bell System Pension Fund is $426 million a year. But, the total balance in the Bell System Pension Fund has passed $9 billion and is still growing.

That is why we strongly support the Williams-Javits bill. Legislation designed to establish minimum federal standards for vesting pension plan beneficiaries and for the funding and insurance of retirement funds must be enacted to counteract the tragedy of lost pensions and to provide meaningful pension reform.

As to the provisions of S. 3598, we believe that providing employees having eight years of service with vested rights to 30% of their credits, with another 10% for each additional year of service until the pension is 100% vested, will not impose an unmanageable obligation on the Bell System Pension Fund or on any other properly managed pension fund. This minimal protection of a worker's pension rights is the single key reform desperately needed by all workers.

We agree with Chairman Williams' statement that "Eight years recognizes the employee's claim to a vested right early in his career, once he has clearly moved out of the transient or casual category. To vest him later would run the risk of unreasonable forfeiture of ultimate retirement benefits."

We believe that a company should consider and treat employee pension matters with a degree of solicitude more nearly comparable to the depreciation reserves for its machinery and other equipment. We note that depreciation schedules begin at the time an item of equipment is placed in service.

The facilitation of the transfer of such encumbered funds as are represented by vested rights into a Voluntary Portability Program Fund under the supervision of the Secretary of Labor, as provided under Title III of the bill, is a desirable adjunct to the Bill's requirement of vested rights and would be a convenience to pensioners and employers.

CWA also endorses the bill's requirement, in Title II, for minimal funding of past service benefits. The case of the terminated Studebaker pension plan is a horrendous example of the retirement promises that can be wiped out under the sanction of existing law as currently written into the Internal Revenue Code on pensions. The proposed funding requirement is not so stringent as to prevent an employer from undertaking the responsibilities imposed in offering a pension program.

Title IV, on Plan Termination Insurance, is perhaps the most important innovation offered in the bill.

While this Title of the bill intends only to insure against losses of vested rights up to the mimimum requirements of vesting provided for by the Act (up to 15 years of credit), this is a step in the right direction. We hope that post-passage experience will clear the way to a more liberal insurance against such pension losses.

Title II's requirement of a minimum of 40-year funding of past service benefits, which is essential, may not be a sufficient safeguard for vested benefits under new plans. For a new plan started 15 years from now, past service benefits that were completely vested 15 years from now could be less than 50% funded by that time if past service liabilities were being amortized over the coming 40 years. We believe this type of reinsurance of private pension plans is necessary. With this beginning we hope that this phase of the proposed legislation could eventually be extended to cover all past service benefits as well as vested benefits.

The bill's proposed amendments to the Welfare and Pension Plans Disclosure Act also are urgently needed, particularly with respect to the proposed increase in actuarial information to be included in annual financial reports. The amendment would require a detailed actuarial report as to funding methods and overall financial soundness. Inclusion of any party-in-interest transaction would be vital to the assessment of a plan's overall soundness.

Unions have always been entitled to this information, independently of the disclosure statute under the current interpretations of labor law. But, those interested in obfuscation of such information for collective bargaining purposes in the past have managed to prevent union negotiators from having the full benefit of such information by taking advantage of the lack of specifics required under the disclosure statute. These proposed changes in required reporting practices would greatly improve the level of public information available to interested parties who must evaluate the funding of pension plans.

One area CWA hopes the Committee will consider in its deliberations on S. 3598 is retroactivity. As presently written, the bill directs itself in its vesting provisions only to service rendered <u>after</u> enactment of the bill. We feel that provisions should be written into the legislation which would take into consideration service rendered <u>prior</u> to enactment, with only that service rendered after enactment being mandatorily vested. This would serve to bridge the gap between workers who are capable of providing eight or more years of service prior to retirement with those who cannot. It would also serve to recognize the needs and concerns of those workers who have labored long without the benefit of pension security and without the assurance that pensions would await them upon retirement.

The public policy underlying establishment of pension plans is that the employer and employee each give up and get something in order to accomplish a socially useful end. The employer sets aside money not directly paid in wages, with certain tax advantages afforded under the Internal Revenue Code. The employee, with or without union representation, foregoes some of his or her wages on the expectation or hope that a pension will be available upon retirement. Even without a direct monetary contribution by the employee, i.e., a payroll deduction, the employee is making a payment to the pension fund by accepting the concept of deferred wages. That employee <u>must</u> get some return, in simple justice.

The money in a pension fund is not "company" money, it is money entrusted for the future needs of the employees for whom the fund was established. By accepting the tax advantages, the company relinquishes its right to the money in its pension fund, although there was evidence in the Subcommittee's record that some companies believe otherwise. The provisions of S. 3598 to eliminate "self-dealing" in pension funds are in themselves worthy of enactment. However, the legislative history of this bill should contain sufficient material to clarify the intent of the Congress in preventing "self-dealing" within a corporate "conglomerate," so that the pension fund for employees of one portion may not be heavily committed in assets of another branch of the same conglomerate.

In summary, CWA supports efforts to bring modest reforms plan system now in effect in the United States, before the system must be radically changed to the extent it would adversely affect the economy.

STATEMENT OF LOUIS ROLNICK, ADMINISTRATOR, ILGWU NATIONAL RETIREMENT FUND
BEFORE THE
SUBCOMMITTEE ON LABOR OF THE SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE
ON
S. 3598, THE RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

August 7, 1972

Mr. Chairman, we appreciate the opportunity to present our views for the record with regard to S. 3598, the Retirement Income Security For Employee's Act.

The statement on behalf of the AFL-CIO submitted by Andrew J. Biemiller essentially encompasses our overall reaction to the proposed bill. Rather than clutter the record, we intend our statement as a supplement. We will, of course, as well comment specifically where there may be some variation in our views and where we may have additional issues which we would like to bring to your attention.

We believe that the basic vehicle for the retirement needs and aspirations of American workers should be the Old Age, and Survivors Insurance Program. We hope that the concern with the problems of private pension plans displayed by this sub-committee, will not substitute for continued devotion and progress towards an adequate universal public system geared to provide a life of dignity and economic security for older Americans.

Nevertheless, private pension plans do play an ever increasing role in the economic welfare of millions of workers and their families. Particularly in the absence of an adequate public system, such plans must be recognized as part of the total economic arrangements made for our retired population and appropriate government intervention is in order.

The complexity of the issue is universally recognized and well documented by the testimony during hearings on this bill and other similar legislative proposals previously introduced. The variety of different types of plans, and therefore problems, is boundless. Perhaps most important is that the techniques most generally used to measure the degree of protection afforded beneficiaries of private plans do not sufficiently take into consideration many important nuances affecting the reality of such protection. Under these circumstances, a cautious approach to government intervention is mandatory lest well intentioned efforts produce victims rather than beneficiaries.

In particular then, Mr. Chairman, we find potentially mischievous the blanketing in of multi-employer funds such as ours under certain provisions of this bill. For example, the funding requirements of a single employer plan where plant termination means plan termination simply has no applicability to a multi-employer plan such as ours. The termination of one or several employers among the thousands contributing to the ILGWU National Retirement Fund is no threat to the financial security of the Plan as has been documented during the quarter of century in which this Plan and its predecessors have been in existence.

We are inclined to think, as well, that the objectives of the reinsurance provisions of the bill are substantially met by a multi-employer fund covering the employees of close to 10,000 employers located in 38 different states and Puerto Rico.

Similarly, we regard very soberly vesting provisions to be applied universally without regard to a particular type of industry or plan. The ILGWU National Retirement Fund is national in scope and provides complete portability of pension credits. Shall the potential loss of pension credits which, for the most part, occur through voluntary worker separation in these circumstances be equated with the problems of workers covered by a single employer plan?

Nor do we feel that the bill is sufficiently sensitive to the problems of an industry characterized by extremely high turnover in the early employment period. The bill would deny workers the choice now afforded through the collective bargaining process of appropriately dividing the relatively meager resources available for pensions. The garment worker who has spent a lifetime in an industry which provides national portability and the opportunity for full pension credits to most of his fellow workers would be required, under the bill, to substantially reduce his pension to provide for the transient worker; a worker who may indeed go on to secure full pension rights in another industry. We think that under the circumstances described, equity may best be served by preserving the choice for garment workers through the collective bargaining process.

Mr. Chairman, we recognize and appreciate the attempts made in several sections of the bill to wrestle with the special circumstances of multi-employer funds. We are convinced, however, that at this time the best interests of American workers will best be served through the exclusion of funds like ours from the funding, vesting and reinsurance provisions of the bill.

STATEMENT OF LEE, TOOMEY & KENT
ON THE RETIREMENT INCOME SECURITY
FOR EMPLOYEES ACT OF 1972 (S. 3598)

FILED WITH THE SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON LABOR AND PUBLIC
WELFARE OF THE UNITED STATES SENATE

July 5, 1972

This statement is being filed by Herman C. Biegel and John A. Cardon, members of the law firm of Lee, Toomey & Kent of Washington, D. C. The views expressed herein are based on many years of law practice specializing in the area of pension, profit sharing and similar employee benefit plans. During the course of our practice we have handled all types of legal problems arising in connection with such plans under the Internal Revenue Code, the Fair Labor Standards Act, the Welfare and Pension Plans Disclosure Act, and other Federal statutes and regulations. Our clients include both large and small employers.

The legislation incorporated in S. 3598 (hereinafter referred to as the "Bill") would, if enacted, make far-reaching changes in the private program for providing pension and other benefits for employees of corporate employers.

Some of the proposals would have only a minimum effect on the private retirement system. Other proposals, particularly the proposal for insuring pension benefits, would have a drastic effect. Accordingly, it is felt that each of the various Titles of the Bill should be examined separately, rather than as a package, and that action should be taken on a selective basis to avoid unnecessary and harmful regulation of the private retirement system.

General Statement

The experience of the last 30 years or more demonstrates that on the whole the private retirement system has operated remarkably well. Plans have increased in number. The quality of benefits has been improved. There has also been an impressive increase in the number of employees covered during that period, as well as in the percentage of those retiring from the work force who receive private benefits.

At the same time, there are areas in which the private retirement system can be improved. Although 30 million employees are now covered, there remains an almost equal number who are not covered. This group deserves consideration in the formulation of legislation by this and other Congressional Committees. Whatever legislation may finally be enacted should not discourage the expansion of private plans to reach the uncovered group.

There are some features of S. 3598 which are desirable and which should be supported as written or with minor modifications.

(1) Most responsible employers will accept the concept that there should be minimum vesting rules as a matter of

law. Such rules should be reasonable and designed to bring into line those plans which have no vesting or whose vesting is substandard. Statistics compiled by the Department of Labor and others demonstrate that by 1969 88% of all private pension plans contained either vesting or early retirement provisions.

(2) There should be more and better communication to plan participants of the terms of the plan, the benefits available, and the circumstances under which they may be lost. Too often the disappointment of an individual at not receiving a benefit has been due to a failure to understand his rights under the plan.

(3) It is desirable to establish Federal fiduciary standards. While the instances of dishonesty are relatively few, no one can condone even one plan failure due to misappropriation of funds set aside for pension benefits.

(4) It is also desirable to require an annual audit of employee benefit plans. Responsible plan administrators have voluntarily followed this practice for years.

Specific Comments

While the Bill deals with several areas in which improvement can be made, it does, as pointed out above, touch on virtually every phase of an extremely complicated subject. It cannot be viewed solely as a worthy attempt to improve conditions for millions of plan beneficiaries. It must also be recognized as a measure which would change radically some of the ground rules affecting hundreds of thousands of employers, fiduciaries and plan administrators. In any legislation of this scope, there are bound to be some features which are of doubtful value. With this background, the following comments, suggestions and criticisms are offered:

Title I - Organization

Title I of the Bill sets up a new Office of Pension and Welfare Plan Administration headed by an Assistant Secretary of Labor who is authorized to administer the Act. A number of powers over pension plans would vest in this Office.

It is submitted that such an Office is not needed and it is premature to set one up. At the present time some features of pension regulation are a function of the Treasury Department while others are a function of the Department of Labor. A good deal of expertise has been acquired by these Departments with respect to their respective spheres of supervision. It is suggested that if new regulatory measures are enacted affecting plans, the authority for their administration be placed within the existing framework -- i.e., vesting be left with the Treasury Department and revisions in the Welfare and Pension Plans Disclosure Act be left to the administration of the Department of Labor.

Title II - Vesting and Funding

(1) Vesting

As already indicated, the concept of mandatory vesting is acceptable. At the same time, certain features of the Bill should be modified before the legislation is finalized:

(a) Alternative Vesting -- Anyone who has had any experience in writing pension plans knows that vesting is one of the principal features of any retirement program. Many factors shape the requirements for vesting -- the age of the group covered, the level of benefits, the ability of the company to pay benefit costs, and the wishes of the employees themselves. Vesting is a matter for collective bargaining and as such it is subject to all the give and take and considerations which enter into any labor agreement. A long period of service as a condition for vesting may well be traded for a higher level of benefits.

In short, because of all the various factors relating to vesting, no one vesting rule can be said to be "right" or "wrong". There is no magic in the Bill's providing that 30% of accrued credit shall vest after 8 years with graduated vesting to 100% after 15 years. Nor is it necessary to write a law requiring every plan to vest in any one manner. There are undoubtedly thousands of existing plans with vesting provisions just as equitable as those proposed in the Bill and which might even vest at a more rapid rate.

It must also be borne in mind that the Committee is writing a law to establish a minimum vesting rule. Like the minimum wage law, the statutory standard must be set at the level where it will bring up the substandard plan, not penalize the plan which has been keeping abreast of the trend to better vesting. From this standpoint, it is premature to require vesting in less than 10 years because the vast majority of plans vest at 10 or more years. (See Bankers Trust Company 1970 Study of Industrial Retirement Plans, pp. 10-12.)

> RECOMMENDATION: Title II of the Bill should be revised to allow alternative standards of vesting to the one prescribed. Two are suggested:
>
> (i) Vesting after attainment of age 40 and completion of 10 years of service.
>
> (ii) Vesting under the "Rule of 50" contained in S. 3012.

(b) Thrift Plans -- Special consideration should be given to thrift or savings plans where there is a separate vesting schedule with respect to each year of employer contributions. The typical thrift plan provides for the investment of each year's employer and employee contributions in Government bonds or in company stock or in both. The employee's right to the securities purchased by the employer contributions with respect to a given year -- called a "class year" -- usually vests over a relatively short period of time, such as 3 or 5 years following the year for which the contribution is made. Usually distribution is made at the end of the vesting period but the employee may sometimes elect to defer the distribution of each "class year" until his retirement.

A special rule of vesting should apply to these plans because they are not designed as retirement plans and usually the employer has a pension plan to provide for the employee's old age.

> RECOMMENDATION: Title II should be modified to make acceptable thrift or savings plans which provide a vesting schedule with respect to each annual contribution of the employer, provided the employee is vested in 100% of the employer's contribution with respect to any year not later than the fifth year after such contribution is made.

(c) Definition of Vested Benefit -- An important aspect of any legislation imposing mandatory vesting is the definition of the benefit which must vest. Under the Bill the benefit is defined in terms of the normal retirement benefit payable under the particular plan. Plans vary considerably in this respect. The "normal" retirement benefit may take the form of an annuity for the remaining life of the retired participant, an annuity for his life with payments continuing for a period certain if he dies prematurely, or an annuity payable on a joint and survivor basis. In addition, the time at which the full benefit becomes payable may vary. The general practice is to provide for payment of the vested benefit when the employee reaches retirement age, if then living. Moreover, some plans provide no ancillary benefits to survivors and beneficiaries of the participants, while others may provide very liberal benefits in this regard.

It is quite apparent that the definition of the "vested benefit" will have a pronounced effect on the cost of vesting. The Bill should not penalize the employer who has a plan with very liberal benefits payable on the most expensive form. Consider two plans which now vest at age 55 after 10 years of service. Suppose Plan A provides $100 per month on a life annuity basis, and Plan B provides $200 per month on a 10 year certain and life basis with survivor benefits. It is apparent that if the Bill is adopted in its present form, each plan must be amended to provide vesting in the <u>plan</u> benefit. This means that the employer who provides better benefits under Plan B will incur greater cost increases. Since the Bill is setting a minimum standard applicable to all, it should attempt to avoid penalizing the employer whose plan may lack the required vesting but which provides richer benefits than normal. Whether any particular plan vests benefits which are greater than this mandatory minimum should be left to the discretion and the collective bargaining of the managements and unions involved.

> RECOMMENDATION: Title II should be modified to define the benefit in which the employee must be vested as a life annuity payable as of the normal retirement date specified in the plan, but not later than age 65, provided the employee is then living. (The time of payment is already adequately covered by the definition of "normal retirement age" found in Sec. 3(29) of the Bill.)

(d) Eligibility -- The Bill prohibits any plan from requiring as a condition for eligibility to participate a period of longer than six months or an age greater than 21, whichever occurs later.

These limitations are much too low, according to today's standards. The objection to such requirements is that they require the inclusion in the plan of employees who are temporary and for whom no benefit need be provided because they will not remain in the service of the employer for any significant time. The protection which the Bill seeks for the longer service employees can be achieved fully and more efficiently by allowing eligibility rules to be set at levels which will weed out the employee whose status with the employer is temporary or at least not yet determined.

> <u>RECOMMENDATION</u>: Title II of the Bill should be revised to allow a period of service requirement of three years and attainment of age 30. These requirements are contained in the Administration's bill (S. 3012) and are reasonable. At the same time, they are more restrictive than the present provisions of §401 (a)(3)(A) of the Internal Revenue Code which prescribe a mathematical test for acceptable plan coverage.

(e) <u>Contributory Plans</u> -- Some plans provide that the participating employees must contribute part of the cost of the benefits. Such plans are favored by employers because they provide an incentive to the employee to save for his retirement years and thus give him a greater appreciation of the plan. The Bill is silent on the treatment of contributions in applying the vesting provisions.

> <u>RECOMMENDATION</u>: Inasmuch as employee contributions are definitely part of the benefit, the Bill should be revised to provide that they are not subject to withdrawal by the employee but must remain in the plan and be paid to the employee when the vested benefit is payable. If the employee does not qualify for a vested benefit, his contributions should be returnable to him or his beneficiary since they are always vested in him.

(2) <u>Funding</u>

(a) <u>Deletion of Funding Provisions</u> -- Under present rules of the Internal Revenue Service a tax qualified pension plan must be funded by contributions equal to the current service cost, plus the interest on the unfunded past service liability. The Bill proposes no change with respect to the funding of current service but would require contributions sufficient to fund initial unfunded liabilities over a 40 year period. In addition, experience deficiencies must be funded over a period of 5 years at most.

There is no necessity to require additional funding as a matter of law for these reasons:

In the first place, the evidence indicates that established qualified plans are very well funded under existing rules. The most reliable information developed to date is the study by the Pension Research Council, Wharton School of Finance and Commerce, University of Pennsylvania, which was financed to a substantial degree by the Federal Government. The Report leads to the following conclusions:

(i) A high degree of benefit security has been achieved by the vast majority of plans studied.

(ii) For plans with funding periods of 15 years or more, assets were sufficient on the average to cover approximately 95% of the <u>accrued</u> benefits. For plans with 10 to 14 years of funding, assets were sufficient to cover 86% of accrued benefits and for plans with funding periods of less than 10 years, the assets were sufficient to cover 62% of accrued benefits.

(iii) Funding of <u>vested</u> benefits was even better, assets as a percentage of vested benefits being even higher than for <u>accrued</u> benefits.

(iv) Benefit security is greater under single employer plans than under multi-employer plans.

In the second place, Opinion No. 8 of the Accounting Principles Board of the American Institute of Certified Public Accountants provides rules and general guidelines for the recognition of pension costs in company financial statements. Under these rules past service liabilities must be charged against company income sufficient to liquidate the normal cost of the plan currently and the past service cost over a period not in excess of 40 years. While it is true that Opinion No. 8 relates to sound accounting rather than to actual funding requirements, the fact remains that as a practical matter an employer is forced to fund plan liabilities in accordance with its financial statements. Thus, in practice, funding is taking place now as quickly as it would under the Bill. Regulation by the Federal Government should not be imposed without some showing that it is needed and the best evidence available fails to show that necessity.

> RECOMMENDATION: Title II should be modified to delete the requirements for funding of private plans. There should be a liberalization of the present limits on the amounts which an employer may contribute to a plan and deduct for Federal income tax purposes. There should not only be a liberalization of the present 10% limit on deduction of past service cost but a deduction should also be allowed for a contribution even though the plan might be overfunded within some limited amount, such as 10%.

(b) Modification of Funding Provisions -- If the Committee should decide, nevertheless, to recommend funding legislation, there are some matters in particular which should be covered:

(i) There should be no change in the existing practice of the Internal Revenue Service which allows the employer to follow actuarial factors and assumptions subject only to the requirement that they be reasonable. Under present law the Internal Revenue Service does not lay down rigid standards in this respect. The Bill would vest the Secretary with rather broad authority in this area and, as suggested above, the establishment of a new Office of Pension and Welfare Plan Administration is not necessary at this time. The function of the Federal Government in this area should continue to be performed by the Internal Revenue Service under the existing rules.

(ii) The provisions of the Bill requiring funding of an "experience deficiency" over a period of not exceeding five years should be deleted. The terminology utilized in this section of the Bill is not technically correct and gives a misleading impression. In American actuarial practice, the proper nomenclature is "actuarial gain or loss" rather than "deficiency" or "surplus". The idea that there is a surplus or a deficiency at one point in time is misleading because it is based on the assumption that all of the actuarial rates will be met precisely in the future and only the deviation between those rates and past experience will be taken into account.

As a practical matter, it is well understood that a plan's experience will not coincide precisely with actuarial assumptions at any particular point in time. The actuarial assumptions are based on the average anticipated experience over a long period of years. It recognizes that at certain times the stock market will rise faster than the assumed performance, while at other periods it will decline. It recognizes that in some years a company will hire and promote much faster than the assumed average, while in other years there will be few hirings or increases in pay. To consider these variations in experience as creating "deficiencies" or "surpluses" is a total warping of the entire process of funding on the basis of long-range actuarial assumptions. The simple fact is that short-run variations from the assumed averages in no way indicates a real shortage or surplus in the funds.

If all of the past service costs of a plan are being funded over 40 years, it will make little difference if a small part of the costs from actuarial losses is funded rapidly. On the other hand, any large losses are likely to stem from salary increases and investment fluctuations, both relatively uncontrollable and unpredictable.

(iii) It is doubtful that the actuarial reports required within six months of the effective date of the Act could be furnished for all of the plans in existence except at a great expense. The overtime and special work required would be enormous and would impose an unwarranted cost on the employers.

(iv) The order of priority for distribution of assets under the Plan is not properly a matter of law. It is a matter of collective bargaining, or a matter for the employer where there is no bargaining unit. The provisions of the Bill establishing priorities conflict with many plans in this respect. For example, a recent trend in pension planning is to ignore benefit increases in the last few years prior to plan termination because it is questionable whether the retired employees should have priority over active employees where such amendments have occurred. The Bill would outlaw these provisions.

Further, the juxtaposition of Section 211 dealing with the distribution of plan assets and Section 210 dealing with funding implies a relationship between the two subjects; yet, the 40-year funding requirement is not in terms of the value of <u>vested</u> benefits for service to date but in terms of unfunded liability for past service, presumably determined under any acceptable actuarial method.

Title III - Voluntary Portability Program for Vested Benefits

There has been much confusion about "portability" of pension benefits. In some instances it has been used interchangeably with "vesting" or the right of the employee to receive a benefit at retirement after working for a given number of years notwithstanding his moving from the original employer to another. As used in the Bill it means the right to transfer assets out of the plan in which the employee has a vested right into a pool established by the Federal Government from which the vested benefit will ultimately be paid.

Under the Bill, an employer need not join in the proposed Voluntary Portability Program Fund. This treatment of portability is to be commended. However, portability in the sense it is used in the Bill would create problems for private plans if it were made mandatory.

Basically, the reason is that there is no uniformity in the various factors used to determine the value of the vested benefit. This is because each plan has its own actuarial methods and assumptions and, when assets are transferred from one plan to another, there may well be differences, either with respect to the present value of a given benefit or the dollar amount payable at retirement from a given amount of assets transferred.

This could be overcome, it is true, but only if the Government were to lay down a flat set of inflexible standards applicable across-the-board to all plans. There is simply no necessity for the imposition of such a strait-jacket.

Moreover, a mandatory system of portability could well result in a drain on the assets of a plan and render the benefits of the remaining employees perhaps less secure. Why should the short service employee have assets siphoned off to provide his benefits at the risk of the long service employee?

Take, for example, the case of a company which is running into difficulty and finds that it must discharge a number of employees. If its pension plan were not fully funded and if the terminated employees were permitted to remove 100% of their vested benefits when they left, it is apparent that the funding of benefits for the remaining employees could be placed in substantial jeopardy. Yet, the remaining employees would be those with the longest years of service, those who are oldest -- in fact, the very employees who should receive the maximum protection.

Clearly, portability would favor younger employees at the expense of older employees. It would benefit those least interested in retirement benefits at the expense of those who are most dependent on their pensions.

While under the Bill an employer need not join in the proposed Voluntary Portability Program Fund, nevertheless the foregoing objections to portability from an employer's standpoint have been set forth to emphasize the necessity of keeping the proposed portability program on a voluntary basis. If the Committee were to report out a bill making participation in the portability program fund mandatory, it would seriously jeopardize the operation of the private retirement system as we have known it in the past.

Title IV - Plan Termination Insurance

The proposal to establish a Federal system of benefit insurance would probably affect the private retirement system more than any other Title of the Bill and, for this reason alone, Congress should proceed cautiously and only upon an adequate basis of the facts and problems involved.

(a) Objections to Insurance -- The suggestion for insurance of plan benefits is highly objectionable from the standpoint of employers for a number of reasons:

(i) The insurance of the pension benefit promise cannot be compared to insurance of bank deposits under the Federal Deposit Insurance Corporation Act or to the recently enacted Security Investors Protection Act. Under both of those programs an asset is already in existence. There is nothing comparable in the case of a pension plan. The uncertainty is not the preservation of an existing asset, but the uncertainty of contributions which have not yet been made.

(ii) The existence of an insurance pool to guarantee plan benefits could also lead to pressure for increasing benefits beyond the financial capability of the company to pay for them. The amount of the benefit should be established in accordance with collective bargaining or unilaterally on the part of the employer without the influence of a program funded by other employers which will make up deficiencies.

(iii) The proposal would encourage speculative investment of plan assets. The fact that a Federal pool would back up any losses would lead to the conclusion that such investments would be attractive to some plan administrators.

If the speculative investments proved successful, there would be little or no need for corporate contributions to the plan and small contributions to the insurance program. On the other hand, if the speculations failed, the administrators would know that the insurance fund would protect the participants -- that is, the soundly-managed plans would bail out the speculators.

Of course, after this happened a few times, the Federal government would feel an obligation to stop this kind of speculative fund management. Government officials would feel that, in order to defend the insurance program, they would be compelled to lay down ground rules covering the types of investments that could be made, the actuarial assumptions which could be used by the plans and other basic ingredients of the plan.

In short, a system of Federal insurance of pension benefits would inevitably lead to complete regulation of the private retirement system. Federal standards would likely be prescribed for the valuation of plan assets, actuarial assumptions and methods and rules regarding kinds and sizes of investments permitted for plan assets. If the Federal Government is going to have a hand in insuring pension benefits to any degree, it stands to reason that the Federal Government is going to prescribe rules with respect to the underlying assets of the plan. While such Federal control might not be necessary at first, it would be a logical next step.

The operation of an insurance system would of necessity require a multitude of rules and regulations on such items as insurance premiums, definitions of the risks insured against, submission and investigation of claims, the distribution of benefits, etc. The tendency is always in the direction of more, not less, regulation and these features of an insurance system would provide a springboard for more far-reaching components.

(b) Recommendation -- Because of the effect on the private pension system of the proposals in Title II, it is imperative that facts first be established.

The study of the Pension Research Council on funding referred to above demonstrates a very high level

82-079 O - 72 - pt. 3 - 25

of funding. It can hardly be interpreted as indicating a need for such legislation; nor does the 1968 joint study by the Internal Revenue Service and the Department of Labor of the reasons for plan terminations. (Monthly Labor Review for September, 1968, Volume 91, Number 9)

The survey covered approximately 8,100 qualified plan terminations over the years 1955-1965 and showed that such terminations affected on the average approximately 20,000 workers a year. This amounts to only 1/10th of 1% of the total pension plan coverage. This did not mean that all the employees affected lost benefits. The survey acknowledged that except for a handful of cases, only "the most fragmentary data are available on the extent of participants' losses of expected benefits through plan terminations". It is submitted that on the basis of the facts known today it is premature to enact plan insurance legislation.

Assuming the Committee is not persuaded by any of the foregoing, it is respectfully urged that at the very least it should postpone action on Title IV until it has the benefit of the study of plan terminations which is currently being made by the Treasury and Labor Departments at the direction of President Nixon. In Secretary Hodgson's testimony before the Committee on June 20, 1972, the Secretary pointed out the dangers of making any assumptions about plan terminations and their effects on plan participants. He properly stated that the information being developed "is a crucial prerequisite to the formulation of a Federal policy on these issues". The Secretary's position on this issue is endorsed.

(c) Positive Suggestions on Partial Termination -- At the same time, we acknowledge that there is a problem in the area of partial termination of plans -- i.e., where a plant is shut down or a number of employees are terminated. In addition, allegations have been made as to losses where companies have merged and plan assets have supposedly been used for corporate purposes.

These are troublesome areas. Although the Treasury-Labor study may afford some data to help resolve these problems, in the meantime, the following suggestions are made:

(i) The Treasury Department has prescribed income tax regulations on partial termination of plans which require that in the event of a partial termination the accrued benefits (to the extent they are funded) vest in the participants. This is required regardless of whether the employees are vested under the rules regarding termination of employment. The standards prescribed by the regulations for determining when a partial plan termination has occurred are understandably vague. However, the Treasury recently promulgated Form 4848 which must be filed annually for every plan. Part of the information solicited by this form relates to partial termination. It is suggested that this data may be helpful in writing workable, equitable IRS rules regarding disposition of plan assets in these troublesome situations.

(ii) The cases alleging recovery of plan assets by the contributing employer in merger situations could be solved by providing that contributions by the employer are irrevocable under all circumstances. At present, the Internal Revenue Code requires that contributions be irrevocable but it permits reversion to the employer after the satisfaction of all liabilities to the employees and their beneficiaries, provided the excess funds are due to erroneous actuarial computation.

(iii) Enactment of Title V of the Bill will reduce losses due to mismanagement of funds by plan fiduciaries. Losses caused by manipulations should be eliminated or substantially reduced.

Although the foregoing may not solve all pension disappointment associated with partial plan terminations, they are immediate, practical steps toward a solution. These protections can be installed promptly and should not be delayed while more grandiose proposals fail of enactment.

Title V - Disclosure and Fiduciary Standards

(1) Disclosure

(a) Desirable Features of the Bill -- As already stated, it is desirable to act promptly on those provisions of the Bill which would promote a better understanding by a participant of his rights under the plan. It has long been apparent that meaningful disclosure along these lines would be beneficial and help remove the source of many pension disappointments.

The Bill is also desirable insofar as it requires additional disclosure of the details of transactions between the fiduciary and parties in interest. Such transactions should be subjected to the closest scrutiny.

(b) Unnecessary Disclosure Features -- The Bill goes far beyond party in interest dealings and requires a mass of detail to be reported which would neither contribute to an understanding of the plan by the participants nor ensure honesty on the part of the fiduciaries.

It would seem, therefore, that the proper approach would be to recognize that the vast majority of plans are properly and honestly administered. Some additional disclosure of financial holdings and transactions may be reasonably required of all plans. In addition, where the

Secretary of Labor has reason to believe that a plan is not being honestly administered, he should be empowered to require supplemental information in the detail provided for in the Bill. Such an approach would avoid imposing the added burden except in those situations where it is justified.

The foregoing approach was taken in H.R. 1046 introduced by Congressman Dent in the 91st Congress and it is recommended for consideration of this Committee before finalizing the pending legislation.

(c) Specific Recommendations -- Should the Committee fail to adopt the approach utilized in H.R. 1046 (91st Congress), Title V should be revised in the manner described below. (References are to the proposed amended sections of the Welfare and Pension Plans Disclosure Act.)

(i) Section 7(b)(2) and (3) are illustrative of the objections set forth in (b) above. They would require the annual report to furnish an enormous amount of additional detail, which would add to the time and expense of administering a plan and would not assure honesty on the part of fiduciaries. It is difficult to see how a plan participant would be made more secure by requiring the administrator to file an immense amount of information which the participant could not understand. The Department of Labor's failure to process or analyze the information already filed under the Welfare and Pension Plans Disclosure Act does not encourage confidence that these additional filings would enhance protection for participants. The Bill would require the aggregate cost "of each security, by issuer". (§7(b)(2)(A)) The net effect is to require each separate security to be identified and the cost set forth.

> RECOMMENDATION: Amend Section 7(b)(2)(A) to read:
>
> "(A) The aggregate cost and aggregate value by type or category of security;"
>
> RECOMMENDATION: Amend Section 7(b)(3) by deleting "a list of the issuers of such securities".

(ii) Sections 7(b)(4) and (5) purport to avoid burdensome disclosure with respect to investments other than securities by requiring separate identification of such investments and transactions of over $100,000 or 3% of the value of the fund. In most large funds the $100,000 figure would be meaningless, resulting in a very detailed report of transactions of little real meaning to the plan participant. There may be some merit in scrutinizing transactions involving a significant portion of the fund assets and therefore the 3% limit is supported.

RECOMMENDATION: Amend sections 7(b)(4) and (5) to eliminate the \$100,000 limit with respect to detailed reporting of the transactions covered by those sections.

(iii) Section 7(b)(8) provides for disclosing certain information in the annual report where trust assets are held in a common or collective trust or in a separate account of an insurance carrier. The bank or insurance carrier is required to report to the plan administrator to enable him to comply with the Act.

There is no objection in principle to this. However, the Bill should not require the administrator to duplicate the information furnished him by the bank or insurance carrier.

RECOMMENDATION: Amend Section 7(b)(8) to make it clear that the plan administrator is relieved from responsibility under the Act if he files the data as furnished by the bank or insurance carrier.

(iv) Section 7(e) requires that the annual report include a considerable amount of information with respect to actuarial aspects of the plan. It also gives the Secretary a considerable amount of authority to prescribe additional information to be included in the annual report which is not specifically mentioned in Section 7(e).

There are several objections to the requirements of this section. Before detailing them, it should be noted that Section 505 of the Bill would amend Section 6(b) of the Welfare and Pension Plans Disclosure Act to require that the plan description include a statement of the vesting requirements written in a simple, understandable manner. In addition, Section 507(b) of the Bill would amend Section 8(c) of the Act to require the administrator to furnish rather detailed information regarding the participant's own vested benefits. These are sensible changes because it is this type of information, rather than technical data, which will promote an understanding of pension rights and help avoid disappointments.

Section 7(e) is objectionable for these reasons:

(A) Section 7(e)(4) does not indicate the basis on which the required actuarial data should be supplied. The Secretary of Labor should not have the authority to prescribe the actuarial bases since they may not coincide with those used in computing costs under the plan and would, therefore, result in a duplication of effort. It would seem reasonable that, as long as the plan actuary is certified, his assumptions should be used.

RECOMMENDATION: Amend Section 7(e)(4) to specify that the data required shall be computed on the actuarial bases normally used under the plan.

(B) Section 7(e)(7) requires a statement showing the number of participants who terminated service during the year, whether they were vested, their length of service, the present value of the total accrued benefits and the present accrued value of forfeited benefits. Section 7(e)(8) contains broad authority for the Secretary to prescribe other information pertinent to the disclosure under Section 7(e).

Paragraphs (7) and (8) may well increase the powers of the Secretary unnecessarily for gathering information. It is not felt that these paragraphs are necessary for meaningful disclosure to the employees. Moreover, if these paragraphs are retained, then the objections to other portions of Section 7(e) become more serious.

RECOMMENDATION: Delete Paragraphs (7) and (8) of Section 7(e).

(v) Section 8(c)(3) requires the administrator to furnish, upon request, a copy of the plan description, the annual report, or both. He must also furnish copies of the bargaining agreement, the trust agreement, the contract, and other underlying documents, if requested. This is in addition to the requirement that he make copies of these papers available for examination by the participant.

The Bill permits the administrator to make a charge to cover the cost of furnishing such copies but such charge must be "in accordance with regulations of the Secretary". The right to make a charge is reasonable and makes the requirements of Section 8(c)(3) more palatable. It is felt, however, that the administrator should be allowed to set a reasonable charge without having the Secretary of Labor lay down rules.

> RECOMMENDATION: Amend Section 8(c)(3) by deleting the words "in accordance with regulations of the Secretary".

(2) Fiduciary Standards

(a) Desirability of Standards -- The establishment of Federal fiduciary standards is desirable and the provisions of the Bill in general are an improvement over the early forms of legislation on this subject.

(b) Specific Comments -- Section 14(c) of the Welfare and Pension Plans Disclosure Act as proposed to be amended by Section 508 of the Bill contains a list of exceptions from the prohibited transactions between a fiduciary and party-in-interest. Although there is every reason to require fiduciaries to meet prescribed standards, it is felt that some modification of permitted practices can be made without jeopardizing the general objective of Section 14. In this connection it should be stressed that full disclosure should be required of all party-in-interest transactions.

Specifically, subsection (4)(A) permits the purchase of a security of the employer under certain conditions, one of which is that it be for not more than adequate consideration. It would seem that sales, purchases or leases of other investment property might well be in the best interests of the fund if they are for full and adequate consideration, notwithstanding the fact that they are between the fiduciary and a party-in-interest. It should be noted that under §503(c) of the Internal Revenue Code, recognition is given to such transactions with a party-in-interest provided all the terms of the transaction are fair and reasonable. The same considerations should apply under the proposed amendments to the Disclosure Act.

RECOMMENDATION: Amend Section 14(c) to permit party-in-interest transactions in property other than securities where the terms are fair and reasonable and adequate consideration is paid or received.

Conclusion

Many features of the Bill are desirable and, if enacted, will not only be beneficial to employees and employers but will also help eliminate the causes which produce much of the adverse criticism of the private pension retirement system. There are, nevertheless, some features of the Bill which should be modified before enactment and the foregoing comments have been made in an effort to improve the Bill in this regard.

We submit that with respect to the funding, insurance and portability portions of this legislation there is no compelling reason for Congress to act hastily. Accordingly, we particularly urge that action with respect to insurance of pension plan benefits be deferred pending the outcome of the study of plan terminations by the Administration.

Respectfully submitted,

LEE, TOOMEY & KENT

By Herman C. Biegel
Herman C. Biegel

John A. Cardon
John A. Cardon

NABISCO, INC.
425 Park Ave. • New York, N.Y. 10022
Office of Vice President

July 17, 1972

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

Dear Senator Williams:

Please incorporate our endorsement of the statement filed by H.C. Biegel and J.A. Cardon on behalf of Lee, Toomey & Kent in connection with S. 3598 in the record of hearings on the bill.

Very truly yours,

J.B. McGovern
Vice-President - Personnel

J.B. McGovern/kd

SENATOR
WILLIAMS N.J.
JUL 14 9 55 AM '72

John Sagan
Vice President-Treasurer

Ford Motor Company
The American Road
Dearborn, Michigan 48121

July 10, 1972

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

Dear Senator Williams:

Ford Motor Company endorses the written statement on S. 3598, submitted to you by Mr. John A. Cardon and Mr. Herman C. Biegel and we request that this letter appear in the written record following the Lee, Toomey & Kent statement.

We would like to underline the portion of that statement which points out the considerable progress and accomplishments of the private retirement plan system. We believe it has been highly unfortunate that the problems of a relatively few plans have been used to discredit the record of all private plans. We oppose many aspects of S. 3598, as the Lee, Toomey & Kent statement points out, because the Bill's sweeping changes would harm a system that has generally worked well.

Very truly yours,

J. M. Sagan

John Sagan

Westinghouse Electric Corporation

Robert D Blasier
Vice President
Industrial Relations

Westinghouse Building
Gateway Center
Pittsburgh Pennsylvania 15222

July 11, 1972

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

Dear Senator Williams:

We have reviewed very carefully the written statement concerning S. 3598 which was forwarded to you on July 5, 1972 by John A. Cardon, Esq. and his partner Herman C. Biegel, Esq. on behalf of Lee, Toomey and Kent. Inasmuch as the limitation of time and the number of witnesses wishing to testify prevented you from scheduling appearances by individual companies, we would appreciate it greatly if you will note for the committee record that Westinghouse Electric Corporation endorses and supports Mr. Cardon's testimony.

We would hope particularly that the committee will give consideration to modifying the present vesting provisions of S. 3598 so that employers such as Westinghouse which have favorable vesting provisions (full vesting after 10 years service and age 35) may continue to maintain such provisions rather than being compelled to adopt other less desirable provisions such as that presently contained in S. 3598 or the "Rule of 50" contained in H.R. 12272.

Your cooperation in incorporating our endorsement of Mr. Cardon's statement in the committee record will be very much appreciated.

Yours very truly,

Robert D. Blasier

R. D. Blasier

cc: John A. Cardon, Esq.

Gulf Oil Corporation

'72

Russell G. Connolly
Vice President and Secretary

Gulf Building
Pittsburgh, Pa. 15230

July 11, 1972

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

My dear Senator Williams:

Mr. John A. Cardon sent me a copy of Lee, Toomey & Kent's written statement regarding S 3598 which he mailed to you on July 5, 1972.

On behalf of Gulf Oil Corporation, I endorse the contents of that statement and request that you incorporate our endorsement in the record of hearings on the bill.

Very truly yours,

Russell G. Connolly

RUSSELL G. CONNOLLY

CC: John A. Cardon, Esq.
Lee, Toomey & Kent
1200 Eighteenth Street, N.W.
Washington, D.C. 20036

REYNOLDS ALUMINUM

REYNOLDS METALS COMPANY • RICHMOND, VIRGINIA 23261

July 7, 1972

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

Dear Senator Williams:

On July 5, 1972, Herman C. Biegel and John A. Cardon of Lee, Toomey & Kent filed a statement with regard to the Javits-Williams bill (S. 3598).

This is to advise you that Reynolds Metals Company endorses this statement and request is hereby made that this letter appear in the written record following the Lee, Toomey & Kent statement.

Very truly yours,

REYNOLDS METALS COMPANY

R. L. Adams

R. L. Adams, Manager
Employee Security Division

Don

SENATOR
WILLIAMS N.J.
JUL 13 12 34 PM '72

July 11, 1972

SUBCOMMITTEE ON LABOR
JUL 14 1972

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

Dear Senator Williams:

A statement on the Retirement Income Security For Employees Act of 1972 (S. 3598) was filed with the Subcommittee on Labor on July 5, 1972, by Messrs. Herman C. Biegel and John A. Cardon of the firm of Lee, Toomey & Kent of Washington. Dresser Industries, Inc. requests that its endorsement of the views expressed in said statement be reflected in the written record of the hearings related to such proposed legislation, and be communicated to the Members of the Committee.

Very truly yours,

DRESSER INDUSTRIES, INC.

By J D Mayson
J. D. Mayson
Vice President, Secretary
and General Counsel

KIMBERLY-CLARK CORPORATION

July 19, 1972

KENNETH A. WARREN
TREASURER

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

Dear Senator Williams:

This letter is in reference to the statement of Herman C. Biegel and John A. Cardon of Lee, Toomey & Kent regarding the Javits-Williams bill (S. 3598) filed with the Senate Subcommittee on Labor on July 5, 1972. Kimberly-Clark Corporation has a high regard for the opinions of Lee, Toomey & Kent and regret that the Subcommittee could not grant this law firm's request for an opportunity to appear before them.

Kimberly-Clark wishes to endorse this statement and requests that this letter appear in the written record following the statement of Lee, Toomey & Kent.

Yours very truly,

K A Warren

KAW:mab

Republicsteel

Republic Steel Corporation
General Offices: Republic Building
PO Box 6778
Cleveland OH 44101

John R Wall
Vice President
Personnel

July 28, 1972

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

Dear Senator Williams:

By letter of July 5, 1972, Mr. John A. Cardon of Lee, Toomey and Kent filed with your subcommittee comments regarding the Javits-Williams Bill S.3598.

We would like to take this opportunity to express our support of the comments made by Mr. Cardon. We would appreciate having this letter of support incorporated in the record of hearings on the bill.

While we are in general agreement with the comments of Lee, Toomey and Kent, our emphasis on the desirability or undesirability of specific provisions might differ to a slight degree from those presented. Further, as a matter of principle, we do not support mandatory vesting requirements inasmuch as such provisions interfere with an area of benefits which have been developed through collective bargaining. We are of the opinion that vesting of benefits should be a matter determined by management and their employees as part of the overall program of pension benefits.

Very truly yours,

John R. Wall

Vice President
Personnel

JRW:pm

SENATOR
WILLIAMS (N.J.)
JUL 31 11 59 AM '72

AUG 4 1972

SENATE COMMITTEE ON
LABOR AND PUBLIC WELFARE
RECEIVED
JUL 31 1972
RECEIVED

LITTON INDUSTRIES, INC. 360 NORTH CRESCENT DRIVE BEVERLY HILLS, CALIFORNIA 90210

JOHN H. MARTIN, VICE PRESIDENT

72

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

Dear Senator Williams:

Because the limited hearings on S. 3598 did not provide time for individual company testimony, we would like to record our position by means of this letter.

In summary, we support the testimony of John A. Cardon filed with The Subcommittee on Labor of the Committee on Labor and Public Welfare of the United States Senate on July 5, 1972.

In addition, we would like to urge your support of a provision providing tax deductibility for individuals contributing to pension plans. Such provision should be available to every worker to whatever limit you decide. (We have previously recommended a $1,500 ceiling.) It should not be hedged with restrictions as is the case in the Administration's proposal H.R. 12272.

We would appreciate having our position incorporated in the record of hearings on the bill.

Very truly yours,

John H. Martin

John H. Martin

PHILLIPS PETROLEUM COMPANY

BARTLESVILLE, OKLAHOMA 74004
918 661-6067

W. R. THOMAS
Vice President

Employee Relations Department

August 1, 1972

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

Dear Senator Williams:

Phillips Petroleum Company endorses the statement relating to S. 3598 which Herman C. Biegel and John A. Cardon of Lee, Toomey & Kent filed with Senate (Williams, D-N.J.) Subcommittee on Labor.

The purpose of this letter is to request that our endorsement appear in the written record following the Lee, Toomey & Kent statement.

Very truly yours,

W R Thomas

WRThomas:dd

REGISTERED MAIL

Blue Bell, Inc.
Edwin A. Morris
Chairman of the Board

335 Church Court
Greensboro, North Carolina 27401

SENATE COMMITTEE ON
LABOR AND PUBLIC WELFARE
RECEIVED
JUN 2 6 1972

June 19, 1972

✓Senator Harrison A. Williams, Jr.
Senator Jacob K. Javits
United States Senate
Washington, D. C. 20510

Gentlemen:

We understand your Senate committee on Labor and Public Welfare will start hearings on this subject and in particular Senate Bill S3598, beginning June 20, and the purpose of this letter is to give you a brief statement of our company's position with respect to some of the proposed Federal legislation relating to private pension plans. Rather than repeat herein our position, we are sending you herewith copy of letter we wrote the Honorable Wilbur D. Mills, Chairman of the House Ways and Means Committee, on May 17, 1972, with respect to this subject. We would like for you and your committee to please review this letter and relate it in like manner to your proposed legislation with the assurance that we stand ready to work with you in any manner we can and will greatly appreciate your consideration of the thoughts expressed herein.

There is one specific point regarding your proposed legislation which we would like to emphasize with respect to mandatory vesting of 100% after 15 years of service. To paraphrase what we said in our letter to Mr. Mills, we strongly recommend that your committee avoid all mandatory vesting rules and either allow the Department of Labor or the Internal Revenue Service to police this area on a flexible basis so that the facts of each situation can be fully considered before a rule is imposed to suit the particular case.

Yours very truly,

E. A. Morris

E. A. Morris, Chairman

R. S. LeMatty, President

L. K. Mann, Executive Vice President

G. E. Dixon, Vice President Finance and Controller

Enclosure

cc: Senator Sam J. Ervin, Jr.
Senator B. Everett Jordan

U. S. Chamber of Commerce

National Association of Manufacturers

Council of Profit Sharing Ind.

Honorable Wilbur D. Mills
Chairman
House Ways and Means Committee

Blue Bell, Inc.
Edwin A. Morris
Chairman of the Board

335 Church Court
Greensboro, North Carolina 27401

REGISTERED MAIL

May 17, 1972

Honorable Wilbur D. Mills, Chairman
House Ways and Means Committee
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Re: Proposed Legislation Affecting Private Pension Plans

This letter is a brief statement of our company's position with respect to some of the proposed Federal legislation relating to private pension plans and in particular President Nixon's address to the Congress on December 14, 1971, and House bill HR12272 as introduced to the House by you and the Honorable John W. Byrnes.

We will not attempt to go into detail nor get into a lot of the technicalities involved on this subject, but we wish to make several observations which we feel are pertinent and hopefully impress your Committee and others concerned that any such legislation should be extremely carefully thought out and not hastily adopted because of the tremendous impact this could have upon private pension plans even to the point of destroying them completely:

1. With respect to the President's first point, it would be difficult to object to the principle that employees who wish to save independently for their retirement or to supplement employer financed pensions should be allowed to do so possibly by deducting on their income tax returns amounts set aside for these purposes. In so saying, we should not overlook the fact that all employees and employees are already setting aside vast sums of money every year in the form of social security taxes which among other things are designed to provide retirement income for all employees. The extent to which individual employees or employers might be able to afford additional deductions of this kind is certainly not known, but in our own case, we seriously doubt if our employees as a whole could afford a great deal more, although some doubtless would take advantage of such an opportunity. Based on what we hear about what has become of the social security funds paid in, doubtless monies put aside by employees and employers for private pension funds would be far safer and more dependable as a means for retirement income than will be social security funds. Should inflation continue at the high rate it has been over the past several years, none of these funds will be of much value.

2. We also agree with the President's second point in that self-employed persons who invest in pension plans for themselves and their employees should be given a more generous tax deduction than they now receive, although we feel that in some respects this relates back to the points made in #1.

3. With respect to the President's item #3, we likewise agree that employees should not be denied reasonable pension vesting rights so as to preserve these even though they leave their jobs before retirement. We strongly feel that too liberal a formula for vesting and in particular the "rule of 50" would render a disservice both to employers and employees by encouraging voluntary terminations and creating more labor turnover rather than stabilizing the work force.

Our own experience prior to 1964 (we have had a retirement program since the earliest days of qualified plans under the tax laws) when we had a very liberal vesting formula taught us that employees who become too fully vested, especially in their younger years, will quit their jobs in spite of an otherwise satisfactory employment relationship in an attempt to get this money to use for any and all kinds of purposes when it is designed for their retirement--the very antithesis of what it was designed to do! In our own experience, the tighter vesting formula which we adopted since that time has helpd us stabilize our employment, and we are confident these funds are and will be used more in keeping with the objectives.

With respect to the effect the "rule of 50" would have upon the employment of older persons, (and we agree the older persons should have a break) if this vesting formula is too generous, it might well tend to bar older employees from receiving fair consideration for employment in spite of equal employment opportunity legislation.

Furthermore, whether uniformity in vesting is desirable is open to serious question in view of the disparity in working conditions, profitability, and other fringe benefits from one industry to another, one geographical area to another or even among companies in the same industry and geographical area. However that may be, given the lack of uniformity in retirement benefits in general, it is unwise to attempt to single out a single aspect of the field and legislate rigid rules for one.

We would recommend that your Committee avoid all mandatory vesting rules and allow the Internal Revenue Service to continue to police this area on a flexible basis, as in the past, so that the facts of each situation can be fully considered before a rule is imposed. There is nothing presently to prevent the adoption of a "rule of 50" by the IRS as a general standard, but employers and employees would, under such a rule, have an opportunity to show that under the facts of the particular case a different rule was desirable.

To further protect both the employee and the employer regardless of what vesting schedule applies, the spotlight on vesting and employee rights should include statements concerning forfeitures in case of embezzlement, dishonesty, and the like. Also, some mention should be made that these vested funds can be reserved for the individual's retirement and need not be paid out as a lump sum at termination.

Honorable Wilbur D. Mills
Page 3
May 17, 1972

4. We are in complete agreement with the President's item #4 with respect to the Employers Benefits Protection Act insofar as its basic principles are concerned.

5. We agree completely with the President's point #5 that this whole subject needs considerably more research and study in an effort to determine what really needs to be done to preserve employee benefits under pension plans which are terminated. In addition, we strongly recommend taking a good look at what the present House and Senate sub-committees' studies on this general subject will reveal and that your Committee take plenty of time investigating the variety of plans in existence and the effects the proposed legislation would have thereon.

6. Without attempting to comment on the details of HR12272 or any of the other several pieces of proposed legislation which we have heard about, we would strongly caution your Committee and all of our Congressmen and Senators to go very slowly in what might appear to be a complete Federal takeover of private pension plans lest we run the horrible risk of killing the incentive of employers to provide such plans or destroying them entirely.

As further developments take place with respect to this legislation, we would be pleased to work with your Committee, the House and the Senate in any manner we can on any aspect of this very important subject and will greatly appreciate your consideration of the thoughts expressed herein.

Yours very truly,

E. A. Morris

E. A. Morris, Chairman

R. S. LeMatty, President

L. K. Mann, Executive Vice President

G. E. Dixon, Vice President, Finance

cc: All Members of House Ways and Means Committee
All North Carolina Congressmen and Senators
U. S. Chamber of Commerce
National Association of Manufacturers
Council of Profit Sharing Industries

AUG 10

Honeywell

AUG 10 9 37 PM '72

RUSSELL W. LAXSON
Vice President, Public Affairs

August 8, 1972

The Honorable Harrison A. Williams, Jr., Chairman
Senate Committee on Labor and Public Welfare
S.T.-50 Capitol
United States Senate
Washington, D.C. 20510

Dear Senator Williams:

Minnesota Senator Walter F. Mondale recently invited Honeywell management to comment on the "Retirement Income Security for Employees Act of 1972", (S.3598). We hope you will insert the following excerpts of our letter replying to Senator Mondale into the printed record of hearings on S.3598:

> We have been following the developments and proposals in this field since the time of the major Presidential report begun under the Kennedy administration and completed sometime after Mr. Johnson took office. During this period there have been quite a few bills introduced, mostly associated with Senator Javits and Congressman Dent, and the major thrust has been quite similar.
>
> For your information, the Honeywell contribution to pension and retirement plans covering its United States employees is now about $20 million per year. The accumulated funds presently in the hands of trustee banks covering United States Honeywell employees exceeds $165 million and is growing rapidly.
>
> The two most important and controversial areas in a consideration of this subject are those of vesting and portability.
>
> To consider first the subject of vesting, the underlying purposes in the origination of company pension plans were to encourage the better employees to remain with a company through their working lives and to provide, in conjunction with social security and personal savings, an adequate income at normal retirement date. A vesting provision is included to protect older and/or long service employees who may leave the employ of the company either involuntarily, or perhaps voluntarily, prior to a normal or early retirement date. Pension plans and their vesting provisions were <u>not</u> intended to provide benefits for younger people who may work for several different companies a few months or a few years on their way to finding their longer term occupation.

A realistic vesting provision in a company pension or retirement plan is certainly a necessity but we believe a provision which takes into account both age and period of service makes much more sense and fills the basic purposes of the plan much better than one which is based on years of service alone. We see the "Rule of 50" (50% vesting when age plus years of service equals 50 with additional 10% vesting each subsequent year of service until 100% is reached), which is proposed in S.3012 as a reasonable provision but definitely the most liberal minimum requirement that should be considered at this time. Even here probably a five year phase-in period should be allowed.

The 30% vesting after eight years of service irrespective of age increasing to 100% after 15 years, as proposed in S.3598, would be too costly and would not make a significantly greater contribution to the real purposes of these plans. We do not have a precise estimate of the cost of the "Rule of 50" as compared to the somewhat less liberal vesting in some of our current Honeywell plans, but adoption of the "Rule of 50" could result in a cost to us in the area of $1 1/2 million per year.

Now as to the provision for portability of vested pension benefits, we believe this an unnecessary and uneconomical provision. Under this proposed program any person with a vested benefit in the plan of one company would have transferred to his successor employer (probably through a federal government conduit) a lump sum to pay for the vested retirement benefits earned under the previous employer's plan. This would be a costly and confusing procedure which could lead to many problems and misunderstandings. When an employee with a vested benefit leaves Honeywell, he is provided a certificate indicating his vested interest in retirement income payable at age 65. This becomes a part of our permanent records and the payment will be forthcoming from the Honeywell trust funds merely by the former employee identifying himself at the proper time. This is a procedure followed, to our knowledge, by most plans and we believe this is an entirely satisfactory way of handling.

We have no quarrel with the setting up of reasonable fiduciary standards. Most companies operate through recognized bank trustees using the best professional investment advice they can retain. High standards of conduct in the handling and investment of these pension funds, which now amount to more than $150 billion in the United States, is the rule.

Determining funding requirements of a pension plan is not an exact science. The necessary actuarial calculations represent an extremely technical and involved process which includes measuring and predicting mortality rates, employee turnover rates, future return on investment of trust funds and, in some cases, future salary rates. Most companies, including ours, arrange for annual valuations by competent actuaries in which all of these assumptions are constantly under review and being adjusted currently where necessary. We have followed a practice of paying for past service costs over a 30 year period, which is shorter than the 40 year pay-out called for by S.3598. Some people believe only interest on past service cost should be contributed. Forty years, to us, is a reasonable requirement.

With respect to administration, we believe that with the setting of proper standards on vesting, funding, etc., the Internal Revenue Service, in conjunction with required plan disclosure information, can adequately monitor these plans. The setting up of a parallel expertise on this subject within the Labor Department to review and make rules is not necessary.

S.3598 also provides for the establishment of some sort of "plan termination insurance." We do not feel a case has been made for the need for this procedure. True, there was the Studebaker case of a good many years ago, and you have been involved with the Moline situation this year. There may be others, but they are relatively rare. We believe that reasonable funding standards and proper attention to actuarial valuations should provide the needed protection. In any event, no action should be contemplated until the joint Treasury-Labor study on this subject is completed later this year and evaluated.

In this connection, any audit of a pension trust by a certified public accountant can authenticate that funds said to be in a pension trust are actually there. However, normally a public accounting firm is not qualified to render expert opinion on the actuarial work which goes into determination of company contributions, unfunded liability, etc. This part of the responsibility must rest with the actuary.

One important element which cannot be emphasized enough is that the ultimate soundness of the entire private pension system of the U.S. is dependent on the continued profitability of the country's industry. The funds set aside by each company for future retirement benefits are not held in suspended animation, they have been reinvested in a broad range of corporate securities of other companies - a high proportion in equity securities. Over a period of years market appreciation and dividends on these investments can exceed the effect of company direct payments on the amounts of pensions paid.

We would be pleased to discuss any of these items with you in greater detail at the Committee's request.

Sincerely,

RWLaxson

RWLaxson:cc

IAMS

BOWES SEAL FAST CORPORATION

5902 East Thirty-Fourth Street, Indianapolis, Indiana 46218

AREA CODE 317 • 547-5245

the famous "500" line BOWES SEAL FAST INDIANAPOLIS *of car care products*

July 20, 1972

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

Dear Sir:

Attached is a copy of our letter to Mr. James R. Baker of Northwestern Mutual Life Insurance Company, his Company serving as the insurance carrier under our Pension Plan. It is believed that our position with respect to pending Senate Bill S.3598 will be self-explanatory as discussed in our letter to Mr. Baker.

The attached letter pertains only to our Pension Plan. Above and beyond that, our Company also has an Employees' Profit Sharing Plan. The latter is not an insured plan, and since profit will vary from one year to another, the annual contribution to the Profit Sharing Trust by our Company will vary accordingly. It is non-contributory to participants.

The Profit Sharing Plan resembles our Pension Plan in that it provides vesting of participants based upon length of service, and 100% vesting regardless of service in the case of retirement, disability, death or discontinuance of the plan. It also includes provision for settlement of vested interest in cash or paid-up annuity (optional), so the plan does have portability.

In Profit Sharing, it is impossible to amend the plan in favor of one group without affecting the interest of another group. At present, age 25 is required for participation in the plan. If it were lowered to age 21, that would affect the accruing of benefits of employees nearer retirement age. For this reason, we are not in favor of lowering the age requirement for participation.

Also, like the Pension Plan, the accounting system and method of operation of our Profit Sharing Plan is on the annual year-end anniversary basis. Consequently, we do not consider eligibility based upon six months' service to be practical. Accounts could not be established at random dates during the year, because profits and the proportionate annual contribution by the Company cannot be determined until after the year-end.

Currently, under our Profit Sharing Plan, employees become eligible for participation at the end of the first full calendar year of employment, which we believe to be the most equitable and practical manner of establishing participation.

Page 2

Our Company has never failed to make the annual contribution to the Profit Sharing Trust since its beginning in 1952, so there is no unfunded obligation. Unvested portions of accounts of participants leaving employment of the Company are distributed at the next year end to the accounts of remaining participants.

This letter is written in the hope that the experience and views of a small business in employee benefit programs may be of interest to your Committee, and copies will go to all members.

Cordially yours,

BOWES SEAL FAST CORPORATION

Geo E Talmage

GEORGE E. TALMAGE, Chairman
Profit Sharing Committee

GET:jwk

Enc.

BOWES SEAL FAST CORPORATION
5902 East Thirty-Fourth Street, Indianapolis, Indiana 46218
AREA CODE 317 • 547-5245
the famous "500" line BOWES SEAL FAST INDIANAPOLIS *of car care products*

June 26, 1972

Mr. J. R. Baker, C.L.U., Agent
The Northwestern Mutual Life
Insurance Company
812 Guaranty Building
Indianapolis, Indiana 46204

Dear Jim:

Reading your letter of June 21 brings to mind some history of our pension plan, which dates back to 1947. In its 25 years, there has never been any unfunded obligation, and there has always been vesting of participants based on service. As you know, the indenture provides for 100% vesting in the event of disability, or termination of the plan, and payment of principal sum in the case of death of the participant before retirement. There is also a provision for retirement between ages 55 and 65, with 100% vesting.

Under the plan, a participant leaving employment of our Company has the option of taking over the insurance policies for himself. This is an invaluable feature to any participants who may leave employment by reason of disability. They are automatically vested 100%, and they can acquire the policies at a time when they probably would not otherwise be insurable.

Portability of vested interest was accomplished in our pension plan by an amendment in 1966. Prior to that time a participant, on leaving the Company, could receive his vested interest in cash only if it amounted to less than $1,000.00, greater benefits were deferred until retirement age. Now, the participant is eligible to receive his full vested interest in lump sum cash settlement, which is normally made in less than 30 days. We have portability.

One portion of the Williams-Javits Bill S.3598 causing us concern is the proposed eligibility rule of not more than 6 months' service or an age greater than 21, whichever occurs later. Age 21 should not be a serious problem in that for the most part incoming employees meet that requirement. The 6 months' service is more complicated.

As you are aware, our Company does not have great turnover, a high percentage of employees being those with 10 to 20 years' service, or more. Most of the turnover we do have occurs with beginning employees, during the first year of service, and we believe this is not unique. It is recognized that neither the personnel manager nor the job applicant can always score 100% in matching the new employee and the job. Dissatisfaction may occur on the part of either one of the two parties, and that is most likely to be during the first year, if it occurs. Under an insured pension plan, the company contribution in behalf of the participant during the first year is taken up largely by the cost of insurance. This means that if the employee leaves during the first year in the plan, the premium paid is practically a total loss.

It is for the reason of turnover during the early stage of employment that our plan has required 3 years' service for eligibility. It has not been to deprive the participant of vesting, as the participant is automatically 25% vested when he enters the plan.

As in most other plans, the accounting system and method of operation in our pension plan is on the annual anniversary basis, employees become participants as of December 31 of each year. At this point, the proposed eligibility rule becomes a serious problem.

In our opinion, it is not practical for employees to become participants in a pension plan at accidental dates scattered at random throughout 365 days of the year--whenever they might happen to attain age 21 or 6 months' service. This could affect hiring practices in many companies, to the detriment of both prospective employees and employers. It would increase the administrative burden entirely out of proportion to the benefits. It would be much more practical, we believe, for eligibility to be at the end of the first calendar year of employment, provided the employee has then attained 6 months' service and 21 years of age.

Since in our pension plan there is no unfunded obligation, and it already includes vesting and portability, we believe it can be readily adjusted to whatever the pending legislation may be in final form. We are interested only in the final form's being of a reasonably practical nature, so as not to adversely affect interests of either the employee or the employer.

Cordially yours,

BOWES SEAL FAST CORPORATION

Geo E. Talmage

GEORGE E. TALMAGE, Chairman
Pension Committee

GET:jwk

STATEMENT OF
RUSSELL M. TOLLEY
Chairman of the Board of
National Association of Professional Administrators
before the
SUBCOMMITTEE ON LABOR
SENATE COMMITTEE ON LABOR AND PUBLIC WELFARE

Mr. Chairman; Members of the Subcommittee:

NAPA is a recently formed voluntary association of leading professional administrators of collectively bargained health and welfare and pension plans. These programs take the form of a trust in which management and labor are equally represented in conformity with Section 302(c) of the Labor Management Relations Act, as amended, which sets forth the basic guide lines and structure of these Taft-Hartley Trusts.

Professional administrators assume the responsibility for the proper handling of the fiscal affairs of these joint trusts, determine eligibility and conduct a myriad of administrative transactions designed to achieve the object of the trust. Professional administrators, through years of experience, have developed a practical expertise in the operation of pension trusts. Professional administrators are intimately familiar with the provisions of the trust, investment policies, actuarial assumptions and other aspects of the pension trust fabric. An important aspect is to establish and to maintain communication with participating employees. Pension administrators work closely with the trustees, render periodic reports to them, attend trustee meetings and participate in their deliberations. They also maintain a close working relationship with the attorney for the trust, certified public accountants, actuaries and other professionals serving the trust. Policy decisions are of course made by the trustees. The administrator is charged with carrying out these decisions.

NAPA is vitally concerned with the perpetuation and growth of the private pension system. Private pensions have achieved a phenomenal growth in this country during the last twenty-five years. They have grown in assets from twelve billion in 1950 to an excess of a hundred and fifty billion in 1970, growing at the rate of eight to ten billion dollars annually. Some thirty million workers, half of the labor force - are covered by the thirty-four thousand pension plans now in operation. In excess of six billion dollars are paid annually to over four million retirees.

This impressive growth is attributable largely to the initiative of organized labor and management working through the collective bargaining system. But it must be recognized that pensions constitute but one item among other items and are hammered out in the course of negotiations. A balance is being struck constantly between direct wage adjustments, health and welfare, other fringe benefits, pensions and other items. Labor negotiators recognize the limitation of funds available for improvement of wages, hours and working conditions. Today the Pay Board imposes strict limitations. Compromise, modification, deferment and withdrawal of negotiable items characterize the bargaining process. Rising costs of maintaining a pension plan inevitably result in a diminution of other negotiable benefits or require retrogressive pension adjustments. To the extent that legislation mandates new features involving cost considerations, the parties are deprived of opportunities of improving pensions in areas to which they may attach their priority. They are forced to accept governmental priorities. The parties may be desirous of increasing pension benefits, or adding features such as survivor benefits or death benefits. But if Congress mandates liberalized vesting, funding or requires re-insurance no consideration may feasibly be given to any item to which the parties attach priority. Legislation mandating early vesting or a funding or re-insurance has a detrimental impact on the free collective bargaining system. It imposes a government program on substantive aspects of negotiations, and because of the cost impact, it has a burdensome secondary effect on collective bargaining.

The private pension system is characterized by individuality and variety. Each plan is tailored in accordance with the specialized factors of the industry, the financial structure of the employer and the unique make-up of the employees. Governmental interposition in vital aspects will create an artificial standardization which will impair the individuality of the private pension plans. It will not be the same plan which the parties carefully structured to serve their individual needs.

Negotiated pensions were never intended nor designed to serve the working population of the country as a whole, but have been established to serve the interest and best welfare of employees represented by the union in a specified bargaining unit. These plans are seldom designed to benefit employees who spend a short time in a particular bargaining group. Pensions almost by definition were intended to provide retirement income for employees who through years of work have become identified with the industry or bargaining unit.

Now we are faced with a new concept. Proponents of pension reform decry the lack of early vesting, portability, and other features of a national private pension system.

Statistics are quoted that a significant percentage of employees leave particular employment without having obtained any vested benefit. Plainly a large number of employees move habitually from job to job and do not spend sufficient time in a particular plant or industry to obtain vested pension benefits. In many instances they are employed in plants or operations which do not have any pension benefits. To complete the picture, many millions of employees from time to time are unemployed or underemployed. Admittedly, therefore, a great number of employees will not obtain significant vested benefits because of the dynamics of the economy. Proponents of pension reform understandably dissatisfied with these realities are seeking to convert the private pension system into a national public pension system. Basically, the imposition of early vesting, portability, funding and re-insurance are designed to guarantee employees pension benefits regardless of their mobility. Each employer with a pension is to become a cog in the national system. This may be a noble and desirable ideal. But we cannot close our eyes to the reality that to achieve this objective the private pension system is being converted into a thoroughly regulated national system.

While it is piously avowed that it would not be feasible or desirable for government to physically take over the private pension system and frankly convert it into a government operation, nevertheless, such a result will ultimately be accomplished through Senate bill S3598 and legislation of similar character.

An area which requires congressional concern is found in the lack of coverage. Less than one-half of the non-farm working population is presently covered by pensions. Necessity exists for providing sufficient incentives or other means of covering a substantial portion of the uncovered working population. If this objective were achieved, many of the problems of prime concern now to Congressional Committees would be overcome.

It appears wrong to impose severe pension restrictions on employers of half of the working population who operate under voluntarily adopted pensions while permitting other employers to remain completely unregulated and free of requirements relating to pensions. Serious apprehension exists that by the imposition of the proposed legislative standards, the incentive for the establishment of private pensions will diminish significantly.

Proponents of pension reform have been led astray in regarding the private pension system as a supplement to Social Security retirement benefits. The two systems are distinct notwithstanding efforts to integrate them. Social Security retirement benefits should be evaluated in terms of national policy seeking to provide minimum retirement income for the covered employee. Sound social policy dictates that the Social Security retirement income should be adequate to meet the basic requirements of living. If it is inadequate, it should be improved. Positive steps have been taken in the last few years in this direction. At this writing there is every indication that Social Security retirement benefits will be increased by an additional twenty percent. But it is an error to relate the inadequacy of the Social Security system as a rationale for reforming the private pensions systems. The two systems should be viewed separately. In providing for improvements in Social Security, Congress does not look to the private pensions system and the private pensions system should not be appraised in terms of the deficiencies of that system. When the Social Security system will commence paying adequate benefits, it will reduce the anxiety to convert the private pension system into a governmental regulated program.

Existing pension disclosure is inadequate, cumbersome and meaningless. Therefore, we support a system of meaningful disclosure. But at the same time it is important that the pension administrators ought not to be subjected to an oppressive volume of details which will serve no purpose. For example, a disclosure of every stock transaction can serve no particular purpose and could be tremendously burdensome and costly. Sufficient information should be filed to demonstrate that the plan is being operated prudently and information should be disclosed which would reveal wrong doing, although it is unlikely that an intentional wrong doer would disclose this information.

Because we support the growth of private pensions, we warmly support proposals made by the administration and the bills pending in both houses providing for a tax deduction by employees contributing towards the establishment of individual retirement programs. It is inequitable to grant a tax deduction to the employer and not grant a tax incentive to the employee in order to achieve the same purpose. This proposal has been endorsed by almost all sectors of the pension industry and significant representation of business and labor. The proposal, if adopted, should go a long way towards eliminating many alleged abuses in private pensions. It would mitigate the problem of vesting, portability and concern over re-insurance. Employees would be given free choice of determining what percentage of their income to lay aside on a tax deductible basis to increase retirement prospects. The choice would not be limited to any particular plan, but would be an individual choice. This we believe is a precious right. It would promote self-reliance, prudence and independence, qualities which our government should work to encourage among our people. It would also go a long way towards giving the fifty percent of the employees who are not covered by pension plans the incentive for investing in retirement saving. It would also permit those employees who do not regard their present plan as adequate or regard them as insufficient to take steps on their own initiative to improve their retirement income.

We believe that tax deductibility for the individual employee as set forth in the administration's proposal is perhaps the most creative suggestion which has emerged from the deliberations on pensions during the last several years.

One final thought of great concern to professional administrators is inflation. The rate of inflation has been severely destructive of pensions. It appears to us that Congress ought to give priority to protecting existing pension benefits from this insidious force. A successful effort in this respect would be of the greatest value to those now living on fixed income and those looking forward to retirement. A study of pensions should be concerned with this distressing problem.

THE CHAIRMAN. Thank you.

(Whereupon at 11:40 a.m., the hearing was adjourned.)

○