TEAMSTERS' UNION CENTRAL STATES PENSION FUND, 1976

HEARING

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

(Designated A Select Committee Under Authority of S. Res. 483, 94th Congress, Dated June 30, 1976)

NINETY-FOURTH CONGRESS

SECOND SESSION

ON

INVESTIGATION OF ALLEGED IRREGULARITIES IN THE OPERATION OF THE TEAMSTERS' CENTRAL STATES PENSION FUND

JULY 1, 1976

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THURSDAY, JULY 1, 1976

UNITED STATES SENATE,
SUBCOMMITTEE ON LABOR OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met at 9:45 a.m., in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman), presiding.

Present: Senators Williams, Pell, Durkin, Javits, Taft, Schweiker, Randolph, and Hathaway.

Committee staff present: Donald Elisburg, counsel; Roy Wade, professional staff; Don Zimmerman, minority counsel; and Ira Shepard, professional staff.

The CHAIRMAN. We will come to order.

This morning the Subcommittee on Labor is meeting to receive a report from the Secretary of Labor, other Departmental officials, and the Department of Justice regarding the progress of the Government's investigation of alleged irregularities in the operation of the Teamsters' Central States Pension Fund.

Last fall, when many of these allegations began to receive broad dissemination, Senator Javits and I met with then Secretary of Labor, John Dunlop, and officials of the Department of Justice to discuss the need for an impartial, thorough, and speedy inquiry.

In December 1975, the Department of Labor and the Department of Justice created a joint task force to conduct such an investigation, and that fact was reported to the subcommittee in the form of a memorandum of understanding between the agencies.

At this point in the record I will insert a copy of that document.

[The following material was received for the record:]

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

December 2, 1975

Honorable Harrison A. Williams, Jr.
Chairman
and
Honorable Jacob K. Javits
Ranking Minority Member
Senate Committee on Labor and
Public Welfare
United States Senate
Washington, D. C. 20510

Gentlemen:

In reference to our recent conversations concerning the Teamsters' Central States Pension and Welfare Funds and the disappearance of former Teamsters' President, James R. Hoffa, we wished to take this opportunity to set forth the activities of the Department of Justice and the Department of Labor in our respective areas of jurisdiction.

As the enclosed memoranda set forth, our investigatory and enforcement resources have been dedicated to a thorough and well coordinated effort to ensure the effective enforcement of the Federal criminal and labor relations laws. We appreciate your interest in these two issues of national importance and assure you of our continuing efforts to guarantee the effective administration of the Federal civil and criminal laws.

Sincerely,

Deputy Attorney General

Secretary of Labor

Enclosures

December 1, 1975

MEMORANDUM OF UNDERSTANDING

In order to ensure the most effective use of the investigatory and litigation resources of the Department of Justice (Justice) and the Department of Labor (Labor) in pursuing their respective statutory obligations under Title 18 of the United States Code, the Employee Retirement Income Security Act of 1974 (ERISA), and other appropriate statutes, including the Welfare and Pension Plan Disclosure Act (WPPDA), and the Labor-Management Reporting and Disclosure Act (LMRDA), the two Departments hereby agree to the following coordination procedures in their review of the Central States Teamsters Pension and Welfare Funds (the Fund).

I. There shall be established an Interdepartmental Policy Committee (Policy Committee) comprised of the following representatives of each Department:

James D. Hutchinson
Administrator of Pension and Welfare
Benefit Programs

William J. Kilberg
Solicitor of Labor

Rex E. Lee
Assistant Attorney General
Civil Division

Richard L. Thornburgh
Assistant Attorney General
Criminal Division

Samuel K. Skinner
United States Attorney
Northern District of Illinois

The Policy Committee shall review basic policy decisions on investigation and remedial action to ensure that the resources

of both Justice and Labor are pursuing activities which are neither overlaping nor inconsistent. For example, although responsibility for prosecuting criminal violations would be with Justice and primary litigating authority for civil violations under ERISA would be with Labor, the Policy Committee would review such questions as when and where particular proceedings should be initiated and whether in a given case criminal or civil cases should be brought. In addition, the Policy Committee would deal with questions such as whether civil process or grand jury proceedings are most appropriate as a vehicle for obtaining information in given situations.

II. The presently constituted Department of Labor Central States Task Force (Task Force) comprised of Labor attorneys and investigators will be expanded to include attorneys from the Department of Justice. It is intended that this direct, operational level coordination will ensure that those who are investigating the Fund will on a daily basis be communicating with each other and coordinating their efforts.

The operational control of the Labor personnel on the Task Force will remain with the Task Force Director; however, the Director shall consult with the Justice attorneys on the Task Force so that full consideration

of the civil and criminal aspects of any actions can be reviewed and so that all matters which warrant discussion or review by the Policy Committee can be referred for its consideration.

III. Consistent with prior practice, Labor investigators will be made available to provide resources for general criminal and organized crime investigations by the Department of Justice which arise out of matters involving pension and welfare funds within the jurisdiction of the Department of Labor, including matters which involve the Fund.

IV. There shall be established a procedure within Justice to ensure that all matters involving the Fund which are the subject of current or proposed activities of the various United States Attorneys and Organized Crime Strike Forces shall be brought to the attention of the Task Force and Policy Committee to ensure efforts which are consistent with Justice's and Labor's commitment to a coordinated review of the Fund.

On Behalf of the U.S. Department of Justice

Deputy Attorney General

On Behalf of the U.S. Department of Labor

Secretary of Labor

MEMORANDUM RE: CENTRAL STATES TEAMSTERS' PENSION AND WELFARE FUNDS

A comprehensive investigation of the Central States, Southeast and Southwest Areas Pension Fund requires close coordination between the Departments of Justice and Labor in order to maximize the investigative and litigating resources of both Departments and to allow the greatest flexibility in applying the criminal and civil sanctions now available. In order to achieve this kind of cooperation, James D. Hutchinson, Administrator of Pension and Welfare Benefit Programs, U.S. Department of Labor, met on a number of occasions in October, 1975 with Harold R. Tyler, Deputy Attorney General, and Rudolph W. Giuliani, Associate Deputy Attorney General, U.S. Department of Justice, to lay the groundwork for establishing a mechanism to assure cooperation. On October 28, 1975, a meeting was held in the office of the Deputy Attorney General to discuss in detail the best way to achieve the cooperation that would be necessary to investigate and seek remedial relief if necessary against the Central States, Southeast and Southwest Areas Pension and Welfare Funds. The participants in that meeting agreed that a Policy Committee should be established to oversee the investigation. This committee would deal with questions such as the appropriate way in which to staff particular investigations of the Funds, the question of whether certain situations would be best handled by civil process

or grand jury subpoena, and the question of whether civil or criminal remedies would be the most appropriate.

As the attached Memorandum of Understanding between the Departments indicates, the Justice and Labor Departments agree that both a Policy Committee overseeing the investigation and a Joint Task Force with members of both Departments conducting the investigation is the most productive way to assure full use of investigatory resources and available remedies. A Department of Labor Task Force is already operational, and is proceeding with the initial phases of our investigation of the Central States, Southeast and Southwest Areas Pension Fund.

To date, the Department of Labor Task Force has completed an exhaustive multiweek review of records currently in the custody of government agencies. This information includes records and data focusing on the assets and investment practices of the Fund, as well as its operations in providing benefits to participants and beneficiaries. The Task Force is now prepared to commence a thorough audit of the Central States Funds' books and records. To be done thoroughly and effectively, this effort will require the expenditure of a great deal of time and resources, and therefore, it would be premature to predict

with certainty when this audit will be completed and the ultimate results it will achieve.

We are confident that with the evidence we now possess and the joint organization herein described, we can mount an effective investigation of the Central States Pension and Welfare Funds, and we are resolved to commit to our efforts the resources necessary to conclude a thorough and effective investigation of these matters.

Attachment

December 2, 1975

MEMORANDUM RE: JUSTICE DEPARTMENT'S INVESTIGATIVE EFFORTS REGARDING THE HOFFA DISAPPEARANCE

The effort being expended by the Justice Department in the Hoffa case is considerable. For example, in Detroit, where Hoffa disappeared and hence where the investigation is primarily concentrated, the FBI office has expended 19,319 agent manhours and 2,936 clerical manhours as of November 25, 1975. Six attorneys from the Detroit Strike Force have also been working on the case, two of them full-time, and one attorney has been detailed from Buffalo to Detroit to work full-time on the case.

The investigation has not been confined to Detroit. Two attorneys from the Newark Strike Force have also been working on the Hoffa case, supported by appropriate FBI activity, and similar investigations involving one attorney, are being carried on by the Strike Forces in New York, New Orleans, Chicago, and Cleveland.

The investigation so far has focused on finding potential witnesses, interviewing them, and putting them before a grand jury. Massive as the effort has been, the investigation is still continuing and it is, therefore, impossible for me to supply you with any further details at this time.

The CHAIRMAN. Since that time we have received periodic reports from the Department of Justice and Labor with respect to the conduct of the investigation. We have not commented on the status of the investigation in order to give all parties a chance to have the facts developed in the normal progress of Government law enforcement.

In this connection, it is important that those who may be accused of wrongdoing, if such wrongdoing exists, be given every opportunity to properly defend themselves in the appropriate forum. Consequently, it is not our function today to pass judgment on the central States fund.

The subcommittee also has a broader foundation for its concern and interest in the investigation of the Central States Teamsters Pension Fund. This is the first substantial test of the enforcement power—and, in fact, the very principles—of the Employees Retirement Income Security Act of 1974. If this vital pension reform law is to achieve its high purpose, American workers must be given every reason to develop full confidence that the administration of the law will be fully dedicated to protecting what is rightfully theirs.

In recent weeks, there have been many stories and editorials concerning the Central States Pension Fund and the Department of Labor's inquiry into it. I think that serious questions have been raised, and I feel it incumbent that we address ourselves to those questions so that we may determine if, in fact, the law is being adequately enforced.

Therefore, we are hopeful this morning that, to the fullest extent possible, the Secretary and other officials will provide a public record as to the basis of their inquiry and the progress to date.

I am mindful that in developing the public record it is entirely possible that areas will be reached where, for reasons defined in law and regulation, the matters should not be made public, and our rules do provide for executive session on those matters that, under law and regulation are not to be made public.

We will cross that bridge, of course, when and if we approach it in our public hearings, probably this morning.

We announced last evening that Senator Javits and I introduced a resolution conforming with requirements of the law for a committee of Congress to receive certain information from the Internal Revenue Service. Under the law, one of the means of receiving information from the Internal Revenue Service is through the creation of a select committee. That was done last night.

The Committee on Labor and Public Welfare was designated as select committee for the purposes of receiving pertinent and relevant information from IRS in connection with our inquiries that we are embarked upon now.

I would like to turn to our ranking member, Senator Javits, for his opening statement.

Senator JAVITS. Thank you, Mr. Chairman.

Mr. Chairman, this status report of the progress of the inquiries being made by the Department of Labor, the Department of Justice and the IRS, is of the most critical importance as far as we are concerned, to the 350,000 participants and beneficiaries of one of our Nation's largest private sector labor-management pension funds.

Senator Williams and I, as coauthors of the Employee Retirement Income Security Act of 1974, popularly known as ERISA, are

naturally deeply concerned with the pension rights of 35 million Americans. We naturally are also concerned about the enforcement of the laws with respect to the fiduciary standards in ERISA in order to assure that they are complied with. There are both criminal and civil penalties under the statute.

Our authority in this matter is derived from the oversight jurisdiction which we have in labor laws, with particular reference to the Department of Labor. We will have two issues before us, safeguarding the pension rights and resources of the Teamster beneficiaries and prospective beneficiaries in this particular fund, and restraining any violations of law, and it is our duty to see that guilty parties are brought to justice.

While today's inquiry relates specifically to the Central States Pension Fund, we feel it is also very important for all Americans who participate in pension funds. Senator Williams has already given a brief reference to our history in respect to this matter and also to what took place last fall when we jointly announced the establishment of the Labor-Justice Interdepartmental Policy Committee to review the activities of this fund. We feel that there is adequate authority in the ERISA statute to correct situations which may involve self-dealing and other abusive practices in the investment and management of these pension funds. We both feel strongly, as Senator Williams has already indicated, that the Reform Act provisions must be administered and enforced with vigor and complete integrity.

We have, of course, like everyone else, read and heard about the reported action of the Internal Revenue Service with reference to this fund. We asked the Senate to allow us, as Senator Williams has described, to inquire into the IRS aspects of this matter where these aspects bear directly upon our responsibility in respect of legislative oversight of the Department of Labor.

Now, Mr. Chairman, the Senate has granted us that authority. But I wish to make two matters very, very clear in fairness to the other committees involved here in the Senate. One, our authority respecting IRS information, and that is all the authority is for, is strictly confined by the resolution to the Central States Southeast and Southwest Areas Pension Fund. Secondly, our authority is strictly confined to our responsibility relating to the labor aspects of these matters. Further, nothing we are doing is in any way taking over or interfering with the work of other committees. The Government Operations Committee, of which I am a member, is looking into matters concerning the same fund and the same union. They have a particular jurisdiction, as is very well known, regarding laws which antedate the ERISA.

We have always had laws respecting kickbacks and other derelictions, and the Investigations Subcommittee of Government Operations has a longstanding history of action in this field. There is nothing that we are doing which will in any way encumber or interfere with that jurisdiction.

The Finance Committee participated with this committee in the development of ERISA. They have their particular concerns with the tax policy of the country, with the enforcement of our laws in that regard, and there is nothing that we plan to do which will in any way embarrass or encumber that jurisdiction.

And, comparably, the Judiciary Committee has oversight jurisdiction over the Department of Justice. Again we should do our utmost to be sure that that jurisdiction is fully and carefully preserved.

So, Mr. Chairman, I thank you very much for calling this hearing. I think it is very essential, and I think the committee is now very well equipped to do its part in unearthing what needs to be unearthed.

The CHAIRMAN. Thank you, Senator Javits.

Senator Pell.

Senator PELL. No statement Mr. Chairman, except to congratulate you Mr. Chairman, and the ranking minority member for the forceful way in which you seized this issue.

The CHAIRMAN. Senator Durkin.

Senator DURKIN. Thank you, Mr. Chairman.

I do not have an opening statement, but I do have a couple of questions that Senator Javits alluded to in his opening statement.

My major concern is why this subcommittee is involved in this issue when it can be handled, and in fact was being handled by Sam Nunn's investigations committee?

The CHAIRMAN. We are looking into the oversight and enforcement of the law that came from this committee. I know this law antedates your arrival here, John, but we are clearly the primary jurisdiction of the ERISA legislation, and that is what we are here for.

Senator DURKIN. Is this not a subject which could be better handled by Sam Nunn's Permanent Investigations Subcommittee?

The CHAIRMAN. I think Senator Javits referred to those areas where they have a background of experience and jurisdiction in relation to this part of the question, and they still have that.

Senator DURKIN. As the Senator described it, is it not a fragmented approach? Shouldn't we let Sam Nunn's committee tie all the ends together and come up with a complete package?

The CHAIRMAN. You have just been through a baptism on the floor where part of our jurisdiction received fragmentations through the appropriations process. You will recall, and you particularly, because you commendably handled the floor debate on the OSHA, as it was being changed through appropriations. Many members thought that our primary jurisdiction had not been exercised to their satisfaction.

So I think, for multiple reasons, we are in the right place at the right time with this subject matter.

Now, we will turn immediately from this, our opening statements, to the Secretary of Labor, Hon. William J. Usery, Jr.

STATEMENT OF HON. WILLIAM J. USERY, JR., SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR; ACCOMPANIED BY WILLIAM J. KILBERG, SOLICITOR OF LABOR; AND JAMES D. HUTCHINSON, ADMINISTRATOR, PENSION AND WELFARE BENEFIT PROGRAMS

Secretary USERY. Thank you, Mr. Chairman.

I have with me this morning, to my left, William J. Kilberg, Solicitor of Labor; to my right, James D. Hutchinson, Administrator of the Pension and Welfare Benefit Programs of the U.S. Department of Labor.

Mr. Chairman, I would first like to apologize that we did not get this statement over to you, my own personal statement to you and to the committee members yesterday. I did call you and apologize because I had been in Cleveland in rubber negotiations and only returned to the city around 2:30. We did not have it available.

We told you earlier that we would fully cooperate in every way we possibly could. I apologize for not having it to you.

The CHAIRMAN. We appreciate that.

I did talk to you, you explained it to me yesterday. If your days are anything like the days of Members of the Senate, I can certainly understand. We are going from 8 in the morning until midnight every day.

We are grateful for your early announcement that you could not meet our particular deadline.

Secretary USERY. Thank you, sir.

Mr. Chairman, I welcome this opportunity to appear before the Senate Labor and Public Welfare Committee to review the Department of Labor's activity in implementing the Employee Retirement Income Security Act of 1974—ERISA—particularly those provisions which set the standards for the conduct of fiduciaries.

As the first Secretary of Labor to testify about this act, I am very much aware of the contribution this committee made in developing and bringing about the passage of this vital legislation.

I believe that it would be fair to say that there are few responsibilities which face any executive department or agency today which are as far-reaching and important as the basic regulation of private pension and welfare benefits plans embodied in ERISA.

Realizing the enormousness of this undertaking, we at the Department of Labor are ever mindful that effective and fair administration of ERISA affects the rights and obligations of almost 40 million plan participants and beneficiaries. Therefore, I would like to outline briefly my perception of the reasons why these rules were enacted as part of ERISA and what we have been doing to see to it that their basic purposes are served.

The legislative history of ERISA extensively documented the need for a statute that would ensure greater retirement income security for American workers covered by private pension benefit plans. The decade prior to ERISA's enactment was marked by examples of lost benefits, poor plan administration, misuse and abuse of plan assets, and criminal acts, as well as violations of basic fiduciary obligations.

These persons are members of more than 1.5 million plans which hold assets which total more than $210 billion. Those millions of workers and their families look to ERISA to protect their retirement security and the other benefits which they have been promised or have bargained for.

In accepting our responsibility to administer ERISA, we have placed special emphasis on the administration and enforcement of ERISA's standards for the conduct of fiduciaries. These are the persons who are responsible for the assets of private employee benefit plans.

Although these violations occurred in only a minority of plans, you in the Congress and we in the executive branch were in agreement that reform was still needed.

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In an attempt to remedy these abuses as part of an overall effort to insure the security of private pension and welfare plans, Congress, in great measure as a result of the work of this committee, enacted reporting and disclosure and fiduciary standards, as well as effective enforcement mechanisms in ERISA.

The primary purpose of these provisions was to guarantee adequate disclosure to Government agencies and also to inform participants and beneficiaries of their rights and obligations; to describe how plans are being administered; and to regulate the manner in which plan assets are managed.

The fiduciary provisions of the act are intended to insure that persons who exercise control or authority over plan management or plan assets act solely in the interest of plan participants and beneficiaries. These provisions outline the duties of fiduciaries, set forth certain prohibited transactions, require that employee benefit plans be established and maintained under a written instrument with provision for "named fiduciaries," require that plan assets generally be held in trust, require bonding of persons who handle funds, and render exculpatory clauses void.

To insure compliance, Congress granted to the Department of Labor and private parties significant new civil enforcement authority under the act. In addition to the traditional criminal penalties for willful reporting and disclosure violations, the Department has been given broad civil investigation, subpena and enforcement powers.

The Department of Labor has the authority to initiate litigation in Federal District Court to seek injunctive and other equitable relief.

ERISA empowers the Department to file suit in Federal district court to seek broad-ranging civil remedies. Also, we may intervene in most kinds of litigation brought by private parties under ERISA. This intervention power permits the Department to select issues on which it wishes to present its position before the court to assist in the development of sound legal precedents under ERISA.

We undertake this activity not only to help shape the development of the law, but to insure that the public interest is adequately represented as opposed to the more narrow interests of the parties to the litigation.

Finally, we may assess a civil penalty on parties in interest who are engaged in prohibited transactions with nontax qualified plans—including welfare plans.

One of the most important and far-reaching provisions in ERISA is the concept of personal liability for persons who breach their fiduciary duties. A fiduciary can be ordered to make good any loss suffered by the plan by his activity in violation of the fiduciary standards. He also can be made to restore any profits that he gained through activity in violation of his fiduciary obligations. In addition, in appropriate cases a trustee or other fiduciary is subject to removal from his position with the plan.

One important provision provides that the court may order "such other equitable or remedial relief as it may deem appropriate."

That power is very broad, and indicates that the kind of relief that can be brought to bear, either by the Department of Labor or by private litigating parties, is limited by the facts of the case, the ability

to discover and prove those facts, and provide flexibility in seeking effective relief through the court.

We believe now that the Department has the opportunity to obtain pervasive civil relief, we have a better chance to get to the bottom of the abuses, correct policies and practices, and change overall operations of a plan if that is necessary to provide the security to plan participants and beneficiaries that the fiduciary provisions of ERISA were meant to ensure.

We intend to employ these new tools vigorously, but fairly, as we seek to protect the interests of the participants and beneficiaries of private pension and welfare benefit plans.

A recent request for information from this Committee provided the Department with an opportunity to present additional data concerning our implementation efforts and compliance strategy. That data shows that, through March 31, 1976, the Department has opened 1,225 cases. For the period July 1, 1975, to March 31, 1976, 481 cases were closed. As of April 1976, over 425 participants and beneficiaries were granted pension or benefit payments as the result of the Department's consultation with plan administrators.

One recent case involving ERISA's fiduciary provisions concerned a proposed transaction where two employee benefit plans were contemplating putting 90 percent and 60 percent of their respective assets into a single investment. The Department was notified of the proposal and, following an initial investigation, advised the trustees of each plan that their action might produce a violation of the fiduciary provisions of the act. The investment was not consummated.

Within 30 days of the Department's notice to the trustees, the entity in which the plans intended to invest their assets was declared insolvent and the guarantor of the payment to be made to the funds was declared bankrupt. Because the two plans did not enter the contemplated transaction, $2.5 million in assets of the plans were not lost as they might have been.

In order to achieve the maximum return from our broad civil enforcement tools and remedies, the Department of Labor and the Department of Justice have moved toward more effective overall coordination between our respective Departments to ensure that the civil and criminal resources of both agencies are used effectively.

I believe that the interaction of ERISA and traditional criminal proceedings under title 18, as well as the general relationship between the Department of Labor and the Department of Justice in this area may prove to be a unique first step in the direction of sound coordinated enforcement efforts.

This principle is embodied in a memorandum of understanding, which was provided to this committee on December 2, 1975, by Deputy Attorney General Harold Tyler and former Secretary of Labor John T. Dunlop. It provides in relevant part:

"The Policy Committee—established by the memorandum—shall review basic policy decisions on investigation and remedial action to insure that the resources of both Justice and Labor are pursuing activities which are neither overlapping nor inconsistent. For example, although responsibility for prosecuting criminal violations would be with Justice and primary litigation authority for civil violations

under ERISA would be with Labor, the Policy Committee would review such questions as when and where particular proceedings should be initiated and whether in a given case criminal or civil cases should be brought. In addition, the Policy Committee would deal with questions such as whether civil process or grand jury proceedings are most appropriate as a vehicle for obtaining information in given situations."

This memorandum was addressed to our current investigation of the activities of the Central States Teamsters' pension plan to determine whether the policies and practices of that plan are in compliance with ERISA.

The Central States plan is administered jointly by trustees, half of whom are appointed by the International Brotherhood of Teamsters and half of whom are appointed by the employers whose employees are covered by the plan. Our investigation has been in progress for several months, and is being conducted in coordination with the Department of Justice.

Because this matter involves an ongoing investigation, I am sure that this committee shares our concern that discussion of this case must be undertaken in a manner which ensures both the continuing integrity and effectiveness of the investigation and respects the rights of those parties who are or may be the subject matter of the investigation or may be involved in current or future proceedings to ensure compliance with ERISA or other relevant Federal statutes.

I am quite aware that this hearing comes following publicity over my recent appearance and speech at the 21st convention of the International Brotherhood of Teamsters on June 14.

Mr. Chairman, I sincerely welcome this opportunity today not only to report on ERISA, but also to make a few observations about my appearance and remarks before that convention.

Naturally, I am disturbed at some of the reaction that has come in the wake of my appearance there. While in my opening remarks I may have been a little more enthusiastic than I should have been, I felt then, and I feel now, that my appearance there was proper.

In my opinion, much of that commentary has been simplistic and has overlooked the overall responsibilities of a Secretary of Labor, as well as the underlying facts relating to our ongoing investigation of the Central States Teamsters Pension Fund.

No Secretary of Labor should summarily dismiss an invitation from the largest trade union in America to address its delegates who, in the case of the Teamsters, assembled only once every 5 years.

This is an organization of some 2 million American workers—or 1 out of every 100 Americans.

More than 6,500 officers and business agents of the Teamsters negotiate 50,000 contracts for their members—20,000 in any given year. Those contracts affect a wide cross-section of workers.

Initially, it must be recognized that the Secretary of Labor not only has responsibility for the implementation of specific statutes like ERISA, and 133 other laws and executive orders, but also is responsible for insuring a favorable climate for labor-management relations in this country.

Over the past 8 years, as Assistant Secretary of Labor, as Director of the Federal Mediation and Conciliation Service, and as Secretary of Labor, I have been involved in labor relations situations with

hundreds of labor and management organizations. As you might imagine, many of them involved the Teamsters.

For example, I recently mediated the dispute between the Teamsters and various trucking associations that resulted in a National Master Freight contract agreement, following a strike that ended after only 3 days. That agreement covers several hundred thousands of workers whose jobs have a major impact on the health and stability of our economy.

Mr. Chairman, not once during any of those times did anyone criticize Bill Usery for associating with the Teamsters.

Mr. Chairman, at any one time, there are literally hundreds of investigations underway in the Labor Department, including the investigation now being conducted concerning the Central States Pension Fund.

The investigating task force is performing its duties in an uncompromising, professional manner under the day-to-day direction of Lawrence Lippe, Director of the Special Investigations Staff.

In connection with the investigation, I was advised 3 weeks before my appearance at the Teamsters Convention that it was necessary to serve administrative subpenas under the provisions of the ERISA on several Central States Fund trustees who are officers of the Teamsters, including Mr. Fitzsimmons.

I concurred in the issuance of those subpenas, and they were served the next week.

No mention was made to me of the subpenas by any teamster during my visit to their convention, nor was there any discussion of any aspect of the investigation with any official or member of the International Brotherhood of Teamsters.

Further, I did not undertake to comment on the Central States' investigation or on the role of any of the labor or management trustees who may be involved in that investigation.

In my view, the above actions represent a proper and complete discharge of my responsibilities as Secretary of Labor.

Mr. Chairman, the investigation of the Central States Pension Fund is being carried out effectively, professionally and judiciously.

Before considering my remarks, I wish to state to this committee and to the hundreds of thousands of working people who may be affected in some way by our efforts in this investigation that, from the outset, the Department of Labor has been committed to the proposition that the Central States investigation will be conducted fairly, effectively, and professionally so that we can discharge our obligation to determine whether the fund is being administered in compliance with ERISA.

That, in my opinion, is our obligation to the working people and their families who are the beneficiaries of ERISA's protections.

This investigation has, from its inception, had the full and unswerving support of the Department of Labor, and while I am Secretary of Labor, it will continue to enjoy that support.

Consequently, I personally reject any implication that my appearance at the Teamsters Convention or my professional dealings with officials of that organization could or would influence an impartial, fair and professional investigation by the Department of Labor.

I would now, Mr. Chairman, like to ask James D. Hutchinson, the administrator of pension and welfare benefit programs at the Department of Labor, to provide the committee with an overview of our activities in the Central States matter. As administrator, Mr. Hutchinson directs the Office of Employee Benefits Security—if I might pause, Mr. Chairman, to say I have the utmost confidence in his ability and integrity to carry out this investigation.

It is a pleasure to have him to work with.

The CHAIRMAN. I wonder if you would pause first, Mr. Hutchinson?

I think it will be advisable, Mr. Secretary, since you raised your Las Vegas appearance at the Teamsters Convention, and that was in the conclusion of your statement, I believe it would be wise if that subject were dealt with before we go to the details of your work and review of the activities of the Fund in relation to the ERISA law.

It might serve to clear the air here if we could just be certain that the fact of your conclusions as well as your statement, that the investigation is being conducted fairly, effectively, and professionally. The Las Vegas appearance and the attendant publicity was immense, as you know, and conclusions were drawn or suggestions were made that maybe the investigation might not be as vigorous as you say it is because of the report of your appearance.

We have a transcript of proceedings out there, and Senator Javits' name was mentioned.

I think it appropriate, if Senator Javits would like to deal with this subject.

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

Mr. Secretary, as you know, we have to be very careful, not only of evil, but of the appearance of evil.

Secretary USERY. I appreciate that.

Senator JAVITS. Very, very serious implications were drawn as to your motivation and your fidelity of your purpose.

Now, no man can swear for anybody else. He is his own best witness. I would like to read to you the statements from a transcript of your remarks at Las Vegas and have such explanation, comment or additional information as you have given us, for example, in your own statement about authorizing the issuance of subpenas, which bears upon your own fidelity of purpose and your own motivation and your own good faith in being the Secretary of the Department, which is engaged cooperatively with the Department of Justice and the IRS in this investigation.

The transcript reads as follows:

"Let me assure you that even though I do not have a Teamsters' card, I belong to this club because I believe in it."

Another quote:

> I was delighted when my friend and your President, Frank Fitzsimmons, asked me to take part in the 21st Convention of the International Brotherhood of Teamsters. I have had several opportunities over the years to work closely with Fitz and a number of other leaders of Teamsters. Many over a period of time have become close personal friends. I can tell you I have enjoyed those experiences. I have enjoyed them because I found when it comes to representing their members, Teamsters' leaders are always prepared and professional.

Can I have your comment?

Secretary USERY. The first one about the club was in the context of four, I believe three or four stories I told prior to the convention.

One of them was about a club joke that I must have told at least 50 times, which usually gets a laugh.

I have been a part of collective bargaining, and free collective bargaining, Senator, all my life. I believe in free collective bargaining. I do not belong to the Teamsters. I never belonged to the Teamsters, never been a part of the Teamsters.

But when it comes to collective bargaining and the rights of people to organize and to join together and to foster their interest, I believe in it.

I think our national policy is correct in that. I subscribe to it.

A further point on "my friend" as relates to Mr. Fitzsimmons. I have known Mr. Fitzsimmons approximately 9 years. I have never visited his home. I have never had any social dealings with Mr. Fitzsimmons, but I have had a lot of professional dealings with Mr. Fitzsimmons.

I see Mr. Fitzsimmons as a professional friend, as you would have any place. I have called on him on many times about different things we need to do, and he has responded in many cases. We have disagreed on many occasions about certain things, but I was truly trying to make only a gesture, as to almost any proper president I spoke to, "my friend." I would not want to say "my enemy"—I guess I should not have said "my friend" and just left it blank, looking back.

I, too, Senator, have been disturbed because I do not want anything to interfere with the obligations, duties, and responsibilities we have to carry out under the law or investigation.

Second, my personal experience I am speaking of, and again I have dealt with the Teamsters trying to set up food industry committees, the Commission for Industrial Peace, and I have worked to try to set project agreements together, and I have been—I have worked in a strike the mayor of New York got me involved in, concerning UPS. I spent a lot of time with Fitz, and got him to take some actions with the local there.

I have been involved with the Metro construction strike, that was very lengthy here in this city, to work it out.

I have been involved in the master agreement when we had over 100,000 independent truckers on strike. That was serious, and had a serious effect upon this Nation.

I met with Mr. Fitzsimmons and other leaders of the Teamsters to get them to work to keep the Teamsters living up to their contract and not go on strike as a result of the independent truckers being on strike.

My professional experience with him has been relatively good.

As I say, I have had a professional relationship with Mr. Fitzsimmons, as well as some of the other members—some of the individuals in the Teamsters I have known for as long as 30 years. But in no way does that prevent me from carrying out my activity and my job.

When I was Assistant Secretary of Labor, Senator, I not only had investigative responsibilities, but I was also—we had people in an antiorganized crime strike force. There have been many, many times we have had investigations, not only with Teamsters, but many other labor organizations in this country. I feel that not only do I know in my own self that I can, I have and will continue to carry out the laws of this land to the best of my ability, fair and equitable as I can. It

is not any social relationship. I have never even played golf with Mr. Fitzsimmons.

I have never visited his home. He has never visited mine. I do not even know where he lives.

I probably have never had over half a dozen dinners with Mr. Fitzsimmons in the evening, and even that was in a public restaurant, and a lot of times at lunch when there were negotiations.

When I have asked him questions, he has responded to me, and my dealings are with him from that point of view.

I see the Central States Pension Fund—we have 278, I believe, pension funds in the Teamsters, and we have one under investigation. But consistently over the years that I have known, with as many locals of Teamsters and other organizations, there have been investigations going on.

I say again it is unfortunate, and I certainly regret that there has been all the publicity, not over my own personal self, but in any way that would interfere with carrying out the professional job that we do enforcing the laws that we have.

Senator JAVITS. Mr. Usery, you may find yourself in a position of prosecutor because the Department of Labor has the authority under the ERISA statute to go into court, to seek civil remedies or a trusteeship for this Central States Fund, displacing the existing trustees. Or you may find it necessary to refer criminal cases to the Department of Justice for action.

It is always a very delicate question for a judge or prosecutor—I have been one myself as attorney general of the State of New York. What do you do about somebody you know or a friend, as it is popularly defined? Have you tested your own conscience?

We have heard your explanation of your speech. Do you feel that you should continue in your job exercising its authority respecting this particular investigation, or should you step aside and disqualify yourself and let someone else handle the direction of this particular investigation?

Secretary USERY. No, sir, I do not feel that I should step aside. In fact, I have an obligation and responsibility to fulfill, and I will fulfill it.

As I say, Senator, maybe in a closed hearing I could tell you, but there have been other times we have had to pursue cases in this organization as others pursue, and many investigations. That presents no problem with me whatsoever.

I say again, as Secretary of Labor, trying to blend all the things we have to do together as a department, certainly I can do my job and do it well. I would never at any time consider disqualifying myself because my first obligation is to the office which I hold and my obligation that I took to enforce fairly the laws of the Department of Labor.

I intend to do that. I intend to do it as fairly as I possibly can. I have been 8 years trying to get respect, gain friends, you might say, to get the job done that I have to do, and in no way when somebody willfully, or however it might come about, violates the law, then they have to suffer with that. It presents no problem whatsoever to me.

Senator JAVITS. Mr. Secretary, I would like you to know, in asking this question, I recognize my duty just as you recognize yours, and it is my duty to ask this question and to listen to the answer and to decide

if I am convinced by your answer. I think that is the duty of all of us in the Congress and all the people in the country.

I hope it will be very clear that this represents no denigration or disrespect to you. If we had asked such questions of Presidents of the United States before without being bashful about it, our country might be a lot better off than it is today with respect to the feeling of people about the morality of its public officials. So I thank you for your frank answer.

One last thing. You were essentially known as, and you are identified with mediation in past years, and indeed probably you are America's No. 1 labor mediator. You have been very successful and have an enviable reputation in that field.

As one individual, I had the feeling that it took an incident like this to shake you up, too, with respect to what it means to be a mediator and what it means to be Secretary of Labor.

The prosecution of this particular inquiry is of the utmost seriousness, the Secretary knows that as well as I do, and critically important to the workers of this country and to the operations of the Government of the United States. I would hope that you will bear this in mind in whatever we may do, and whatever our opinion may be about continuance of this investigation. You hold a balanced responsibility, and I must say it was very unfortunate that you were not conscious of that when you made the appearance and when you made these statements.

I am very hopeful that it will not only have done the country good to have aired this proposition publicly, but will also do the Secretary good in the further carrying out of very high and very important responsibilities.

Thank you, Mr. Chairman.

The CHAIRMAN. You raised a point here——

Senator JAVITS. You can answer, of course. I did not mean to shut you off.

Secretary USERY. I want to assure you again, Senator, that I appreciate what you said about mediation, and if you will pardon me, I would like to think doing an effective job as Secretary of Labor. But the point I want to make is, even when I was Assistant Secretary of Labor, I enforced Landrum-Griffin during a very difficult period of time. And as I said, a large group of people who were on the anticrime strike force at that time in a lot of areas.

I am convinced I understand my full responsibility, and I am going to try to do it as fairly, as honestly as I possibly can.

I do not believe in condemning people or trying to indict people for something until the evidence is there to do it or the proper courts.

I have been trying to create goodwill and understanding between labor and management and everyone concerned in this Nation. I do appreciate your remarks, Senator, certainly, but I feel that not only have I in the past, but will continue in the future, to be a good steward and try to be a good public servant.

This Nation is a great nation. It has afforded me great opportunities and a high office, and I am a law-abiding person, believe in the laws of the land, and I think we have to carry them out fairly and equitably. That is what I am trying to do and will continue to try to do that under, sometimes, a very difficult circumstance.

Senator JAVITS. Mr. Usery, no other man can fail to be impressed by the seriousness and the candor with which you have spoken. This itself is very, very important, and my own feeling would be to let the matter stay here, just where it is. You will have plenty of people looking over your shoulder, there is no question about that, and I am glad to have given you the opportunity to express the depth of your feelings.

The CHAIRMAN. One of the problems, as I see it, Mr. Secretary, is this success that you have had in various relationships in the labor-management equation, as Senator Javits said, a record of excellence in coming to constructive results in mediation, and that has followed you into your present position in the Cabinet as Secretary of Labor, and you are still called to the big ones, are you not?

Secretary USERY. Yes, sir, that is true.

The CHAIRMAN. In mediation, and I believe it was most recently in the Teamsters' last contract; am I right?

Secretary USERY. That is correct, Senator, yes, sir.

The CHAIRMAN. Perhaps the variety of responsibilities that you carry present certain problems. Certainly as mediator, an appearance at the Teamsters convention would not have presented a problem, you would not have been there, I assume. You were there as Secretary of Labor.

Secretary USERY. Mr. Chairman, if I might say, though, I appreciate your remarks, too, out of the 150 or 200 national and international unions, a Secretary of Labor could hardly ever appear at a convention where there was not either a dissident group or we did not have investigations going on.

We have continuing investigations. In many, many organizations, fine organizations with fine people, things have gone wrong.

We are constantly moving in this area to correct many of these. It happens, as I say, and I agree unfortunately in light of this one, the publicity surrounded prior to and there, certainly looking back, I would certainly have weighed my words differently, I would still—I keep asking myself—I know I would have gone to the convention, the Teamsters convention. I probably would not have said some of the things I said that could have been misconstrued or misinterpreted.

I know what my intent was, but I appreciate that.

But there is so much. Not only negotiations between labor organizations, but trying overall to get people to recognize the total responsibilities.

One of the things in my speech that got lost was talking about fuel and productivity, that I am concerned about, and jobs. How do we get jobs in the private sector? How do we work to accomplish these things?

So all I am saying, Mr. Chairman, is that the responsibilities are very broad. I recognize those. I regret that the matter came up the way it did.

The CHAIRMAN. Well, in your history of involvement in labor-management affairs, I do not know, I cannot think of anybody that has enjoyed the degree of confidence you enjoy with the American people, and this whole episode and incident certainly shook—tended to shake—some of that confidence.

Your appearance here is part of our hope that your effectiveness will not be diminished because of that, and we want to know just how you are proceeding.

I think we had better now proceed with Mr. Hutchinson——

Senator DURKIN. Mr. Chairman, if I may, after Senator Pell, I would like to ask a couple of questions.

The CHAIRMAN. Could we limit it to this area, then we will be coming back?

Senator DURKIN. Sure.

The CHAIRMAN. On this matter that we have just been discussing, you have questions?

Senator DURKIN. Yes.

Senator PELL. I think it might be helpful, Mr. Chairman, to put the whole text of the speech in the record.

Senator JAVITS. Yes.

I ask unanimous consent that the whole transcript be entered in the record.

The CHAIRMAN. Without objection.

Senator JAVITS. I have a transcript of the press conference which followed.

Unfortunately, no record was made of the questions. We have the answers.

I will put the answers in the record, but I will make a request if any of the news media have a transcript, we would welcome that, but we have not been able to find a transcript of the questions.

[The material referred to follows:]

FIRST DAY—MORNING SESSION

WILLIAM J. USERY, JR.

Secretary of Labor

President Fitzsimmons, Secretary-Treasurer Schoessling, distinguished officers of this great organization, Mayor Daley, distinguished guests:

It is an honor and a privilege for me to stand at this podium to address you this morning. Fitz said that he would call me Bill sometimes, sometimes Willy, sometimes Mr. Secretary. He also says

"Willy-boy" sometimes. He also says "Billy-Boy." And whenever he calls for me I can tell how he feels depending on what he calls me, you understand.

I would say, Fitz, in being introduced as the 15th Secretary of the United States of America, is a great honor, a great challenge, a wonderful opportunity in very difficult times, very complex problems. But I do feel that I have a true feeling of the working men and women and their problems, and I stand here today to assure you I will do my very best as long as it is my privilege to serve in this high offie of what I like to refer to as mine and your government in the greatest country in all the world, even with our problems.

Now, obviously I would say — and this would be the only reference I would make that might indicate anything this morning — for 63 years we have had a United States Department of Labor. It is 63 years old. The first 55 years we had ten Secretaries of Labor. The last sevens years we have had five Secretaries of Labor, and the last year we've had three, but obviously I hope it stops, you understand.

I would like to tell you a story of being introduced as the Secretary of Labor about three weeks ago. I was invited to a reception on a Sunday afternoon in Washington and I had on a Saturday told the driver who drives for me that I would not need the car on Sunday, that I was not going any place. Then I got a call that reminded me of this reception so I decided to dress and go to the reception, and I called for a cab.

I went downstairs and got in the cab and it was obvious that this man had been doing something for many years of his life, because he was on up in years. He looked to be 70 years old, or thereabouts. So I started a conversation with him because it is always good to have a conversation with a cab driver, as I used to do with a barber before I started going to a hair dresser.

(Laughter.)

As I got into discussion with the cab driver I said, "How many years have you been driving a cab?" He said "Forty-seven years." I said, "Have you been driving a cab all those years in

Washington?" He said yes, he had been driving the cab all those years in Washington.

So I said, "I guess you have seen great changes in Washington." He said yes, he had seen a lot of changes in Washington, and he went on telling me a lot of these changes. I said, "I guess you have met a lot of interesting people driving a cab in Washington." He said yes, he had met a lot of interesting people.

I said, "Who is the most interesting person you have ever met?" He thought a few minutes and he said, "Well, during World War II, when the war was on in Europe, the Queen of Holland was here in Washington and I had the privilege of driving for her. I think she was the most influential person that I have ever driven for." So I said, "I guess you have seen a lot of characters and different types of people here in Washington?" He said yes, and about this time we were getting to the Quality Court where I was going to the reception.

I said, "How much is the tab?" He said, "$1.55." I said, "Well, how would $2.25 and a fountain pen be from the Secretary of Labor?" He said, "That is another problem here in Washington. There are always people impersonating other people."

(Laughter.)

So whether I am impersonating or not, it is a great honor.

If I might tell you one other story, someone asked me this morning, "Do you belong to this club?" There are all kinds of clubs around here. I said, "Well, I don't know," which reminded me of a story.

It seems this golfer finished playing 18 holes of golf and he had promised his wife that he would take her to dinner that evening, and he was in a hurry. When he finished the 18th green he went running into the clubhouse to dress quickly and get home to his wife. After he got in and he stripped off his clothes and he was taking a shower and he was soaping down well he began to hear voices and they were women's voices.

He looked around and said, "Lo and behold, I have got into the women's shower." He said, "Now, all I have is a towel. I can do either one of two things. I can drape it around my body

and run out or I can drape it over my head and run out." As he thought a few minutes he decided to drape it over his head. He draped it over his head and started running out.

There were three women there. One of them said, "He's not my husband." The second one said, "He is sure not my husband." The third one said, "I don't even believe he belongs to this damn club."

(Laughter.)

Let me assure you that even though I don't have a Teamsters Card, I belong to this club because I believe in it.

I will tell you one other story and get on with what I have to say and let you go to lunch. It seems that this truck driver was driving this big rig and pulled his truck up in front of this diner to have some breakfast. He went in and he ordered his breakfast and about the time he got in there were these three big guys with leather jackets who came riding up on motorcycles outside.

The truck driver was just ready to sit down and eat his breakfast and just as he went to take his coffee one of these guys walked over and grabbed his coffee and said, "I will take that coffee." The truck driver didn't say anything. About that time the waitress brought his grapefruit and he started to eat it and the second fellow came over and said, "I will take that grapefruit." So he grabbed it. He didn't say anything. About that time she brought his breakfast and set it down and the third fellow came over and grabbed his breakfast.

The truck driver just got up as calmly as one could and walked over to the cashier and said he would like to pay his bill. So he left.

In a few minutes these motorcycle guys went over to the cashier and one of them said, "That truck driver sure wasn't much of a man, was he?" She said, "Well, I don't know whether he was much of a man or not, but I know that man wasn't much of a truck driver. He ran over three motorcycles when he left."

(Laughter.)

As I say, it is an honor to be with you this morning. I bring you greetings from Washington. I am never sure who wants them, but I bring them anyway, you understand.

(Laughter.)

Washington is truly a great city, though, notwithstanding all the things you hear and read. It is one of the greatest cities in all the world, certainly with a great government because it is a government of the American people, as Fitz said a while ago.

I was delighted when my friend and your President, Frank Fitzsimmons, asked me to take part in the 21st Convention of the International Brotherhood of Teamsters.

I've had several opportunities over the years to work closely with Fitz and a number of other leaders of Teamsters. Many over a period of time have become close personal friends.

And I can tell you that I've enjoyed those experiences. I've enjoyed them because I have found that when it comes to representing their members, Teamsters leaders are always prepared and professional.

(Applause.)

It's a proper coincidence, I believe, that your 21st Convention is being held during our Bicentennial year—and just a few weeks before we celebrate Independence Day.

It is proper because your forebearers—those rugged individualis who hooked up a team of horses to a wagon in colonial times - made commerce in America possible.

They, too, came to recognize the need for unity.

And from the humble beginning of the Team Drivers International Union of 1899 --with its 18 locals and 1,200 drivers—you have grown to an organization of two-million members in hundreds of occupations, whose lives are made better through the conditions negotiated in 40,000 contracts.

Those early teamsters, like the teamsters of today, made a mighty contribution to building and securing a system of economic liberty through private enterprise. Fitz, I don't know if you planned it this way, but your convention is opening on the same day that we pay honor to the symbol of our principle of

freedom — the American flag.

It was on June 14, 1777, less than a year after we declared our independence, that the Continental Congress chose the design for a new flag — a design that they believed would portray the unity of the 13 struggling colonies. The delegates voted "that the flag of the 13 United States be 13 stripes, alternate red and white; that the Union be 13 stars, white in a blue field representing a new constellation."

Well, that constellation has grown and become closed-knit with the addition of 37 stars.

And today it is looked to from every part of the world as the symbol of a strong and dynamic republic committed to liberty and justice to all of its people.

There are a hundred Americans today for every one who lived in the 13 colonies 200 years ago.

And our growth — materially, spiritually and in numbers — has not come without difficulty.

The nation has been tested many times — militarily, economically, politically and socially. Each time we have met the challenge, and each time we have emerged stronger. You can be proud that your members have played an important part in the building of America.

For the past two years, we have been fighting to overcome the worst recession to hit our nation since the Great Depression of the 30's.

In 1974, the words "double-digit" had become synonymous with "double-trouble."

We had double-digit inflation — double-digit interest rates — and worst of all, nearly double-digit unemployment.

But, in our tradition, we are fighting back.

Inflation, which two years ago was running at a rate of 14 percent a year, fell to a three percent rate in the first four months of this year.

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The prime rate of interest -- so important in the purchase of the equipment your members operate — has dropped from 12 percent to seven percent.

Unemployment, which peaked just shy of the nine percent mark a year ago, has steadily dropped back to a level of 7.3 percent. Too high!

And today more Americans — 87,700 of us — and as I say this is more than have ever worked in the history of our nation — that's an increase of two-and-a-half million jobs in the last six months — and two-and-a-half million paychecks that will be spent on goods that we must transport and use.

While production limped along during those dreary times, it has bounced back sharply in 1976. Our Gross National Product — the measure of the goods and services that we produce — rose at a rate of eight-and-a-half percent in the first three months of this year.

That figure might mean more if we translate it into dollars. If the GNP maintains that level of expansion for the full year, 200 billion dollars will be added to our economy.

Now there are a number of respected voices in the land saying: "That's not good enough."

And I stand here and say I agree that we have more to do before the recovery can be considered a full-blown success and before any of us can be fully satisfied.

But we have developed a healthy head of steam, and we are headed in the right direction.

There are still some nagging problems that must be resolved.

Fitz, you addressed one of them in your column in this month's issue of the "International Teamster." I'm referring to the delicate position we will continue to find ourselves in so long as we are dependent on foreign sources for a major supply of our oil and fuel.

We were stung hard by the Arab oil boycott of 1973 and 1974. In fact, many of our problems can be traced to that boy-

cott. That boycott was a strong contributor to the inflation rate that sapped our economy.

We imported 32 percent of our petroleum supply from foreign sources in 1973. Today we are importing 40 percent, according to the Federal Energy Administration.

The FEA tells us that we can expect that trend to continue for the next two years.

Some of the pressures will be relieved at that time.

Relief will come with the flow of petroleum from Alaska, where your members are working in harsh climates around the clock to get that job done.

(Applause)

Additional relief is expected as we take greater advantage of the untapped oil supplies that lie under the Outer Continental Shelf.

The new sources of energy fuels — combined with an effective conservation program — will help to dampen the potential for another fuel crisis until we have fully developed and placed in production other methods of securing petroleum — from coal and shale, for example.

The uncertainty of supply, as well as the rising cost of fuel gives us an added incentive for getting the greatest possible benefit out of every gallon that we consume.

This leads to another area where improvement can bring us substantial rewards — the area of increased productivity.

In the trucking industry, this translates into securing more efficient equipment, and using it more effectively.

If we should fail in our objectives in these two areas — well, it might be that we'll find ourselves back hitching up a team of horses to a wagon when there is a load to be hauled.

I have every confidence that we will pass the tests that have come our way because of support of such great organizations such as yours.

That confidence is also greater because of my experience with your negotiating team during this year's negotiations of the master freight agreement in Chicago.

Your president, and the entire union negotiating committee showed from the beginning that they were determined to bring to the members the finest contract possible.

Through the days and weeks of tough bargaining, I could sense that while your leadership was seeking the very best for its members, they were also keenly aware of their obligation to the national interest.

I was in constant touch with the President during those days of decision, and I was able to relay my convictions that both parties were displaying an attitude of reason and responsible bargaining.

The President held to his strong trust in the free collective bargaining process.

He rejected the strong pressure that was applied by those who wanted the government to interfere through a Taft-Hartley injunction.

And in the end my faith, as well as his, was justified by an agreement that received overwhelming approval of your members.

(Applause)

I have no doubt there is no doubt in my mind even with all the letters I got that the national interest is best served by letting the collective bargaining process, the free process in a free democracy work — by letting the parties dig out their own solutions to their own problems because they had to work with them.

It is my sincere hope that this year's bargaining results have established the framework for the development of many years of labor-management peace and understanding between the Teamsters and the trucking industry.

I know that your president, or I feel that he shares in that so that we might build a better relationship.

I know because I have had the opportunity to work with him on a number of programs over the years — including those of the Joint Labor-Management Committee for the Retail Food Industry, which Fitz was so instrumental in creating. Nothing is so important to us today than food for all Americans.

His strong belief that labor and management can both profit by working together on problems of mutual concern was further acknowledged two weeks ago when President Ford appointed him a director of the new National Center for Productivity and Quality of Working Life.

(Applause)

I know that this contribution to this committee will help it to succeed in its goal, which is to encourage labor-management cooperation to enhance productivity and a better quality of life for all working men and women of America.

To the degree that the Center succeeds, Americans, you and I, will have a more bountiful life.

Bringing a better life to all Americans is what it's all about. The International Brotherhood of Teamsters and, yes, the United States Department of Labor, which I have the opportunity to head, share in that goal.

There is no higher calling — and no work is more rewarding.

The second sentence in the Act that established the Department of Labor 63 years ago laid down for us a mission that is as valid today as it was when it was written. That sentence says:

"The purpose of the Department of Labor shall be to foster, promote, and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment."

That's why we're here and that's what it's all about for all of us.

I am confident that your actions this week will add to the strength of all of us who are dedicated to fulfilling that mission — to helping the American worker live better and have a better quality of life.

(Applause)

As I said earlier, it is fitting that your convention take place at this particular time in our Nation's history.

Just 20 days from today, Americans will join together in paying tribute to the Bravery of those who 200 years ago issued our Declaration of Independence.

At that time, 56 men mutually pledged to each other "our lives, our fortunes and our sacred honor" in their determination to create a society of liberty through laws.

They held certain truths to be self-evident.

All men are created equal, they said.

And they declared that all men are endowed by their creator with certain unalienable rights — the right to life, to liberty, and to the pursuit of happiness.

They pledged themselves to the proposition that those rights should be secured through a government that receives its power from the consent of the governed.

Nearly all of those 56 men did indeed lose their fortunes. Most of them lost their lives.

But their unblemished honor stands today as our heritage.

So in this Bicentennial year, let us pledge to devote our lives to protecting this cherished heritage — and making it stronger so that future generations will be able to look back and say that this was a golden era in the movement toward freedom for all people.

Let us pay honor to our tradition of freedom that is founded on our Declaration of Independence . . . that is protected by our constitution and the Bill of Rights . . . and that is protected by those who continue to insist that the ideals expressed in these documents apply to all people, of all races, of all creeds, and both sexes.

No other society in the entire history of the world has been able to enjoy and protect for two centuries the liberty that is ours.

"We Americans alone have been able to create, develop, defend and enhance a democratic system that for 200 years has guaranteed that every individual:

- has the right to assemble — or not assemble.

- has the right to speak freely — or keep his mouth shut.

- has the right to believe in God as he chooses — or to not believe at all.

- has the right to publish or broadcast without censorship, has the right to meet as we are meeting today.

- has the right — the legal right — to life, liberty and the pursuit of happiness.

So in closing, our obligation is to see to it that the torch of liberty that has been passed to us reaches future generations with a flame that still burns bright — a flame that will light the way for others, that our children and their children may have an even better way of life. Thank you very much.

DEPARTMENT OF LABOR

Press Conference with

The Honorable W.J. Usery

Las Vegas, Nevada

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PROCEEDINGS

MR. : Okay.

MR. : All right. Rolling.

MR. : Rolling.

MR. USERY : Before they start rolling the cameras we were going to be in Las Vegas, and when we heard you were here, we decided to make ourself available. I guess that's about all the _____ we can do. I don't have any prepared statement to make, so any thoughts or any questions you might have.

MR. : (Inaudible)

MR. USERY: I think that you can look at what the office's report has said, and Mr. Fitzsimmons' statement yesterday, that he had not invited any political candidates or political people here. I'm here as Secretary of Labor, and the points I've made may be the same points the President has made. I think it's a responsibility of mine, as Secretary of Labor, to try to keep working people advised as to the trends and how see employment and the other things that we've cited this morning, so I'm not here in any more political forum than I would go to any meeting as far as the Secretary of Labor is concerned.

MS. : (Inaudible)

MR. USERY: Wall, I (Unintelligible). I think you have the responsibility and the obligation, when you are invit

to certainly organizations like the Teamsters or other labor organizations, to make an appearance on behalf of the office which I hold. We are running a professional investigation and the Central States Pension Fund. It is being run that way and I hope it will continue to run that way. And in no way will it compromise anything whatsoever that we have to do.

I think that most of you know we have 134 laws and executive orders to administer, and to carry out, and we're going to carry them out as impartially and as professionally as one possibly can.

MR. : (Inaudible)

MR. USERY: Well, certainly I would not make reference to what they would say in their report. If they have any complaints, they can certainly make them with the proper officials. And there are complaints, and the complaints are investigated, as I said earlier, and will be investigated professionally, in the way that it should be investigated.

MR. : Mr. Secretary, could you give us the (Inaudible).

MR. USERY: I think, Harry, the only thing that I could say is that on a weekly basis, I'm going to report on how the investigation is proceeding. And it's proceeding in a normal way that professional people who have been at the job for some time there expect it to be. It will be some time ther before the investigation is completed. I think that's as much

as I can say about it at this particular time.

MR. : (Inaudible)

MR. USERY: If there is, Harry. But at the present time, I'm not sure, there are about 14 people I believe.

MR. : (Inaudible)

MR. USERY: Well, there is, at the present time, in the investigation. It is being, shortly, between the Labor Department and the Justice Department. And I think that this generally known by most everyone here.

MR. : (Inaudible)

MR. USERY: Well, certainly, in an organization as larger as the Teamsters, with 40,000 contracts, there are alway people who are going to dissent, disagree, as we have on our national scene today people disagreeing, they think we're not doing things correctly. I truthfully can say, in my experience with the Teamsters and their negotiations, they negotiate very hard, and I think do an outstanding job in representing their members. Now again, I'm not privy to all the many negotiations that go on each day in the Teamsters. I was speaking from my own experiences with them, and more particularly, recently, when we went through the national negotiations, it was a very difficult negotiations, and I know the Teamsters bargained very hard and very long, night and day, to try to achieve the very best agreement they could achieve. And every organization I know of has some dissidents, and people who disagree, who want

more or who don't like what was agreed to, and I don't think that's too uncommon, in our country this day.

MR. : (Inaudible)

MR. USERY: I was not doing either. I was not inten to do either. I say if they have some complaints, there are proper officials to go make those complaints. Certainly I would not speak to any complaint, nor would we pick up any complaint that they might have in some document they have written and investigate it. That's not the way to go about it in a professional investigation. If there are complaints, I'm sure they will or have already made them. I don't know.

MR. : (Inaudible)

MR. USERY: Oh, absolutely not. Things are written about people every day. All kinds of statements being made, and you wouldn't go around and just pick up any document and start investigating, based on that document. I feel very strongly about trying to administer laws and enforce the laws that we have in a very professional way, trying to protect both the rights of those that's making complaints, and at the same time, try to protect the rights of those that's being accused. Until there is sufficient evidence or something is found that action should be taken. I'm neither trying to agree or disagree with _____. I have read a lot of their material. I'm not even sure that I have read the particular piece of material that he spoke to here. But certainly w

would not be moving far on something that's just been written by someone.

MR. : (Inaudible)

MR. USERY: No, I do not know, Voss, why they ordere 50 copies. It may be that for some reason they wanted it as a part of an ongoing investigation they already had. I do not know.

MR. : (Inaudible)

MR. USERY: They may have already been looking into. But I would not know.

MR. : (Inaudible)

MR. USERY: I don't think so. There are many investigations going on in many organizations, not only union organizations, but in some cases employee organizations, daily. The investigations in the Teamsters have been highlighted recently, but certainly you would not boycott or stay away or not attend, as Secretary of Labor, a convention of the size and magnitude and the impact the Teamsters have on America. And out of the two million people you would not -- certainly, these two million people are from all walks of life and are outstandi individuals. And if there is some wrongdoing, I'm sure that in due process, it will be found out and it will be handled in a professional manner. That's all I'm trying to say.

MR. : (Inaudible)

MR. USERY: No, we do not. We would cooperate if he

asked us for any information or anything that we would be supposed to supply to him. But we're no part of his investigations.

MR. : (Inaudible)

MR. USERY: That, as you know, is a separate investigation, separate from the investigation that we're talking about of the Central States Pension Fund. No, I would say the same thing that is being investigated, in the same fashion as the one we just spoke to here. There is an investigation going on there to my knowledge and my understanding, and it's proceeding in the same fashion.

MR. : (Inaudible)

MR. USERY: No, I did not ask the White House whether I should accept this invitation. Both the President and the Vice-President knew that I was going to be here, but I did not ask them. I don't -- I've been in government eight years, now and I haven't gone around asking where I should go or what -- where I should speak.

MR. : (Inaudible)

MR. USERY: I think the Act is certainly strong enough to safeguard the rights of people. If you're asking me from a total picture, (unintelligible) from the total collective bargaining process, as you are probably aware, I have been advocating some changes in the Act. I think it is time we take a look at the Act, as it's now applied overall, not just to

investigations. But when it comes to protect the rights of individuals, I think it's an adequate law to do just that. think it's intended to do that, and I would defend the proce as carried out, because I think it's professionally carried out.

MR. : (Inaudible)

MR. USERY: Well, I think that's one man's opinion versus another man's opinion. You've heard me say I'm sure before, I believe very strongly in the free press and the rig of people to write and say what they think. That's what America is all about. So I think it would just be me speculat as to whether it's been fair or unfair to Mr. Fitzsimmons. Wouldn't be for me to be saying that. I was concerned, I gues from the point of the whole week that was in collective bargai There was a lot of things being written. Of course, at that time, I was trying to foster and promote a settlement. Hope- fully a reasonable settlement for America. But it would be unwise and unfair for me to comment as to whether they've been fair or unfair.

MR. : (Inaudible)

MR. USERY: Oh, Harry, that's not true at all. First of all, in America, a person's not guilty until their -- they're proven guilty. As far as I know, in this case that we're talkin about, nobody's even been indicted. And I think it would be unwise for me to say. I am in no way prejudiced, myself. We ar

running a professional investigation. When the investigatio finished, I can assure you that if the investigation warrants proceeding further, we will proceed further. But for me to t to prejudge or say what's there, I overall feel that the Teamsters have, over the years, represented their people and represented them well. I understand that there may be people or incidents that it's not correct or right, and maybe some t illegal. But that doesn't keep me from saying that overall this organization has been doing an outstanding job, or two million people wouldn't be belonging to it if that was not true, I think. So all I'm saying is we will professionally carry out our work. And as soon as the investigation is finished, we will proceed in whatever manner that investigatio calls for to proceed. There are a lot of people watching and observing our actions, and I can assure you again that we are struggling to be as professional as we know how, to carry out the investigation.

MR. : (Inaudible)

MR. USERY: Oh, that would be definitely unwise if something was said here. That would -- I would not comment at all, and it would be unwise if I even thought that until all th facts was in. So certainly I could not say or do anything regarding what we believe to be evidence up until this time. I would be unwise for me to even comment, and I wouldn't commen

MR. : (Inaudible)

MR. USERY: I do not believe that to be an accurate statement. There has been some changes of some people, and that's not too uncommon in an investigation, where people are we have a number of people who've been with this investigatic from its inception, and who are both following it, working on it, and monitoring it. I repeat again, I don't know of any investigation I've seen that we are so concerned about handli it professionally and in the way that it should be carried ou as this investigation.

MR. : (Inaudible)

MR. USERY: I would not comment on what it entailed looking into. It entails looking into the things that the la would cause us to be concerned about, and wherever that leads us, certainly we would be looking into that. But whether I would not comment on whether it would be loans to Las Vegas or not loans to Las Vegas, it would be unwise for me to comment at this time.

MR. : Thank you.

MR. USERY: Thank you.

(End of proceedings as recorded.)

Senator PELL. Thank you, Mr. Chairman.

I think we all know the integrity and ability of Secretary Usery. We have worked with him in this House. He knows it and we know.

The problem here is whether his appearance at Las Vegas gave to the American people a different impression than the one we have.

The difference, as the Chairman points out in this hearing, trying to put the Secretary's good work in context, and also quite frankly to express disapproval of the ebullience which you expressed yourself there in support of Mr. Fitzsimmons at the time that he was being investigated. And I think you have come to agree with us that the appearance was fine, but the added enthusiasm may have given the wrong impression to the American people on the objectivity to which the Department of Labor would conduct the investigation and your support to conduct the investigation.

I think we recognize that, and I think you will do a fine job, and I have complete personal confidence in you, sir.

The CHAIRMAN. Senator Durkin.

Senator DURKIN. Thank you, Mr. Chairman.

Mr. Secretary, I don't think anyone is questioning your association with teamsters or longshoremen or bricklayers, or what have you. That is your job.

I am a little concerned, however, on page 10 of your statement you say that you concurred with the issuance of the subpenas and that you had not discussed the investigation before going to Las Vegas.

I think that you have indicated in your statement that you did not commit any crime while you were in Las Vegas. I think you will have to admit, however, that your trip to Las Vegas showed poor judgment and poor taste.

I think the American public wants to know, wants to be sure, that there is no coverup surrounding any investigation of the Teamsters. The people of this country have had enough unimpartial investigations, incompleted investigations and coverups of all sorts.

I want to know the answers to two questions.

First: Were you out there at the urging of the White House and is this another effort by the White House to corral the Teamsters as they did in 1972?

Second: How can a citizen in New Hampshire or anywhere else in the country have any confidence in your investigation of the Teamsters when you act as a cheerleader and advance man for Frank Fitzsimmons' reelection efforts?

Secretary USERY. First, Senator, I do not know—well, I have not committed any crime. That is No. 1.

Senator DURKIN. I am pleased to hear it.

Secretary USERY. No. 2, I have a responsibility as Secretary of Labor for organizations that represent 2 million Americans. I am not about to indict all of those 2 million Americans, you understand, that are in there.

There are policemen, there are firemen, there is every cross-section of people in America that belong to the Teamsters organization. I resent, myself, the cartoon of my being put in a pocket of Mr. Fitzsimmons—I am not in his pocket, your pocket, or anybody else's pocket. I am in the American people's pocket.

I have tried very hard to convey that.

Now, I feel bad myself that it might detract from the good that you can try to do. I detest further that there is a coverup or abuse of power. It seems like a public official trying to do a job cannot do a good job, because he is either covering up or he is abusing power.

Senator, I am trying my best to fulfill and carry out the laws that I am charged with the responsibility to do, my oath of office, and my obligation to the American people.

I did not go out there for political purposes.

In my years that I have been in Government, I must have made over 300 speeches to all types of labor organizations and all types of walks of life. I do not condone a lot of things that I hear goes on—I probably do not even condone some of the things I even see—that does not keep me from trying to fulfill my job.

Senator DURKIN. I think everyone admits you have a fine record as a mediator. But the role you now have is that of investigator of the Central States Pension Fund.

Do you think it is proper for an investigator while investigating the Teamsters or anyone else, to go out and make that type of speech to a convention?

How is the American public going to have any confidence in an investigation being jointly conducted by your Labor Department and the Justice Department when you give that type of performance?

Secretary USERY. Senator, I will try once more.

The responsibility of the Secretary of Labor goes much broader, investigative responsibilities under ERISA, under Landrum-Griffin, under OSHA, Fair Labor Standards Act, and all the other things. We have, as I said earlier, 133 laws and Executive orders.

Also, if you read what the mission of the Department of Labor is, and what I am supposed to be doing as Secretary of Labor, is to try to promote overall sound labor-management relations in this country, to try to get jobs, to try to get the things enforced that we are saying. I can, am, and believe I can do the job effectively. And if it gets right down to it, as I said to somebody else I think I could put my brother in jail if he violated the law, you understand.

Senator DURKIN. You still have not answered my question.

Were you out there at the urging of the White House?

Secretary USERY. I said, no, I was not. I have never made a speech at the urging of the White House.

They asked me on several occasions could I cover a conference or meeting, but not in this case. In fact, in no way had I been asked by anyone. I was asked by Mr. Fitzsimmons 2 months ago, and again in his negotiations, would I address his convention. I said if my itinerary would permit it, I would.

In fact, the following day, I addressed the State, County and Municipal Employees Union, and no, I was not there politically either. I was there in what I thought was in the best interest of the office I hold, serving the American people.

Senator DURKIN. This is my last question, Mr. Chairman.

You say you have confidence that you can conduct an impartial investigation.

But can you tell me how the people in New Hampshire and the people of this country can have confidence in your investigation when

you are out there acting as cheerleader at Frank Fitzsimmons' reelection soiree or whatever you want to call it?

If you can explain how the people of New Hampshire and this country can have confidence after that performance, I would appreciate it.

Secretary USERY. Obviously, I could not convince you, but I can certainly state to you that what I have said here is honest, and I resent from anyone that would question my integrity or my ability to carry out the job that I have to carry out. And as I said earlier, I think it is high time that we quit saying everybody is covering up or everybody is abusing power. I do not want to abuse the power I have, and I am not involved in any coverup, nor do I want to get involved, and I detest words like that.

I believe there are a lot of good public servants in this Government. I believe it is a good Government. A lot of people are working to make it even better.

You know, people can always accuse people or write somebody about it. Look at my deeds, if you will, and watch me for the future. I am sure you will, and others will be, too, as they have in the past. I intend to be as faithful to the people of New Hampshire as I do to the people of Georgia or Florida or any other place.

Senator JAVITS. Would the Senator yield?

I think these questions are very proper. I think they have been phrased sharply, but they need to be phrased sharply. I feel that these statements about friends, about being a member of the club were very ill-advised and that the burden is on you to restore the confidence of the American people in your conduct of this matter.

You are very sincere. You have deep feelings. You have an extraordinary record, and we shall, I am sure, in all fairness, balance the two. I cannot speak for my colleague, but I think, notwithstanding the sharpness of his questioning, he will balance the two.

I hope you will not feel that these questions, mine, his and others, are any challenge to your integrity or imply an accusation. We feel the people have the right to know. It is our duty to give you this opportunity. You were doing what you thought you had to do, and we are doing what we have to do.

The CHAIRMAN. I would like to echo that, too, Mr. Secretary.

We have observed you over the years, and you were always brought in to the most difficult labor-management situations and you tirelessly applied your talents and with great success. We know that, and we know it intimately. That is not known by the public generally; what they have received is the cartoon you mentioned and a lot of press out at Vegas.

And without their depth of foundation of respect that we have working with you, and knowing you, in various roles over the years, you can see how all of that publicity presented certain problems to their confidence in the office, and without that background of history that we are fortunate to have, observing your work over the years.

You know you mentioned you have not even played golf with Mr. Fitzsimmons. That does not bear any weight on the whole question before us unless we ask the question, do you play golf?

Secretary USERY. Occasionally, occasionally.

Senator, if I might say one other thing, and I would like to close it, but I would be glad to talk with the Senator—I recognize this—but, also, if you will pardon me, you have to understand my feelings. I feel very strongly about trying to serve the American people, very faithful, with integrity and honesty, and it bothers me that another issue would arise that would cause the American people to say there is another public servant that has done something wrong.

I believe in this system as deeply as anybody possibly could believe in this system of Government that we have, and I know, as Senator Javits said, and I recognize, maybe it might be a good thrashing for me to be in at this point now because I will probably be more cautious, but only twice since I have been Secretary of Labor have I used a military plane. I did not get to Las Vegas until 2:30 in the morning, and I left within 1 hour after I spoke after the press conference.

So I was going in and going out. I went to speak and changed my itinerary to speak on the first day. I thought it would be when you have the usual governors, mayors and other people who come to a convention, and I would speak and get out of the convention and would not get involved in any part of it.

Unfortunately, what I said has been misinterpreted. This is not the first time I have been told by labor that I am in the pockets of management, and I have been told by management sometimes that I am in the pockets of labor—somebody else—but I have never had this—I would like to say again to the Senator from New Hampshire, I do not believe you, Senator, or anyone else is concerned any more than I about how it looks as a public servant with what he is trying to do, and I will try to assure you and the people of New Hampshire, as long as I am there, I am going to try to do it as faithfully and honestly as I can, and I am not in the pocket of anybody, but to uphold and carry out the laws of this country. I think I can do that.

I think I have been doing that, even though it now is perceived differently.

I have been around 8 years where there has been some pretty hard times, as you understand, in this whole area.

Senator DURKIN. Mr. Chairman, just one final question.

Mr. Secretary, if the convention were held next Wednesday, would you go?

Secretary USERY. Yes, sir, I would go. I would not——

The CHAIRMAN. We did not hear the question.

Senator DURKIN. I asked if he would attend the Teamsters convention in Las Vegas if it were next Wednesday.

His answer was yes.

The CHAIRMAN. Senator Taft has joined us during this questioning.

Could we ask you a question, Senator Taft?

Is our health manpower bill still on the floor?

Senator TAFT. It is still there.

I apologize for not being here earlier. That was the reason I could not leave the floor. There is an amendment relating to the appropriation question.

Mr. Secretary, I am sorry I have not had a chance to listen to you, but I quickly reviewed your remarks. There are a few things outside

of your remarks that perhaps you could clear up with me at the outset with regard to the problems that we have here.

First of all, who are you talking about when you refer to the "club" in the speech at Las Vegas?

Secretary USERY. Senator Taft, I had, as I said earlier, trying to change the tempo of the convention where there was a large convention at that time, and I told four stories, I think, three of them being jokes, four to be humorous. And one of them was a club story that I must have told 60 times at audiences, usually to get a good laugh. So that it would not be interpreted that I was there—well, I said I was not a Teamster, but when it came to collective bargaining, I was a member of the club.

I believe in collective bargaining. That was my intent of that. It was leading into—it was not in my prepared statement. It was just four stories. One was about a motorcycle, one was about a guy at the country club, one was about the Secretary of Labor that I told on myself. I forget what the other one was.

But it dealt—or it was seeking at that time to be humorous. But, at the time, at the same time to prepare the audience for what I was about to speak——

Senator TAFT. So you were not referring specifically to the Teamsters or to the pension fund, is that correct?

Secretary USERY. I was not, sir.

I even said that here in Las Vegas there are a lot of clubs, before I even told the story, and if you have been to Las Vegas, you know there are a lot of clubs there.

Senator TAFT. The New York Times, in its editorial on that subject, commented as follows:

> In fact, the only puzzle in Las Vegas was whatever possessed Secretary of Labor W. J. Usery, Jr. to go to the convention and declare, "I belong to this club because I believe in it," when the department which he heads was conducting an investigation of that very same pension fund.

That inference, I take it, you think is totally inaccurate, that when you said club you were not referring in any way to the pension fund or to the Teamsters Union?

Secretary USERY. It certainly was not, Senator.

Senator TAFT. Fine.

Would you tell me how the makeup of the trustees of the Teamsters fund is set up?

Secretary USERY. There are 8 trustees from the Teamsters—8 trustees, voted on by the officers of Central States, and 8 employers—there are 16 trustees. They are selected and become the trustees of the fund.

Senator TAFT. Is there one pension fund or a number of pension funds, or are the trustees the same people, if there are more than one?

Secretary USERY. The Teamsters have 260-some different pension funds, but the Central States Pension Fund is one of—I guess one of the two largest pension funds and it covers, as I say, one of the largest—they have 268, and there are 700-something welfare plans—it is just one of the many they have, Central States Pension Fund is one of the biggest.

Senator TAFT. Sixteen trustees you are referring to, half from labor and half from management on that Central States Fund?

Secretary USERY. Yes, sir.

Senator TAFT. Mr. Secretary, who is actually carrying out the investigation in the Department of Labor?

Secretary USERY. Well, shortly after, or prior to becoming Secretary, if I might say this, I was aware of the investigation. I had a discussion with the chairman and Senator Javits and others, and I had talked to my predecessor, Secretary Dunlop.

I was generally acquainted with the investigation, and after I assured myself that we had a man of integrity and ability, which is Mr. Hutchinson, to my right, who is directly responsible for the investigation and for the program.

Senator TAFT. Mr. Secretary, in the investigation have the pension fund trustees resisted or cooperated with the Labor Department?

Secretary USERY. I would have to say, Senator, that there has been generally—I use the word "generally"—cooperation, and I think later we might develop that more, most likely in an executive session, but I would say generally they have been cooperative.

Senator TAFT. And when the IRS letter was written recently to the Central States Pension Fund from, I guess it is the Regional Director in Chicago, is it?

Secretary USERY. Senator, I do not know.

Senator TAFT. The question I was going to ask was was the Labor Department apprised of that?

Secretary USERY. I do not know Senator. I have no knowledge, and I do not know.

Senator TAFT. You were not advised of it, any way?

Secretary USERY. No.

Senator TAFT. Thank you very much. Those are all the questions I have.

Senator PELL. Mr. Chairman, one question.

The CHAIRMAN. Yes.

Senator PELL. I think just to clear the record on this question of club, so we know exactly what you did mean to say, I ought to repeat your own words, and then ask for your interpretation of them.

You said, Mr. Usery, "let me assure that even though I do not have a Teamster's card I belong to this club, because I believe in it."

What was the club to which you were referring?

Secretary USERY. The fraternity of collective bargaining.

I said earlier I believe in collective bargaining. There is a whole labor movement in collective bargaining. I was speaking totally of collective bargaining, and the rights of people to join together and organize, and to bargain collectively for their wages, hours, and working conditions.

The CHAIRMAN. We will recess long enough to go over and vote on the manpower bill, and then return.

[Short recess.]

The CHAIRMAN. We will resume our hearings.

Sometime ago, Mr. Secretary, you introduced the Administrator of Pension and Welfare Benefit Programs, Mr. James D. Hutchinson. We have now reached Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, in my following remarks I shall outline the history and progress of the Department's ongoing inves-

tigation of the Teamsters Central States, Southeast and Southwest Areas Pension Fund.

As Secretary of Labor Usery has stated, the purpose of this investigation is to determine whether this plan is being administered in the interests of the participants and beneficiaries who look to it for retirement security, and consistent with the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974.

In undertaking a review of this magnitude, we must not lose sight of the fact that we are talking about a pension plan which covers more than 400,000 participants, with assets estimated on its 1975 annual financial filing with the Department of Labor to be in excess of $1.3 billion, and which has asset holdings in many different locations across the United States.

Right from the beginning, it has been apparent to us that any form of comprehensive review of the plan's policies and practices would require the expenditure of significant amounts of time and resources. No detailed, professional investigation of this scope, particularly one which does not prejudge the outcome, can be accomplished quickly.

To act precipitously would increase the likelihood of faulty conclusions or ineffective compliance proceedings if they become necessary.

Perhaps the most graphic way to depict our activity in this matter is to review the logical steps which are a part of any investigation of this scope. As we see it, this case, similar to any large complex investigation, will pass through several phases: Phase 1, initial planning and review, including projections for staffing and resources; phase 2, comprehensive review of existing Government records to develop preliminary strategies; phase 3, onsite review of fund operations and records and pursuit of initial third party investigatory leads; phase 4, assessment of information collected and patterns discovered, which lead to determination of future investigatory/enforcement activity; phase 5, review of overall results and recommendations for remedial actions if necessary; phase 6, obtain satisfactory voluntary compliance, or initiate formal proceedings.

During phase 1 of this investigation, we had to decide whether in the first instance an examination of the Central States plan should be undertaken. We screened formal complaints, prior enforcement activity, allegations raised by the Congress and the media, and existing Government records. This activity was undertaken during the summer of 1975, and led us to the conclusion that a more complete review was warranted.

These initial efforts made it clear that the scope of the undertaking was indeed massive and that additional resources and new organizational structures would be necessary to accomplish the task. Temporary resources from within the Office of Employee Benefits Security in the Department of Labor and elsewhere within the Department of Labor were diverted to the investigation on an interim basis.

At the same time we began to estimate resource requirements and requested—and ultimately received in January 1976—more permanent resources as part of a fiscal 1976 supplemental budget to staff a new unit. That new unit is the special investigations staff, whose director was appointed on January 18, 1976. Our current staffing for

that unit includes 20 permanent positions, plus additional resources detailed to the investigation from other agencies.

As we moved into phase 2 of our activity during the late summer and early fall of 1975, we collected massive amounts of material relating to the plan from within the Government.

This included such data as Department of Labor financial filings and complaints, information from previously concluded judicial proceedings from the Department of Justice, information obtained through appropriate disclosure procedures under section 6103(g) of the Internal Revenue Code, as well as properly disclosable information which we obtained from other regulatory agencies. It also included a screening of files and data in our field offices across the country in order to develop a fully integrated data base.

This activity was accomplished by temporary reassignment of OEBS and other Department of Labor personnel to an interim task force while requests were being prepared to authorize permanent positions to be embodied in the special investigations staff, which I mentioned earlier.

To select individuals for reassignment, we reviewed the qualifications of dozens of auditors and investigators to obtain the best talents available, even if for temporary assignment.

Mr. Chairman, I must take a moment at this point to state to the committee that the dedication and professionalism which those Department employees brought to their new assignment cannot be overstated. Many spent long hours and days away from their permanent assignments and families, and they responded superbly. Their contributions made this investigation effective in its earliest days, and they deserve credit for that fact.

This "in-house" review of existing Government records and data which I have described above was undertaken to develop a familiarity with the recorded holdings, operations, and practices of the plan, so that when we would make direct requests of the plan in the months thereafter, we could do so with a basic framework which would minimize duplication and produce more efficient review. This effort required review of tens of thousands of pages of material by auditors, investigators and attorneys.

During the same period of time, we met frequently with representatives of other Government agencies, particularly the Department of Justice and the Internal Revenue Service. These coordination meetings were held to achieve the type of cooperation that would result in the best use of resources and the recognition of the available jurisdiction of each of the agencies. These sessions resulted in a joint Department of Justice and Department of Labor Memorandum of Understanding which Secretary Usery mentioned earlier.

As that memorandum indicates, a five-member Interdepartmental Policy Committee was established to provide a forum for resolving any policy issues which might develop during the course of the investigation. Its members are: Rex E. Lee, Assistant Attorney General, Civil Division, Department of Justice; Richard L. Thornburgh, Assistant Attorney General, Criminal Division, Department of Justice; Samuel K. Skinner, United States Attorney, Northern District of Illinois; William J. Kilberg, Solicitor of Labor, and myself.

Throughout this period during late summer and early fall 1975, we continued to recruit and screen candidates qualified to serve as the director of the interim task force which was superseded later by the permanent special investigation staff.

During the latter part of Phase 2, in November, 1975, and at the invitation of the plan, we sent several investigators and attorneys to the plan's offices near Chicago, Ill., to obtain a brief, preliminary view of the plan's organizational structure, recordkeeping systems, and data collection and storage systems. At the same time, we were in the final stages of our own review of Government documents.

During the first 2 weeks of January 1976, we received formal approval for creation of the new special investigations staff, and the appointment of Mr. Lawrence Lippe as its director.

Mr. Lippe brought to the position 10 years of experience as an investigator and attorney working in highly complex civil and criminal matters with the Office of the United States Attorney for the District of Columbia and the Civil Division of the Department of Justice.

The special investigations staff complement of auditors, investigators, and other professionals was also augmented with a special team of attorneys from the Office of the Solicitor of Labor. These lawyers work directly with the special investigations staff, giving us a fully integrated team that is conducting the investigation and planning potential litigation strategies.

As we concluded phase II, I forwarded a letter dated December 31, 1975, to the plan's executive director advising him in more detail of our proposed onsite visit to the plan's offices to conduct a thorough review and analysis of the plan's operations, procedures and policies. That letter outlined in substantial detail the nature and extent of both conventional and machine readable records and documents that we wished to review.

We also indicated our desire to interview plan trustees, employees, and representatives and requested the plan's cooperation in making available the personnel and records of third parties which provide goods, services and facilities to the plan and/or maintain records relating to the plan's activities.

Mr. Chairman, I believe that the specific detail of items listed in that letter suggest that its contents should be provided to this committee in executive session. We make that suggestion not only to ensure the integrity and effectiveness of our ongoing investigation, but so that negative inferences are not drawn concerning certain aspects of the plan's operations by the public disclosure of our request for information about those aspects of its operations.

On January 19, 1976, representatives of the special investigations staff, the Office of the Solicitor, and the Department of Justice visited the plan's offices to begin phase III of the investigation—an indepth onsite analysis of the plan's operations, procedures, policies and records. An initial period of time was spent in establishing ground rules for the voluntary production of records and data, the use of facilities, and further briefings by plan personnel on the operations of the plan.

During the 5 months since the Department began its onsite review, we have reviewed thousands of records and documents, including

many loan files and related documents. The plan's loan files alone if stacked on top of each other would reach to a height of over 240 feet.

This volume of records does not include such additional documents as the plan's original books of account; for example, the general and subsidiary ledgers and related documents such as appraisal files respecting loan transactions.

Over 650 complex sets of accounting workpapers have been prepared by our auditors already, more than 200 investigative memoranda have been prepared for followup, interviews have been conducted of plan and third party personnel and several depositions under oath have been conducted in various parts of the country.

In addition, a number of leads have been pursued by Department personnel assigned to our field offices across the country. Appropriate matters have also been referred to the Department of Justice for its review, and we are prepared to discuss those matters in executive session due to the nature of the criminal proceedings involved.

Throughout this period, we have been adding permanent personnel to our special investigations staff, as well as retaining the advice of outside consultants on particular matters such as information retrieval and data system design.

In addition, pursuant to the authority granted to the Secretary, pursuant to section 506 of ERISA, we have had the full cooperation of other Federal agencies in detailing persons with relevant skills and expertise to work with our staff. Because a description of the number and expertise of staff involved in any investigation necessarily indicates particular investigative strategies, I would prefer to address particular questions, if any, on that issue in executive session.

During the period from January 19, 1976, to date, we have remained in close coordination with many Federal agencies, particularly the Department of Justice, to insure that our efforts are consistent and complementary.

We believe at this time that we are substantially along in phase III of our investigation, and in some instances have identified particular areas of the plan's operations where phase IV analysis and planning of targeted investigatory efforts are beginning. However, several important factors must be stressed again.

When we set out to conduct this review of the operations and practices of the Central States plan, we knew that it would be a long and complex task requiring the patience and skill which is at the heart of any professionally conducted investigation.

As I mentioned earlier, the Central States pension plan has reported assets of over $1.3 billion. These assets are spread among several categories of investment, such as real estate loans and mortgages listed at over $780 million, bank deposits at interest or shares in savings and loan associations listed at over $100 million, common stocks, bonds, and debentures listed at over $180 million, and owned real estate listed at approximately $200 million. Indeed, the number of individual loans alone totals over 350.

We are determined to review these assets and the plan's operations in such a manner that we can discharge our statutory obligation to determine whether the plan is being operated in compliance with ERISA.

As my comments on the status of the investigation indicate, we have not completed our review or drawn ultimate conclusions.

We intend to take the time necessary to complete our investigation. However, if certain interim conclusions are reached that persuade us that litigation or other compliance actions are necessary to protect the interests of the plan's participants and beneficiaries and insure compliance with ERISA, or if presently unforeseen events occur that call for protective action on our part, we are already prepared to take those actions.

Indeed, as I have mentioned earlier, we reviewed certain matters in the Department of Justice, and we have other transactions which we are willing to discuss in detail in closed session.

From the beginning, Mr. Chairman, we have felt that we cannot take precipitous or careless action which would in the long run be unfair to the plan and to the participants and beneficiaries whom we are obliged to protect. In my opinion, to perform our task in a less than thorough manner would be worse than taking no action at all.

In closing, I should note that the men and women of the Department of Labor who have contributed to this investigation have performed in a professional and dedicated manner. We have consistently enjoyed the support of the Secretary of Labor in our efforts, and we have kept this committee advised of our progress and enjoyed its support as well. I believe we are all working toward the same goal.

The CHAIRMAN. Are you satisfied, Mr. Hutchinson, and I will address this to the Secretary too, that you have sufficient resources to do the complete job of investigation that I know you have set out to do?

Mr. HUTCHINSON. Mr. Chairman, from the very beginning we have requested, and indeed, in each case, have received the resources we have asked for when we were far enough along to determine what our needs are. That is an ongoing process, and if we reach the same conclusion, that additional resources will be necessary in the future, we will ask for them, and based on past performance, I expect we will receive them.

The CHAIRMAN. As I recall, and this seems quite a time back, you were borrowing people from other tasks, and assigning them to this, which suggests that other necessary work was left undone.

What is your situation now in terms of the necessary personnel?

Mr. HUTCHINSON. The activity that you are referring to, Mr. Chairman, occurred during the late summer, early fall of 1975, which was prior to the time that we received from the Congress authorization for supplemental budget. We received that authorization in January, for 20 new permanent positions, dedicated to this investigation. Those positions are in place, and in most cases we have returned personnel detailed from other activities back to their original assignments, and permanent personnel are coming aboard.

So we are in a posture now where we will no longer strain other ongoing activities, in my opinion.

The CHAIRMAN. Now, in this connection, in describing broadly the personnel that are working on the investigation, you suggest it will be necessary to go into an executive session before discussing numbers and special abilities.

Mr. HUTCHINSON. Mr. Chairman, we believe that the types of skills that we have collected to review certain matters, particularly skills

collected from other agencies, as well, would give a clear indication of the areas of our present concentration.

Merely in the interest of trying to keep the investigation on track, and not being hindered by premature disclosure of our intentions, I made that suggestion.

The CHAIRMAN. One question was asked earlier, dealing with the IRS, and its activity in connection with the Teamsters Pension Fund, and it was asked of the Secretary, and I think we should now know just what you can state as to what has been your relationship with the IRS in their activity which has brought forth the only notice of enforcement action.

Mr. HUTCHINSON. Mr. Chairman, I cannot comment on whether speculated action of the IRS has been taken. Any information we have received on that matter was disclosed to us pursuant to a statutory inhibition of public disclosure. We can do so in private session.

In a general way, I think it is fair to say from the beginning the Department of Justice and Department of Labor have put together an integrated investigation. Indeed, personnel have been working directly together.

In early communications with the IRS, it was their opinion at that time, and it has been the operating rule that we have followed, that they have under review certain matters more unique to their jurisdiction that they are pursuing, and as long as we can move in a coordinated fashion and share information, there is no need to have a fully integrated task force.

That is the procedure we are working with now.

The CHAIRMAN. What is your understanding of what the IRS has done?

There have been newspaper reports of an alleged disqualification notice.

Could you state your understanding to the extent you can here in public session?

Mr. HUTCHINSON. In the absence of violating the disclosure statute, it compels me not to address that issue.

It is fair to say I am aware of the press coverage, and it is true that that action has been taken, it appears to be a revocation of the qualified status of the plan.

The CHAIRMAN. Senator Javits?

Senator JAVITS. Was the Department of Labor notified in advance that the IRS would issue anything such as was reported in the press?

Mr. HUTCHINSON. We were not.

Senator JAVITS. So you were surprised at that newspaper story, is that correct?

Mr. HUTCHINSON. Yes, I was, Senator.

Senator JAVITS. Have you since taken measures, first, to ascertain whether there is anything to it? I am not asking whether there is or is not. We will do that in executive session. Have you sought to ascertain whether there is or is not any substance to the story?

Mr. HUTCHINSON. We most definitely have.

Immediately after that disclosure we obtained from the Internal Revenue Service a further authorization permitting disclosure of that information, and our representatives have been meeting with them to discuss the matter.

Senator JAVITS. Now, is the material which you have received from them germane and relevant to the investigation of this joint task force?

Mr. HUTCHINSON. Again, I do not think it would be appropriate to characterize the material in open session, sir.

Senator JAVITS. All right.

What is the purpose of the investigation by the joint Labor and Justice task force?

Mr. HUTCHINSON. I think if you had to really go to the theory of our investigation, we are attempting, for the first time, in my opinion, to effectively use the new tools that have been given to us by ERISA, tools that are no longer as drastic as disqualification, or isolated criminal proceedings, but an overall review of the plans, operations.

To answer the question whether the assets being held were managed in the best interest of the participants of that plan, that is our strategy.

With a fund this size it will take some time, but I am convinced with the tools that we have under ERISA, and with the resources we have, we can finally end some of the speculation as to whether certain allegations are true or not, and determine whether that plan is being operated consistent with the law.

Senator JAVITS. Now, the Department of Labor itself is empowered to seek civil penalties, is it not?

Mr. HUTCHINSON. It is, Senator, for nontax qualified plans.

Senator JAVITS. Right.

For nontax qualified plans.

As to the tax qualified plans, it would be IRS?

Mr. HUTCHINSON. That is correct.

Senator JAVITS. That is a tax qualified plan?

Mr. HUTCHINSON. To the best of my knowledge, it is.

Senator JAVITS. So what would be IRS jurisdiction with respect to civil and criminal remedies?

Mr. HUTCHINSON. I am not sure I appreciate the thrust of that question.

Senator JAVITS. In other words, what authority does the Department of Labor and IRS have to seek civil penalties in this matter?

Mr. HUTCHINSON. I am prepared to address that.

We do have remedies in ERISA that apply to tax qualified plans, such as the Central States plan.

We can proceed at the same time Internal Revenue is seeking any tax penalties under the Internal Revenue Code.

Senator JAVITS. I just wanted to make that clear.

Now, what is the scope of those civil penalties?

Mr. HUTCHINSON. The remedies provided to the Department of Labor, in section 409 of ERISA, I think, are quite broad. They provide that if determination is made that fiduciaries have violated their obligations to a plan they can be removed from office, they can be held accountable to discourage any profits they made through their misuse of plan assets, they can be held personally accountable to the plan to repay any losses that occur to that plan because of their misdealings, and then there is a phrase that I believe the Secretary referred to earlier, "and such other equitable relief as the court may deem appropriate."

Senator JAVITS. Now, in your opinion, would that include the displacement of present trustees by new trustees?

Mr. HUTCHINSON. If the facts that are developed in an investigation presented to a court convinced it that that was the type action that was necessary to place the plan in compliance, I do think that is available as a remedy.

Senator JAVITS. That would be a suit brought by the Department of Labor itself?

Mr. HUTCHINSON. We can bring that action, and request that kind of relief.

Senator JAVITS. As to criminal penalties, you, like IRS, can refer a case to the U.S. Attorney for criminal prosecution?

Mr. HUTCHINSON. Precisely.

The CHAIRMAN. You have done that, am I right?

Mr. HUTCHINSON. We have referred several matters in this investigation, like many others that we conducted, to the Department of Justice for their review.

Senator JAVITS. Mr. Chairman, I ask unanimous consent that the statutory provisions which carry out what Mr. Hutchinson has just testified to be made a part of this record at this point.

The CHAIRMAN. They will be.

Is this complete? Sections 409, 501, 502——

Mr. HUTCHINSON. Those are the main provisions, Mr. Chairman, that outline both the remedies available, and the Department's enforcement responsibilities.

The CHAIRMAN. That is the complete area of authority?

Mr. HUTCHINSON. All of part 4, all of the 400 section, 401 through 412, I think properly represent all of the obligations that fiduciaries have, and the rules that guide them, and I think that might appropriately be placed in the record in addition to 501 and 502.

Senator JAVITS. I so request.

The CHAIRMAN. They will be made a part of the record.

Senator JAVITS. Of course, we have a witness here from the Department of Justice who will testify in due course respecting his activity. Also, the Secretary of Labor has an extensive investigatory authority, does he not, for purposes of inspection of books, subpenas, et cetera?

Mr. HUTCHINSON. Yes, we do, Senator, and it is that wide ranging authority that I think we have that convinced us that we do have effective ways to investigate and bring action.

Senator JAVITS. I ask unanimous consent that section 504 on investigative authority be inserted into the record at this point.

The CHAIRMAN. It will be so entered.

[The following was received for the record:]

[Excerpt from Public Law 93-406, 93d Congress, H.R. 2, September 2, 1974]

* * * * * * *

PART 4—FIDUCIARY RESPONSIBILITY

COVERAGE

29 USC 1101.
88 STAT. 874
88 STAT. 875

SEC. 401. (a) This part shall apply to any employee benefit plan described in section 4(a) (and not exempted under section 4(b)), other than—

(1) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees; or

(2) any agreement described in section 736 of the Internal Revenue Code of 1954, which provides payments to a retired partner or deceased partner or a deceased partner's successor in interest. 26 USC 736.

(b) For purposes of this part:

(1) In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, solely by reason of such investment, be deemed to include any assets of such investment company. 15 USC 80a-51.

(2) In the case of a plan to which a guaranteed benefit policy is issued by an insurer, the assets of such plan shall be deemed to include such policy, but shall not, solely by reason of the issuance of such policy, be deemed to include any assets of such insurer. For purposes of this paragraph:

(A) The term "insurer" means an insurance company, insurance service, or insurance organization, qualified to do business in a State. "Insurer."

(B) The term "guaranteed benefit policy" means an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. Such term includes any surplus in a separate account, but excludes any other portion of a separate account. "Guaranteed benefit policy."

ESTABLISHMENT OF PLAN

SEC. 402. (a)(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan. 29 USC 1102.

(2) For purposes of this title, the term "named fiduciary" means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly. "Named fiduciary."

(b) Every employee benefit plan shall—

(1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this title,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedure described in section 405(c)(1)),

(3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and

(4) specify the basis on which payments are made to and from the plan.

(c) Any employee benefit plan may provide—

(1) that any person or group of persons may serve in more than one fiduciary capacity with respect to the plan (including service both as trustee and administrator);

(2) that a named fiduciary, or a fiduciary designated by a named fiduciary pursuant to a plan procedure described in section 405(c)(1), may employ one or more persons to render advice with regard to any responsibility such fiduciary has under the plan; or

(3) that a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of a plan.

ESTABLISHMENT OF TRUST

29 USC 1103.

SEC. 403. (a) Except as provided in subsection (b), all assets of an employee benefit plan shall be held in trust by one or more trustees. Such trustee or trustees shall be either named in the trust instrument or in the plan instrument described in section 402(a) or appointed by a person who is a named fiduciary, and upon acceptance of being named or appointed, the trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that—

(1) the plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to this title, or

(2) authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 402(c)(3).

(b) The requirements of subsection (a) of this section shall not apply—

(1) to any assets of a plan which consist of insurance contracts or policies issued by an insurance company qualified to do business in a State;

(2) to any assets of such an insurance company or any assets of a plan which are held by such an insurance company;

(3) to a plan—

(i) some or all of the participants of which are employees described in section 401(c)(1) of the Internal Revenue Code of 1954; or

26 USC 401.

(ii) which consists of one or more individual retirement accounts described in section 408 of the Internal Revenue Code of 1954, to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of such Code, whichever is applicable;

Post, p. 959.

(4) to a plan which the Secretary exempts from the requirement of subsection (a) and which is not subject to any of the following provisions of this Act—

Ante, p. 852.

(A) part 2 of this subtitle,

Ante, p. 868.

(B) part 3 of this subtitle, or

Post, p. 1003.

(C) title IV of this Act; or

(5) to a contract established and maintained under section 403(b) of the Internal Revenue Code of 1954 to the extent that the assets of the contract are held in one or more custodial accounts pursuant to section 403(b)(7) of such Code.

Post, p. 986.

Post, p. 940.

(c)(1) Except as provided in paragraph (2) or (3) or subsection (d), or under section 4042 and 4044 (relating to termination of insured plans), the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

Post, pp. 1021, 1025.

(2)(A) In the case of a contribution which is made by an employer by a mistake of fact, paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the payment of the contribution.

(B) If a contribution is conditioned on qualification of the plan under section 401, 403(a), or 405(a) of the Internal Revenue Code of 1954, and if the plan does not qualify, then paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the date of denial of qualification of the plan. 26 USC 401, 403, 405.

(C) If a contribution is conditioned upon the deductibility of the contribution under section 404 of the Internal Revenue Code of 1954, then, to the extent the deduction is disallowed, paragraph (1) shall not prohibit the return to the employer of such contribution (to the extent disallowed) within one year after the disallowance of the deduction. Post, p. 921.

(3) In the case of a contribution which would otherwise be an excess contribution (as defined in section 4972(b) of the Internal Revenue Code of 1954) paragraph (1) shall not prohibit a correcting distribution with respect to such contribution from the plan to the employer to the extent permitted in such section to avoid payment of an excise tax on excess contributions under such section. Post, p. 955.

(d)(1) Upon termination of a pension plan to which section 4021 does not apply at the time of termination and to which this part applies (other than a plan to which no employer contributions have been made) the assets of the plan shall be allocated in accordance with the provisions of section 4044 of this Act, except as otherwise provided in regulations of the Secretary. Post, p. 1025.

(2) The assets of a welfare plan which terminates shall be distributed in accordance with the terms of the plan, except as otherwise provided in regulations of the Secretary.

FIDUCIARY DUTIES

SEC. 404. (a)(1) Subject to sections 403 (c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and— 29 USC 1104. Ante, p. 876; Post, pp. 93, 197, 921, 1025.

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

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

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title.

(2) In the case of an eligible individual account plan (as defined in section 407(d)(3)), the diversification requirement of paragraph (1)(C) and the prudence requirement (only to the extent that it requires diversification) of paragraph (1)(B) is not violated by acquisition or holding of qualifying employer real property or qualifying employer securities (as defined in section 407(d)(4) and (5)).

(b) Except as authorized by the Secretary by regulation, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States.

(c) In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over assets in his account, if a participant or beneficiary exercises con-

trol over the assets in his account (as determined under regulations of the Secretary)—

(1) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and

(2) no person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control.

LIABILITY FOR BREACH BY CO-FIDUCIARY

29 USC 1105. SEC. 405. (a) In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

(2) if, by his failure to comply with section 404(a)(1) in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or

(3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(b)(1) Except as otherwise provided in subsection (d) and in section 403(a) (1) and (2), if the assets of a plan are held by two or more trustees—

(A) each shall use reasonable care to prevent a co-trustee from committing a breach; and

(B) they shall jointly manage and control the assets of the plan, except that nothing in this subparagraph (B) shall preclude any agreement, authorized by the trust instrument, allocating specific responsibilities, obligations, or duties among trustees, in which event a trustee to whom certain responsibilities, obligations, or duties have not been allocated shall not be liable by reason of this subparagraph (B) either individually or as a trustee for any loss resulting to the plan arising from the acts or omissions on the part of another trustee to whom such responsibilities, obligations, or duties have been allocated.

(2) Nothing in this subsection shall limit any liability that a fiduciary may have under subsection (a) or any other provision of this part.

(3)(A) In the case of a plan the assets of which are held in more than one trust, a trustee shall not be liable under paragraph (1) except with respect to an act or omission of a trustee of a trust of which he is a trustee.

(B) No trustee shall be liable under this subsection for following instructions referred to in section 403(a)(1).

(c)(1) The instrument under which a plan is maintained may expressly provide for procedures (A) for allocating fiduciary responsibilities (other than trustee responsibilities) among named fiduciaries, and (B) for named fiduciaries to designate persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan.

(2) If a plan expressly provides for a procedure described in paragraph (1), and pursuant to such procedure any fiduciary responsibility of a named fiduciary is allocated to any person, or a person is designated to carry out any such responsibility, then such named fiduciary

shall not be liable for an act or omission of such person in carrying out such responsibility except to the extent that—

(A) the named fiduciary violated section 404(a)(1)—

(i) with respect to such allocation or designation,

(ii) with respect to the establishment or implementation of the procedure under paragraph (1), or

(iii) in continuing the allocation or designation; or

(B) the named fiduciary would otherwise be liable in accordance with subsection (a).

(3) For purposes of this subsection, the term "trustee responsibility" means any responsibility provided in the plan's trust instrument (if any) to manage or control the assets of the plan, other than a power under the trust instrument of a named fiduciary to appoint an investment manager in accordance with section 402(c)(3). "Trustee responsibility."

(d)(1) If an investment manager or managers have been appointed under section 402(c)(3), then, notwithstanding subsections (a) (2) and (3) and subsection (b), no trustee shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager. Liability.

(2) Nothing in this subsection shall relieve any trustee of any liability under this part for any act of such trustee.

PROHIBITED TRANSACTIONS

SEC. 406. (a) Except as provided in section 408: 29 USC 1106.

(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) lending of money or other extension of credit between the plan and a party in interest;

(C) furnishing of goods, services, or facilities between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan; or

(E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 407(a).

(2) No fiduciary who has authority or discretion to control or manage the assets of a plan shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 407(a).

(b) A fiduciary with respect to a plan shall not—

(1) deal with the assets of the plan in his own interest or for his own account,

(2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

(3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

(c) A transfer of real or personal property by a party in interest to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a party-in-interest placed

on the property within the 10-year period ending on the date of the transfer.

10 PERCENT LIMITATION WITH RESPECT TO ACQUISITION AND HOLDING OF EMPLOYER SECURITIES AND EMPLOYER REAL PROPERTY BY CERTAIN PLANS

29 USC 1107.

SEC. 407. (a) Except as otherwise provided in this section and section 414:

(1) A plan may not acquire or hold—

(A) any employer security which is not a qualifying employer security, or

(B) any employer real property which is not qualifying employer real property.

(2) A plan may not acquire any qualifying employer security or qualifying employer real property, if immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeds 10 percent of the fair market value of the assets of the plan.

(3)(A) After December 31, 1984, a plan may not hold any qualifying employer securities or qualifying employer real property (or both) to the extent that the aggregate fair market value of such securities and property determined on December 31, 1984, exceeds 10 percent of the greater of—

(i) the fair market value of the assets of the plan, determined on December 31, 1984, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(B) Subparagraph (A) of this paragraph shall not apply to any plan which on any date after December 31, 1974; and before January 1, 1985, did not hold employer securities or employer real property (or both) the aggregate fair market value of which determined on such date exceeded 10 percent of the greater of

(i) the fair market value of the assets of the plan, determined on such date, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(4)(A) After December 31, 1979, a plan may not hold any employer securities or employer real property in excess of the amount specified in regulations under subparagraph (B). This subparagraph shall not apply to a plan after the earliest date after December 31, 1974, on which it complies with such regulations.

Regulations.

(B) Not later than December 31, 1976, the Secretary shall prescribe regulations which shall have the effect of requiring that a plan divest itself of 50 percent of the holdings of employer securities and employer real property which the plan would be required to divest before January 1, 1985, under paragraph (2) or subsection (c) (whichever is applicable).

(b)(1) Subsection (a) of this section shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property by an eligible individual account plan.

(2) CROSS REFERENCES.—

(A) For exemption from diversification requirements for holding of qualifying employer securities and qualifying employer real property by eligible individual account plans, see section 404(a)(2).

(B) For exemption from prohibited transactions for certain acquisitions of qualifying employer securities and qualifying employer real property which are not in violation of 10 percent limitation, see section 408(e).

(C) For transitional rules respecting securities or real property subject to binding contracts in effect on June 30, 1974, see section 414(c).

(c)(1) A plan which makes the election, under paragraph (3) shall be treated as satisfying the requirement of subsection (a)(3) if and only if employer securities held on any date after December 31, 1974 and before January 1, 1985 have a fair market value, determined as of December 31, 1974, not in excess of 10 percent of the lesser of—

(A) the fair market value of the assets of the plan determined on such date (disregarding any portion of the fair market value of employer securities which is attributable to appreciation of such securities after December 31, 1974) but not less than the fair market value of plan assets on January 1, 1975, or

(B) an amount equal to the sum of (i) the total amount of the contributions to the plan received after December 31, 1974, and prior to such date, plus (ii) the fair market value of the assets of the plan, determined on January 1, 1975.

(2) For purposes of this subsection, in the case of an employer security held by a plan after January 1, 1975, the ownership of which is derived from ownership of employer securities held by the plan on January 1, 1975, or from the exercise of rights derived from such ownership, the value of such security held after January 1, 1975, shall be based on the value as of January 1, 1975, of the security from which ownership was derived. The Secretary shall prescribe regulations to carry out this paragraph.

(3) An election under this paragraph may not be made after December 31, 1975. Such an election shall be made in accordance with regulations prescribed by the Secretary, and shall be irrevocable. A plan may make an election under this paragraph only if on January 1, 1975, the plan holds no employer real property. After such election and before January 1, 1985 the plan may not acquire any employer real property.

(d) For purposes of this section— Definitions.

(1) The term "employer security" means a security issued by an employer of employees covered by the plan, or by an affiliate of such employer. A contract to which section 408(b)(5) applies shall not be treated as a security for purposes of this section.

(2) The term "employer real property" means real property (and related personal property) which is leased to an employer of employees covered by the plan, or to an affiliate of such employer. For purposes of determining the time at which a plan acquires employer real property for purposes of this section, such property shall be deemed to be acquired by the plan on the date on which the plan acquires the property or on the date on which the lease to the employer (or affiliate) is entered into, whichever is later.

(3)(A) The term "eligible individual account plan" means an individual account plan which is (i) a profit-sharing, stock bonus, thrift, or savings plan; (ii) an employee stock ownership plan; or (iii) a money purchase plan which was in existence on the date of enactment of this Act and which on such date invested primarily in qualifying employer securities. Such term excludes an individual retirement account or annuity described in section 408 of the Internal Revenue Code of 1954.

(B) Notwithstanding subparagraph (A), a plan shall be treated as an eligible individual account plan with respect to the acquisition or holding of qualifying employer real property or qualifying employer securities only if such plan explicitly provides for acquisition and holding of qualifying employer securities or qualifying employer real property (as the case may be). In the case of a plan in existence on the date of enactment of this Act, this subparagraph shall not take effect until January 1, 1976.

Post, p. 959.

(4) The term "qualifying employer real property" means parcels of employer real property—

(A) if a substantial number of the parcels are dispersed geographically;

(B) if each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use;

(C) even if all of such real property is leased to one lessee (which may be an employer, or an affiliate of an employer); and

(D) if the acquisition and retention of such property comply with the provisions of this part (other than section 404 (a)(1)(B) to the extent it requires diversification, and sections 404(a)(1)(C), 406, and subsection (a) of this section).

(5) The term "qualifying employer security" means an employer security which is stock or a marketable obligation (as defined in subsection (e)).

(6) The term "employee stock ownership plan" means an individual account plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus plan and money purchase both of which are qualified, under section 401 of the Internal Revenue Code of 1954, and which is designed to invest primarily in qualifying employee securities, and

26 USC 401.

(B) which meets such other requirements as the Secretary of the Treasury may prescribe by regulation.

(7) A corporation is an affiliate of an employer if it is a member of any controlled group of corporations (as defined in section 1563(a) of the Internal Revenue Code of 1954, except that "applicable percentage" shall be substituted for "80 percent" wherever the latter percentage appears in such section) of which the employer who maintains the plan is a member. For purposes of the preceding sentence, the term "applicable percentage" means 50 percent, or such lower percentage as the Secretary may prescribe by regulation. A person other than a corporation shall be treated as an affiliate of an employer to the extent provided in regulations of the Secretary. An employer which is a person other than a corporation shall be treated as affiliated with another person to the extent provided by regulations of the Secretary. Regulations under this paragraph shall be prescribed only after consultation and coordination with the Secretary of the Treasury.

26 USC 1563.

Regulations.

(8) The Secretary may prescribe regulations specifying the extent to which conversions, splits, the exercise of rights, and similar transactions are not treated as acquisitions.

"Marketable obligation."

(e) For purposes of subsection (d)(5), the term "marketable obligation" means a bond, debenture, note, or certificate, or other evidence of indebtedness (hereinafter in this subsection referred to as "obligation") if—

(1) such obligation is acquired—

(A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the plan than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and

Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the plan than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation—

(A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the plan, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) immediately following acquisition of the obligation, not more than 25 percent of the assets of the plan is invested in obligations of the employer or an affiliate of the employer.

EXEMPTIONS FROM PROHIBITED TRANSACTIONS

SEC. 408. (a) The Secretary shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 406 and 407(a). Action under this subsection may be taken only after consultation and coordination with the Secretary of the Treasury. An exemption granted under this section shall not relieve a fiduciary from any other applicable provision of this Act. The Secretary may not grant an exemption under this subsection unless he finds that such exemption is— 29 USC 1108.

(1) administratively feasible,

(2) in the interests of the plan and of its participants and beneficiaries, and

(3) protective of the rights of participants and beneficiaries of such plan.

Before granting an exemption under this subsection from section 406 (a) or 407(a), the Secretary shall publish notice in the Federal Register of the pendency of the exemption, shall require that adequate notice be given to interested persons, and shall afford interested persons opportunity to present views. The Secretary may not grant an exemption under this subsection from section 406(b) unless he affords an opportunity for a hearing and makes a determination on the record with respect to the findings required by paragraphs (1), (2), and (3) of this subsection. Publication in Federal Register.

(b) The prohibitions provided in section 406 shall not apply to any of the following transactions: Nonapplicability.

(1) Any loans made by the plan to parties in interest who are participants or beneficiaries of the plan if such loans (A) are available to all such participants and beneficiaries on a reasonably equivalent basis, (B) are not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees, (C) are made in accordance with specific provisions regarding such loans set forth in the plan, (D) bear a reasonable rate of interest, and (E) are adequately secured.

(2) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.

(3) A loan to an employee stock ownership plan (as defined in section 407(d)(6)), if—

(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

(B) such loan is at an interest rate which is not in excess of a reasonable rate.

If the plan gives collateral to a party in interest for such loan, such collateral may consist only of qualifying employer securities (as defined in section 407(d)(5)).

(4) The investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment.

(5) Any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State, if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

(A) the employer maintaining the plan, or

(B) a party in interest which is wholly owned (directly or indirectly) by the employer maintaining the plan, or by any person which is a party in interest with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are parties in interest (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan).

(6) The providing of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the providing of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and adherence to such guidelines would reasonably preclude such bank or similar financial institution from providing such ancillary service (i) in an excessive or unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans.

Such ancillary services shall not be provided at more than reasonable compensation.

(7) The exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary, but only if the plan receives no less than adequate consideration pursuant to such conversion.

(8) Any transaction between a plan and (i) a common or collective trust fund or pooled investment fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency or (ii) a pooled investment fund of an insurance company qualified to do business in a State, if—

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan.

(9) The making by a fiduciary of a distribution of the assets of the plan in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of this Act (relating to allocation of assets). Post, p. 1025.

(c) Nothing in section 406 shall be construed to prohibit any fiduciary from—

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

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

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(d) Section 407(b) and subsections (a), (b), (c), and (e) of this section shall not apply to any transaction in which a plan, directly or indirectly—

(1) lends any part of the corpus or income of the plan to;

(2) pays any compensation for personal services rendered to the plan to; or

(3) acquires for the plan any property from or sells any property to;

any person who is with respect to the plan an owner-employee (as defined in section 401(c)(3) of the Internal Revenue Code of 1954), 26 USC 401. a member of the family (as defined in section 267(c)(4) of such Code) 26 USC 267. of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of this subsection a shareholder employee (as defined in section 1379 of the Internal

26 USC 1379. Revenue Code of 1954) and a participant or beneficiary of an individual retirement account, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409 of the Internal Revenue Code of 1954) and an employer or association of employers which establishes such an account or annuity under section 408(c) of such code shall be deemed to be an owner-employee.

Post, pp. 959, 964.

(e) Sections 406 and 407 shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 407 (d)(5)) or acquisition, sale or lease by a plan of qualifying employer real property (as defined in section 407(d)(4))—

(1) if such acquisition, sale, or lease is for adequate consideration (or in the case of a marketable obligation, at a price not less favorable to the plan than the price determined under Section 407(e)(1)),

(2) if no commission is charged with respect thereto, and

(3) if—

(A) the plan is an eligible individual account plan (as defined in section 407(d)(3)), or

(B) in the case of an acquisition or lease of qualifying employer real property by a plan which is not an eligible individual account plan, or of an acquisition of qualifying employer securities by such a plan, the lease or acquisition is not prohibited by section 407(a).

LIABILITY FOR BREACH OF FIDUCIARY DUTY

29 USC 1109. SEC. 409. (a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this title if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary.

EXCULPATORY PROVISIONS; INSURANCE

29 USC 1110. SEC. 410. (a) Except as provided in sections 405(b)(1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void as against public policy.

(b) Nothing in this subpart shall preclude—

(1) a plan from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary;

(2) a fiduciary from purchasing insurance to cover liability under this part from and for his own account; or

(3) an employer or an employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee benefit plan.

PROHIBITION AGAINST CERTAIN PERSONS HOLDING CERTAIN POSITIONS

SEC. 411. (a) No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 9(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)(1)), a violation of any provision of this Act, a violation of section 302 of the Labor-Management Relations Act, 1947 (29 U.S.C. 186), a violation of chapter 63 of title 18, United States Code, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of title 18, United States Code, a violation of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401), or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve— 29 USC 1111. 21 USC 802. 18 USC 1341.

(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan, or

(2) as a consultant to any employee benefit plan,

during or for five years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in paragraph (1) or (2) would not be contrary to the purposes of this title. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in paragraph (1) or (2) in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee, of any employee benefit plan or as a consultant to any employee benefit plan without a notice, hearing, and determination by such Board of Parole that such service would be inconsistent with the intention of this section.

(b) Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both. Penalty.

(c) For the purposes of this section: Definitions.

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event.

(2) The term "consultant" means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(3) A period of parole shall not be considered as part of a period of imprisonment.

88 STAT. 888

BONDING

29 USC 1112.

SEC. 412. (a) Every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan (hereafter in this section referred to as "plan official") shall be bonded as provided in this section; except that—

(1) where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section, and

(2) no bond shall be required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary—

(A) is a corporation organized and doing business under the laws of the United States or of any State;

(B) is authorized under such laws to exercise trust powers or to conduct an insurance business;

(C) is subject to supervision or examination by Federal or State authority; and

(D) has at all times a combined capital and surplus in excess of such a minimum amount as may be established by regulations issued by the Secretary, which amount shall be at least $1,000,000.

Paragraph (2) shall apply to a bank or other financial institution which is authorized to exercise trust powers and the deposits of which are not insured by the Federal Deposit Insurance Corporation, only if such bank or institution meets bonding or similar requirements under State law which the Secretary determines are at least equivalent to those imposed on banks by Federal law.

The amount of such bond shall be fixed at the beginning of each fiscal year of the plan. Such amount shall be not less than 10 per centum of the amount of funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, subject to the 10 per centum limitation of the preceding sentence. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of the plan official, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 6 through 13 of title 6, United States Code. Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

Limitation.

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

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

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

(e) The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section including exempting a plan from the requirements of this section where he finds that (1) other bonding arrangements or (2) the overall financial condition of the plan would be adequate to protect the interests of the beneficiaries and participants. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section. Regulations.

LIMITATION ON ACTIONS

SEC. 413. (a) No action may be commenced under this title with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of— 29 USC 1113.

(1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date (A) on which the plaintiff had actual knowledge of the breach or violation, or (B) on which a report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Secretary under this title;

except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

EFFECTIVE DATE

SEC. 414. (a) Except as provided in subsections (b), (c), and (d), this part shall take effect on January 1, 1975. 29 USC 1114.

(b) (1) The provisions of this part authorizing the Secretary to promulgate regulations shall take effect on the date of enactment of this Act.

(2) Upon application of a plan, the Secretary may postpone until not later than January 1, 1976, the applicability of any provision of sections 402, 403 (other than 403(c)), 405 (other than 405 (a) and (d)), and 410(a), as it applies to any plan in existence on the date of enactment of this Act if he determines such postponement is (A) necessary to amend the instrument establishing the plan under which the plan is maintained and (B) not adverse to the interest of participants and beneficiaries.

(3) This part shall take effect on the date of enactment of this Act with respect to a plan which terminates after June 30, 1974, and before January 1, 1975, and to which at the time of termination section 4021 applies. Post, p. 1014.

(c) Section 406 and 407(a) (relating to prohibited transactions) shall not apply—

(1) until June 30, 1984, to a loan of money or other extension of credit between a plan and a party in interest under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of the Internal Revenue Code of 1954 or the corresponding provisions of prior law);

26 USC 503.

(2) until June 30, 1984, to a lease or joint use of property involving the plan and a party in interest pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b) of the Internal Revenue Code of 1954) or the corresponding provisions of prior law;

(3) until June 30, 1984, to the sale, exchange, or other disposition of property described in paragraph (2) between a plan and a party in interest if—

(A) in the case of a sale, exchange, or other disposition of the property by the plan to the party in interest, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(B) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition;

(4) Until June 30, 1977, to the provision of services, to which paragraphs (1), (2), and (3) do not apply between a plan and a party in interest—

(A) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or

(B) if the party in interest ordinarily and customarily furnished such services on June 30, 1974, if such provision of services remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if such provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of the Internal Revenue Code of 1954) or the corresponding provisions of prior law; or

(5) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a party in interest, if such plan is required to dispose of such property in order to comply with the provisions of section 407(a) (relating to the prohibition against holding excess employer securities and employer real property), and if the plan receives not less than adequate consideration.

(d) Any election, or failure to elect, by a disqualified person under section 2003(c)(1)(B) of this Act shall be treated for purposes of this part (but not for purposes of section 514) as an act or omission occurring before the effective date of this part.

Post, p. 971.

PART 5—ADMINISTRATION AND ENFORCEMENT

CRIMINAL PENALTIES

SEC. 501. Any person who willfully violates any provision of part 1 of this subtitle, or any regulation or order issued under any such provision, shall upon conviction be fined not more than $5,000 or imprisoned not more than one year, or both; except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $100,000. 29 USC 1131. Ante, p. 840.

CIVIL ENFORCEMENT

SEC. 502. (a) A civil action may be brought— 29 USC 1132.

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 105(c); Ante, p. 849.

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this title, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this title; or

(6) by the Secretary to collect any civil penalty under subsection (i).

(b) In the case of a plan which is qualified under section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 (or with respect to which an application to so qualify has been filed and has not been finally determined) the Secretary may exercise his authority under subsection (a)(5) with respect to a violation of, or the enforcement of, parts 2 and 3 of this subtitle (relating to participation, vesting, and funding), only if— 26 USC 401, 403, 405. Ante, pp. 852, 868.

(1) requested by the Secretary of the Treasury, or

(2) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall prescribe by regulation) that he exercise such authority on their behalf. In the case of such a request under this paragraph he may exercise such authority only if he determines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries to benefits under the plan.

(c) Any administrator who fails or refuses to comply with a request for any information which such administrator is required by this title to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the

date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

(d)(1) An employee benefit plan may sue or be sued under this title as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this title against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title.

Jurisdiction.

(e)(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

(2) Where an action under this title is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(f) The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(g) In any action under this title by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(h) A copy of the complaint in any action under this title by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) which is solely for the purpose of recovering benefits due such participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle. If the Secretary brings an action under subsection (a) on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

Ante, p. 874.

Penalty.

(i) In the case of a transaction prohibited by section 406 by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved (as defined in section 4975(f)(4) of the Internal Revenue Code of 1954); except that if the transaction is not corrected (in such manner as the Secretary shall prescribe by regulation, which regulations shall be consistent with section 4975(f)(5) of such Code) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved. This subsection shall not

Post, p. 971.

apply to a transaction with respect to a plan described in section 4975 (e) (1) of such Code. Post, p. 974.

(j) In all civil actions under this title, attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28, United States Code), but all such litigation shall be subject to the direction and control of the Attorney General.

(k) Suits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan to review a final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this Act, or to compel him to take action required under this title, may be brought in the district court of the United States for the district where the plan has its principal office, or in the United States District Court for the District of Columbia.

CLAIMS PROCEDURE

SEC. 503. In accordance with regulations of the Secretary, every employee benefit plan shall— 29 USC 1133.

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

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

INVESTIGATIVE AUTHORITY

SEC. 504. (a) The Secretary shall have the power, in order to determine whether any person has violated or is about to violate any provision of this title or any regulation or order thereunder— 29 USC 1134.

(1) to make an investigation, and in connection therewith to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary under this title, and

(2) to enter such places, inspect such books and records and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation, if he has reasonable cause to believe there may exist a violation of this title or any rule or regulation issued thereunder or if the entry is pursuant to an agreement with the plan.

The Secretary may make available to any person actually affected by any matter which is the subject of an investigation under this section, and to any department or agency of the United States, information concerning any matter which may be the subject of such investigation; except that any information obtained by the Secretary pursuant to section 6103(g) of the Internal Revenue Code of 1954 Post, p. 941. shall be made available only in accordance with regulations prescribed by the Secretary of the Treasury.

(b) The Secretary may not under the authority of this section require any plan to submit to the Secretary any books or records of the plan more than once in any 12 month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order thereunder. Books or records, accessability.

(c) For the purposes of any investigation provided for in this title, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents) of the Federal Trade Commission Act (15 U.S.C. 49, 50) are hereby made applicable (without regard to any limitation in such sections respect-

ing persons, partnerships, banks, or common carriers) to the jurisdiction, powers, and duties of the Secretary or any officers designated by him. To the extent he considers appropriate, the Secretary may delegate his investigative functions under this section with respect to insured banks acting as fiduciaries of employee benefit plans to the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

REGULATIONS

29 USC 1135. Post, p. 995; Ante, p. 850.

SEC. 505. Subject to title III and section 109, the Secretary may prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this title. Among other things, such regulations may define accounting, technical and trade terms used in such provisions; may prescribe forms; and may provide for the keeping of books and records, and for the inspection of such books and records (subject to section 504(a) and (b)).

OTHER AGENCIES AND DEPARTMENTS

29 USC 1136.

SEC. 506. In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this title and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize, on a reimbursable or other basis, the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this title. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this title as may be found to warrant consideration for criminal prosecution under the provisions of this title or other Federal law.

ADMINISTRATION

29 USC 1137. 5 USC 551, 701.

SEC. 507. (a) Subchapter II of chapter 5, and chapter 7, of title 5, United States Code (relating to administrative procedure), shall be applicable to this title.

(b) Section 5108 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) In addition to the number of positions authorized by subsection (a), the Secretary of Labor is authorized, without regard to any other provision of this section, to place 1 position in the Department of Labor in grade GS-18, and a total of 20 positions in the Department of Labor in grades GS-16 and 17."

(c) No employee of the Department of Labor or the Department of the Treasury shall administer or enforce this title or the Internal Revenue Code of 1954 with respect to any employee benefit plan under which he is a participant or beneficiary, any employee organization of which he is a member, or any employer organization in which he has an interest. This subsection does not apply to an employee benefit plan which covers only employees of the United States.

26 USC 1 et seq.

* * * * * * *

Senator JAVITS. Now, Mr. Hutchinson, it is your purpose, as I understand it, to utilize these authorities in close coordination with the Department of Justice, in order to alleviate duplication of effort and, if the IRS is willing, to proceed the same way with the IRS.

Mr. HUTCHINSON. We would welcome the cooperation, sir.

Senator JAVITS. Could you quantify for us in public session to what extent that is working with Justice, and how it is working with IRS?

Mr. HUTCHINSON. In terms of the operating relationship with the Department of Justice, as I stated earlier, the Department of Labor has dedicated 20 full time personnel to the investigation. The Department of Justice has also assigned two attorneys from the labor management section of the Criminal Division of that Department, to act as continuing liaison with our task force, and indeed, they have been present at the fund site, and at meetings in their offices—and ours—through the course of this investigation.

The Department would then turn, in addition to those two personnel, to other resources, including the U.S. attorneys, or strike force attorneys in the field, to pursue particular actions.

I think it is fair to say that when we originally discussed this operating scheme with the Department of Justice last summer and fall, in my opinion, and as the Secretary has stated, I think this is a unique kind of first step toward integrated use of the enforcement powers of the executive branch.

We are putting aside any parochial interest, such as this is your staff and this is ours. We are essentially saying we both have obligations, why can we not work together and determine the best way to use all our resources and our statutory authority.

Senator JAVITS. You are doing it?

Mr. HUTCHINSON. I am convinced we are.

Senator JAVITS. What about the IRS?

Mr. HUTCHINSON. At the outset the IRS made a decision not to participate in an integrated task force. Nonetheless, we have on occasion requested from them formal production of information under the Tax Code, and we have received that production under Section 6103(g) of the tax code.

There were meetings early in the initiation of the investigation pursuant to proper disclosure whereby their prior history and relationship in auditing the fund was discussed with our personnel, and was helpful to us in developing initial strategies.

They are not on a day-to-day basis working as part of the integrated task force. I would characterize that relationship more one of seeking cooperation than joint action.

Senator JAVITS. So it is fair to say that the coordination with Justice is by agreement, and the coordination insofar as it goes with IRS is by request?

Mr. HUTCHINSON. That might be a fair way to characterize it.

Senator JAVITS. That seems a fair way to characterize it.

Mr. HUTCHINSON. We have formalized our agreement with the Justice Department.

Senator JAVITS. You were appointed by the Secretary of Labor, were you not?

Mr. HUTCHINSON. That is correct.

Senator JAVITS. Secretary Usery's predecessor?

Mr. HUTCHINSON. Correct.

Senator JAVITS. Do you have a term, or do you hold office at the pleasure of the Secretary?

Mr. HUTCHINSON. I am an appointee that holds office at the pleasure of the Secretary.

Senator JAVITS. Now, we understand that, and your answers to what I am about to ask you will be considered by me, and I am sure by other Senators, in the light of that answer.

But, nevertheless, we have to ask it, because you are the man who is on the job. Do you feel what the Secretary said at the Las Vegas convention pulled the rug out from under your investigation, or otherwise adversely affected it?

Mr. HUTCHINSON. Senator, I do not think that there has been any effect of those comments, other than the time and energy necessary to divert to responding to them. It has not affected the day-to-day operations for control with our investigative attorneys, auditors, indeed not before, and it has not since.

Senator JAVITS. Do you feel the morale of your staff is what it was, or has there been any change in it?

Mr. HUTCHINSON. I think that any time there is public criticism of a Cabinet official all employees in that agency are interested in it and curious about it. I can say, in total conviction, in the last few weeks, working with the members of this investigating unit, they have complete and total confidence they are going to be able to operate the way they always have, that is, directly involved in investigation, and doing it professionally, in the way they see fit.

Senator JAVITS. No holds barred?

Mr. HUTCHINSON. None.

Senator JAVITS. Nothing inhibited?

Mr. HUTCHINSON. Absolutely none.

Senator JAVITS. No compromise of the investigation?

Mr. HUTCHINSON. I do not think we could stand for that, Senator.

Senator JAVITS. Well, Mr. Hutchinson, I would again like to bracket what you said, because I am a lawyer, and you know that, first and foremost. I would again repeat that you hold office at the pleasure of the Secretary, but nonetheless, it is our duty, my duty, to find out from you what you would say about it. That is not necessarily conclusive. I want to tell you that.

Mr. HUTCHINSON. I understand that.

Senator JAVITS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Before we turn to Senator Pell, there was one statement in Secretary Usery's prepared statement that I would like to amplify. It is illustrative of how your authority can operate. It was described that the Department was notified of an investment proposal of some fund. It is not named what fund it was. It was your conclusion that their action might violate the fiduciary provisions of the act. Notice was given to the trustees. The investments were not made. The investments would have been made to a company that went bankrupt.

It is described here that $2.5 million in assets were saved. The plan might have lost.

I just wondered. That is a rather casual notice. It is described as rather casual.

The Department was notified of this proposal. I just wondered now a little bit more about that, Mr. Usery.

Is there a procedure to become notified of intending investments of the pension fund?

Secretary USERY. Well, let me just say this, Senator.

In this case I think probably Mr. Hutchinson can give you more details to it than I can. I just cited one case. There are a number of cases where we think that by discussion, by talking with us, or by other ways, we have prevented certain things from happening.

Mr. HUTCHINSON. Senator, I think that is an important clarification made, because to me the actions that occurred in that case precisely indicate the wisdom of the new remedies that are in ERISA.

That prospective investment was brought to our attention by an individual who considered himself to be a fiduciary to that plan, and thought that the action, if taken, would make him liable, and he did not agree with it. He brought this to the attention of a local area office of the Department of Labor, who advised the national office, who reviewed the matter, who did a preliminary investigation to find out whether the facts he alleged of the intended investment were true, and having determined that, we sent a formal letter to the board of trustees, advising them that we had the matter under investigation, and it might constitute a violation of the law.

At that point they decided not to go forward. But it was brought to our attention by someone who perceives himself to be a fiduciary to that plan. It seems to point out the wisdom of some of the new rules that are in the statute.

The CHAIRMAN. Let me ask you whether you feel that the variety of enforcement opportunities that you have under the law, can reach all possible situations so that remedy can precisely fit any potential wrongdoing, or any wrongdoing under the law?

Mr. HUTCHINSON. Senator, I think that the provisions for relief that are now in ERISA, having been formerly a practicing attorney, are adequate to frame any kind of relief for situations that we have yet discovered.

The CHAIRMAN. And as far as obtaining information in your relationship with the IRS, is the code provision adequate for you to receive basic information from IRS that you feel is essential?

Mr. HUTCHINSON. We can receive it through a very formal process, which then limits our use of the material, but we indeed have an ability to receive the material we need.

Senator JAVITS. Mr. Chairman, could I ask a question on this line?

The CHAIRMAN. Yes.

Senator JAVITS. By the way, Mr. Chairman, I request that Mr. Lippe be called as a witness.

The CHAIRMAN. Mr. Lippe is present, and is available to be a witness, am I right?

Mr. LIPPE. Yes, sir.

Senator JAVITS. In due course I want to hear him.

Now, I would like to ask you this, pursuant to what you just said. What about violations of law before the enactment and effective date of ERISA? The fiduciary standards and remedies were effective immediately upon enactment, but I understand there is an area which

precedes ERISA, which may or may not be invoked by one or another Government department, including IRS, in respect of the authority and remedy.

Could you tell us about these sanctions?

Mr. HUTCHINSON. Senator, there are provisions in title 18 of the Criminal Code that were not superseded by ERISA, that have been in place for many years before 1975 that are still in place and offer remedies for abuses prior to the passage of ERISA.

There are provisions in the Internal Revenue Code that address the time period prior to the passage of ERISA that are also directed at the activities of employee benefit plans.

So ERISA is not the only tool.

The CHAIRMAN. Senator Pell.

Senator JAVITS. Would you mind putting those in the record?

Mr. HUTCHINSON. We will supply them for the record.

Mr. Chairman, the principal regulatory provisions of the Internal Revenue Code which affect employee benefit plans and which were not superseded by ERISA are sections 401–407. More broadly, the basic non-ERISA regulatory scheme under the Internal Revenue Code consists of sections 72, 101(b), 219, 401–07, 501–03, 1379, 2039 (c) and 2517. Substantially all of these provisions were amended by ERISA. A discussion of the historical development of this regulatory scheme is to be found in Chadwick and Foster, "Federal Regulation of Retirement Plans: The Quest for Parity", 28 Vanderbilt Law Review No. 4 at 645–668 (May 1975).

[The following was received for the record:]

Sec.
405. Qualified bond purchase plans.
406. Certain employees of foreign subsidiaries.
407. Certain employees of domestic subsidiaries engaged in business outside the United States.
408. Individual retirement accounts.
409. Retirement bonds.

Editorial Notes

Subpart analysis and headings were added by Pub.L. 93–406, Title II, § 1016(b) (1), Sept. 2, 1974, 88 Stat. 932. Effective date, see Editorial Notes under section 401.

Items 408 and 409 were added by Pub.L. 93–406, Title II, § 2002(h) (2), Sept. 2, 1974, 88 Stat. 970, effective Jan. 1, 1975.

§ 401. Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a) (3) (B) (relating to deduction for contributions to profit-sharing and stock bonus plans), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries;

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) If the contributions or the benefits provided under the plan do not discriminate in favor of employees who are—

(A) officers,

(B) shareholders, or

(C) highly compensated.

For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b) (2) (A) and (C).

(5) A classification shall not be considered discriminatory within the meaning of paragraph (4) or section 410(b) (without regard to paragraph (1) (A) thereof) merely because it excludes employees the whole of whose remuneration constitutes "wages" under section 3121(a) (1) (relating to the Federal Insurance Contributions Act) or merely because it is limited to salaried or clerical employees. Neither shall a plan be considered discriminatory within the meaning of such provisions merely because the contributions or benefits of or on behalf of the employees

under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, or merely because the contributions or benefits based on that part of an employee's remuneration which is excluded from "wages" by section 3121(a)(1) differ from the contributions or benefits based on employee's remuneration not so excluded, or differ because of any retirement benefits created under State or Federal law. For purposes of this paragraph and paragraph (10), the total compensation of an individual who is an employee within the meaning of subsection (c)(1) means such individual's earned income (as defined in subsection (c)(2)), and the basic or regular rate of compensation of such an individual shall be determined, under regulations prescribed by the Secretary or his delegate, with respect to that portion of his earned income which bears the same ratio to his earned income as the basic or regular compensation of the employees under the plan bears to the total compensation of such employees. For purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate. For the purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary or his delegate to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates.

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards).

(8) A trust forming part of a pension plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

(9) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), a trust forming part of such plan shall not constitute a qualified trust under this section unless, under the plan, the entire interest of each employee—

(A) either will be distributed to him not later than his taxable year in which he attains the age of 70½ years, or, in the case of an

employee other than an owner-employee (as defined in subsection (c) (3)), in which he retires, whichever is the later, or

(B) will be distributed, commencing not later than such taxable year, (i) in accordance with regulations prescribed by the Secretary or his delegate, over the life of such employee or over the lives of such employee and his spouse, or (ii) in accordance with such regulations, over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and his spouse.

A trust shall not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee under the plan of which such trust is a part, of a method of distribution which does not meet the terms of the preceding sentence.

(10) In the case of a plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c) (3))—

(A) paragraph (3), the first and second sentences of paragraph (5), and section 410 shall not apply, but—

(i) such plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of or on behalf of employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, and

(ii) such plan shall not be considered discriminatory within the meaning of paragraph (4) solely because under the plan contributions described in subsection (e) which are in excess of the amounts which may be deducted under section 404 for the taxable year may be made on behalf of any owner-employee; and

(B) a trust forming a part of such plan shall constitute a qualified trust under this section only if the requirements in subsection (d) are also met.

(11) (A) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for the payment of benefits in the form of an annuity unless such plan provides for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

(B) Notwithstanding the provisions of subparagraph (A), in the case of a plan which provides for the payment of benefits before the normal retirement age (as defined in section 411(a) (8)), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

(i) the date the employee reaches the earliest retirement age under the plan, or

(ii) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

(C) A plan described in subparagraph (B) does not meet the requirements of subparagraph (A) unless, under the plan, a participant has a reasonable period during which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subparagraph (B) ends and ending on the date on which he reaches normal retirement age (as defined in section 411(a) (8)) if he continues his employment during that period. A plan does not meet the requirements of this subparagraph unless, in the case of such an election, the payments under the survivor annuity are not less than the payments which would have been made under the joint annuity to which the participant would have been entitled if he made an election described in this subparagraph immediately prior to his retirement and if his retirement had occurred on the day before his death and within the period within which an election can be made.

(D) A plan shall not be treated as not satisfying the requirements of this paragraph solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election described in subparagraph (C) has been made under subparagraph (C)) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

(E) A plan shall not be treated as satisfying the requirements of this paragraph unless, under the plan, each participant has a reasonable period (as described by the Secretary or his delegate by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subparagraph) not to take such joint and survivor annuity.

(F) A plan shall not be treated as not satisfying the requirements of this paragraph solely because under the plan there is a provision that any election described in subparagraph (C) or (E), and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

(i) the participant dies from accidental causes,

(ii) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

(iii) such election or revocation is made before such accident occurred.

(G) For purposes of this paragraph—

(i) the term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability),

(ii) the term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits, and

(iii) the term "qualified joint and survivor annuity" means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single life annuity for the life of the participant.

For purposes of this paragraph, a plan may take into account in any equitable manner (as determined by the Secretary or his delegate) any increased costs resulting from providing joint and survivor annuity benefits.

(H) This paragraph shall apply only if—

(i) the annuity starting date did not occur before the effective date of this paragraph, and

(ii) the participant was an active participant in the plan on or after such effective date.

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after the date of the enactment of the Employee Retirement Income Security Act of 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). This paragraph shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation.

(13) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d) (1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on the date of the enactment of the Employee Retirement Income Security Act of 1974.

(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially, reduced under regulations prescribed by the Secretary or his delegate.

(15) a trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part—

(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after the date of the enactment of the Employee Retirement Income Security Act of 1974 or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be.

(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415.

(17) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c) (1), or are shareholder-employees within the meaning of section 1379(d), only if the annual compensation of each employee taken into account under the plan does not exceed the first $100,000 of such compensation.

(18) In the case of a trust which is part of a plan providing a defined benefit for employees some or all of whom are employees within the meaning of subsection (c) (1), or are shareholder-employees within the meaning of section 1379(d), only if such plan satisfies the requirements of subsection (j).

(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent

that an accrued benefit is permitted to be forfeited in accordance with section 411(a) (3) (D) (iii) (relating to proportional forfeitures of benefits accrued before enactment of the Employee Retirement Income Security Act of 1974, in the event of withdrawal of certain mandatory contributions).

Paragraphs (11), (12), (13), (14), (15), and (19) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e) (2) of such section.

(b) Certain retroactive changes in plan.—A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary or his delegate may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period.

(c) Definitions and rules relating to self-employed individuals and owner-employees.—For purposes of this section—

(1) Employee.—The term "employee" includes, for any taxable year, an individual who has earned income (as defined in paragraph (2)) for the taxable year. To the extent provided in regulations prescribed by the Secretary or his delegate, such term also includes, for any taxable year—

(A) an individual who would be an employee within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(B) an individual who has been an employee within the meaning of the preceding sentence for any prior taxable year.

(2) Earned income.—

(A) In general.—The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c),

(iii) in the case of any individual who is treated as an employee under sections 3121(d) (3) (A), (C), or (D), without regard to paragraph (2) of section 1402(c), and

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items.

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date.

(B) Omitted. Pub.L. 89–809, Title II, § 204(c), Nov. 13, 1966, 80 Stat. 1577.

(C) Income from disposition of certain property.—For purposes of this section, the term "earned income" includes gains (other than any gain which is treated under any provision of this chapter as gain from the sale or exchange of a capital asset) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

(3) Owner-employee.—The term "owner-employee" means an employee who—

(A) owns the entire interest in an unincorporated trade or business, or

(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary or his delegate, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

(4) Employer.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(5) Contributions on behalf of owner-employees.—The term "contribution on behalf of an owner-employee" includes, except as the context otherwise requires, a contribution under a plan—

(A) by the employer for an owner-employee, and

(B) by an owner-employee as an employee.

(d) Additional requirements for qualification of trusts and plans benefiting owner-employees.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the following requirements of this subsection are met by the trust and by the plan of which such trust is a part:

(1) In the case of a trust which is created on or after October 10, 1962, or which was created before such date but is not exempt from tax under section 501(a) as an organization described in subsection (a) on the day before such date, the assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will administer the trust will be consistent with the requirements of this section. A trust shall not be disqualified under this paragraph merely because a person (including the employer) other than the trustee or custodian so administering the trust may be granted, under the trust instrument, the power to control

the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, or exchanges). This paragraph shall not apply to a trust created or organized outside the United States before October 10, 1962, if, under section 402(c), it is treated as exempt from tax under section 501(a) on the day before such date; or, to the extent provided under regulations prescribed by the Secretary or his delegate, to a trust which uses annuity, endowment, or life insurance contracts of a life insurance company exclusively to fund the benefits prescribed by the trust, if the life insurance company supplies annually such information about trust transactions affecting owner-employees as the Secretary or his delegate shall by forms or regulations prescribe. For purposes of this paragraph, the term "bank" means a bank as defined in section 581, an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act), a corporation which under the laws of the State of its incorporation is subject to supervision and examination by the commissioner of banking or other officer of such State in charge of the administration of the banking laws of such State, and, in the case of a trust created or organized outside the United States, a bank or trust company, wherever incorporated, exercising fiduciary powers and subject to supervision and examination by governmental authority.

(2) Under the plan—

(A) the employees' rights to or derived from the contributions under the plan are nonforfeitable at the time the contributions are paid to or under the plan; and

(B) in the case of a profit-sharing plan, there is a definite formula for determining the contributions to be made by the employer on behalf of employees (other than owner-employees).

Subparagraph (A) shall not apply to contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by subsection (a) (4), may not be used to provide benefits for designated employees in the event of early termination of the plan.

(3) (A) The plan benefits each employee having 3 or more years of service (within the meaning of section 410(a) (3)).

(B) For purposes of subparagraph (A), the term "employee" does not include—

(i) any employee included in a unit of employees covered by a collective-bargaining agreement described in section 410(b) (2) (A), and

(ii) any employee who is a nonresident alien individual described in section 410(b) (2) (C).

(4) Under the plan—

(A) contributions or benefits are not provided for any owner-employee unless such owner-employee has consented to being included under the plan; and

(B) no benefits in excess of contributions made by an owner-employee as an employee may be paid to any owner-employee, except

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in the case of his becoming disabled (within the meaning of section 72(m) (7)), prior to his attaining the age of 59½ years.

(5) The plan does not permit—

(A) contributions to be made by the employer on behalf of any owner-employee in excess of the amounts which may be deducted under section 404 for the taxable year;

(B) in the case of a plan which provides contributions or benefits only for owner-employees, contributions to be made on behalf of any owner-employee in excess of the amounts which may be deducted under section 404 for the taxable year; and

(C) if a distribution under the plan is made to any employee and if any portion of such distribution is an amount described in section 72(m) (5) (A) (i), contributions to be made on behalf of such employee for the 5 taxable years succeeding the taxable year in which such distribution is made.

Subparagraphs (A) and (B) shall not apply to any contribution which is not considered to be an excess contribution (as defined in subsection (e) (1)) by reason of the application of subsection (e) (3).

(6) Except as provided in this paragraph, the plan meets the requirements of subsection (a) (4) without taking into account for any purpose contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, as amended, or any other Federal or State law. If—

(A) of the contributions deductible under section 404, not more than one-third is deductible by reason of contributions by the employer on behalf of owner-employees, and

(B) taxes paid by the owner-employees under chapter 2 (relating to tax on self-employment income), and the taxes which would be payable under such chapter 2 by the owner-employees but for paragraphs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees,

then taxes paid under section 3111 (relating to tax on employers) with respect to an employee may, for purposes of subsection (a) (4), be taken into account as contributions by the employer for such employee under the plan.

(7) Under the plan, if an owner-employee dies before his entire interest has been distributed to him, or if distribution has been commenced in accordance with subsection (a) (9) (B) to his surviving spouse and such surviving spouse dies before his entire interest has been distributed to such surviving spouse, his entire interest (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of his surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which will be immediately distributed to such beneficiary or beneficiar-

ies. The preceding sentence shall not apply if distribution of the interest of an owner-employee has commenced and such distribution is for a term certain over a period permitted under subsection (a) (9) (B) (ii).

(8) Repealed. Pub.L. 93–406, Title II, § 2001(e)(2), Sept. 2, 1974, 88 Stat. 954.

(9) (A) If the plan provides contributions or benefits for an owner-employee who controls, or for two or more owner-employees who together control, the trade or business with respect to which the plan is established, and who also control as an owner-employee or as owner-employees one or more other trades or businesses, such plan and the plans established with respect to such other trades or businesses, when coalesced, constitute a single plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection with respect to the employees of all such trades or businesses (including the trade or business with respect to which the plan intended to qualify under this section is established).

(B) For purposes of subparagraph (A), an owner-employee, or two or more owner-employees, shall be considered to control a trade or business if such owner-employee, or such two or more owner-employees together—

(i) own the entire interest in an unincorporated trade or business, or

(ii) in the case of a partnership, own more than 50 percent of either the capital interest or the profits interest in such partnership.

For purposes of the preceding sentence, an owner-employee, or two or more owner-employees, shall be treated as owning any interest in a partnership which is owned, directly or indirectly, by a partnership which such owner-employee, or such two or more owner-employees, are considered to control within the meaning of the preceding sentence.

(10) The plan does not provide contributions or benefits for any owner-employee who controls (within the meaning of paragraph (9) (B)), or for two or more owner-employees who together control, as an owner-employee or as owner-employees, any other trade or business, unless the employees of each trade or business which such owner-employee or such owner-employees control are included under a plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection, and provides contributions and benefits for employees which are not less favorable than contributions and benefits provided for owner-employees under the plan.

(11) Under the plan, contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.

(e) Contributions for premiums on annuity, etc., contracts.—A contribution by the employer on behalf of an owner-employee is described in this subsection if—

(1) under the plan such contribution is required to be applied (directly or through a trustee) to pay premiums or other consideration for one or more annuity, endowment, or life insurance contracts on the life of such owner-employee issued under the plan,

(2) the amount of such contribution exceeds the amount deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan, and

(3) the amount of such contribution does not exceed the average of the amounts which were deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan (or which would have been deductible if such section had been in effect) for the first three taxable years (A) preceding the year in which the last such annuity, endowment, or life insurance contract was issued under the plan, and (B) in which such owner-employee derived earned income from the trade or business with respect to which the plan is established, or for so many of such taxable years as such owner-employee was engaged in such trade or business and derived earned income therefrom.

In the case of any individual on whose behalf contributions described in paragraph (1) are made under more than one plan as an owner-employee during any taxable year, the preceding sentence does not apply if the amount of such contributions under all such plans for all such years exceeds $7,500. Any contribution which is described in this subsection shall, for purposes of section 4972(b), be taken into account as a contribution made by such owner-employee as an employee to the extent that the amount of such contribution is not deductible under section 404 for the taxable year, but only for the purpose of applying section 4972(b) to other contributions made by such owner-employee as an employee.

(f) Certain custodial accounts and annuity contracts.—For purposes of this title, a custodial account or an annuity contract shall be treated as a qualified trust under this section if—

(1) the custodial account or annuity contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

(2) in the case of a custodial account the assets thereof are held by a bank (as defined in subsection (d) (1)) or another person who demonstrates, to the satisfaction of the Secretary or his delegate, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or annuity contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof.

(g) Annuity defined.—For purposes of this section and sections 402, 403, and 404, the term "annuity" includes a face-amount certificate, as defined in section 2(a) (15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a–2); but does not include any contract or certificate issued after December 31, 1962, which is transferable, if any person other than the

trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.

(h) Medical, etc., benefits for retired employees and their spouses and dependents.—Under regulations prescribed by the Secretary or his delegate, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if—

(1) such benefits are subordinate to the retirement benefits provided by the plan,

(2) a separate account is established and maintained for such benefits,

(3) the employer's contributions to such separate account are reasonable and ascertainable,

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits, and

(5) notwithstanding the provisions of subsection (a) (2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer.

(i) Certain union-negotiated pension plans.—In the case of a trust forming part of a pension plan which has been determined by the Secretary or his delegate to constitute a qualified trust under subsection (a) and to be exempt from taxation under section 501(a) for a period beginning after contributions were first made to or for such trust, if it is shown to the satisfaction of the Secretary or his delegate that—

(1) such trust was created pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(2) any disbursements of contributions, made to or for such trust before the time as of which the Secretary or his delegate determined that the trust constituted a qualified trust, substantially complied with the terms of the trust, and the plan of which the trust is a part, as subsequently qualified, and

(3) before the time as of which the Secretary or his delegate determined that the trust constitutes a qualified trust, the contributions to or for such trust were not used in a manner which would jeopardize the interests of its beneficiaries,

then such trust shall be considered as having constituted a qualified trust under subsection (a) and as having been exempt from taxation under section 501(a) for the period beginning on the date on which contributions were first made to or for such trust and ending on the date such trust first constituted (without regard to this subsection) a qualified trust under subsection (a).

(j) Defined benefit plans providing benefits for self-employed individuals and shareholder-employees.—

(1) **In general.**—A defined benefit plan satisfies the requirements of this subsection only if the basic benefit accruing under the plan for each plan year of participation by an employee within the meaning of subsection (c) (1) (or a shareholder-employee) is permissible under regulations prescribed by the Secretary or his delegate under this subsection to insure that there will be reasonable comparability (assuming level funding) between the maximum retirement benefits which may be provided with favorable tax treatment under this title for such employees under—

(A) defined contribution plans,

(B) defined benefit plans, and

(C) a combination of defined contribution plans and defined benefit plans.

(2) **Guidelines for regulations.**—The regulations prescribed under this subsection shall provide that a plan does not satisfy the requirements of this subsection if, under the plan, the basic benefit of any employee within the meaning of subsection (c) (1) (or a shareholder-employee) may exceed the sum of the products for each plan year of participation of—

(A) his annual compensation (not in excess of $50,000) for such year, and

(B) the applicable percentage determined under paragraph (3).

(3) **Applicable percentage.**—

(A) **Table.**—For purposes of paragraph (2), the applicable percentage for any individual for any plan year shall be based on the percentage shown on the following table opposite his age when his current period of participation in the plan began.

Age when participation began:	Applicable percentage
30 or less	6.5
35	5.4
40	4.4
45	3.6
50	3.0
55	2.5
60 or over	2.0

(B) **Additional requirements.**—The regulations prescribed under this subsection shall include provisions—

(i) for applicable percentages for ages between any two ages shown on the table,

(ii) for adjusting the applicable percentages in the case of plans providing benefits other than a basic benefit,

(iii) that any increase in the rate of accrual, and any increase in the compensation base which may be taken into account, shall, with respect only to such increase, begin a new period of participation in the plan, and

(iv) when appropriate, in the case of periods beginning after December 31, 1977, for adjustments in the applicable percent-

ages based on changes in prevailing interest and mortality rates occurring after 1973.

(4) Certain contributions and benefits may not be taken into account.—A defined benefit plan which provides contributions or benefits for owner-employees does not satisfy the requirements of this subsection unless such plan meets the requirements of subsection (a) (4) without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law.

(5) Definitions.—For purposes of this subsection—

(A) Basic benefit.—The term "basic benefit" means a benefit in the form of a straight life annuity commencing at the later of—

(i) age 65, or

(ii) the day 5 years after the day the participant's current period of participation began

under a plan which provides no ancillary benefits and to which employees do not contribute.

(B) Shareholder-employee.—The term "shareholder-employee" has the same meaning as when used in section 1379(d).

(C) Compensation.—The term "compensation" means—

(i) in the case of an employee within the meaning of subsection (c) (1), the earned income of such individual, or

(ii) in the case of a shareholder-employee, the compensation received or accrued by the individual from the electing small business corporation.

(6) Special rules.—Section 404(e) (relating to special limitations for self-employed individuals) and section 1379(b) (relating to taxability of shareholder-employee beneficiaries) do not apply to a trust to which this subsection applies.

(k) Cross reference.—

For exemption from tax of a trust qualified under this section, see section 501(a).

Aug. 16, 1954, c. 736, 68A Stat. 134; Oct. 10, 1962, Pub.L. 87–792, § 2, 76 Stat. 809; Oct. 23, 1962, Pub.L. 87–863, § 2(a), 76 Stat. 1141; Feb. 26, 1964, Pub.L. 88–272, Title II, § 219(a), 78 Stat. 57; July 30, 1965, Pub.L. 89–97, Title I, § 106(d) (4), 79 Stat. 337; Nov. 13, 1966, Pub.L. 89–809, Title II, §§ 204(b) (1), (c), 205(a), 80 Stat. 1577, 1578; Jan. 12, 1971, Pub.L. 91–691, § 1(a), 84 Stat. 2074; Sept. 2, 1974, Pub.L. 93–406, Title II, §§ 1012(b), 1016(a) (2), 1021, 1022(a) to (d), (f), 1023, 2001(c) to (e) (4), (h) (1), 2004(a) (1), 88 Stat. 913, 929, 935, 937 to 940, 943, 952 to 955, 957, 979.

Editorial Notes

Pub.L. 93–406, § 1016(a), substituted subsec. (a) (3) for a former subsec. (a) (3), effective according to Pub.L. 93–406, § 1017.

Pub.L. 93–406, § 1022(a), substituted subsec. (a) (4) for a former subsec. (a) (4), effective according to Pub.L. 93–406, § 1024.

Pub.L. 93–406, Title II, § 1016(a) (2) (B), substituted the words "paragraph (4) or section 410(b) (without regard to paragraph (1) (A) thereof)" for "paragraph (3) (B) or (4)" in subsec. (a) (5), effective according to Pub.L. 93–406, § 1017.

Pub.L. 93–406, Title II, § 1012(b), added the fourth and fifth sentences to subsec. (a) (5), effective according to Pub.L. 93–406, § 1017.

Pub.L. 93–406, § 1016(a), substituted subsec. (a) (7) for a former subsec. (a) (7), effective according to Pub.L. 93–406, § 1017.

Pub.L. 93–406, Title II, § 1022(b) (1), substituted "(A) paragraph (3), the first and second sentences of paragraph (5), and section 410 shall not apply, but—" for "(A) paragraph (3) and the first and second sentences of paragraph (5) shall not apply, but—" in subsec. (a) (10), effective according to Pub.L. 93–406, § 1024.

Pub.L. 93–406, Title II, § 2001(e) (4), deleted "(3) (A)" following "subsection (e)" in subsec. (a) (10) (A) (ii), applicable to contributions made in taxable years beginning after December 31, 1975.

Pub.L. 93–406, Title II, § 1021(a) (1), added pars. (11) and (12) to subsec. (a), effective with respect to plan years beginning after Dec. 31, 1975.

Pub.L. 93–406, Title II, § 1021(c), added paragraph (13) to subsec. (a), effective Jan. 1, 1976 by force of its own terms.

Pub.L. 93–406, Title II, § 1021(d), added paragraph (14) to subsec. (a), effective according to the terms of section 1024.

Pub.L. 93–406, Title II, § 1021(e), added paragraph (15) to subsec. (a), effective according to terms of Pub.L. 93–406, § 1024.

Title II of the Social Security Act, referred to in subsec. (a) (15), is classified to 42 U.S.C.A. § 401 et seq.

Pub.L. 93–406, Title II, § 2004(a) (1), added paragraph (16) to subsec. (a), applicable to years beginning after Dec. 31, 1975.

Pub.L. 93–406, Title II, § 2001(c), added paragraph (17) to subsec. (a), applicable to taxable years beginning after Dec. 31, 1975, and any other taxable years beginning after Dec. 31, 1973, for which contributions were made under the plan in excess of the amounts permitted to be made under sections 404(e) and 1379(b) as in effect on the day before the date of the enactment of this Act.

Pub.L. 93–406, Title II, § 2001(d) (1), added paragraph (18) to subsec. (a), applicable to taxable years beginning after Dec. 31, 1975.

Pub.L. 93–406, Title II, § 1021(f), added paragraph (19) to subsec. (a), effective in accordance with terms of Pub.L. 93–406, § 1024.

Pub.L. 93–406, Title II, § 1021(a) (2), added a paragraph to the end of subsec. (a), effective according to terms of Pub.L. 93–406, § 1024.

Subsection (b) was amended by Pub.L. 93–406, Title II, § 1023, effective on Sept. 2, 1974.

The first sentence of subsec. (d) (1), prior to amendment by Pub.L. 93–406, Title II, § 1022(c) (1), effective according to the terms of Pub.L. 93–406, § 1024, read as follows:

"(1) In the case of a trust which is created on or after the date of the enactment of this subsection, or which was created before such date but is not exempt from tax under section 501(a) as an organization described in subsection (a) on the day before such date, the trustee is a bank, but a person (including the employer) other than a bank may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, and exchanges)."

Pub.L. 93–406, Title II, § 1022(c) (2), substituted "October 10, 1962" for "the date of the enactment of this subsection" in the second sentence of subsec. (d) (1), effective according to the terms of Pub.L. 93–406, § 1024.

Pub.L. 93–406, Title II, § 1022(f), inserted the words "an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act)" in the last sentence of subsec. (d) (1), effective as of Jan. 1, 1974.

Section 101(6) of the Federal Credit Union Act, referred to in subsec. (d) (1), is classified to 12 U.S.C.A. § 1752(6).

Pub.L. 93–406, Title II, § 1022(b) (2), rewrote paragraph (3) of subsec. (d), effective according to the terms of Pub.L. 93–406, § 1024, which previously read:

"(3) The plan benefits each employee having a period of employment of 3 years or more. For purposes of the preceding sentence, the term 'employee' does not include any employee whose customary employment is for not more than 20 hours in any one week or is for not more than 5 months in any calendar year."

Pub.L. 93–406, Title II, § 2001(h) (1), applicable to taxable years ending after Sept. 2, 1974, inserted the words "in excess of contributions made by an owner-employee as an employee" in subsec. (d) (4) (B).

The last sentence of subsec. (d) (5) was amended by Pub.L. 93–406, Title II, § 2001(e) (1), applicable to contributions made in taxable years beginning after Dec. 31, 1975, to read as follows:

"Subparagraphs (A) and (B) do not apply to contributions described in subsection (e)."

Subsection (d) (8) was repealed by Pub.L. 93–406, Title II, § 2001(e) (2), applicable to contributions made in taxable years beginning after Dec. 31, 1975, and read:

"(8) Under the plan—

"(A) any contribution which is an excess contribution, together with the income attributable to such excess contribution, is (unless subsection (e) (2) (E) applies) to be repaid to the owner-employee on whose behalf such excess contribution is made;

"(B) if for any taxable year the plan does not, by reason of subsection (e) (2) (A), meet (for purposes of section 404) the requirements of this subsection with respect to an owner-employee, the income for the taxable year attributable to the interest of such owner-employee under the plan is to be paid to such owner-employee; and

"(C) the entire interest of an owner-employee is to be repaid to him when required by the provisions of subsection (e) (2) (E)."

Subsection (e) prior to amendment by Pub.L. 93–406, Title II, § 2001(e) (3), applicable to contributions made in taxable years beginning after Dec. 31, 1975, read as follows:

"(e) Excess contributions on behalf of owner-employees.—

"(1) Excess contribution defined.—For purposes of this section, the term 'excess contribution' means, except as provided in paragraph (3)—

"(A) if, in the taxable year, contributions are made under the plan only on behalf of owner-employees, the amount of any contribution made on behalf of any owner-employee which (without regard to this subsection) is not deductible under section 404 for the taxable year; or

"(B) if, in the taxable year, contributions are made under the plan on behalf of employees other than owner-employees—

"(i) the amount of any contribution made by the employer on behalf of any owner-employee which (without regard to this subsection) is not deductible under section 404 for the taxable year;

"(ii) the amount of any contribution made by any owner-employee (as an employee) at a rate which exceeds the rate of contributions permitted to be made by employees other than owner-employees;

"(iii) the amount of any contribution made by any owner-employee (as an employee) which exceeds the lesser of $2,500 or 10 percent of the earned income for such taxable year derived by such owner-employee from the trade or business with respect to which the plan is established; and

"(iv) in the case of any individual on whose behalf contributions are made under more than one plan as an owner-employee, the amount of any contribution made by such owner-employee (as an employee) under all such plans which exceeds $2,500; and

"(C) the amount of any contribution made on behalf of an owner-employee in any taxable year for which, under paragraph (2) (A) or (E), the plan does not (for purposes of section 404) meet the requirements of subsection (d) with respect to such owner-employee."

"For purposes of this subsection, the amount of any contribution which is allocable (determined in accordance with regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance shall not be taken into account.

"(2) Effect of excess contribution.—

"(A) In general.—If an excess contribution (other than an excess contribution to which subparagraph (E) applies) is made on behalf of an owner-employee in any taxable year, the plan with respect to which such excess contribution is

made shall, except as provided in subparagraphs (C) and (D), be considered, for purposes of section 404, as not meeting the requirements of subsection (d) with respect to such owner-employee for the taxable year and for all succeeding taxable years.

"**(B) Inclusion of amounts in gross income of owner-employees.**—For any taxable year for which any plan does not meet the requirements of subsection (d) with respect to an owner-employee by reason of subparagraph (A), the gross income of such owner-employee shall, for purposes of this chapter, include the amount of net income for such taxable year attributable to the interest of such owner-employee under such plan.

"**(C) Repayment within prescribed period.**—Subparagraph (A) shall not apply to an excess contribution with respect to any taxable year, if, on or before the close of the 6-month period beginning on the day on which the Secretary or his delegate sends notice (by certified or registered mail) to the person to whom such excess contribution was paid of the amount of such excess contribution, the amount of such excess contribution, and the net income attributable thereto, is repaid to the owner-employee on whose behalf such excess contribution was made. If the excess contribution is an excess contribution as defined in paragraph (1) (A) or (B) (i), or is an excess contribution as defined in paragraph (1) (C) with respect to which a deduction has been claimed under section 404, the notice required by the preceding sentence shall not be mailed prior to the time that the amount of the tax under this chapter of such owner-employee for the taxable year in which such excess contribution was made has been finally determined.

"**(D) Repayment after prescribed period.**—If an excess contribution, together with the net income attributable thereto, is not repaid within the 6-month period referred to in subparagraph (C), subparagraph (A) shall not apply to an excess contribution with respect to any taxable year beginning with the taxable year in which the person to whom such excess contribution was paid repays the amount of such excess contribution to the owner-employee on whose behalf such excess contribution was made, and pays to such owner-employee the amount of net income attributable to the interest of such owner-employee which, under subparagraph (B), has been included in the gross income of such owner-employee for any prior taxable year.

"**(E) Special rule if excess contribution was willfully made.**—If an excess contribution made on behalf of an owner-employee is determined to have been willfully made, then—

"(i) subparagraphs (A), (B), (C), and (D) shall not apply with respect to such excess contribution;

"(ii) there shall be distributed to the owner-employee on whose behalf such excess contribution was willfully made his entire interest in all plans with respect to which he is an owner-employee; and

"(iii) no plan shall, for purposes of section 404, be considered as meeting the requirements of subsection (d) with respect to such owner-employee for the taxable year in which it is determined that such excess contribution was willfully made and for the 5 taxable years following such taxable year.

"**(F) Statute of limitations.**—In any case in which subparagraph (A) applies, the period for assessing any deficiency arising by reason of—

"(i) the disallowance of any deduction under section 404 on account of a plan not meeting the requirements of subsection (d) with respect to the owner-employee on whose behalf an excess contribution was made, or

"(ii) the inclusion, under subparagraph (B), in gross income of such owner-employee of income attributable to the interest of such owner-employee under a plan,

"for the taxable year in which such excess contribution was made or for any succeeding taxable year shall not expire prior to one year after the close of the 6-month period referred to in subparagraph (C).

"**(3) Contributions for premiums on annuity, etc., contracts.**—A contribution by the employer on behalf of an owner-employee shall not be considered to be an excess contribution within the meaning of paragraph (1), if—

"(A) under the plan such contribution is required to be applied (directly or through a trustee) to pay premiums or other consideration for one or more annuity, endowment, or life insurance contracts on the life of such owner-employee issued under the plan,

"(B) the amount of such contribution exceeds the amount deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan, and

"(C) the amount of such contribution does not exceed the average of the amounts which were deductible under section 404 with respect to contributions made by the employer on behalf of such owner-employee under the plan (or which would have been deductible under such section if such section had been in effect) for the first 3 taxable years (i) preceding the year in which the last such annuity, endowment, or life insurance contract was issued under the plan and (ii) in which such owner-employee derived earned income from the trade or business with respect to which the plan is established, or for so many of such taxable years as such owner-employee was engaged in such trade or business and derived earned income therefrom.

"In the case of any individual on whose behalf contributions described in subparagraph (A) are made under more than one plan as an owner-employee during any taxable year, the preceding sentence shall not apply if the amount of such contributions under all such plans for such taxable year exceeds $2,500. Any contribution which is not considered to be an excess contribution by reason of the application of this paragraph shall, for purposes of subparagraphs (B) (ii), (iii), and (iv) of paragraph (1), be taken into account as a contribution made by such owner-employee as an employee to the extent that the amount of such contribution is not deductible under section 404 for the taxable year, but only for the purpose of applying such subparagraphs to other contributions made by such owner-employee as an employee."

Subsection (f) was amended by Pub.L. 93–406, Title II, § 1022(d), effective as of Jan. 1, 1974.

Pub.L. 93–406, Title II, § 2001(d) (2), redesignated subsec. (j) as (k) and inserted a new subsec. (j), applicable to taxable years beginning after Dec. 31, 1975.

Chapter 2, referred to in subsec. (j), is classified to 26 U.S.C.A. (I.R.C.1954) § 1401 et seq.

Chapter 21, referred to in subsec. (j), is classified to 26 U.S.C.A. (I.R.C.1954) § 3101 et seq.

Title II of the Social Security Act, referred to in subsec. (j), is classified to 42 U.S.C.A. § 401 et seq.

Section 1017 of Pub.L. 93–406, Title II, provided:

"§ 1017. EFFECTIVE DATES AND TRANSITIONAL RULES.

"(a) General rule.—Except as otherwise provided in this section, the amendments made by this part shall apply for plan years beginning after the date of the enactment of this Act.

"(b) Existing plans.—Except as otherwise provided in subsections (c) through (i), in the case of a plan in existence on January 1, 1974, the amendments made by this part shall apply for plan years beginning after December 31, 1975.

"(c) Existing plans under collective bargaining agreements.—

"(1) Application of vesting rules to certain plan provisions.—

"(A) Waiver of application.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, during the special temporary waiver period the plan shall not be treated as not meeting the requirements of section 411(b) (1) or (2) of the Internal Revenue Code of 1954 solely by reason of a supplementary or special plan provision (within the meaning of subparagraph (D)).

"(B) Special temporary waiver period.—For purposes of this paragraph, the term 'special temporary waiver period' means plan years beginning after December 31, 1975, and before the earlier of—

"(i) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

"(ii) January 1, 1981.

For purposes of clause (i), any plan amendment made pursuant to a collective

bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this Act shall not be treated as a termination of such collective bargaining agreement.

"(C) Determination by secretary of labor required.—Subparagraph (A) shall not apply unless the Secretary of Labor determines that the participation and vesting rules in effect on the date of the enactment of this Act are not less favorable to the employees, in the aggregate, than the rules provided under sections 410 and 411 of the Internal Revenue Code of 1954.

"(D) Supplementary or special plan provisions.—For purposes of this paragraph, the term 'supplementary or special plan provision' means any plan provision which—

"(i) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant, or

"(ii) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

"(2) Application of funding rules.—

"(A) In general.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, section 412 of the Internal Revenue Code of 1954, and other amendments made by this part to the extent such amendments relate to such section 412, shall not apply during the special temporary waiver period (as defined in paragraph (1) (B)).

"(B) Waiver of underfunding.—In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary of Labor finds to be collective bargaining agreements between employee representatives and one or more employers, if by reason of subparagraph (A) the requirements of section 401(a) (7) of the Internal Revenue Code of 1954) apply without regard to the amendment of such section 401(a) (7) by section 1016(a) (2) (C) of this Act, the plan shall not be treated as not meeting such requirements solely by reason of the application of the amendments made by sections 1011 and 1012 of this Act or related amendments made by this part.

"(C) Labor organization conventions.—In the case of a plan maintained by a labor organization, which is exempt from tax under section 501(c) (5) of the Internal Revenue Code of 1954, exclusively for the benefit of its employees and their beneficiaries, section 412 of such Code and other amendments made by this part to the extent such amendments relate to such section 412, shall be applied by substituting for the term 'December 31, 1975' in subsection (b), the earlier of—

"(i) the date on which the second convention of such labor organization held after the date of the enactment of this Act ends, or

"(ii) December 31, 1980,

but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subparagraph (A) or (B) be substituted.

"(d) Existing plans may elect new provisions.—In the case of a plan in existence on January 1, 1974, the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit (as in effect from time to time) shall apply in the case of the plan year (which begins after the date of the enactment of this Act but before the applicable effective date determined under subsection (b) or (c)) selected by the plan administrator and to all subsequent plan years, if the plan administrator elects (in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe) to have such provisions so apply. Any election made under this subsection, once made, shall be irrevocable.

"(e) Certain definitions and special rules.—Section 414 of the Internal Revenue Code of 1954 (other than subsections (b) and (c) of such section 414), as added by section 1015(a) of this Act, shall take effect on the date of the enactment of this Act.

"(f) **Transitional rules with respect to breaks in service.**—

"(1) **Participation.**—In the case of a plan to which section 410 of the Internal Revenue Code of 1954 applies, if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 410 first becomes effective with respect to such plan) provides that any employee's participation in the plan would commence at any date later than the later of—

"(A) the date on which his participation would commence under the break in service rules of section 410(a) (5) of such Code, or

"(B) the date on which his participation would commence under the plan as in effect on January 1, 1974,

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code.

"(2) **Vesting.**—In the case of a plan to which section 411 of the Internal Revenue Code of 1954 applies, if any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which such section 411 first becomes effective with respect to such plan) provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

"(A) the break in service rules of section 411(a) (6) of such Code, or

"(B) the plan as in effect on January 1, 1974,

such plan shall not constitute a plan described in section 403(a) or 405(a) of such Code and a trust forming a part of such plan shall not constitute a qualified trust under section 401(a) of such Code. Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

"(g) **3-Year delay for certain provisions.**—Subparagraphs (B) and (C) of section 404(a) (1) shall apply only in the case of plan years beginning on or after 3 years after the date of the enactment of this Act.

"(h) (1) Except as provided in paragraph (2), section 413 of the Internal Revenue Code of 1954 shall apply to plan years beginning after December 31, 1953.

"(2) (A) For plan years beginning before the applicable effective date of section 410 of such Code, the provisions of paragraphs (1) and (8) of subsection (b) of such section 413 shall be applied by substituting '401(a) (3)' for '410'.

"(B) For plan years beginning before the applicable effective date of section 411 of such Code, the provisions of subsection (b) (2) of such section 413 shall be applied by substituting '401(a) (7)' for '411(d) (3)'.

"(C) (i) The provisions of subsection (b) (4) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 411 of such Code.

"(ii) The provisions of subsection (b) (5) (other than the second sentence thereof) of such section 413 shall not apply to plan years beginning before the applicable effective date of section 412 of such Code.

"(i) **Contributions to H.R. 10 Plans.**—Notwithstanding subsections (b) and (c) (2), in the case of a plan in existence on January 1, 1974, the amendment made by section 1013(c) (2) of this Act shall apply, with respect to a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c) (1) of the Internal Revenue Code of 1954, for plan years beginning after December 31, 1974, but only if the employer (within the meaning of section 401(c) (4) of such Code) elects in such manner and at such time as the Secretary of the Treasury or his delegate shall by regulations prescribe, to have such amendment so apply. Any election made under this subsection, once made, shall be irrevocable."

Section 1024 of Pub.L. 93–406, Title II, provided:

"**§ 1024. EFFECTIVE DATES.**

"Except as otherwise provided in section 1021, the amendments made by section 1021 [enacting subsecs. (a) (13), (14), (15), and (19) and provisions

following subsec. (a) (19) of this section] shall apply to plan years to which part I applies [for description of plan years to which part I applies, see Pub.L. 93–406, § 1017]. Except as otherwise provided in section 1022, the amendments made by section 1022 [amending subsecs. (a) (4), (10) (A), (d) (1), (3) of this section and 6051(a) of this Code] shall apply to plan years to which part I applies. Section 1023 [amending subsec. (b) of this section] shall take effect on the date of the enactment of this Act."

Section 2006 of Pub.L. 93–406, Title II, provided:

"§ 2006. SALARY REDUCTION REGULATIONS.

"(a) Inclusion of certain contributions in income.—Except in the case of plans or arrangements in existence on June 27, 1974, a contribution made before January 1, 1977, to an employees' trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code, or under an arrangement which, but for the fact that it was not in existence on June 27, 1974, would be an arrangement described in subsection (b) (2) of this section, shall be treated as a contribution made by an employee if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation.

"(b) Administration in the case of certain qualified pension or profit-sharing plans, etc., in existence on June 27, 1974.—No salary reduction regulations may be issued by the Secretary of the Treasury in final form before January 1, 1977, with respect to an arrangement which was in existence on June 27, 1974, and which, on that date—

"(1) provided for contributions to an employee's trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code, or

"(2) was maintained as part of an arrangement under which an employee was permitted to elect to receive part of his compensation in one or more alternative forms if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1954.

"(c) Administration of law with respect to certain plans.—

"(1) Administration in the case of plans described in subsection (b).—Until salary reduction regulations have been issued in final form, the law with respect to plans or arrangements described in subsection (b) shall be administered—

"(A) without regard to the proposed salary reduction regulations (37 FR 25938) and without regard to any other proposed salary reduction regulations, and

"(B) in the manner in which such law was administered before January 1, 1972.

"(2) Administration in the case of qualified profit-sharing plans.—In the case of plans or arrangements described in subsection (b), in applying this section to the tax treatment of contributions to qualified profit-sharing plans where the contributed amounts are distributable only after a period of deferral, the law shall be administered in a manner consistent with—

"(A) Revenue Ruling 56–497 (1956—2 C.B. 284),

"(B) Revenue Ruling 63–180 (1963—2 C.B. 189), and

"(C) Revenue Ruling 68–89 (1968—1 C.B. 402).

"(d) Limitation on retroactivity of final regulations.—In the case of any salary reduction regulations which become final after December 31, 1976—

"(1) for purposes of chapter 1 of the Internal Revenue Code of 1954 (relating to normal taxes and surtaxes), such regulations shall not apply before January 1, 1977; and

"(2) for purposes of chapter 21 of such Code (relating to Federal Insurance Contributions Act) and for purposes of chapter 24 of such Code (relating to collection of income tax at source on wages), such regulations shall not apply before the day on which such regulations are issued in final form.

"(e) Salary reduction regulations defined.—For purposes of this section, the term 'salary reduction regulations' means regulations dealing with the includibility in gross income (at the time of contribution) of amounts contributed to a

plan which includes a trust that qualifies under section 401(a), or a plan described in section 403(a) or 405(a), including plans or arrangements described in subsection (b) (2), if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation, or under an arrangement under which the employee is permitted to elect to receive part of his compensation in one or more alternative forms (if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1954)."

Subsection (c) (2) (B), omitted in 1966, related to earned income when both personal services and capital were material income-producing factors. See, now, subsec. (c) (2) (A) (i).

Federal Insurance Contributions Act, referred to in subsec. (a) (5), is classified to 26 U.S.C.A. 3101–3135.

The date of the enactment of this paragraph, and the date of enactment of this subsection, referred to in subsecs. (a) (9) and (d) (1), respectively, means the date of enactment of Pub.L. 87–792, which was approved on Oct. 10, 1962.

Title II of the Social Security Act, as amended, referred to in subsec. (d) (6), is classified to 42 U.S.C.A. § 401 et seq., The Public Health and Welfare.

The Investment Company Act of 1940, referred to in subsec. (g), is classified to 15 U.S.C.A. § 80a–1 et seq., Commerce and Trade.

§ 402. Taxability of beneficiary of employees' trust

(a) Taxability of beneficiary of exempt trust.—

(1) General rule.—Except as provided in paragraphs (2) and (4), the amount actually distributed or made available to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to him, in the year in which so distributed or made available, under section 72 (relating to annuities). The amount actually distributed or made available to any distributee shall not include net unrealized appreciation in securities of the employer corporation attributable to the amount contributed by the employee. Such net unrealized appreciation and the resulting adjustments to basis of such securities shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

(2) Capital gains treatment for portion of lump sum distributions. —In the case of an employee trust described in section 401(a), which is exempt from tax under section 501(a), so much of the total taxable amount (as defined in subparagraph (D) of subsection (e) (4)) of a lump sum distribution as is equal to the product of such total taxable amount multiplied by a fraction—

(A) the numerator of which is the number of calendar years of active participation by the employee in such plan before January 1, 1974, and

(B) the denominator of which is the number of calendar years of active participation by the employee in such plan,

shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of computing the fraction described in this paragraph and the fraction under subsection (e) (4) (E), the Secretary or his delegate may prescribe regulations under which plan years may be used in lieu of calendar years. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c) (1), determination of whether or not any

distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e) (4) (B), but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

(3) **Definitions.**—For purposes of this subsection—

(A) The term "securities" means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

(B) The term "securities of the employer corporation" includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 425) of the employer corporation.

(C) Repealed. Pub.L. 93–406, Title II, § 2005(c) (1), Sept. 2, 1974, 88 Stat. 991.

(4) **Distributions by United States to nonresident aliens.**—The amount includible under paragraph (1) or (2) of this subsection in the gross income of a nonresident alien individual with respect to a distribution made by the United States in respect of services performed by an employee of the United States shall not exceed an amount which bears the same ratio to the amount includible in gross income without regard to this paragraph as—

(A) the aggregate basic salary paid by the United States to such employee for such services, reduced by the amount of such basic salary which was not includible in gross income by reason of being from sources without the United States, bears to

(B) the aggregate basic salary paid by the United States to such employee for such services.

In the case of distributions under the Civil Service Retirement Act (5 U.S.C. 2251), the term "basic salary" shall have the meaning provided in section 1(d) of such Act.

(5) **Rollover amounts.**—In the case of an employees' trust described in section 401(a) which is exempt from tax under section 501(a), if—

(A) the balance to the credit of an employee is paid to him on one or more distributions which constitute a lump sum distribution within the meaning of subsection (e) (4) (A) (determined without reference to subsection (e) (4) (B)),

(B)(i) the employee transfers all the property he receives in such distribution to an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property, to the extent the fair market value of such property exceeds the amount referred to in subsection (e) (4) (D) (i), or

(ii) the employee transfers all the property he receives in such distribution to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or to an annuity plan described in section 403(a) on or before the 60th day after the day on which he received such property, to the

extent the fair market value of such property exceeds the amount referred to in subsection (e) (4) (D) (i), and

(C) the amount so transferred consists of the property (other than money) distributed, to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such distributions are not includible in gross income for the year in which paid. For purposes of this title, a transfer described in subparagraph (B) (i) shall be treated as a rollover contribution as described in section 408(d) (3). Subparagraph (B) (ii) does not apply in the case of a transfer to an employees' trust, or annuity plan if any part of the lump sum distribution described in subparagraph (A) is attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c) (1) at the time contributions were made on his behalf under the plan.

(b) Taxability of beneficiary of nonexempt trust.—Contributions to an employees' trust made by an employer during a taxable year of the employer which ends within or with a taxable year of the trust for which the trust is not exempt from tax under section 501(a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section. The amount actually distributed or made available to any distributee by any such trust shall be taxable to him in the year in which so distributed or made available, under section 72 (relating to annuities), except that distributions of income of such trust before the annuity starting date (as defined in section 72(c) (4)) shall be included in the gross income of the employee without regard to section 72(e) (1) (relating to amount not received as annuities). A beneficiary of any such trust shall not be considered the owner of any portion of such trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners).

(c) Taxability of beneficiary of certain foreign situs trusts.—For purposes of subsections (a) and (b), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).

(d) Certain employees' annuities.—Notwithstanding subsection (b) or any other provision of this subtitle, a contribution to a trust by an employer shall not be included in the gross income of the employee in the year in which the contribution is made if—

(1) such contribution is to be applied by the trustee for the purchase of annuity contracts for the benefit of such employee;

(2) such contribution is made to the trustee pursuant to a written agreement entered into prior to October 21, 1942, between the employer and the trustee, or between the employer and the employee; and

(3) under the terms of the trust agreement the employee is not entitled during his lifetime, except with the consent of the trustee, to

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any payments under annuity contracts purchased by the trustee other than annuity payments.

The employee shall include in his gross income the amounts received under such contracts for the year received as provided in section 72 (relating to annuities). This subsection shall have no application with respect to amounts contributed to a trust after June 1, 1949, if the trust on such date was exempt under section 165(a) of the Internal Revenue Code of 1939. For purposes of this subsection, amounts paid by an employer for the purchase of annuity contracts which are transferred to the trustee shall be deemed to be contributions made to a trust or trustee and contributions applied by the trustee for the purchase of annuity contracts; the term "annuity contracts purchased by the trustee" shall include annuity contracts so purchased by the employer and transferred to the trustee; and the term "employee" shall include only a person who was in the employ of the employer, and was covered by the agreement referred to in paragraph (2), prior to October 21, 1942.

(e) Tax on lump sum distributions.—

(1) Imposition of separate tax on lump sum distributions.—

(A) Separate tax.—There is hereby imposed a tax (in the amount determined under subparagraph (B)) on the ordinary income portion of a lump sum distribution.

(B) Amount of tax.—The amount of tax imposed by subparagraph (A) for any taxable year shall be an amount equal to the amount of the initial separate tax for such taxable year multiplied by a fraction, the numerator of which is the ordinary income portion of the lump sum distribution for the taxable year and the denominator of which is the total taxable amount of such distribution for such year.

(C) Initial separate tax.—The initial separate tax for any taxable year is an amount equal to 10 times the tax which would be imposed by subsection (c) of section 1 if the recipient were an individual referred to in such subsection and the taxable income were an amount equal to one-tenth of the excess of—

(i) the total taxable amount of the lump sum distribution for the taxable year, over

(ii) the minimum distribution allowance.

(D) Minimum distribution allowance.—For purposes of this paragraph, the minimum distribution allowance for the taxable year is an amount equal to—

(i) the lesser of $10,000 or one-half of the total taxable amount of the lump sum distribution for the taxable year, reduced (but not below zero) by

(ii) 20 percent of the amount (if any) by which such total taxable amount exceeds $20,000.

(E) Liability for tax.—The recipient shall be liable for the tax imposed by this paragraph.

(2) Multiple distributions and distributions of annuity contracts.—In the case of any recipient of a lump sum distribution for the taxable year with respect to whom during the 6-taxable-year period ending on

the last day of the taxable year there has been one or more other lump sum distributions after December 31, 1973, or if the distribution (or any part thereof) is an annuity contract, in computing the tax imposed by paragraph (1) (A), the total taxable amounts of all such distributions during such 6-taxable-year period shall be aggregated, but the amount of tax so computed shall be reduced (but not below zero) by the sum of—

(A) the amount of the tax imposed by paragraph (1) (A) paid with respect to such other distributions, plus

(B) that portion of the tax on the aggregated total taxable amounts which is attributable to annuity contracts.

For purposes of this paragraph, a beneficiary of a trust to which a lump sum distribution is made shall be treated as the recipient of such distribution if the beneficiary is an employee (including an employee within the meaning of section 401(c) (1)) with respect to the plan under which the distribution is made or if the beneficiary is treated as the owner of such trust for purposes of subpart E of part I of subchapter J. In the case of the distribution of an annuity contract, the taxable amount of such distribution shall be deemed to be the current actuarial value of the contract, determined on the date of such distribution. In the case of a lump sum distribution with respect to any individual which is made only to two or more trusts, the tax imposed by paragraph (1) (A) shall be computed as if such distribution was made to a single trust, but the liability for such tax shall be apportioned among such trusts according to the relative amounts received by each. The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph.

(3) **Allowance of deduction.**—The ordinary income portion of a lump sum distribution for the taxable year shall be allowed as a deduction from gross income for such taxable year, but only to the extent included in the taxpayer's gross income for such taxable year.

(4) **Definitions and special rules.—**

(A) **Lump sum distribution.**—For purposes of this section and section 403, the term "lump sum distribution" means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

(i) on account of the employee's death,

(ii) after the employee attains age 59½,

(iii) on account of the employee's separation from the service, or

(iv) after the employee has become disabled (within the meaning of section 72(m) (7))

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Clause (iii) of this subparagraph shall be applied only with respect to an individual who is an employee without regard to section 401(c) (1), and clause (iv) shall be applied only with respect to an employee within the meaning of section 401(c) (1). For purposes of this subparagraph, a distribu-

tion of an annuity contract from a trust or annuity plan referred to in the first sentence of this subparagraph shall be treated as a lump sum distribution. For purposes of this subparagraph, a distribution to two or more trusts shall be treated as a distribution to one recipient.

(B) Election of lump sum treatment.—For purposes of this section and section 403, no amount which is not an annuity contract may be treated as a lump sum distribution under subparagraph (A) unless the taxpayer elects for the taxable year to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary or his delegate. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age 59½. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to an employee to two or more trusts, the election under this subparagraph shall be made by the personal representative of the employee.

(C) Aggregation of certain trusts and plans.—For purposes of determining the balance to the credit of an employee under subparagraph (A)—

(i) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

(ii) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a) (2) shall not be taken into account.

(D) Total taxable amount.—For purposes of this section and section 403, the term "total taxable amount" means, with respect to a lump sum distribution, the amount of such distribution which exceeds the sum of—

(i) the amounts considered contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore distributed to him which were not includible in gross income, and

(ii) the net unrealized appreciation attributable to that part of the distribution which consists of the securities of the employer corporation so distributed.

(E) Ordinary income portion.—For purposes of this section, the term "ordinary income portion" means, with respect to a lump sum distribution, so much of the total taxable amount of such distribution as is equal to the product of such total taxable amount multiplied by a fraction—

(i) the numerator of which is the number of calendar years of active participation by the employee in such plan after December 31, 1973, and

(ii) the denominator of which is the number of calendar years of active participation by the employee in such plan.

(F) Employee.—For purposes of this subsection and subsection (a) (2), except as otherwise provided in subparagraph (A), the term "employee" includes an individual who is an employee within the meaning of section 401(c) (1) and the employer of such individual is the person treated as his employer under section 401(c) (4).

(G) Community property laws.—The provisions of this subsection, other than paragraph (3), shall be applied without regard to community property laws.

(H) Minimum period of service.—For purposes of this subsection (but not for purposes of subsection (a) (2) or section 403(a) (2) (A)), no amount distributed to an employee from or under a plan may be treated as a lump sum distributed under subparagraph (A) unless he has been a participant in the plan for 5 or more taxable years before the taxable year in which such amounts are distributed.

(I) Amounts subject to penalty.—This subsection shall not apply to amounts described in clause (ii) of subparagraph (A) of section 72(m) (5) to the extent that section 72(m) (5) applies to such amounts.

(J) Unrealized appreciation of employer securities.—In the case of any distribution including securities of the employer corporation which, without regard to the requirement of subparagraph (H), would be treated as a lump sum distribution under subparagraph (A), there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation so distributed. In the case of any such distribution or any lump sum distribution including securities of the employer corporation, the amount of net unrealized appreciation of such securities and the resulting adjustments to the basis of such securities shall be determined under regulations prescribed by the Secretary or his delegate.

(K) Securities.—For purposes of this subsection, the terms "securities" and "securities of the employer corporation" have the respective meanings provided by subsection (a) (3).

Aug. 16, 1954, c. 736, 68A Stat. 135; Apr. 22, 1960, Pub.L. 86–437, §§ 1, 2(a), 74 Stat. 79; Oct. 10, 1962, Pub.L. 87–792, § 4(c), 76 Stat. 825; Feb. 26, 1964, Pub.L. 88–272, Title II, §§ 221(c) (1), 232(e) (1)–(3), 78 Stat. 75, 111; Dec. 30, 1969, Pub.L. 91–172, Title III, § 321(b) (1), Title V, § 515(a) (1), 83 Stat. 590, 643; Sept. 2, 1974, Pub.L. 93–406, Title II, §§ 2002(g) (5), 2005(a), (b) (1), (c) (1), (2), 88 Stat. 968, 987, 990, 991.

Editorial Notes

Subsection (a) (2) was amended by Pub.L. 93–406, Title II, § 2005(b) (1), applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after such date.

Subparagraph (C) of subsec. (a) (3), defining total distributions payable, was repealed by Pub.L. 93–406, applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after such date.

Former paragraph (5) (as in effect on Dec. 31, 1973) of subsec. (a), relating to limitation on capital gains treatment, was repealed by Pub.L. 93–406, applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after such date.

Paragraph (5) of subsec. (a), relating to rollover amounts, was added by Pub.L. 93–406, Title II, § 2002(g)(5), applicable on and after the date of enactment of this Act with respect to contributions to an employees' trust described in section 401(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code or an annuity plan described in section 403(a) of such Code.

Subsection (e) was amended by Pub.L. 93–406, Title II, § 2005(a), applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after such date.

The Civil Service Retirement Act, referred to in subsec. (a) (4), is classified to 5 U.S.C.A. § 8301 et seq., Government Organization and Employees.

Section 1(d) of such Act, referred to in subsec. (a) (4), means subsection (d) of section 1 of the Civil Service Retirement Act, which is covered by 5 U.S.C.A. § 8331.

§ 403. Taxation of employee annuities

(a) Taxability of beneficiary under a qualified annuity plan.—

(1) General rule.—Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a) (2) (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).

(2) Capital gains treatment for certain distributions.—

(A) General rule.—If—

(i) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

(ii) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

(iii) a lump sum distribution (as defined in section 402(e) (4) (A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e) (4) (D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a) (2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c) (1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e) (4) (B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

(B) Cross reference.—

For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).

(3) Self-employed individuals.—For purposes of this subsection, the term "employee" includes an individual who is an employee within the

meaning of section 401(c) (1), and the employer of such individual is the person treated as his employer under section 401(c) (4).

(4) Rollover amounts.—In the case of an employee annuity described in 403(a), if—

(A) the balance to the credit of an employee is paid to him in one or more distributions which constitute a lump sum distribution within the meaning of section 402(e) (4) (A) determined without reference to section 402(e) (4) (B),

(B) (i) the employee transfers all the property he receives in such distribution to an individual account described in section 408(a), an individual retirement annuity described in section 408(b) (other than an endowment contract), or a retirement bond described in section 409, on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e) (4) (D) (i), or

(ii) the employee transfers all the property he receives in such distribution to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or to an annuity plan described in subsection (a) on or before the 60th day after the day on which he received such property to the extent the fair market value of such property exceeds the amount referred to in section 402(e) (4) (D) (i), and

(C) the amount so transferred consists of the property distributed to the extent that the fair market value of such property does not exceed the amount required to be transferred pursuant to subparagraph (B),

then such distribution is not includible in gross income for the year in which paid. For purposes of this title, a transfer described in subparagraph (B) (i) shall be treated as a rollover contribution described in section 408(d) (3).

Subparagraph (B) (ii) does not apply in the case of a transfer to an employees' trust, or annuity plan if any part of the lump sum distribution described in subparagraph (A) is attributable to an annuity plan under which the employee was an employee within the meaning of section 401(c) (1) at the time contributions were made on his behalf under the plan.

(b) Taxability of beneficiary under annuity purchased by section 501(c) (3) organization or public school.—

(1) General rule.—If—

(A) an annuity contract is purchased—

(i) for an employee by an employer described in section 501(c) (3) which is exempt from tax under section 501(a), or

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational institution (as defined in section 151(e) (4)), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing,

(B) such annuity contract is not subject to subsection (a), and

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the exclusion allowance for such taxable year. The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).

(2) Exclusion allowance.—

(A) In general.—For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of—

(i) the amount determined by multiplying 20 percent of his includible compensation by the number of years of service, over

(ii) the aggregate of the amounts contributed by the employer for annuity contracts and excludible from the gross income of the employee for any prior taxable year.

(B) Election to have allowance determined under section 415 rules.—In the case of an employee who makes an election under section 415(c) (4) (D) to have the provisions of section 415(c) (4) (C) (relating to special rule for section 403(b) contracts purchased by educational institutions, hospitals, and home health service agencies) apply, the exclusion allowance for any such employee for the taxable year is the amount which could be contributed (under section 415) by his employer under a plan described in section 403(a) if the annuity contract for the benefit of such employee were treated as a defined contribution plan maintained by the employer.

(3) Includible compensation.—For purposes of this subsection, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1) (A), and which is includible in gross income (computed without regard to sections 105(d) and 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies.

(4) Years of service.—In determining the number of years of service for purposes of this subsection, there shall be included—

(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary or his delegate) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) Application to more than one annuity contract.—If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

(6) Forfeitable rights which become nonforfeitable.—For purposes of this subsection and section 72(f) (relating to special rules for computing employees' contributions to annuity contracts), if rights of the employee under an annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.

(7) Custodial accounts for regulated investment company stock.—

(A) Amounts paid treated as contributions.—For purposes of this title, amounts paid by an employer described in paragraph (1) (A) to a custodial account which satisfies the requirements of section 401(f) (2) shall be treated as amounts contributed by him for an annuity contract for his employee if the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account.

(B) Account treated as plan.—For purposes of this title, a custodial account which satisfies the requirements of section 401(f) (2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

(C) Regulated investment company.—For purposes of this paragraph, the term "regulated investment company" means a domestic corporation which is a regulated investment company within the meaning of section 851(a), and which issues only redeemable stock.

(c) Taxability of beneficiary under nonqualified annuities or under annuities purchased by exempt organizations.—Premiums paid by an employer for an annuity contract which is not subject to subsection (a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of such contract shall be substituted for the fair market value of the property for purposes of applying such section. The preceding sentence shall not apply to that portion of the premiums paid which is excluded from gross income under subsection (b). The amount actually paid or made available to any beneficiary under such contract shall be taxable to him in the year in which so paid or made available under section 72 (relating to annuities).

(d) Repealed. Pub.L. 91–172, Title III, § 321(b) (2), Dec. 30, 1969, 83 Stat. 591.

Aug. 16, 1954, c. 736, 68A Stat. 137; Sept. 2, 1958, Pub.L. 85–866, Title I, § 23(a–c), 72 Stat. 1620–1622; Oct. 4, 1961, Pub.L. 87–370, § 3(a), 75 Stat. 801; Oct. 10, 1962, Pub.L. 87–792, § 4(d), 76 Stat. 825; Feb. 26, 1964, Pub.L. 88–272, Title II, § 232(e) (4)–(6), 78 Stat. 111; Dec. 30, 1969, Pub.L. 91–172, Title III, § 321(b) (2), Title V, § 515(a) (2), 83 Stat. 591, 644; Sept. 2, 1974, Pub.L. 93–406, Title II, §§ 1022(e), 2002(g) (6), 2004(c) (4), 2005(b) (2), 88 Stat. 940, 969, 986, 991.

Editorial Notes

Paragraph (2) of subsec. (a) was amended by Pub.L. 93–406, Title II, § 2005(b) (2), applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after such date.

Subsection (a) (4) was added by Pub.L. 93–406, Title II, § 2002(g) (6), applicable on and after the date of enactment of this Act with respect to contributions to an employees' trust described in section 401(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code or an annuity plan described in section 403(a) of such Code.

Subsection (b) (2) prior to amendment by Pub.L. 93–406, Title II, § 2004(c) (4), applicable to years beginning after Dec. 31, 1975, read as follows:

"(3) **Exclusion allowance.**—For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of—

"(A) the amount determined by multiplying (i) 20 percent of his includible compensation, by (ii) the number of years of service, over

"(B) the aggregate of the amounts contributed by the employer for annuity contracts and excludable from the gross income of the employee for any prior taxable year."

Subsection (b) (7) was added by Pub.L. 93–406, Title II, § 1022(e), effective as of Jan. 1, 1974.

Salary reduction regulations, see Editorial Notes under section 401 of this Code.

Subsection (d), repealed by Pub.L. 91–172, § 321(b) (2), provided for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations.

§ 404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan

(a) General rule.—If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income); but, if they satisfy the conditions of either of such sections, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

(1) Pension trusts.

(A) In general.—In the taxable year when paid, if the contributions are paid into a pension trust, and if such taxable year ends

within or with a taxable year of the trust for which the trust is exempt under section 501(a), in an amount determined as follows:

(i) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan),

(ii) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary or his delegate, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years.

(iii) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary or his delegate, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary or his delegate.

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under section 412, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 412.

(B) Special rule in case of certain amendments.—In the case of a plan which the Secretary of Labor finds to be collectively bargained which makes an election under this subparagraph (in such manner and at such time as may be provided under regulations prescribed by the Secretary or his delegate), if the full funding limitation determined under section 412(c) (7) for such year is zero, if as a result of any plan amendment applying to such plan year, the amount determined under section 412(c) (7) (B) exceeds the amount determined under section 412(c) (7) (A), and if the funding method and the actuarial assumptions used are those used for such year under section 412, the maximum amount deductible in such year under the limitations of this paragraph shall be an amount equal to the lesser of—

(i) the full funding limitation for such year determined by applying section 412(c) (7) but increasing the amount referred to in subparagraph (A) thereof by the decrease in the present

value of all unamortized liabilities resulting from such amendment, or

(ii) the normal cost under the plan reduced by the amount necessary to amortize in equal annual installments over 10 years (until fully amortized) the decrease described in clause (i).

In the case of any election under this subparagraph, the amount deductible under the limitations of this paragraph with respect to any of the plan years following the plan year for which such election was made shall be determined as provided under such regulations as may be prescribed by the Secretary or his delegate to carry out the purposes of this subparagraph.

(C) **Certain collectively-bargained plans.**—In the case of a plan which the Secretary of Labor finds to be collectively bargained, established or maintained by an employer doing business in not less than 40 States and engaged in the trade or business of furnishing or selling services described in section 167(*l*) (3) (A) (iii), with respect to which the rates have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof, and in the case of any employer which is a member of a controlled group with such employer, subparagraph (B) shall be applied by substituting for the words "plan amendment" the words "plan amendment or increase in benefits payable under title II of the Social Security Act". For purposes of this subparagraph, the term "controlled group" has the meaning provided by section 1563(a), determined without regard to section 1563(a) (4) and (e) (3) (C).

(D) **Carryover.**—Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the foregoing limitations.

(2) **Employees' annuities.**—In the taxable year when paid, in an amount determined in accordance with paragraph (1), if the contributions are paid toward the purchase of retirement annuities, or retirement annuities and medical benefits as described in section 401(h), and such purchase is a part of a plan which meets the requirements of section 401(a) (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), and (15), (16), (17), (18), and (19), and, if applicable, the requirements of section 401(a) (9), (10), (17), and (18) and of section 401(d) (other than paragraph (1)), and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year towards the purchase of such retirement annuities, or such retirement annuities and medical benefits.

(3) **Stock bonus and profit-sharing trusts.**—

(A) **Limits on deductible contributions.**—In the taxable year when paid, if the contributions are paid into a stock bonus or

profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501(a), in an amount not in excess of 15 percent of the compensation otherwise paid or accrued during the taxable year to all employees under the stock bonus or profit-sharing plan. If in any taxable year there is paid into the trust, or a similar trust then in effect, amounts less than the amounts deductible under the preceding sentence, the excess, or if no amount is paid, the amounts deductible, shall be carried forward and be deductible when paid in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any such succeeding taxable year shall not exceed 15 percent of the compensation otherwise paid or accrued during such succeeding taxable year to the beneficiaries under the plan, but the amount so deductible under this sentence in any one succeeding taxable year together with the amount so deductible under the first sentence of this subparagraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan. In addition, any amount paid into the trust in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this subparagraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this subparagraph shall not exceed 15 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan. The term "stock bonus or profit-sharing trust", as used in this subparagraph, shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarially as provided in paragraph (1). If the contributions are made to 2 or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for purposes of applying the limitations in this subparagraph.

(B) Profit-sharing plan of affiliated group.—In the case of a profit-sharing plan, or a stock bonus plan in which contributions are determined with reference to profits, of a group of corporations which is an affiliated group within the meaning of section 1504, if any member of such affiliated group is prevented from making a contribution which it would otherwise have made under the plan, by reason of having no current or accumulated earnings or profits or because such earnings or profits are less than the contributions which it would otherwise have made, then so much of the contribution which such member was so prevented from making may be made, for the benefit of the employees of such member, by the other members of the group, to the extent of current or accumulated earnings or profits, except that such contribution by each such other member shall be limited, where the group does not file a consolidated return, to that proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution deductible without regard to this subparagraph which

the total prevented contribution bears to the total current and accumulated earnings or profits of all the members of the group remaining after adjustment for all contributions deductible without regard to this subparagraph. Contributions made under the preceding sentence shall be deductible under subparagraph (A) of this paragraph by the employer making such contribution, and, for the purpose of determining amounts which may be carried forward and deducted under the second sentence of subparagraph (A) of this paragraph in succeeding taxable years, shall be deemed to have been made by the employer on behalf of whose employees such contributions were made.

(4) Trusts created or organized outside the United States.—If a stock bonus, pension, or profit-sharing trust would qualify for exemption under section 501(a) except for the fact that it is a trust created or organized outside the United States, contributions to such a trust by an employer which is a resident, or corporation, or other entity of the United States, shall be deductible under the preceding paragraphs.

(5) Other plans.—If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee.

(6) Time when contributions deemed made.—For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(7) Limit on deductions.—If amounts are deductible under paragraphs (1) and (3), or (2) and (3), or (1), (2), and (3), in connection with two or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed the greater of 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries of the trusts or plans, or the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 for the plan year which ends with or within such taxable year (or for any prior plan year). In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this paragraph shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this paragraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans. This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than one trust or a trust and an annuity plan.

(8) **Self-employed individuals.**—In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c) (1), for purposes of this section—

(A) the term "employee" includes an individual who is an employee within the meaning of section 401(c) (1), and the employer of such individual is the person treated as his employer under section 401(c) (4);

(B) the term "earned income" has the meaning assigned to it by section 401(c) (2);

(C) the contributions to such plan on behalf of an individual who is an employee within the meaning of section 401(c) (1) shall be considered to satisfy the conditions of section 162 or 212 to the extent that such contributions do not exceed the earned income of such individual derived from the trade or business with respect to which such plan is established, and to the extent that such contributions are not allocable (determined in accordance with regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance; and

(D) any reference to compensation shall, in the case of an individual who is an employee within the meaning of section 401(c) (1), be considered to be a reference to the earned income of such individual derived from the trade or business with respect to which the plan is established.

(9) **Plans benefiting self-employed individuals.**—In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c) (1)—

(A) the limitations provided by paragraphs (1), (2), (3), and (7) on the amounts deductible for any taxable year shall be computed, with respect to contributions on behalf of employees (other than employees within the meaning of section 401(c) (1)), as if such employees were the only employees for whom contributions and benefits are provided under the plan;

(B) the limitations provided by paragraphs (1), (2), (3), and (7) on the amounts deductible for any taxable year shall be computed, with respect to contributions on behalf of employees within the meaning of section 401(c) (1)—

(i) as if such employees were the only employees for whom contributions and benefits are provided under the plan, and

(ii) without regard to the second sentence of paragraph (3); and

(C) the amounts deductible under paragraphs (1), (2), (3), and (7), with respect to contributions on behalf of any employee within the meaning of section 401(c) (1), shall not exceed the applicable limitation provided in subsection (e).

(10) **Repealed. Pub.L. 89–809, Title II, § 204(a), Nov. 13, 1966, 80 Stat. 1577.**

(b) Method of contributions, etc., having the effect of a plan.—If there is no plan but a method of employer contributions or compensation has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or similar plan deferring the receipt of compensation, subsection (a) shall apply as if there were such a plan.

(c) Certain negotiated plans.—If contributions are paid by an employer—

(1) under a plan under which such contributions are held in trust for the purpose of paying (either from principal or income or both) for the benefit of employees and their families and dependents at least medical or hospital care, or pensions on retirement or death of employees; and

(2) such plan was established prior to January 1, 1954, as a result of an agreement between employee representatives and the Government of the United States during a period of Government operation, under seizure powers, of a major part of the productive facilities of the industry in which such employer is engaged,

such contributions shall not be deductible under this section nor be made nondeductible by this section, but the deductibility thereof shall be governed solely by section 162 (relating to trade or business expenses). For purposes of this chapter and subtitle B, in the case of any individual who before July 1, 1974, was a participant in a plan described in the preceding sentence—

(A) such individual, if he is or was an employee within the meaning of section 401(c) (1), shall be treated (with respect to service covered by the plan) as being an employee other than an employee within the meaning of section 401(c) (1) and as being an employee of a participating employer under the plan,

(B) earnings derived from service covered by the plan shall be treated as not being earned income within the meaning of section 401(c) (2), and

(C) such individual shall be treated as an employee of a participating employer under the plan with respect to service before July 1, 1975, covered by the plan.

Section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in this subsection. The first and third sentences of this subsection shall have no application with respect to amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501(a).

(d) Carryover of unused deductions.—The amount of any unused deductions or contributions in excess of the deductible amounts for taxable years to which this part does not apply which under section 23(p) of the Internal Revenue Code of 1939 would be allowable as deductions in later years had such section 23(p) remained in effect, shall be allowable as deductions in taxable years to which this part applies as if such section 23(p) were continued in effect for such years. However, the deduction under the preceding sentence shall not exceed an amount which, when added to the deduction allowable under subsection (a) for contributions made in taxable years to which this part applies, is not greater than the amount which would be deductible under subsection (a) if the contributions which give rise to the

deduction under the preceding sentence were made in a taxable year to which this part applies.

(e) Special limitations for self-employed individuals.—

(1) In general.—In the case of a plan included in subsection (a) (1), (2), or (3), which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c) (1), the amounts deductible under subsection (a) in any taxable year with respect to contributions on behalf of any employee within the meaning of section 401(c) (1) shall, subject to paragraphs (2) and (4), not exceed $7,500, or 15 percent of the earned income derived by such employee from the trade or business with respect to which the plan is established, whichever is the lesser.

(2) Contributions made under more than one plan.—

(A) Overall limitation.—In any taxable year in which amounts are deductible with respect to contributions under two or more plans on behalf of an individual who is an employee within the meaning of section 401(c) (1) with respect to such plans, the aggregate amount deductible for such taxable year under all such plans with respect to contributions on behalf of such employee shall (subject to paragraph (4)) not exceed $7,500, or 15 percent of the earned income derived by such employee from the trades or businesses with respect to which the plans are established, whichever is the lesser.

(B) Allocation of amounts deductible.—In any case in which the amounts deductible under subsection (a) (with the application of the limitations of this subsection) with respect to contributions made on behalf of an employee within the meaning of section 401(c) (1) under two or more plans are, by reason of subparagraph (A), less than the amounts deductible under such subsection determined without regard to such subparagraph, the amount deductible under subsection (a) with respect to such contributions under each such plan shall be determined in accordance with regulations prescribed by the Secretary or his delegate.

(3) Contributions allocable to insurance protection.—For purposes of this subsection, contributions which are allocable (determined under regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance shall not be taken into account.

(4) Limitations cannot be lower than $750 or 100 percent of earned income.—The limitations under paragraphs (1) and (2) (A) for any employee shall not be less than the lesser of—

(A) $750, or

(B) 100 percent of the earned income derived by such employee from the trades or businesses taken into account for purposes of paragraph (1) or (2) (A) as the case may be.

(f) Certain loan repayments considered as contributions.—For purposes of this section, any amount paid, directly or indirectly, by an owner-employee (within the meaning of section 401(c) (3)) in repayment of any loan which under section 72(m) (4) (B) was treated as an amount received under a

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contract purchased by a trust described in section 401(a) which is exempt from tax under section 501(a) or purchased as a part of a plan described in section 403(a) shall be treated as a contribution to which this section applies on behalf of such owner-employee to such trust or to or under such plan.

(g) Certain employer liability payments considered as contributions.—For purposes of this section any amount paid by an employer under section 4062, 4063, or 4064 of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to which this section applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan.

Aug. 16, 1954, c. 736, 68A Stat. 138; Sept. 2, 1958, Pub.L. 85–866, Title I, § 24, 72 Stat. 1623; Oct. 10, 1962, Pub.L. 87–792, § 3, 76 Stat. 819; Oct. 23, 1962, Pub.L. 87–863, § 2(b), 76 Stat. 1141; Nov. 13, 1966, Pub.L. 89–809, Title II, § 204(a), (b) (2), (3), 80 Stat. 1577; Dec. 30, 1969, Pub.L. 91–172, Title III, § 321(b) (3), 83 Stat. 591; Sept. 2, 1974, Pub.L. 93–406, Title II, §§ 1013(c), 1016(a) (3), 2001(a), (g) (2) (E), (F), 2004(b), (c) (1), 2007(a), (b), Title IV, § 4081(a), 88 Stat. 921, 929, 952, 957, 986, 993, 994, 1033.

Editorial Notes

Paragraph (1) of subsec. (a) was amended by Pub.L. 93–406, Title II, § 1013(c), effective according to the terms of section 1017 of Pub.L. 93–406, see Editorial Notes under section 401 of this Code.

Pub.L. 93–406, Title II, § 1016(a) (3), substituted "(8), (11), (12), (13), (14), and (15)" for "and (8)" in subsec. (a) (2), effective according to the terms of Pub.L. 93–406, § 1017, see Editorial Notes under section 401 of this Code.

Pub.L. 93–406, Title II, § 2001(g) (2) (E), substituted "(16), (17), (18)" for "(16)' in subsec. (a) (2), applicable to distributions made in taxable years beginning after Dec. 31, 1975.

Pub.L. 93–406, Title II, § 2004(c) (1), substituted "(15), (16), and (19)" for "(15)" and "(a) (9), (10), (17), and (18)" for "(a) (9) and (10)" in subsec. (a) (2), applicable to years beginning after Dec. 31, 1975.

Pub.L. 93–406, Title II, § 2004(b), applicable to years beginning after Dec. 31, 1975, amended the second sentence of subsec. (a) (3) (A) by striking out "beneficiaries under the plan." and inserting in lieu thereof "beneficiaries under the plan, but the amount so deductible under this sentence in any one succeeding taxable year together with the amount so deductible under the first sentence of this subparagraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan."

Paragraph (6) of subsec. (a) prior to amendment by Pub.L. 93–406, Title II, § 1013(c) (2), effective according to terms of Pub.L. 93–406, § 1017 set out under Editorial Notes to section 401 of this Code, read as follows:

"**(6) Taxpayers on accrual basis.**—For purposes of paragraphs (1), (2), and (3), a taxpayer on the accrual basis shall be deemed to have made a payment on the last day of the year of accrual if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)."

Paragraph (7) of subsec. (a) prior to amendment by Pub.L. 93–406, Title II, § 1013(c) (3), effective according to terms of Pub.L. 93–406, § 1017 set out under Editorial Notes to section 401 of this Code, read as follows:

"**(7) Limit of deduction.**—If amounts are deductible under paragraphs (1) and (3), or (2) and (3), or (1), (2), and (3), in connection with 2 or more trusts, or one or more trusts and an annuity plan, the total amount deductible in a taxable year under such trusts and plans shall not exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the persons who are the beneficiaries of the trusts or plans. In addition, any amount paid into such trust or under such annuity plans in any taxable year in excess of the amount allowable with respect to such year under the preceding provisions of this paragraph shall be deductible in the succeeding taxable years in order of time,

but the amount so deductible under this sentence in any one such succeeding taxable year together with the amount allowable under the first sentence of this paragraph shall not exceed 30 percent of the compensation otherwise paid or accrued during such taxable years to the beneficiaries under the trusts or plans. This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than one trust, or a trust and an annuity plan."

Clause (ii) of subsec. (a) (9) (B) prior to amendment by Pub.L. 93–406, Title II, § 2001(g) (2) (F), applicable to distributions made in taxable years beginning after Dec. 31, 1975, read as follows:

"(ii) without regard to paragraph (1) (D), the second and third sentences of paragraph (3), and the second sentence of paragraph (7); and".

Subsection (c) was amended by Pub.L. 93–406, Title II, § 2007(a), (b), applicable to taxable years ending on or after June 30, 1972.

Subsection (e) (1) and (2) were amended and paragraph (4) was added by Pub.L. 93–406, Title II, § 2001(a), applicable to taxable years beginning after Dec. 31, 1973.

Subsection (g) was added by Pub.L. 93–406, Title II, § 4081(a), effective on Sept. 2, 1974.

Year of deduction for certain employer contributions for severance payments required by foreign law.—Section 1022(j) of Pub.L. 93–406 provided that: "Effective for taxable years beginning after December 31, 1973, if—

"(1) an employer is engaged in a trade or business in a foreign country,

"(2) such employer is required by the laws of that country to make payments, based on periods of service, to its employees or their beneficiaries after the employees' retirement, death, or other separation from the service, and

"(3) such employer establishes a trust (whether organized within or outside the United States) for the purpose of funding the payments required by such law,

then, in determining for purposes of paragraph (5) of section 404(a) of the Internal Revenue Code of 1954 [subsec. (a) of this section] the taxable year in which any contribution to or under the plan is includible in the gross income of the nonresident alien employees of such employer, such paragraph (5) shall be treated as not requiring that separate accounts be maintained for such nonresident alien employees."

Section 204(a), (b) (2), (b) (3) of Pub.L. 89–809, Title II, Nov. 13, 1966, 80 Stat. 1577, repealed subsec. (a) (10) which provided for a special limitation on the amount allowed as a deduction for self-employed individuals, and struck out references to subsec. (a) (10) wherever appearing.

§ 405. Qualified bond purchase plans

(a) Requirements for qualification.—A plan of an employer for the purchase for and distribution to his employees or their beneficiaries of United States bonds described in subsection (b) shall constitute a qualified bond purchase plan under this section if—

(1) the plan meets the requirements of section 401(a) (3), (4), (5), (6), (7), (8), (16), and (19) and, if applicable, the requirements of section 401(a) (9) and (10) and of section 401(d) (other than paragraphs (1), (5) (B), and (8)); and

(2) contributions under the plan are used solely to purchase for employees or their beneficiaries United States bonds described in subsection (b).

(b) Bonds to which applicable.—

(1) Characteristics of bonds.—This section shall apply only to a bond issued under the Second Liberty Bond Act, as amended, which by its terms, or by regulations prescribed by the Secretary under such Act—

(A) provides for payment of interest, or investment yield, only upon redemption;

(B) may be purchased only in the name of an individual;

(C) ceases to bear interest, or provide investment yield, not later than 5 years after the death of the individual in whose name it is purchased;

(D) may be redeemed before the death of the individual in whose name it is purchased only if such individual—

(i) has attained the age of 59½ years, or

(ii) has become disabled (within the meaning of section 72(m) (7)); and

(E) is nontransferable.

(2) Must be purchased in name of employee.—This section shall apply to a bond described in paragraph (1) only if it is purchased in the name of the employee.

(c) Deduction for contributions to bond purchase plans.—Contributions paid by an employer to or under a qualified bond purchase plan shall be allowed as a deduction in an amount determined under section 404 in the same manner and to the same extent as if such contributions were made to a trust described in section 401(a) which is exempt from tax under section 501(a).

(d) Taxability of beneficiary of qualified bond purchase plan.—

(1) Gross income not to include bonds at time of distribution.—For purposes of this chapter, in the case of a distributee of a bond described in subsection (b) under a qualified bond purchase plan, or from a trust described in section 401(a) which is exempt from tax under section 501(a), gross income does not include any amount attributable to the receipt of such bond. Upon redemption of such bond, the proceeds shall be subject to taxation under this chapter, but the provisions of section 72 (relating to annuities, etc.) and section 1232 (relating to bonds and other evidences of indebtedness) shall not apply.

(2) Basis.—The basis of any bond received by a distributee under a qualified bond purchase plan—

(A) if such bond is distributed to an employee, or with respect to an employee, who at the time of purchase of the bond, was an employee other than an employee within the meaning of section 401(c) (1), shall be the amount of the contributions by the employee which were used to purchase the bond, and

(B) if such bond is distributed to an employee, or with respect to an employee, who, at the time of purchase of the bond, was an employee within the meaning of section 401(c) (1), shall be the amount of the contributions used to purchase the bond which were made on behalf of such employee and were not allowed as a deduction under subsection (c).

The basis of any bond described in subsection (b) received by a distributee from a trust described in section 401(a) which is exempt from tax under section 501(a) shall be determined under regulations prescribed by the Secretary or his delegate.

(e) Capital gains treatment and limitation of tax not to apply to bonds distributed by trusts.—Subsections (a) (2) and (e) of section 402 shall not apply to any bond described in subsection (b) distributed to any distributee and, for purposes of applying such sections, any such bond distributed to any distributee and any such bond to the credit of any employee shall not be taken into account.

(f) Employee defined.—For purposes of this section, the term "employee" includes an individual who is an employee within the meaning of section 401(c) (1), and the employer of such individual shall be the person treated as his employer under section 401(c) (4).

(g) Proof of purchase.—At the time of purchase of any bond to which this section applies, proof of such purchase shall be furnished in such form as will enable the purchaser, and the employee in whose name such bond is purchased, to comply with the provisions of this section.

(h) Regulations.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section.

Added Pub.L. 87–792, § 5(a), Oct. 10, 1962, 76 Stat. 826, and amended Pub.L. 89–97, Title I, § 106(d) (5), July 30, 1965, 79 Stat. 337; Pub.L. 91–172, Title V, § 515(c) (1), Dec. 30, 1969, 83 Stat. 645; Pub.L. 93–406, Title II, §§ 2004(c) (2), 2005(c) (11), Sept. 2, 1974, 88 Stat. 986, 992.

Editorial Notes

Pub.L. 93–406, Title II, § 2004(c) (2), substituted "(8), (16), and (19)" for "and (8)" in subsec. (a) (1), applicable to years beginning after Dec. 31, 1975.

Pub.L. 93–406, Title II, § 2005(c) (11), substituted "Subsections (a) (2) and (e) of section 402" for "Section 72(n) and section 402(a) (2)", in subsec. (e), applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after such date.

Salary reduction regulations, see Editorial Notes under section 401.

The Second Liberty Bond Act, as amended, referred to in subsec. (b) (1), is classified to sections 745, 752–754b , 757, 757b–758, 760, 764–766, 769, 771, 773, 774 and 801 of Title 31, U.S.C.A., Money and Finance.

§ 406. Certain employees of foreign subsidiaries

(a) Treatment as employees of domestic corporation.—For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a), of a domestic corporation, an individual who is a citizen of the United States and who is an employee of a foreign subsidiary (as defined in section 3121(*l*) (8)) of such domestic corporation shall be treated as an employee of such domestic corporation, if—

(1) such domestic corporation has entered into an agreement under section 3121(*l*) which applies to the foreign subsidiary of which such individual is an employee;

(2) the plan of such domestic corporation expressly provides for contributions or benefits for individuals who are citizens of the United States and who are employees of its foreign subsidiaries to which an agreement entered into by such domestic corporation under section 3121(*l*) applies; and

(3) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a), 403(a), or 405(a)) are not provided by any other person with respect to the remuneration paid to such individual by the foreign subsidiary.

(b) Special rules for application of section 401(a).—

(1) Nondiscrimination requirements.—For purposes of applying section 401(a) (4) and section 410(b) (without regard to paragraph (1) (A) thereof) with respect to an individual who is treated as an employee of a domestic corporation under subsection (a)—

(A) if such individual is an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a foreign subsidiary of such domestic corporation, he shall be treated as having such capacity with respect to such domestic corporation; and

(B) the determination of whether such individual is a highly compensated employee shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such domestic corporation and by determining such individual's status with regard to such domestic corporation.

(2) Determination of compensation.—For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of a domestic corporation under subsection (a)—

(A) the total compensation of such individual shall be the remuneration paid to such individual by the foreign subsidiary which would constitute his total compensation if his services had been performed for such domestic corporation, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary or his delegate; and

(B) such individual shall be treated as having paid the amount paid by such domestic corporation which is equivalent to the tax imposed by section 3101.

(c) Termination of status as deemed employee not to be treated as separation from service for purposes of capital gain provisions and limitation of tax.—For purposes of applying subsections (a) (2) and (e) of section 402, and section 403(a) (2) with respect to an individual who is treated as an employee of a domestic corporation under subsection (a), such individual shall not be considered as separated from the service of such domestic corporation solely by reason of the fact that—

(1) the agreement entered into by such domestic corporation under section 3121(*l*) which covers the employment of such individual is terminated under the provisions of such section,

(2) such individual becomes an employee of a foreign subsidiary with respect to which such agreement does not apply,

(3) such individual ceases to be an employee of the foreign subsidiary by reason of which he is treated as an employee of such domestic

corporation, if he becomes an employee of another corporation controlled by such domestic corporation, or

(4) the provision of the plan described in subsection (a) (2) is terminated.

(d) Deductibility of contributions.—For purposes of applying sections 404 and 405(c) with respect to contributions made to or under a pension, profit-sharing, stock bonus, annuity, or bond purchase plan by a domestic corporation, or by another corporation which is entitled to deduct its contributions under section 404(a) (3) (B), on behalf of an individual who is treated as an employee of such domestic corporation under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such domestic corporation or to any other corporation which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the foreign subsidiary of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 (or section 405(c)) by the domestic corporation if he were an employee of the domestic corporation, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b) (2)).

Any amount deductible by a foreign subsidiary under this subsection shall be deductible for its taxable year with or within which the taxable year of such domestic corporation ends.

(e) Treatment as employee under related provisions.—An individual who is treated as an employee of a domestic corporation under subsection (a) shall also be treated as an employee of such domestic corporation, with respect to the plan described in subsection (a) (2), for purposes of applying the following provisions of this title:

(1) Section 72(d) (relating to employees' annuities).

(2) Section 72(f) (relating to special rules for computing employees' contributions).

(3) Section 101(b) (relating to employees' death benefits).

(4) Section 2039 (relating to annuities).

(5) Section 2517 (relating to certain annuities under qualified plans).

Added Pub.L. 88–272, Title II, § 220(a), Feb. 26, 1964, 78 Stat. 58, and amended Pub.L. 91–172, Title V, § 515(c) (2), Dec. 30, 1969, 83 Stat. 645; Pub.L. 93–406, Title II, §§ 1016(a) (4), 2005(c) (12), Sept. 2, 1974, 88 Stat. 929, 992.

Editorial Notes

Pub.L. 93–406, Title II, § 1016(a) (4), substituted "section 401(a) (4) and section 410(b) (with regard to paragraph (1) (A) thereof)" for "paragraphs (3) (B) and (4) of section 401(a)" in subsec. (b) (1), effective according to terms of Pub.L. 93–406, § 1017 set out under Editorial Notes to section 401 of this Code.

Pub.L. 93–406, Title II, § 2005(c) (12), substituted "subsections (a) (2) and (e) of section 402" for "section 72(n), section 402(a) (2)" in subsec. (c), applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after such date.

§ 407. Certain employees of domestic subsidiaries engaged in business outside the United States

(a) Treatment as employees of domestic parent corporation.—

(1) In general.—For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a), of a domestic parent corporation, an individual who is a citizen of the United States and who is an employee of a domestic subsidiary (within the meaning of paragraph (2)) of such domestic parent corporation shall be treated as an employee of such domestic parent corporation, if—

(A) the plan of such domestic parent corporation expressly provides for contributions or benefits for individuals who are citizens of the United States and who are employees of its domestic subsidiaries; and

(B) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a), 403(a), or 405(a)) are not provided by any other person with respect to the remuneration paid to such individual by the domestic subsidiary.

(2) Definitions.—For purposes of this section—

(A) Domestic subsidiary.—A corporation shall be treated as a domestic subsidiary for any taxable year only if—

(i) such corporation is a domestic corporation 80 percent or more of the outstanding voting stock of which is owned by another domestic corporation;

(ii) 95 percent or more of its gross income for the three-year period immediately preceding the close of its taxable year which ends on or before the close of the taxable year of such other domestic corporation (or for such part of such period during which the corporation was in existence) was derived from sources without the United States; and

(iii) 90 percent or more of its gross income for such period (or such part) was derived from the active conduct of a trade or business.

If for the period (or part thereof) referred to in clauses (ii) and (iii) such corporation has no gross income, the provisions of clauses (ii) and (iii) shall be treated as satisfied if it is reasonable to anticipate that, with respect to the first taxable year thereafter for which such corporation has gross income, the provisions of such clauses will be satisfied.

(B) Domestic parent corporation.—The domestic parent corporation of any domestic subsidiary is the domestic corporation which owns 80 percent or more of the outstanding voting stock of such domestic subsidiary.

(b) Special rules for application of section 401(a).—

(1) Nondiscrimination requirements.—For purposes of applying section 401(a)(4) and section 410(b) (without regard to paragraphs (1)(A)

thereof) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a)—

(A) if such individual is an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a domestic subsidiary, he shall be treated as having such capacity with respect to such domestic parent corporation; and

(B) the determination of whether such individual is a highly compensated employee shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such domestic parent corporation and by determining such individual's status with regard to such domestic parent corporation.

(2) **Determination of compensation.**—For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a), the total compensation of such individual shall be the remuneration paid to such individual by the domestic subsidiary which would constitute his total compensation if his services had been performed for such domestic parent corporation, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary or his delegate.

(c) Termination of status as deemed employee not to be treated as separation from service for purposes of capital gain provisions and limitation of tax.—For purposes of applying subsections (a) (2) and (e) of section 402, and section 403(a) (2) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a), such individual shall not be considered as separated from the service of such domestic parent corporation solely by reason of the fact that—

(1) the corporation of which such individual is an employee ceases, for any taxable year, to be a domestic subsidiary within the meaning of subsection (a) (2) (A),

(2) such individual ceases to be an employee of a domestic subsidiary of such domestic parent corporation, if he becomes an employee of another corporation controlled by such domestic parent corporation, or

(3) the provision of the plan described in subsection (a) (1) (A) is terminated.

(d) Deductibility of contributions.—For purposes of applying sections 404 and 405(c) with respect to contributions made to or under a pension, profit-sharing, stock bonus, annuity, or bond purchase plan by a domestic parent corporation, or by another corporation which is entitled to deduct its contributions under section 404(a) (3) (B), on behalf of an individual who is treated as an employee of such domestic corporation under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such domestic parent corporation or to any other corporation which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the domestic subsidiary of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 (or

section 405(c)) by the domestic parent corporation if he were an employee of the domestic parent corporation, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b) (2)).

Any amount deductible by a domestic subsidiary under this subsection shall be deductible for its taxable year with or within which the taxable year of such domestic parent corporation ends.

(e) Treatment as employee under related provisions.—An individual who is treated as an employee of a domestic parent corporation under subsection (a) shall also be treated as an employee of such domestic parent corporation, with respect to the plan described in subsection (a) (1) (A), for purposes of applying the following provisions of this title:

(1) Section 72(d) (relating to employees' annuities).

(2) Section 72(f) (relating to special rules for computing employees' contributions).

(3) Section 101(b) (relating to employees' death benefits).

(4) Section 2039 (relating to annuities).

(5) Section 2517 (relating to certain annuities under qualified plans).

Added Pub.L. 88–272, Title II, § 220(b), Feb. 26, 1964, 78 Stat. 60, and amended Pub.L. 91–172, Title V, § 515(c) (3), Dec. 30, 1969, 83 Stat. 646; Pub.L. 93–406, Title II, §§ 1016(a) (5), 2005(c) (13), Sept. 2, 1974, 88 Stat. 929, 992.

Editorial Notes

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Pub.L. 93–406, Title II, § 2005(c) (13), substituted "subsections (a) (2) and (e) of section 402" for "section 72(n), section 402(a) (2)" in subsec. (c), applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after such date.

§ 408. Individual retirement accounts

(a) Individual retirement account.—For purposes of this section, the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d) (3) in section 402(a) (5), 403(a) (4), or 409(b) (3) (C), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year in excess of $1,500 on behalf of any individual.

(2) The trustee is a bank (as defined in section 401(d) (1)) or such other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

Mr. HUTCHINSON. Mr. Chairman, the criminal provisions of title 18 United States Code which apply directly to employee benefit plans are sections 664 and 1027. The former prohibits thefts or embezzlements from employee benefit plans, and the latter prohibits false statements and concealment of facts in relation to documents required by ERISA. Various other criminal provisions of title 18 and of the Internal Revenue Code could, of course, be applied to specific factual situations involving employee benefit plans.

[The following material was submitted for the record:]

CRIMES AND CRIMINAL PROCEDURE

CHAPTER 31—EMBEZZLEMENT AND THEFT

Sec.
665. Theft or embezzlement from manpower funds; improper inducement.

§ 657. * * *

* * * * * * *

§ 664. Theft or embezzlement from employee benefit plan

Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use or to the use of another, any of the moneys, funds, securities, premiums, credits, property, or other assets of any employee welfare benefit plan or employee pension benefit plan, or of any fund connected therewith, shall be fined not more than $10,000, or imprisoned not more than five years, or both.

As used in this section, the term "any employee welfare benefit plan or employee pension benefit plan" means any employee benefit plan subject to the provision of title I of the Employee Retirement Income Security Act of 1974.

As amended Pub.L. 94–406, Title I, § 111(a)(2)(A), Sept. 2, 1974, 88 Stat. 851.

* * * * * * *

§ 1027. False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974

Whoever, in any document required by title I of the Employee Retirement Income Security Act of 1974 (as amended from time to time) to be published, or kept as part of the records of any employee welfare benefit plan or employee pension benefit plan, or certified to the administrator of any such plan, makes any false statement or representation of fact, knowing it to be false, or knowingly conceals, covers up, or fails to disclose any fact the disclosure of which is required by such title or is necessary to verify, explain, clarify or check for accuracy and completeness any report required by such title to be published or any information required by such title to be certified, shall be fined not more than $10,000, or imprisoned not more than five years, or both.

As amended Pub. L. 93–406, Title I, § 111(a)(2)(B)(i), (ii), Sept. 2, 1974, 88 Stat. 851.

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Mr. HUTCHINSON. In addition to the above statutes, Mr. Chairman, various provisions of the Federal securities laws and of the Federal banking laws may apply to or affect employee benefit plans.

The CHAIRMAN. Senator Pell.

Senator PELL. Thank you, Mr. Chairman.

I was struck by the fact that of the roughly $1.3 billion assets of the Central States pension plan, the vast bulk were real estate investments, almost $1 billion, and that only about 12 percent were in common stocks, bonds, and debentures, which are the normal medium as far as I understand it of most pension funds.

Would that be a correct statement?

Mr. HUTCHINSON. Senator, I think that that is a correct generalization of the majority of the funds.

I think one thing that has been apparent to us, since ERISA has been passed, since we have received more sophisticated reporting, and we will receive more sophisticated reporting of the holdings of pension, welfare funds, are that the strategies for investment are indeed the verse, and those stategies really go to the operation of the plan, its income needs, its age, its size, and we have taken a position consistently totally unrelated to this investigation, that in determining, for instance, the verification rules of ERSIA, those rules cannot be addressed in a vacuum, they have to be addressed on the facts and circumstances on any particular plan in its whole.

I think it is correct that this is a high percentage of real estate holdings, compared to many plans.

I should hasten to add that that, in addition to being 100 percent in guaranteed rate of return investments, is not per se a violation of the statute. It is a question of whether that activity has proved, given the needs of the plan.

Senator PELL. I believe there was a Wall Street Journal article about a year ago that said that 30 percent of the real estate loans were in a delinquent status. Is that correct?

Mr. HUTCHINSON. I cannot respond to the figure that is used. I would be willing to respond in executive session to our findings so far, although we have not completed that review, as I indicated earlier.

Senator PELL. Then also that same Journal series of articles trace State loans, investments, including contributing employers and individuals, with known criminal connections.

I take it that that means organized crime. Is there any evidence of this sort that has come to light this far?

Mr. Hutchinson. In our review we have come across transactions which involve contributing employers.

I would prefer to address the specifics of that, and the possible relationship to any figures in executive session.

I think we should be careful how we use the term "organized crime." It should be reputed personalities.

Senator PELL. What?

Mr. HUTCHINSON. Reputed personalities with organized crime connections.

Senator PELL. I think it would be useful if the Wall Street Journal articles were put in the record.

Senator JAVITS [presiding pro tempore]. Without objection, so ordered.

Senator PELL. Realizing there may be a discrepancy between the audit portfolio and the portfolio on record, and this is what you are working up now, but I think it would be helpful if the portfolio on record was also put on the record, so that we could see what these loans were, what areas of the country they were made to, and also what were the securities made.

Senator JAVITS. I assume the Senator means the public record of the filing by the Department.

Senator PELL. Exactly.

Mr. HUTCHINSON. We will provide the annual financial filing for that plan for the record.

[The information referred to follows:]

July 22, 1975 - Wall Street Journal

Union Financiers

Questions Are Raised By Loans and Benefits Of Teamsters Fund

Many Investments Appear Insider Affairs or Risky; Are Pensions Paid Justly?

The Break-In-Service Pitfall

By Jonathan Kwitny
Staff Reporter of The Wall Street Journal

Every week, more than half a million North American trucking workers each allow their employers to pay $22 of what could be their salaries into one of about 200 pension funds connected with the teamsters' union, the International Brotherhood of Teamsters. A million more teamster members in trucking and other jobs are covered by varying contributions into the funds.

At the $22 rate—which took effect this month, up from $19.50—the largest of these funds alone now takes in about $400 million in contributions a year. This fund—the Central States, Southeast and Southwest Areas Pension Fund, headquartered in Chicago—has long been accused in lawsuits and press exposes of abusing its members' interests, although neither the fund nor any of its trustees has been convicted of a crime in connection with its operations. Lately, however, previously undisclosed details of these operations have become available.

In 1972, Donald Vestal, a disgruntled ex-teamster executive from Dallas, one of many rebels who have tried to overthrow the teamsters' leadership by court action, won the right to a copy of the big pension fund's previously secret ledger of loans. Like most of the other rebels' suits, Mr. Vestal's sank in a sea of legal costs before it neared a verdict, and the fund records he had subpoenaed were sealed by a U.S. district court. Copies eventually were obtained, however, by law-enforcement officials; by a West Coast trucking magazine, Overdrive, which published a series of exposes; and, recently, by this newspaper.

The operations of the big Central States, Southeast and Southwest Areas Pension Fund of the Teamsters' union have been enmeshed in controversy for years. The accompanying article is the first in a series exploring aspects of the controversy.

Risky Investments

The records show that the fund—one of the largest investment funds in the country, which declared assets of $1.34 billion in the year ended last Jan. 31—has plowed hundreds of millions of dollars into loans that were, at best, unwise. Some of them apparently involved fraud.

Meanwhile, many teamsters who have retired or would like to retire say the fund refuses to pay them the pensions they believe they're entitled to.

No official of the teamsters' union would talk to this reporter about the loans, or about the pensions or anything else. But a team of auditors from a leading accounting firm, a team experienced at assessing such portfolios, examined the loan records at The Wall Street Journal's request. Even the loans that seemed to hold their value, the team said, were mostly bizarre and risky.

Many of the loans appear to have been excuses to distribute money for the business convenience of insiders. One indication is a concentration of real-estate mortgages to small, speculative businesses, often for much less than $1 million, investments that the consulted auditors called too small to be worth the bookkeeping trouble for so large a fund.

89% Real Estate

Through such loans, the records reveal, the fund has passed millions of dollars to companies identified with Mafia members and their cronies. It has also lent millions of dollars to employers of teamsters; and according to a number of rank-and-file teamsters, the union has sometimes deserted members' interests in favor of the employer-borrowers.

As of Feb. 29, 1972, the end of the period covered by the detailed records obtained by the Journal, the big pension fund listed total assets of $917.9 million, of which $819 million, or 89%, was either already invested in or firmly committed to real-estate loans—against less than 5% for the average similar fund, according to a survey in 1973 by the Securities and Exchange Commission. The latest and much less detailed figures that the teamster fund reported to the Department of Labor for the year ended last Jan. 31 indicate that of the $1.34 billion in total assets, some $981.6 million, or 73.3%, was invested in real-estate loans; how much more was committed to future real-estate deals wasn't disclosed.

Moreover, in 1972 at least, it wasn't all prime real estate. For one thing, much was invested in second and even third mortgages. For another, as one auditor consulted by the Journal said:

"I've looked at REIT (real estate investment trust) and bank portfolios for a long time and I've never seen a cemetery before. (For the most part) I don't see (in the teamster-fund portfolio) office buildings; I don't see apartment buildings; I don't see good sound investments. I see motels, hospitals, health spas, bowling alleys, cemeteries—all this may come up roses, but I wouldn't bet on it."

High Delinquency Rate

As of 1972 at least, it wasn't coming up roses, not for the half-million teamsters relying on the fund for their retirement income, anyway. The fund records state that real-estate deals accounting for 30% of these mortgage loans were delinquent, not including properties acquired by the fund from borrowers, presumably in lieu of payment. With these properties thrown in, it appears that some 36.5% of the real-estate loans were coming a cropper.

And the actual bad-loan figure could be

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much higher. Some borrowers on the 1972 list by now have gone into bankruptcy or have had their corporate charters canceled for nonpayment of state tax, an indication they are out of business. What's more, the fund has made some loans apparently secured by the same property that secured previous loans. That could mean that in some cases earlier loans are kept current by the lending of new money to pay them off.

Just how much of the fund's later reported $1.34 billion in assets represents bad IOUs or unmarketable property can't be determined from any records publicly available. Teamster critics frequently charge that the fund is near bankruptcy, but that seems unlikely since the benefits paid out to members in the year ended last Jan. 31 totaled $175.2 million, which was $108 million less than the income from employer contributions; since then, the contribution rates have grown substantially while the benefit rates remain the same.

The catch is that the pension payout is held far below what a lot of teamsters say it should be.

Figures, even rough ones, aren't available on how many teamsters are getting retirement or disability pensions, and how many others are claiming pensions that haven't been paid. But a reporter didn't have any difficulty locating dozens of teamster members and former members who say they are being cheated. Most often, the complainers were victims of one of several technicalities in the fund's regulations. If these loopholes are applied uniformly, tens of thousands or even hundreds of thousands of teamsters will lose their pension benefits.

Teamsters who expect to start collecting a pension on reaching retirement age (57 for minimum benefits, 60 for full benefits, which amount to $550 a month for the trucking jobs covered by the $22-a-week contributions) are often surprised to find that it takes four to six months for the big Central States fund to respond to an application. And then a common response is a form letter stating that the fund doesn't keep records of its members' work histories. This leaves it up to the individual teamster to prove he has 20 years of industry credits for a retirement pension or 15 for a disability pension. Truck drivers, untrained in business, often fail to keep adequate records.

Jerry Hayes, a lawyer for two Ohio teamsters who asked a court to order the fund to pay them pensions, tells how hard it is for men to gather the kind of proof the fund requires: "The worker gets his paycheck indicating X dollars were taken out (for pension-fund contribution), but nobody ever knows whether the companies actually send in the money. Teamsters get no annual report on what's been paid in. They can write and they get no answer."

Effect of Job-Hopping

Furthermore, Mr. Hayes says—and case after case bears him out—the nature of trucking work, with its frequent job-hopping among a myriad of small companies, operates against the worker at pension time.

"These trucking companies are very little," Mr. Hayes says. "They go bankrupt; they buy each other out—I doubt that 20% of the trucking companies are still doing business in the same form for 20 years. So records are simply not maintained."

(Mr. Hayes says his clients' suit died when, working without a fee, he couldn't afford to answer the deluge of technical motions filed by teamster lawyers.)

The Central States fund hasn't approved the long-standing pension claim of Michael Talatinick, now retired in Cape Coral, Fla., on the ground that he has insufficient work credits. For one thing, he says, he worked for Eastern Motor Dispatch Inc., an Ohio company now long defunct. In the summer of 1972 Mr. Talatinick submitted an Eastern Motor identification card and a photograph of him driving an Eastern Motor truck, but the Central States fund replied with a form letter saying only, "The attached papers are being returned to you."

After he made more inquiries, the fund answered him the following February. "Kindly be advised," it said, "that affida-

vits must be submitted from fellow workers, owners or supervisors. These affidavits must include the type of work you did, the number of years you worked and the number of hours worked per year. You may also submit your check stubs."

Mr. Talatinick says he doesn't know where to turn for affidavits or stubs at this late date. One teamster local he says he joined after leaving Eastern Motor Dispatch denied to the Journal that Mr. Talatinick was ever a member, though he shows what appears to be a copy of his membership card and a receipt, dated 1954, for dues.

Social Security Records

Ultimately, many teamsters turn to the Social Security Administration for evidence, which takes many more months and an $87.50 fee. But even if the Social Security records are complete—and sometimes, teamsters say, they aren't—they don't necessarily prove to the Central States fund's satisfaction that each employer paid the weekly payroll deductions into the fund as he was supposed to.

Robert Maxwell of Akron, Ohio, has shown the Journal Social Security records evidencing work with numerous trucking companies over the past 32 years. But when he inquired to the Central States fund about his pension he was told, after a 10-month delay, that money hadn't been paid into the fund on his behalf during most of those years, depriving him of the necessary pension credits. Years after a trucking company has gone out of business, a teamster is ill-equipped to determine what circumstances may have allowed the company to pay less into the fund it was supposed to.

Constant transfers from one company to another, and from one depot to another within the same trucking company, often cause an additional problem: transfer of workers from one local to another. When both locals are members of the Central States pension plan, the transfer theoretically presents no problems: The fund is supposed to credit the worker with payments made on his behalf while he was with the other local. But when one or both locals have independent plans, they may not recognize each other's plan—or have a reciprocal arrangement with the big fund, either.

Many teamsters don't know about this, and teamsters applying for pensions are often shocked to be told they must have the minimum 20 years' service with one particular plan, or with plans that accord one another recognition, even though they have been members of the same international union for many decades.

One local whose independent plan has caused frequent problems is No. 705 in Chicago, which has a fluid membership now numbering about 20,000. Dorman Vestal joined Local 705 in 1954 after 17 years with an Iowa local. In 1962 he transferred from truck driving to dock work—also as a teamster, but because of the switch he had to transfer into another Chicago local, No. 710, where he stayed until his retirement in 1969 at age 61. Apparently none of the three locals recognized the others' pension plans.

As a result, Mr. Vestal, who died in 1971, didn't receive any pension money, and his widow, who would be entitled to receive it now if her husband had been credited with 20 years' service, says she is living off an unemployment check and is "practically destitute."

(According to Louis Peick, secretary-treasurer, Local 705 has just negotiated a reciprocal agreement with the Central States fund.)

With so many teamsters disgruntled, it's only natural that many of them suspect there are secret agreements between trucking companies and the union to hold down pension-fund payments. They cite specific cases where companies, at least one of which benefited from a large fund loan, transferred scores of workers to jobs that would require them to join a new local with a different pension plan. But none of the teamsters has evidence that there are secret agreements, or that there are ulterior motives for the transfers. The trucking companies deny that there are.

Even if a teamster does build up 20 years' total service with one plan, he may run afoul of so-called break-in-service provisions. Many teamsters say they were unaware of these provisions until it was too late. In required disclosures filed with the Labor Department, the Central States fund has this to say about the main break-in-service provision:

"If a member did not work under a Teamster collective-bargaining agreement requiring contributions to this pension fund for three consecutive years, he cannot count years of employment before such a break-in his total years of service for a pension."

Credit Wiped Out

In other words, a service break eliminates all prior credit. This applies not only to the many teamsters who quit or get laid off during hard times in the trucking business, then take a steady job and several years later go back to trucking. It applies also to members who never leave the teamsters' union but are transferred to jobs not covered or recognized by the Central States plan.

Such a man is Lester Black of Akron, who drove trucks from 1935 to 1957 while a member of locals that are covered now by the Central States fund. Then, after a year in another sort of job, he went to work for another trucking company, but as a mechanic. Although still a teamster member, he was covered under what is called a "miscellaneous contract" and therefore wasn't under the pension program.

"In 1965 he went back to work as a driver, but when he applied for his pension in 1971 at age 57, the Central States fund omitted his mechanic duty from his work record and said, "We haven't any alternative but to place your application in our rejection file."

One way that tens of thousands of teamsters apparently have fallen into the break-in-service exclusion is by becoming "owner-operators." Drivers often dream of one day owning their own rigs. So, many companies offer their drivers installment sales contract through which, at least in theory, the dream can come true. But while the driver is paying off his rig, the company usually requires him to work only on assignment from the company, and the company and the teamsters' union require him to remain a member of the union.

After a few years, the assigned work often thins out and the driver's income drops, so he gives up his rig—which is usually far from paid for—and takes a job driving with another company. According to the interviews, such teamsters often remain unaware that their pension fund will count their years as owner-operator as a break in service, even if the driver has paid his own pension-fund contribution from his weekly paycheck.

Three Win Court Fight

In 1972, three former owner-operators sued the fund in federal court in St. Louis. The court ruled that company restrictions on owner-operators were so strict that the men were in effect employes, not self-employed as the fund said. But the ruling required pension payments only to the three St. Louis men. Many other teamsters whose cases appear to fall in the same category have been denied pensions and have been unable to finance expensive litigation.

Experts disagree over whether the pension-reform law of 1974 will ease teamsters' pension-collection problems. The law was supposed to take effect Jan. 1, but compliance has largely been postponed pending the issuance of detailed regulations by the government. Critics say the law doesn't attack key problems like breaks in service, portability of rights from one local plan to another, and the owner-operator controversy.

Proponents of the law say workers will be protected by its provision for vesting, or unforfeitability of rights. But under the plan most funds are expected to choose, vesting will require contributions to one fund for 10 years without much interruption. Besides, even proponents concede, as one of them puts it, "The statute is so incredibly complicated that I don't know anybody who understands all of it."

July 23, 1975 · Wall Street

Union Financers

Insiders and Mobsters Benefit From Loans By Teamsters Fund

When an Employer Borrows, Is It the Driver Who Pays? The Allen Dorfman Story

Mr. Lococo and the Cockatoo

By Jonathan Kwitny
Staff Reporter of The Wall Street Journal

Of the nearly half-million teamsters who contribute, through their employers, about $400 million a year into the union's Central States, Southeast and Southwest Areas Pension Fund, probably few would be able to say what Allen Dorfman has done for them. But over the years, they have done plenty for him.

Mr. Dorfman's official role as consultant to the fund—a job that paid him as much as $75,000 a year plus expenses but was only a small part of his profitable relationship with the union—was canceled after his 1972 conviction for taking a kickback in the granting of a loan by the fund. (He recently was acquitted on a similar charge regarding another loan.) But at least socially he remains where he has been for many years, at the hub of a circle of insiders that has benefited greatly from the $2 billion or more that the fund has taken in since it was formed 20 years ago.

Mr. Dorfman's father, Paul Dorfman, who died in 1971, was a close associate of

The operations of the big Central States, Southeast and Southwest Areas Pension Fund of the teamsters' union have been enmeshed in controversy for years. The accompanying article is the second in a series exploring aspects of the controversy.

Chicago mobsters since the days of Al Capone, according to 1959 testimony before a Senate antiracketeering committee by Robert F. Kennedy, then counsel to the committee, and his staff. Paul Dorfman was secretary-treasurer of the Chicago Waste Material Handlers union until the AFL-CIO forced him out on grounds of misuse of funds. While in that post, according to the 1959 testimony, he entered into private business deals with the employers' representative he negotiated labor contracts with, and helped the mobster John (Johnny Dio) Dioguardi gain control of a union local

A Degree In Phys. Ed.

Paul Dorfman's son, Allen, received a B.A. in physical education from the University of Illinois and, soon afterward, in 1949, obtained an Illinois insurance agent's license. Through the efforts of his father, he was appointed general agent for Union Casualty Co., a relatively small firm that handled insurance for Paul Dorfman's waste handlers' union and another Chicago local.

At about that time, James R. Hoffa, long president of the Detroit teamsters' local, was working toward power in the Chicago-based Central Conference of Teamsters and became friendly with Paul Dorfman—because, according to Robert Kennedy, of Mr. Dorfman's helpful contacts in the underworld.

(Paul Dorfman invoked his Fifth Amendment protection against self-incrimination in declining to answer questions at the Senate hearings, including even the question of whether Allen Dorfman was his son. Allen Dorfman also invoked the Fifth Amendment on many questions relating to his insurance business.)

In 1950 the Central Conference, at Mr. Hoffa's direction, threw out the low group-insurance bid of Pacific Mutual Life Insurance Co. That company had assets of $377 million, but the Central Conference said it had a history of financial troubles. (It did, but back in the 1930s.) Instead, the conference awarded its contract for coverage of teamster members to the supposedly more stable Union Casualty, with assets of only $768,000. Teamster business soon constituted more than 80% of young Dorfman's total, with premiums running more than $10 million a year. He and Mr. Hoffa also invested together privately in a lodge in Wisconsin and an oil-exploration company in North Dakota. In 1955, the Central States, Southeast and Southwest Areas Pension Fund was born, and it didn't have to shop far for an agent to buy its insurance from.

Called Expensive

According to Senate testimony by an insurance expert in 1958, Mr. Dorfman charged the fund three or four times the normal rate of commission. Other witnesses said he showed his appreciation by paying, out of his own pocket, the premiums for personal insurance policies he obtained for union officials.

Soon Mr. Dorfman and a few associates were running a complex of insurance agencies, which eventually had their headquarters in the same teamster-owned building that housed the pension fund itself. The fund assigned Mr. Dorfman the task of checking on the insurance coverage of its borrowers, and in March 1967 he was officially appointed consultant to the fund.

One Dorfman company, Union Insurance Agency of Illinois, acquired a Grumman Gulfstream airplane from Frank Sinatra and leased it to the fund, which used it to fly Mr. Dorfman and other insiders around the country. The plane stopped frequently at Rancho La Costa, a Southern California resort and land development where Mr. Dorfman and others acquired property.

La Costa was founded and is run by four men, including convicted stock manipulator Allard Roen and former bootlegging and gambling figure Morris Dalitz. It has been financed since 1964 with some $57 million in loans and commitments from the Central States fund. Fund records produced in federal court and obtained by the Journal show that as of Feb. 29, 1972 (the final date of these records, the only detailed loan records the fund has released), some $12.4 million

Union Financiers: Insiders and Mobsters Benefit From Loans by the Teamsters' Big Pension Fund

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had been paid back on schedule. Auditors consulted by the Journal say that land-development loans are relatively risky and short-term and normally should be paid off in three to five years.

Mr. Dorfman pops up frequently in connection with such fund-financed business ventures. From 1964 to 1971, for example, some $13 million in pension money was lent to Beverly Ridge Estates, a California land development whose promoters transferred two lots to Mr. Dorfman. The $13 million was still owing when the fund foreclosed on the property in 1972. Two promoters of the project, I. Irving Davidson and Leonard L. Bursten, were convicted of bankruptcy fraud; Mr. Bursten was also convicted of mail fraud and income-tax evasion; and a third promoter, Roy Gene Lewis, was convicted of perjury, all in connection with Beverly Ridge.

Recently the fund, having poured $13 million into Beverly Ridge, sold it for $7 million to 32-year-old Allen R. Glick. That could be called cutting your losses, except that the fund lent Mr. Glick the entire $7 million. That loan was for 25 years at 4% interest, far below what banks have been getting for their money from prime customers. (In the last few years Mr. Glick, who left the army in 1969 and spent the next several years working for housing and real-estate firms in San Diego, has been involved in fund loans totaling $100 million, either as a borrower or as an officer of a borrowing firm.)

Mr. Dorfman also acquired, in 1968 or earlier, 25,000 shares of stock in a corporation that was developing Boca Teeca Country Club Estates in Boca Teeca, Fla. The corporation received $5.1 million in teamster loans starting in 1968. As of February 1972, $4.7 million was still owing on the loans, but Mr. Dorfman had done all right: On his 1968 federal income-tax return, he reported a $49,000 gain from sale of the stock.

Directly or indirectly, Mr. Dorfman acquired interests in three other Florida properties that were financed with millions of fund dollars. As of February 1972, most of the money hadn't been repaid. According to testimony at Mr. Dorfman's trial in federal court in 1972, Mr. Dorfman and four partners took over one property, the Cove of Naples motel in Naples, Fla., without putting up a dime. They merely assumed an unpaid $1,550,000 mortgage that the fund had granted the former owners.

Just when Mr. Dorfman and his four partners acquired the motel isn't clear. Mr. Dorfman says it was before he became the fund's consultant in March 1967. In any case, the five partners sold the motel in 1969 for a $350,000 profit, the fund transferring the mortgage debt to the new buyer. In 1972 the mortgage remained fully unpaid, even as to interest. So the fund was still owed the $1,550,000 principal plus $237,938.58 in interest while its consultant and his partners had gained $350,000.

Partners in Deal

One Dorfman partner in the motel deal was Alvin Baron, a Chicago lawyer who has been receiving more than $100,000 a year in legal fees from the fund and who also has acquired land at La Costa. The three other partners in the deal, according to the federal-court testimony, were Morton Harris, Ira Burman and Harvey Silets, partners in a Chicago law firm that also collects substantial legal fees from the fund.

In addition, Mr. Harris was an officer, at least in 1972, of an Arizona land-development company that borrowed $615,000 from the fund in July 1970 and had repaid less than $500 of it by February 1972, according to fund records. Mr. Harris, whose firm also represents at least one other major borrower from the fund, told the Journal that his only income from the Arizona company was legal fees. "I feel there's no conflict," he said, "since the fund in this case was represented by other counsel."

Messrs. Baron and Dorfman also have large blocks of stock in Bally Manufacturing Corp. of Chicago, the slot-machine makers. Bally's operations have been helped along by some $12 million in teamster financing. This financing began in 1964 with a $2 million loan to the corporation operating the building that housed Bally, which was then the Lion Manufacturing Co. When Lion went into the slot-machine business that same year, an important hidden owner, according to the Nevada Gaming Control Board, was Mafia boss Gerardo Catena, who, the board says, bowed out in 1965 when his holdings became known.

Recent Stockholders

More recent stockholders, Bally confirms, have included:

—Frank Fitzsimmons, the general president of the teamsters' union.

—Cal Kovens, a developer whose operations have been heavily financed by the fund and who has served prison time for defrauding the fund.

—William Presser, an Ohio teamster leader who was a trustee of the Central States fund until he was forced out early this year after pleading guilty to violations of the Taft-Hartley Act in connection with the misuse of $590,000 in union money (he was fined $12,000 and given a suspended jail term).

—Jackie Presser, William's son, who has been appointed fund trustee in his father's place, who now earns about $209,000 a year from various teamster and other union jobs, and who reportedly once was president of a company that borrowed $1.2 million from the fund to open a bowling alley in Cleveland and defaulted on the debt. (A spokesman for Jackie Presser declines to confirm or deny the bowling-alley story, which has been widely published, but did confirm the rest.)

Not all of those who have benefited from fund loans are union officials. Over the years, records show, the fund has lent employers of teamster members at least $45.2 million, of which $35.1 million remained owing as of February 1972. There have been several reports of workers' complaining that the union was deserting their interests in favor of the employer-borrowers.

Terminal Sold

In 1964, for example, the fund lent $1.7 million to finance a terminal for A.C.E. Freight Inc. of Akron, Ohio. In 1969, $4 million in debt, A.C.E. sold its operating routes to Great Lakes Express Co., a transaction that cost about 1,000 jobs. Some 150 former A.C.E. truck drivers filed suit alleging that the sale of routes was in effect a merger, entitling them to retain seniority and, many of them, their jobs. Their lawyer, William Gore of Akron, says he and his clients tried to get support from the teamsters' union but failed. Some of the fired truck drivers assert that the union refused to help them be-

cause of its financial commitment to A.C.E. The drivers lost the suit.

When A.C.E. Freight sold its routes to Great Lakes Express, the A.C.E. terminal, with its big pension-fund mortgage, was sold to Spector Motor Freight Corp. of Chicago. Spector is one of the companies whose teamster employes have been transferred from one workplace to another, causing them to switch from one local to another and often costing them pension rights because some locals don't recognize other locals' pension funds.

Some teamsters say in interviews that they blame Spector for the loss of these rights, although they don't have evidence of collusion. Robert Dilley, terminal manager for Spector, says the company has never required an employe to switch locals, and that employes who are transferred from one location to another will switch locals only on their own or the union's volition.

As of February 1972, the 1964 loan of $1.7 million had been paid down to $1.3 million and still was listed on fund records in the name of A.C.E. Freight, which was out of business. Spector says it has been repaying the loan on schedule.

In another case, the fund lent $12.3 million to Valley Steel Products Co. of St. Louis, another employer of teamster members. Valley's president until his death last year was the father of Robert Crancer, a young executive at Valley who married James R. Hoffa's daughter. When the loans were made, from 1963 to 1967, Mr. Hoffa was general president of the teamsters. In 1965 the truck drivers at Valley voted to strike after having rejected a contract the union had negotiated for them. According to Overdrive, a trucking trade publication, the strike was averted by direct pressure on the local from Mr. Hoffa. The current president of Valley, Patrick Gilligan, says there wasn't any outside interference. At any rate, some $6.9 million was still owed on the loan in February 1972.

Loans to Mob Figures

Some fund loans have gone directly to companies controlled by mobsters and criminals. For example, beginning in 1963, some $1.2 million went to Valley Die Cast Corp. of Detroit, whose president until a few years ago was Michael Santo (Big Mike) Polizzi, identified by federal authorities as an important figure in the Detroit Mafia. In 1972 Mr. Polizzi and Detroit Mafia don Anthony J. Zerilli were convicted of concealing their ownership of a Las Vegas casino as part of a plot to skim casino profits. As of February 1972, some $800,000 was still owing on the fund loan to Valley Die Cast.

In 1971, after the fund foreclosed on a defaulted $1.9 million loan to the lavish Savannah (Ga.) Inn & Country Club, a kind of East Coast La Costa, the fund trustees installed as manager Louis (Lou the Tailor) Rosanova, widely reputed as a Chicago Mafia associate.

Andrew Lococo, another mob associate, who over the years was convicted of burglary, larceny, violation of parole and perjury, was lent $2.5 million from 1969 to 1971. The money was borrowed in the name of the Cockatoo Motel, a Los Angeles nightclub Mr. Lococo owned, but, according to Justice Department sources, much of it went to finance a large fishing boat Mr. Lococo planned to operate. He died last year.

Of course, you don't have to be a mobster or an insider to borrow money from the Central States fund, but if you aren't one, it can help to use an influential intermediary, such as Allen Dorfman. Mr. Dorfman served part of a one-year prison term in 1973 for taking a $55,000 bribe in exchange for recommending to the fund's trustees a $1.5 million loan to a firm operated by George Horvath, a textile manufacturer. Before the bribe was discovered in 1967, Mr. Horvath's various enterprises had borrowed $16,791,850 from the fund over several years. As of February 1972, $16,529,969 was still owed. Mr. Horvath received a suspended sentence and was fined $2,000 for rigging the price of the stock of one of his companies.

The Penasquitos Project

The fund's critics also say that its investments are too concentrated in several speculative areas. Most spectacular is the 16,000-acre Penasquitos land-development project in California. By February 1972 the fund had put $116.7 million into Penasquitos—$5.8 million of this had been repaid—and had committed $25.6 million more. A spokesman for a team of auditors that examined the fund's records at the Journal's request said of Penasquitos:

"Never before have I seen a single loan of this magnitude. If that goes bad, you own San Diego. Hell, you own half of California."

Not quite, but the loan did go bad, and since 1973 the fund has owned the 16,000 acres, most of it undeveloped. And if the project ever earns enough to make up for the loss, the fund, under a 1973 agreement, will owe a 20% equity interest to the project's former co-owner, Morris Shenker, a St. Louis lawyer who has spent much of his long career representing James Hoffa.

Mr. Shenker says he introduced the fund to Penasquitos in 1965—possibly, he says under questioning, through Mr. Hoffa. He says his 1973 agreement absolved him of all debts to the fund and also "settled" millions of dollars in loans that Penasquitos had made, with fund money, to other Shenker business interests. Asked if his other interests repaid the money either to Penasquitos or to the fund, Mr. Shenker says the situation is "too complicated" to explain. The man hired by the Central fund to manage Penasquitos declined to disclose the development's current income to the Journal.

Another big concentration of fund loans and commitments—well over $200 million—is in Nevada, primarily in gambling palaces. As with teamster loans in other places, the Nevada deals occasionally involve convicted criminals as either brokers, developers, employes or tenants.

16 Trustees Run Fund

The Central States fund is run by a board of 16 trustees, eight representing union leadership and eight representing employers. Critics have complained that the trustees have thin experience as investment managers, though some do practice up on the side: From about 1967 to at least 1972, three trustees—two management and one union—were partners with Messrs. Baron and Dorfman in a private investment company.

The professional actuary for the fund since its inception has been Maxwell Kunis of New York, who 25 years ago was actuary for Union Casualty Co., the small insurance firm to which Paul and Allen Dorfman steered the heavy business of Chicago unions. According to testimony at 1959 Senate hearings, Mr. Kunis threatened one in-

surance executive with loss of all teamster business unless huge commissions were funneled to Allen Dorfman, even after New York State had withdrawn Mr. Dorfman's insurance license. (Mr. Kunis recently denied to the Journal that he made such a threat.)

Experts disagree on whether the 1974 federal pension-reform law will curtail abuses by the big fund. The law, which won't take effect until the government issues necessary regulations, does impose on trustees such general requirements as prudence and fiduciary responsibility.

Overdrive, the trucking magazine, which has been investigating the Central States fund for several years, recently reported that the fund hasn't been making loans this year—except those already promised—pending clarification of the new law. But since then has come disclosure of a new $40 million commitment to Mr. Shenker to improve the Dunes hotel in Las Vegas.

Edward Daily, acting assistant director of the Office of Employe Benefits Security, which the Labor Department created to enforce the new law, says his small staff is too overwhelmed with routine work to think about investigation. "There's enough allegations in those Overdrive articles to keep two men busy for years," Mr. Daily says, and he adds, "We haven't got anybody."

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Union Financiers

How the U.S. Failed To Convict 7 for Deals With Teamsters Fund

Tale Has Murder & Intrigue, But From the Jury Box The Plot Had Some Holes

Volleyballs, Toys and Death

By Jonathan Kwitny
Staff Reporter of The Wall Street Journal

A few years ago the U.S. government began investigating a series of unrepaid loans in New Mexico that seemed to strike a recurrent theme in the history of the Central States, Southeast and Southwest Areas Pension Fund of the teamsters' union.

Seven men were indicted for conspiring to defraud the fund. If the prosecutors could win their case, the government expected further indictments and a change in the fund leadership.

A jury trial began last Feb. 3 in Chicago, where the fund is based. Nine weeks later, on April 10, after the expenditure of millions of dollars and thousands of man-hours, the trial ended. The defendants were acquitted on every count.

This is the story, based on 8,000 pages of trial transcript and numerous interviews, of how the Central States fund lost more than $8 million over 15 years in loans secured by a continually insolvent factory in Deming, N.M.; how the Justice Department charged some of those involved with criminal intent; and how the government's case foundered, largely on the rules of evidence, leaving the fund's administrators firmly in control of $1.3 billion in workers' pension money.

The operations of big Central States, Southeast and Southwest Areas Pension Fund of the teamsters' union have been enmeshed in controversy for years. The accompanying article is the third and last in a series exploring aspects of the controversy.

The Start of the Matter

The fund got involved in Deming in 1959 when it put up about $3 million to finance a new plant there for Auburn Rubber Co., formerly of Auburn, Ind., a maker of toys and other products. In 1969, Auburn Rubber folded. By then the loans totaled $4.5 million, all unrepaid. Counting interest, Auburn owed the fund $4.9 million. The fund took over the plant.

This early history wasn't part of the case that the government presented to the jury in Chicago this year. That case was limited to the take-over of the plant by another group in 1971 with pension-fund loans that reached $1.4 million.

Early in 1973, the Justice Department, the Internal Revenue Service and the Postal Service found themselves working coincidentally on a possible fraud in the 1971 loans, and they decided to pool their efforts to make one big case that would spearhead a broad attack on the fund administration. The Deming case appealed to the government partly because two men who ran companies that received some of the loan money had agreed to testify they were part of a scheme to defraud the pension fund.

A Bookkeeper From the IRS

One was Harold Lurie, a thrice-convicted long-time business front man for Chicago Mafiosi. Mr. Lurie was trying to avoid further prosecution for tax evasion and had consented to let an IRS agent pose as his bookkeeper for two years, observing his transactions with other alleged conspirators. The second prospective insider witness was Daniel Seifert, who ran a company that helped channel teamster loan money to a man identified by the Illinois Crime Investigating Commission as a Mafia loan shark and collector.

But what made the Deming case even more appealing was the cast of alleged wrongdoers it involved. These are some of the persons who evidence showed benefited from the Deming loan money:

—Felix (Milwaukee Phil) Alderisio, the most active Mafia boss in Chicago, who had once been overheard by FBI bugs as he boasted of murder and who was known to police as the "king of scam," scam being the planned bankruptcy of supposedly legitimate businesses. (Mr. Alderisio died in prison in 1972 while serving an extortion sentence, so he never came to trial in the Deming case.)

—Allen Dorfman, longtime kingpin of Central States fund activity, who was just getting back into circulation after an eight-month prison stay for taking a $55,000 bribe in the award of a fund loan.

Figure in Murder Trial

—Anthony (Tough Tony) Spilotro, who Mr. Lurie said had boasted of being Mr. Alderisio's heir, and who at various times had been charged with, and acquitted of, robbery, burglary, gambling and murder. The murder acquittal, in 1973, was especially galling to authorities because a turncoat mobster gave excruciatingly detailed court testimony about how he, Mr. Spilotro and two others—using guns and a butcher knife—savagely executed a stolen goods fence who was suspected of cheating on Mob accounts. Mr. Spilotro presented several witnesses to testify that he was buying furniture on the day of the murder.

—Joseph (The Clown) Lombardo, the alleged loan-shark racketeer who got teamster money through Mr. Seifert's firm, and who over the years had been charged with, and acquitted of, burglary, loitering and kidnapping.

—Ronald DeAngeles, long suspected by authorities of being the syndicate's electronics whiz. In 1970 federal agents burst in on him in a converted minesweeper he was cruising in near the Chicago Police Department's lakefront headquarters. The boat was laden with radio intercept equipment. Unable to prove what they suspected he was doing with this gear, the agents noticed an oil slick behind the boat and obtained an indictment against him for polluting Lake

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Michigan. The indictment was thrown out of court.

The federal prosecutors also were attracted by evidence that two of the pension fund's 16 trustees had traveled to Deming to see the factory, and therefore could be indicted as part of the alleged conspiracy. They were Albert Matheson, a Detroit labor lawyer, and Jack Sheetz, head of a Dallas-based trucking employers' association.

The indictment came down in February 1974. Messrs. Dorfman, Spilotro, Lombardo, DeAngeles, Matheson and Sheetz were charged with conspiracy to defraud the Central States fund. So was Irwin Weiner, a Chicago bondsman who wrote bonds for the fund's trustees and who, according to testimony, had long standing business ties with Mr. Lurie and Mr. Alderisio. The big trial was set.

Then, on the morning of Sept. 27, 1974, Mr. Seifert, one of the two key government witnesses, entered his office at International Fiberglass Co. in a Chicago suburb, accompanied by his wife and son. Two men in ski masks, surprised to see the entire family, shoved the wife and son into a lavatory and shot Mr. Seifert. But he fled into a hallway. There he encountered another man, with a shotgun, and turned to flee again. A buckshot blast ripped away the back of his head, but Mr. Seifert continued into the fiber-glass plant. The two men in ski masks chased him, firing and yelling to the startled employes to "Hit the deck!" They did. But Mr. Seifert managed to run out a back door. There he encountered another man with a shotgun, who fired at him point-blank. None of the witnesses has come forward with a good identification of the killers.

Mr. Seifert's death cast a pall over the U.S. Attorney's office. The prosecutors decided to drop the charges against Mr. Lombardo, since Mr. Seifert was to have been the primary witness against him. The other defendants went to trial. Matthias Lydon, chief of the government's three trial attorneys, soon found he had many problems besides the lack of a second insider witness to back up Mr. Lurie.

First, the jury was getting a very different picture of the defendants from the one being published in Chicago newspapers, which the jurors were forbidden to read. Defense attorneys presented Mr. DeAngeles and Mr. Weiner as independent businessmen who wanted to go into plastics manufacturing in Deming. They presented Mr. Spilotro as a businessman who wanted to borrow money from his friend Mr. DeAngeles.

So long as the three men didn't testify—none of the defendants did—the prosecution couldn't tell the jury of their backgrounds. Says Mr. Lydon now, "Probably the greatest problem of the case was not being able to explain who all these characters are and what they were doing together in the first place."

Tracks Around Town

Another prosecution problem was that the IRS and Postal Service investigators had left elephant tracks around Deming since they began looking into the matter in February 1972. They thus tipped off the alleged conspirators that a criminal case was in prospect. Late in 1972, new accountants reorganized the plastics factory's books. Money that the government believed had been stolen was reclassified as loans.

For example, some $15,000 in checks that were issued to Mr. Spilotro or a company of his might have seemed suspicious because Mr. Spilotro never worked for the plant in an official capacity. But the money was reclassified as loans to Mr. DeAngeles, an employe of the plant. It was then explained on the books that Mr. DeAngeles had requested the money for his friend Mr. Spilotro. Many of these newly classified loans were repaid —some by means of a $20,000 salary bonus suddenly given to Mr. DeAngeles and charged off against loans to him and others. This new accounting evidently left the jury with the impression that only a small portion of the pension fund's money wasn't properly accounted for.

Moreover, the jury never learned of the fund's checkered history, including details of its earlier losses at Deming. For the jury, the alleged conspiracy began in the fall of 1970 at Gaylur Mercantile Co., a Chicago salvage firm.

Mr. Lurie was Gaylur's proprietor. He testified that a broker he dealt with told him Gaylur might make some money salvaging an inventory of toys for the Central States fund, toys that had been left at the old Auburn plant in Deming. The broker said both the plant and the inventory belonged to the pension fund, so Mr. Lurie called his friend Mr. Weiner, who he knew was a friend of Mr. Dorfman, special consultant to the fund.

A Visit to Prison

At this point there was an important gap in Mr. Lurie's testimony. The jury didn't learn that Gaylur Mercantile had frequently been used as a "wash" for money going to the late Milwaukee Phil Alderisio, Gaylur's real guiding genius. It didn't learn that Gaylur's payroll had sometimes included Mr. DeAngeles and Mr. Spilotro. And it didn't learn that the Deming deal had been approved, perhaps actually conceived, by Mr. Alderisio when Mr. Lurie visited the Mafia boss in prison.

Before telling his story to the jury, Mr. Lurie testified in the chambers of Judge William J. Bauer at a hearing to determine, under the rules of evidence, what the jury could and couldn't learn. There he engaged in the following exchange with Mr. Weiner's lawyer, Thomas Sullivan:

Q—Do you recall that Mr. Alderisio had sent word from prison that he wanted you to run the operation because he said you were the only one he has outside to run the operation who has any brains?

A—Yes, I remember that.

But Judge Bauer agreed with the defense lawyers that Mr. Alderisio's notoriety might prejudice the jury. So the jurors wouldn't hear any testimony involving the mobster. Nor would they learn that the government had relocated Mr. Lurie with a new identity to protect him, or that Daniel Seifert had been killed, justifying such caution; it was decided that these facts, too, were prejudicial.

The jury was told that in November 1970 Mr. Lurie and Mr. Weiner visited the plant and decided they could make money running it, as well as from selling the toy inventory. So they met with Mr. Dorfman, who told them that obtaining a pension-fund loan to take over the plant "shouldn't be too much of a problem." At the same time, Mr. Lurie testified, the three men agreed to split

the projected $30,000 profit from sale of the toy inventory, $10,000 for each of them.

Documents showed that the toys were sold for $31,687.75 and that Mr. Weiner later submitted a check to the fund for $7,169.49 representing sale of the inventory. The defense said that the difference was plowed back into the business.

Loan Wins Approval

Precisely when Mr. Lurie and Mr. Weiner and their associates took over the plant isn't clear. Evidence showed that Mr. Dorfman promoted the project exuberantly in June 1971 at a meeting of the pension-fund trustees. The trustees then approved a $600,000 loan to a new company, Gaylur Products Inc., headed by Mr. Weiner, to resume production at the Deming plant.

There ensued a strange parade through Mr. Lurie's Gaylur Mercantile warehouse. The participants picked out television sets, tape recorders, refrigerators, freezers, volleyballs—even urinals. Among those who received goods without paying for them, according to undisputed testimony, were Mr. Dorfman, his mother, his lawyer Harvey Silets (whose firm also represents the pension fund itself at times) and a children's charity favored by Mr. Dorfman. Mr. Lurie testified that Mr. Weiner told him to charge everything "to the Deming account," which would be reimbursed from the fund loan.

Meanwhile, Mr. Spliotro convinced Mr. DeAngeles to take charge of cleaning up the Deming plant and converting the machines there to the manufacture of plastic products. Mr. DeAngeles got a $190,000 budget and a salary that reached $500 a week after withholding. He also got a house, an airplane and a Cadillac. The government charged he should have paid income tax on these items, but the defense said he was holding them in trust for the company.

A Second Loan

Soon after starting to work, Mr. DeAngeles reported that the plant needed repairs far more extensive than anticipated, sending Mr. Weiner (with Mr. Dorfman supporting him) back to the trustees for another loan. He obtained an additional $298,000. At the trial, the prosecution contended that most of the necessary repairs were made under supervision of a prior caretaker and, anyway, cost much less than $298,000. This led to literally weeks of arguing before an impatient jury over who made which repairs, when and for how much.

Defense attorney Sullivan seized on this nit-picking to help his cause. "It really is incredible," he told the jury in his summation, "that in Chicago in 1975 we spent about a week on the question of whether a roof leaked down in Deming in 1971, but we did. Well, that's all right. It's the taxpayers' money. . . . We finally decided it only leaked when it rained."

The roof wasn't the only thing accused of leaking. Extensive evidence showed that hundreds of thousands of borrowed dollars were used for purposes other than resurrecting the plant in Deming. Whether these purposes were nefarious or not was hotly debated, and some of the debates never reached the jury. Some of the items:

—Before the IRS appeared in Deming in February 1972, Mr. Weiner pledged $149,000 of Gaylur Products' fund money to secure bank loans for his personal business. Some $113,000 of this borrowed collateral was foreclosed on, but later in 1972, after he knew he was under scrutiny, Mr. Weiner repaid the bank the $149,000.

—Mr. Weiner sent $33,000 to help Mr. Spliotro and his wife resettle in Las Vegas and open a gift shop. (Judge Bauer wouldn't let the jury hear about $16,000 of this, paid in cash in a briefcase, on the ground that there wasn't proof that the $16,000 came from Gaylur Products' money.)

—Gaylur also invested, and lost, $42,000 in an unsuccessful venture to market mobile lunch stands called Weenie-Wagons. The Weenie-Wagon firm shared an address and two of its principals with Mr. Weiner's bonding company, and testimony also linked it to Mr. Lombardo and Mr. Dorfman.

—Gaylur also bought several dozen trucks, gave them to a firm Mr. DeAngeles ran, and paid the firm to haul goods from Deming. When the Deming operation folded in 1973, the trucks were driven to Mr. DeAngeles's new home in Florida, apparently without payment to Gaylur. (The jury never learned about all this because the government wasn't aware of the truck deal when it drew the indictment and Judge Bauer refused to let prosecutor Lydon "gum this (trial) up with proof of another crime.")

An Oldsmobile and Taps

The jury did learn of checks written on the borrowed money for $6,000 to pay criminal defense fees for Mr. DeAngeles and Sam Battaglia (though the jury didn't learn that this was the notorious mobster Teets Battaglia or that payment of his fee was ordered by Mr. Alderisio); $1,080 to complete payments on an Oldsmobile for Mr. Battaglia's son; $2,200 for equipment to tap the phones of Mr. Weiner's children, whom he suspected of narcotics involvement (the defense said the equipment later was used for security at the Deming plant); $15,000 to help a friend of Mr. DeAngeles buy a trucking company (the money was repaid from the trucking company's cash); and $24,000 (later repaid) to one of Mr. Weiner's bonding clients.

Then the jury heard Moe Shapiro, a longtime friend of Mr. Weiner and Mr. DeAngeles, testify that on July 7, 1971, he was chatting with Mr. DeAngeles and said, "Gee, I need $4,500 if somebody could borrow it to me." Then, Mr. Shapiro testified, "Ron, my friend, says, 'Moe, I would be happy to borrow it to you.' " The loan was made at once with Gaylur Products money. Mr. Shapiro never repaid it.

But the main issue at the trial wasn't petty chiseling. It was whether Mr. Weiner and his associates willfully misled the fund trustees when they obtained the loans. Their application in 1971 (which Mr. Lurie testified was prepared with Mr. Spliotro's advice,) proposed three products for manufacture at the Deming plant: eight-track tape cartridges, five-gallon pails and Melamine dishes. Each would contribute about equally to a projected $1.8 million annual profit.

The government contended that the tape-cartridge proposal was misleading: The expert who Mr. Weiner said would run the operation testified that he had already rejected the Deming plant as "totally inadequate." The dish proposal was based largely on a letter from a Panamanian company promising large purchases; Mr. Lurie testified that he had forged the letter at Mr. Weiner's request. The pail proposal cited a "contract" for purchase of two million pails a year, but the purchaser turned out to be a company owned by Mr. Weiner's cousin,

and it went out of business before Gaylur began large-scale production.

Nevertheless, the pail business proved genuine, and jurors have told the Journal in interviews that it was a big factor in their vote for acquittal. With U.S. Gypsum Co. a major customer, pails accounted for most of the $1.5 million in sales that Gaylur (later renamed American Pail Corp.) made from 1971 until it closed in the fall of 1973. (Most other sales were of toy swim masks and fins, a product line Gaylur Products inherited from the old Auburn Rubber Co.)

A Third Loan

When the pail business materialized in late 1972, so little remained of the original $900,000 in fund loans that Mr. Weiner went back to the trustees and obtained $500,000 more to buy material. But even in its supposed boom period in early 1973, Gaylur suffered big operating losses. Each pail cost $1.11 to make (despite Gaylur's paying no rent or debt service to the fund) and sold for only 85 cents to meet competition.

The defense said costs would have dropped had Gaylur been able to maintain production as planned. But in mid-1973 Amoco Chemical Co., one of two main suppliers, cut Gaylur off from the oil-based plastic used to make the pails, causing a slowdown, then a shutdown. The jury wasn't allowed to learn the real reason for the cutoff.

That reason is apparent in internal correspondence from the Amoco credit department. The Journal has obtained copies. One memo was accompanied by articles from the Chicago Tribune about the local crime syndicate; the memo writer cites references in the articles to "our 'friends' in New Mexico" and urges that Amoco take "a hands-off attitude" toward Gaylur. A reply from a superior concurs, "due to their questionable background."

Judge Bauer refused to allow the memos into evidence on grounds they would prejudice the jury. The defense was allowed to argue in court that the 1973 petroleum shortage was responsible for the cutoff—a seemingly logical explanation. This forced the government to come up with an alternative false explanation. The prosecutors argued that Gaylur hadn't paid its bills on time. But the defense was able to show otherwise, which impressed the jury.

Perhaps the backbone of the defense was a two-day presentation by Arthur Young & Co. of a detailed—but not certified—accounting done by a team of auditors from the noted firm. The team acknowledged that it relied largely on information supplied by previous bookkeepers, who in turn had testified that they relied at least in part on information from Mr. Weiner and Mr. DeAngeles. By refraining from certifying the figures, the Arthur Young team refrained from guaranteeing their accuracy, but the team was able to account in some way for almost every penny of the loan money.

Financing of the Audit

Howard Doherty, a partner, testified that Arthur Young & Co. was receiving $150,000 for its work, to be paid by two law firms representing defendants. But the Journal has obtained a copy of minutes from a meeting of the pension fund's board of trustees last Oct. 4. The minutes show approval of a motion to hire and pay Arthur Young to audit Gaylur Products. Thus, the minutes indicate that the backbone of the defense in the Chicago trial was paid for with money from the fund—which was supposed to be the victim of the alleged fraud. Spokesmen for Arthur Young say that they have no idea why the minutes should read that way, that the firm understood, and still does, that it was being paid by the defense law firms. Spokesmen for the pension fund declined to be interviewed by the Journal.

This confusion between victim and perpetrator dogged the entire trial. According to interviews with jurors, it heavily influenced the verdict. When the prosecution put on the stand as a purported victim Thomas J. Duffey, a trucking-company lawyer and a fund trustee, Mr. Duffey mainly fed the defense. As prosecutor Lydon listened in disbelief, Mr. Duffey on cross-examination said that once the fund made a loan, the borrower could use the money as he saw fit, regardless of the purpose stated in the application.

Mr. Duffey said the trustees had been satisfied with the unaudited financial statements Gaylur turned in. The defense leaned on this testimony in its summation, along with other testimony from the fund that its own accountant and efficiency expert had gone to Deming and approved Gaylur's operation of the plant.

The effect of all this on the outcome of the case is illustrated by one juror's comment:

"For fraud to exist, the person being defrauded must be somewhat naive. These pension-board members weren't that naive."

Labor

EMPLOYEE WELFARE OR PENSION BENEFIT PLAN
ANNUAL REPORT FORM

Form approved.
Budget Bureau Number 44R1115.2.

This form is prescribed for publishing annual reports of employee welfare or pension benefit plans as required by law. Use a separate form for each separate Plan.

Enter file number which has been assigned by the U.S. Dept. of Labor

Annual Report for Year Ending January 31, 1975
(Month) (Day) (Year)

TAC	FC
	5

File No. WP- 110777-0

110777-0

TEAMSTERS

CENTRAL STATES SE & SW AREAS PENSION
8550 WEST BRYN MAUR AVENUE 015
CHICAGO ILL 60631

Mail two copies of the completed form and accompanying documents to the Office of Labor-Management and Welfare-Pension Reports, U.S. Department of Labor, Washington, D.C. 20210.

ANSWER EACH ITEM. REFER TO INSTRUCTIONS BEFORE ANSWERING. INSTRUCTION NUMBERS CORRESPOND TO ITEMS ON THE FORM.

PART I—TO BE COMPLETED BY ALL PLANS

Part 1—SECTION A

Except as Otherwise Indicated, All Items in Part I Should be Filled in or Marked "None" or "N.A." (Not Applicable) as Appropriate.

1. Name of Employer, Employer Association, or Employee Organization With Which Plan Is Identified .....

Was the same company or organization name used in the last report for this plan? ☐ Yes ☐ No

If "No," state name that was used .....

2. Street Address of Principal Office of Plan ..... (Number) (Street) (City) (State) (ZIP Code)

3. Name of Plan (See page 3 of instructions) .....

Part I—SECTION B

1. Indicate by checking the appropriate box below the type of plan for which this report is being submitted:
   - ☐ a. Welfare Benefit Plan (Provides medical, surgical, or hospital care or benefits in event of sickness, accident, disability, death, or unemployment, through the purchase of insurance, or otherwise).
   - ☒ b. Pension Benefit Plan (Provides retirement benefits by the purchase of insurance, annuity contracts, or otherwise, and includes any profit-sharing plan, savings and thrift plan, or stock purchase plan that provides benefits at or after retirement. Includes death benefits supplemental to a pension plan and retirement for age, service, or disability).
   - ☐ c. Combination of a and b.
2. Check the category that best describes the groups covered by the Plan:
   ☒ a. All employees ☐ b. Hourly rate employees ☐ c. Salaried employees ☐ d. Other (Specify): .....
3. Has the Plan been amended during the reporting year? ☒ Yes ☐ No
4. Indicate by checking the appropriate boxes the types of benefits and the method of providing such benefits.

TYPES OF BENEFITS (1)	METHOD OF PROVIDING BENEFITS: Insurance Carrier, Service or Other Organization[1] (INSURED) (2)	Trust or Other Separately Maintained Fund[2] (SELF-INSURED) (3)	General Assets of Employer, Union, etc. (UNFUNDED) (4)
a. Life Insurance or Death Benefits	☐	☒	☐
b. Accidental Death and Dismemberment	☐	☐	☐
c. Accident and Sickness Insurance	☐	☐	☐
d. Paid Sick Leave	☐	☐	☐
e. Hospital	☐	☐	☐
f. Surgical	☐	☐	☐
g. Medical	☐	☐	☐
h. Dental	☐	☐	☐
i. Unemployment	☐	☐	☐
j. Retirement for Age or Service	☐	☒	☐
k. Retirement for Disability	☐	☒	☐

[1] If any boxes in this column have been checked, applicable sections of Part III are to be completed.
[2] If any boxes in this column have been checked, applicable sections of Part IV are to be completed. (Do not include benefits provided through an insurance contract purchased by a Fund. These are to be reported in Column (2) as Insured.)

Items 5, 6, 7, and 8 of Part I, Section B, need not be answered.

5. Indicate the total amount of contributions made to the Plan during the year covered by this report: (Show all contributions to the Plan, including insurance or annuity premiums, or subscription charges paid. Do not include dividends or retroactive rate refunds credited or unfunded benefits).

Employer(s) $ 282,896,487.00 Employees $ -0- Other $ -0-

6. Enter the number of participants covered by the Plan during the year covered by this report:

a. Employed (or currently carried as active) 424,317

b. Retired employees 59,892

c. Total 484,209

7. If some of the benefits are unfunded, enter the amount of such benefits provided by the Plan during the year covered by this report. (Unfunded benefits are those provided solely from the general assets of the employer, union or other organization. They are not provided or funded through an Insurance Carrier or through the medium of a Trust or other Separately Maintained Fund) $

8. a. Was the Plan insured by a fidelity bond against losses through fraud or dishonesty during the reporting year? ☒ Yes ☐ No

If Yes, what is maximum amount recoverable for loss caused by any person bonded thereunder? $ 500,000.00

Enter the name of the surety company Great American Insurance Co.

If No, explain

b. Was there discovered during the reporting year any loss to the Plan caused by the fraud or dishonesty of any administrator, officer, employee of the plan, or other person handling funds of the Plan? ☐ Yes ☒ No

If yes, list amounts of such losses, amount recovered for each loss from the bonding company, and amount recovered from the individual causing the loss. The individual causing the loss need not be identified in your answer. (If the amounts recovered do not equal the total loss sustained, explain)

Part II

TO BE COMPLETED FOR COMPLETELY UNFUNDED PLANS ONLY

Information To Be Furnished by Plans Checking Boxes Only in Part I, Section B, Item 4, Column 4

Enter the following information for the unfunded benefits furnished during the year covered by this Report and during each of the 4 preceding years. Enter current reporting year on first line:

A—Welfare Plan Benefits

Year Ending (Month, Day, Year) (1)	Unfunded Benefits Paid Under Plan (2)	Average Number of Persons Covered by the Plan (3)
	$	
	$	
	$	
	$	
	$	

B—Pension Plan Benefits

Year Ending (Month, Day, Year) (1)	Average Number of Participants			Total Unfunded Benefits Paid Under Plan (5)	Unfunded Benefits Paid to Retired Employees[1] (6)
	Total (2)	Nonretired (3)	Retired (4)		
				$	$
				$	$
				$	$
				$	$
				$	$

[1] Enter total in this column if it differs from amount in Column 5.

INSTRUCTIONS TO ADMINISTRATOR OF COMPLETELY UNFUNDED PLAN

The completion of PARTS I and II provides all the information required by the Act for an annual report of a Completely Unfunded Plan. The administrator of such a plan, after completing PARTS I and II, should execute and attach the signature and verification section in accordance with the instructions and mail two copies of the completed form to the Office of Labor-Management and Welfare-Pension Reports, Washington, D.C., 20210.

Part IV

Part IV shall be completed for a trust or other separately maintained fund are to be completed for a plan involving a trust or other separately maintained fund. It also is to be completed for a plan which: (1) Has incurred expenses other than: (a) Payments for unfunded benefits or (b) Insurance or annuity premiums or subscription charges paid to an insurance carrier or service or other organization; or (2) Has assets other than: (a) Insurance or annuity contracts or (b) Contributions in the process of payment or collection.

Part IV—Section A
Statement of Assets and Liabilities

Name of Plan Central States, Southeast and Southwest Areas Pension Fd. | File No. | WP- 110777

For Year Beginning 2/1/74 (Month) (Day) (Year) and Ending 1/31/75 (Month) (Day) (Year)

Item	ASSETS [1]	End of Prior Year	End of Reporting Year
1.	Cash	$ 9,191,726	$ 4,600,624
2.	Receivables:		
	a. Contributions: (See Item 18)	26,000,000	24,700,000
	(1) Employer		
	(2) Other (Specify)		
	b. Dividends or experience rating refunds	6,756	332,816
	c. Other (Specify)		
3.	Investments: (Other than real estate)		
	a. Bank deposits at interest and deposits or shares in savings and loan associations	76,144,311	103,236,563
	b. Stocks:		
	(1) Preferred	123,468,768	94,456,077
	(2) Common		
	c. Bonds and debentures:		
	(1) Government obligations:	1,468,169	-0-
	(a) Federal		
	(b) State and municipal		
	(2) Foreign government obligations	3,875,000	3,975,000
	(3) Nongovernment obligations	82,029,298	84,673,035
	d. Common Trusts:		
	(1) (Identify)		
	(2) (Identify)		
	e. Subsidiary organizations (See Instructions)		
	(Identify and indicate percentage of ownership by this Plan in the subsidiary)		
	(1) %		
	(2) %		
4.	Real estate loans and mortgages	660,634,400	783,517,193
5.	Loans and Notes Receivable: (Other than real estate)		
	a. Secured	-0-	9,600,000
	b. Unsecured		
6.	Real Estate:		
	a. Operated	43,639,664	64,880,191
	b. Other real estate	132,230,906	133,167,652
7.	Other Assets:		
	a. Accrued income	29,908,099	30,986,653
	b. Prepaid expenses	-0-	98,752
	c. Other (Specify) Fixed Assets-- Net (Deprec. $112,876.00)	464,654	1,327,609
8.	Total Assets	$ 1$189,061,751	$1,339,552,165
	LIABILITIES		
9.	Insurance and annuity premiums payable	$	$
10.	Unpaid claims (Not covered by insurance)		
11.	Accounts payable	10,000	279,000
12.	Accrued expenses		
13.	~~XXXXXXXXXXXX~~ Investment Valuation Reserve		50,000,000
14.	Reserve for future benefits	1,189,051,751	1,289,273,165
15.	Total Liabilities and Reserves	$ 1$189,061,751	1$339,552,165

[1] The assets listed in this statement must be valued on the basis regularly used in valuing investments held in the fund and reported to the U.S. Treasury Department, or shall be valued at their aggregate cost or present value, whichever is lower, if such a statement is not so required to be filed with the U.S. Treasury Department

Part IV- Section B
Statement of Receipts and Disbursements

Name of Plan: Central States, Southeast and Southwest Areas Pension Fund | File No. | WP- 110777

For Year Beginning 2/1/74 (Month) (Day) (Year) and Ending 1/31/75 (Month) (Day) (Year)

Item			
	CASH RECEIPTS		
1.	Contributions: (Exclude amounts entered in Item 2)		
	a. Employer (Schedule 1)	$ 282,896,487	
	b. Employee		
	c. Other (Specify)		
	d. Total Contributions		$ 282,896,487
2.	Dividends and Experience Rating Refunds From Insurance Companies		
3.	Receipts From Investments:		
	a. Interest	$ 62,429,579	
	b. Dividends	2,894,335	
	c. Rents	1,197,274	
	d. Other (Specify) See Attached	51,733,338	
	e. Total Receipts From Investments		118,254,526
4.	Receipts From Sale of Assets:		
	a. Sales to parties-in-interest	$	
	b. Sales to others and Reallocation in Categories	889,192,136	
	c. Total Receipts From Sale of Assets (Schedule 2)		889,192,136
5.	Other Receipts:		
	a. Loans (Money borrowed)	$	
	b. Other (Specify) Schedule Attached	2,649,072	
	c. Total Other Receipts		2,649,072
6.	Total Receipts		$ 1,292,992,221
	CASH DISBURSEMENTS		
7.	Insurance and Annuity Premiums Paid to Insurance Carriers and Payments to Service Organizations (Including Prepaid Medical Plans)		$ -0-
8.	Benefits Provided Directly by the Trust or Separately Maintained Fund		175,242,197
9.	Payments to an Organization Maintained by the Plan for the Purpose of Providing Benefits to Participants (Attach latest operating statement of the Organization showing detail of administrative expenses, supplies, fees, etc.)		-0-
10.	Payments or Contract Fees Paid to Independent Organizations or Individuals Providing Plan Benefits (Clinics, hospitals, doctors, etc.)		-0-
11.	Administrative Expenses:		
	a. Salaries (Schedule 3)	$ 2,119,252	
	b. Allowances, expenses, etc. (Schedule 3)	456,679	
	c. Taxes	462,564	
	d. Fees and commissions (Schedule 4)	2,923,273	
	e. Rent	573,103	
	f. Insurance premiums	319,741	
	g. Fidelity bond premiums	14,164	
	h. Other administrative expenses (Specify)	1,827,429	
	i. Total Administrative Expenses		8,696,205
12.	Purchase of Assets:		
	a. Investments: (Other than real estate)		
	(1) Purchased from parties-in-interest	$ -0-	
	(2) Purchased from others	1,017,874,839	
	b. Real Estate:		
	(1) Purchased from parties-in-interest	-0-	
	(2) Purchased from others	64,932,647	
	c. Total Purchase of Assets		1,082,807,486
13.	Loans (Money loaned)		
14.	Other Disbursements: (Specify)		
	a. Transfers -- NY Central Teamsters Pension Fund	$ 429,000	
	b. See Schedule	3,316,182	
	c. Total Other Disbursements		3,745,182
15.	Total Disbursements		$ 1,270,491,070

Supporting Schedules for Specific Items Shown on Section B—Statement of Receipts and Disbursements

File No.	WP– 110777

For Year Beginning 2/1/74 (Month) (Day) (Year) and Ending 1/31/75 (Month) (Day) (Year)

If more space is required, attach additional sheets properly identified. Show total of additional listings in space provided.

SCHEDULE 1

Contributions Received from Employers
(Detail of total shown for Item 1a. Statement of Receipts and Disbursements)

Name and Location of Employer (See Instructions) (1)	Contributions Received During Reporting Period (2)
See Schedule Attached	$
Subtotal from additional listing	$
Total	To Item 1a. $

SCHEDULE 2

Receipts From Sale of Assets
(Detail of total shown for Item 4c. Statement of Receipts and Disbursements)

Category of Assets Sold (1)	Cost (2)	Book Value (3)	Gross Sales Price		Amount Received (Net) (6)
			Cash (4)	Other (5)	
	$	$	$	$	$
Schedule Attached					
Subtotal from additional listing	$	$	$	$	$
Total	$ 904,573,204	$ 904,573,204	$ 889,192,136 To Item 4c.	$ -0-	$ 889,192,

SCHEDULE 3

Salaries, Services, Expenses, Etc. Paid and Charged to Plan
(Detail of total shown in Items 11a. and 11b. Statement of Receipts and Disbursements)

Name of Recipient (1)	Position (2)	Gross Salary (Before taxes and other deductions) (3)	Allowances, Expenses, Etc. Allowances (4)	Other Direct and Indirect Disbursements: Expenses (5)	Other Direct and Indirect Disbursements: Other disbursements (6)	Total of (4)+(5)+(6) (7)
See Attached		$	$	$	$	$
Subtotal from additional listing		$	$	$	$	$
Total		$ 2,119,252 To Item 11a.	$ 329,607	$ 127,072	$ -0-	$ 456,679 To Item 11b.

SCHEDULE 4

Fees and Commissions Paid and Charged to the Plan
(Detail of total shown for Item 11d. Statement of Receipts and Disbursements)

All fees and commissions paid and charged to the Plan must be reported here. Include payments to an individual, firm, or corporation which administers the affairs of the Plan on a contract or fee basis, and fees and commissions, paid to salaried administrators or others whose salaries are reported in Schedule 3, above. (Exclude those fees and commissions paid by the insurer and set forth in Part III, Section A, Table 2; also exclude fees for medical, dental, optical, and other services provided to participants.)

To Whom Paid (Give name and address) (1)	Purpose for Which Paid (2)	Amount of— Commissions (3)	Amount of— Fees (4)	Total Commissions and Fees (5)
See Attached		$	$	$
Subtotal from additional listing		$	$	$
Total		$	$ 2,923,273	$ 2,923,273 To Item 11d.

Name of Plan ..... File No. | WP- 110777

This section is to be completed, to the extent applicable, for all plans having any party-in-interest transactions of the types indicated in Tables 1, 2, and 3 hereunder.

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

Table 1. Investments

1. List here all investments held at year end in bonds or stocks of parties-in-interest, which are not listed or registered as described in footnote [1], and in mortgage loans or other property. (Include identity of each security, mortgage loan or property. Give name of party-in-interest and relationship.) [2] (1)	Cost (2)	Present Value (3)	Percentage of Total Funds (Assets) (4)
	$	$	
2. Provide, for the total investments in party-in-interest stocks, and bonds listed and traded or registered, as described in footnote [1] and not requiring identification, information required in columns (2), (3), and (4).	$	$	

[1] Any security which is listed and traded on an exchange subject to regulation by the Securities and Exchange Commission or is a security in an investment company registered under the Investment Company Act of 1940, or is a security of a public utility holding company registered under the Public Utility Holding Company Act of 1935.

[2] If mortgage loans are included in column (1), the identification should also include location and description of property and name of mortgagor.

Table 2. Fees and Commissions

Provide the following information on fees and commissions incidental to the purchase or sale of all investments in securities or properties of parties-in-interest during the reporting year. This information need not be furnished with respect to the securities described in footnote [1].

Name and Address of Recipient (1)	Purpose For Which Paid (Identify securities and properties involved) (2)	Amount (3)
		$

[1] Under the Act the identity of all securities and details of brokerage fees and commissions incidental to the purchase and sale of such securities need not be revealed, if the security is listed and traded on an exchange subject to regulation by the Securities and Exchange Commission or is a security in an investment company registered under the Investment Company Act of 1940, or is a security of a public utility holding company registered under the Public Utility Holding Company Act of 1935.

Table 3. Loans

Provide the following information for all loans made by the fund to the employer or employee organization or any other party in interest. Information is to be furnished for all such loans other than those made to plan participants where such loans are available to all participants on a nondiscriminatory basis and made in accordance with specific provisions regarding loans to participants set forth in the plan description.

List loans made during year or outstanding at end of year to parties in interest, showing names and addresses of debtors, party-in-interest relationship to fund, dates made and maturity dates, interest rate, and any other terms and conditions of such loans. (1)	Face Amount of Loan (2)	Amount Outstanding at End of Year (3)	Type and Value of Collateral Held (4)
	$	$	$

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Part IV Section E
Trust Fund Pension Plan Data

Name of Plan .....

File No. | WP- 110777

This section is to be completed to the extent applicable for those pension plan benefits funded through the medium of a trust.

1. Number of Participants:

a. Retired 59,982

b. Active (exclude those in 1c.) 424,317

c. Separated from employment with vested benefits .....

2. Type and Basis of Funding.—The methods of funding and determination of costs currently being used for the Plan are to be stated here. (See instructions.)

ATTACHED

ATTACHED

3. Actuarial Assumptions and Methods

Attach a statement of the actuarial assumptions and methods currently being used in determining the contributions. A copy of the latest actuarial report which includes such a statement in respect of contributions may be submitted in lieu of the foregoing. Any such statements or reports submitted as attachments should be appropriately identified. Where under the type and basis of funding, figures are entered in Item 4, below, a further statement is required showing the actuarial assumptions and methods used in deriving the liabilities of the pension plan, including a description of the precise meaning assigned to each of the terms of Item 4 below with respect to the amounts shown. (See instructions.)

a. Statement of actuarial assumptions attached ..... ☒ Yes ☐ No

b. Actuarial report attached ..... ☐ Yes ☒ No

4. Amount of current and past service liabilities as determined by the last actuarial valuation:

a. (1) Total accrued actuarial liability including any past service or supplemental cost (Before any offset for assets entered in b.) $7,211,740

(2) Current service or normal cost (Use the annual amount from the last valuation) $113,284,769

b. Enter the amount of the applicable reserves [1] $1,289,273.1

5. Date of last valuation 1/31/75

State the name and business address of the actuary or other person who made the valuation.

Name A.M. Kunis & Co., Inc.

Address 184 Grand Avenue, Englewood, New Jersey 07631

[1] This is the amount of assets appropriate actuarially to represent an offset against the total liability of 4 a (1). Assets should be valued on the basis regularly used for the fund in reports to the United States Treasury Department or on the basis of aggregate cost or present value, whichever is lower, if not reported to the United States Treasury Department.

SIGNATURE AND VERIFICATION

File No. | WP– 110777

Name of Plan: Central States, Southeast and Southwest Areas Pension Fund

18 U.S.C. § 1027 provides penalties up to $10,000 fine or five years imprisonment, or both, for any person who, in any document required by the Act to be published, or kept as part of the records of any covered plan, or certified to the administrator of any such plan, makes any false statement or representation of fact, knowing it to be false, or knowingly conceals, covers up, or fails to disclose any fact required by the Act to be disclosed. In addition, any person who aids, abets, counsels, commands, induces or procures the commission of a violation of 18 U.S.C. § 1027, or who causes the commission of such a violation, is subject to the foregoing penalties even though he intentionally refrained from the direct act constituting a violation of 18 U.S.C. § 1027.

Records providing in sufficient detail the necessary basic information and data from which the report and other documents filed may be verified, explained or clarified, and checked for accuracy and completeness must be maintained and kept available for examination for at least five years after the date of filing the report. These records include vouchers, worksheets, receipts, and applicable resolutions.

This report shall be signed by the administrator or individual(s) duly authorized to sign for and on behalf of the administrator, in the space provided. Where the administrator is a joint employer-union board or committee, at least one employer representative and one union representative must sign the report. The information contained in the report (including sections, schedules, and other documents attached) shall either be (1) sworn to by the administrator or individual(s) duly authorized to sign for and on behalf of the administrator before a notary public or other officer authorized to administer oaths, or (2) certified to by an independent certified or licensed public accountant, based upon a comprehensive audit conducted in accordance with accepted standards of auditing. If method (2) is used attach the accountant's certificate, which shall state facts indicating that the above requirements are met, and check this box:

☐ Certification described in (2) above is attached.

SIGNATURES

(Please observe instructions for completing this page.)

I/we, the administrator or ..... of
(Title or Position)

..... which is the
(Employer or Employee Organization, Partnership, Board of Trustees, Committee, etc.)

administrator who is/are duly authorized to sign for and on behalf of said administrator, declare(s) under the applicable penalties of law that the information in this report (including the information contained in any accompanying schedules and attachments) has been examined by me/us and is to the best of my/our knowledge and belief, true, correct and complete.

SIGN HERE	TYPE OR PRINT NAME HERE	NAME OF COMPANY OR UNION AND POSITION THEREIN
Thomas J. Duffey	Thomas J. Duffey	Employer Trustee
Joseph W. Morgan	Joseph W. Morgan	Union Trustee

VERIFICATION

State of Illinois
County of Cook } ss

Signed and sworn to before me—

This 16th day of June (Month) 1975

Lois A. Laird
(Notary Public)

INTERNATIONAL TOWER BUILDING

COMPARATIVE BALANCE SHEETS

A S S E T S

	December 31, 1975	December 31, 1974
Current Assets		
Cash	$ 59,460.16	$ 41,267.94
Accounts Receivable	24,147.21	7,880.16
Prepaid Insurance	19,434.39	17,598.25
TOTAL CURRENT ASSETS	103,041.76	66,746.35
Fixed Assets		
Land	1,102,400.00	1,102,400.00
Building	7,707,600.00	7,707,600.00
Building Improvements	3,595,388.92	3,595,388.92
Parking Lot Improvements	526,626.97	408,358.03
Tenant Alterations	610,920.96	578,301.21
TOTAL	13,542,936.85	13,392,048.16
Less: Accumulated Depreciation	1,547,906.27	1,109,425.69
NET FIXED ASSETS	11,995,030.58	12,282,622.47
TOTAL ASSETS	$12,098,072.34	$12,349,368.82

L I A B I L I T I E S AND C A P I T A L

Current Liabilities		
Accounts Payable	$ 10,545.44	$ 16,058.09
Security and Bond Deposit	4,106.86	4,359.86
Unearned Rent and Service	223.31	631.31
Accrued Real Estate Taxes	294,502.40	292,803.81
Accrued Wages and Benefits	9,491.15	5,743.04
Accrued Payroll Taxes	3,703.52	213.47
TOTAL CURRENT LIABILITIES	322,572.68	319,809.58
Capital		
Capital Investment	11,607,882.20	11,908,352.16
Accumulated Earnings	167,617.46	121,207.08
TOTAL CAPITAL	11,775,499.66	12,029,559.24
TOTAL LIABILITIES AND CAPITAL	$12,098,072.34	$12,349,368.82
NET WORKING CAPITAL	$(219,530.92)	$(253,063.23)

INTERNATIONAL TOWER BUILDING

CAPITAL INVESTMENT OF ACCUMULATED EARNINGS

FOR THE YEAR ENDED JANUARY 31, 1975

CAPITAL AT FEBRUARY 1, 1974		$11,908,352.16
Add:		
Payments of Expenses	$ 17,660.00	
Payments of Taxes	307,738.10	
Parking Lot Improvements	118,268.94	443,667.04
TOTAL		12,352,019.20
Deduct:		
Income Cash Remitted	490,000.00	
Rental Value of Space Occupied	254,137.00	744,137.00
CAPITAL AT JANUARY 31, 1975		$11,607,882.20

ACCUMULATED EARNINGS:	
BALANCE -- February 1, 1974	$ 121,207.08
Add: Net Income for the Year	46,410.38
BALANCE -- January 31, 1975	$ 167,617.46

INTERNATIONAL TOWER BUILDING

COMPARATIVE INCOME STATEMENT

FOR THE YEAR ENDED

	January 31, 1975	January 31, 1974
INCOME		
(*) Rentals	$ 1,559,672.22	$ 1,430,820.38
Service	22,905.64	30,498.69
Miscellaneous	249.83	4,513.86
TOTAL INCOME	1,582,827.69	1,465,832.93
EXPENSES		
Operating:		
Cleaning	258,039.94	220,245.47
Electrical System	136,295.58	103,873.75
Heating, Ventiliation and Air Conditioning	92,130.67	86,314.39
Plumbing	3,863.16	3,187.89
Elevators	37,257.34	33,607.70
Steam Generation	39,725.47	35,501.73
Decorating	4,484.00	6,261.95
Repairs	19,255.03	13,832.71
Insurance	28,531.83	27,445.15
Others	71,955.96	66,238.73
TOTAL OPERATING EXPENSES	691,538.98	596,509.47
Administrative:		
Management Fees	57,999.96	57,999.96
Leasing Commission	6,029.37	1,399.83
Legal, Audit and Collection, Transp. Subs.	18,306.89	15,643.40
Telephone	3,839.19	3,731.59
Promotion	2,660.66	4,025.38
Office Expense	3,098.30	2,311.29
Miscellaneous	4,863.38	5,518.84
TOTAL ADMINISTRATIVE EXPENSES	96,797.75	90,630.29
TOTAL EXPENSES	788,336.73	687,139.76
INCOME BEFORE REAL ESTATE TAXES AND DEPRECIATION	794,490.96	778,693.17
REAL ESTATE TAXES	309,600.00	270,280.44
INCOME BEFORE DEPRECIATION	484,890.96	508,412.73
DEPRECIATION	438,480.58	378,990.40
NET INCOME	$ 46,410.38	$ 129,422.33
(*) Rental Charges to Pension Fund Included	$ 254,137.00	$ 218,269.42

INTERNATIONAL TOWER BUILDING

STATEMENT OF SOURCES AND APPLICATION OF FUNDS

FOR THE FISCAL YEAR ENDED JANUARY 31, 1975

SOURCES OF FUNDS:	
Net Earnings	$ 46,410.38
Add: Non-Fund Charges Depreciation	438,480.58
TOTAL FUNDS PROVIDED BY OPERATION	484,890.96
Capital Investment	443,667.04
TOTAL FUNDS PROVIDED -- ALL SOURCES	928,558.00
APPLICATION OF FUNDS:	
Parking Lot Improvements	118,268.94
Tenant Alterations	32,619.75
Cash Remitted to Pension Fund	744,137.00
TOTAL APPLICATION OF FUNDS	895,025.69
INCREASE (DECREASE) IN WORKING CAPITAL	$ 33,532.31

The Current Service Cost has increased by 34.9% and the Interest on Unfunded Past Service Liability has increased by 101.3% principally because of (a) increased benefits, (b) increase in the number of members covered and (c) the transfer of members to higher benefit classes. The Current Service Cost per member has increased from $192 to $250. The Adjusted Cost per member has increased from $465 to $781. The annual contribution per member will be $705 during 1974 and $791 during 1976.

The details of the valuation are shown in Exhibit II. A comparison of basic costs during 1972, 1973 and 1974 appear in Exhibit III.

ACTUARIAL ASSUMPTIONS

It is important to note that the basic assumptions made in the valuation were tested by actual studies involving the membership of this Plan.

1. Mortality - A study was made to determine the specific mortality experienced by this group. An exposure of more than 70,000 lives insured under the Central States, Southeast and Southwest Areas Health and Welfare Fund and the corresponding deaths were tabulated during two calendar years. Appropriate mortality rates were then established at each age. It was noted that the mortality of teamsters was significantly more favorable up to age 45 than the mortality appearing in the 1949-1951 U. S. White Males Census Table. The mortality at the higher ages was considerably less favorable. This may be due to the heavy physical exertion required by this industry.

It was found that the 1937 Standard Annuity Table rated back would reproduce the actual mortality of this group and would be sufficiently conservative for the valuation. The 1937 Standard Annuity Table rated back two (2) years was used up to age 45, then merged with the 1937 Standard Annuity Table with no rating back at age 55 and over.

All single premium [illegible] age 57 and over were computed by the 1951 Group Annuity Table Projected by Scale C to 1970.

The mortality rates for active members used for the purpose of the valuation are shown below:

Age	Rate	Age	Rate
15	.00126	50	.00861
20	.00129	55	.01355
25	.00144	60	.01975
30	.00182	65	.02875
35	.00256	70	.04176
40	.00374	75	.06046
45	.00547		

2. Severance Rates - For the purpose of establishing the appropriate withdrawal rates as they apply to this group, a sample of 15,000 members was traced through a calendar year to determine terminations by age grouping. A member was considered terminated if he left the industry and failed to return to the industry after 18 months. The overall annual rate of turnover established was 15.4%. Furthermore, a high rate of turnover was found even at the higher ages. For example, the annual rate of turnover at age 57 was found to be 10%. This may be attributable to arthritis, rheumatism, heart trouble and other diseases which result from the exertions required in this industry.

It is important to introduce margins of safety in establishing rates of turnover for use in actuarial valuations.

(b) Establishment of a pension plan and the level of benefits affect withdrawals.

In view of these considerations, graduated rates of severance were established which follow the pattern of the raw data but which produce an overall annual rate of termination of 8.2%. It is our opinion that by this arrangement we have introduced sufficient elements of conservatism to take care of future improvement in turnover.

The severance rates used in the valuation are shown below:

Age	Rate	Age	Rate
20	.170	45	.057
25	.142	50	.044
30	.112	55	.032
35	.086	60	.017
40	.068	65	.000

3. Disability Rates - It was established that a suitable disability table for the purpose of computing disability benefits would be the 1952 Disability Study, Period 2, Benefit 5, published by the Society of Actuaries.

The disability rates used in the valuation are shown below:

Age	Rate	Age	Rate
32	.00118	52	.00454
37	.00140	57	.00933
42	.00184	60	.01264
47	.00256		

4. Interest - The interest yield on the Fund's investments has varied from 4.2% to 5.9%. However, we believe that a conservative assumption as to future interest should be used. We have used 4 1/2% per annum, compounded annually, in our calculations. We believe this is a sound assumption.

5. Retirement - On the basis of previous experience, we have established that normal retirements will be 8% of those members eligible at age 57 increasing by 2% each year until all members eligible will have retired by the time they reach age 67.

6. Service Tables - Two service tables were developed for the purpose of making the actuarial valuations. These service tables incorporated all of the assumptions regarding mortality, severance, disability and interest which have been discussed previously. The first table contains exists from membership in the Plan by death and withdrawal to age 65 and by death beyond age 65. This table was used to determine the basic pension costs. The second table contains exits from membership in the Plan by death, withdrawal and disability to age 65 and by death and disability thereafter. This table was used to determine disability costs.

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND

Form No. D-2, 1/31/75 W.P. No. 110777

Page No. 9, Item No. 2C-Other Receival

	2/1/74	1/31/75
Security Deposit	$ 425.00	$ 425.00
Accounts Receivable	6,331.00	332,391.00
TOTALS	$ 6,756.00	$ 332,816.00

Page No. 11, Item No. 3D - Other Receipts from Investments

Amortization - R/E Loans & Mtges	$51,311,340.84
Income from Operated R/E -- See Schedule No. 2 - Allocation	421,996.95
TOTAL	$51,733,337.79

Page No. 11, Item No. 5B

Mortgage Loan Application Fees -- Legal, Appraisal, Etc.	$ 2,264,636.22
Accounts Receivable -- Beginning	3,331.00
Accounts Payable -- Aladdin - To be refunded	269,000.00
Refunds -- Prior Year's Transportation Equipment Rental	102,000.00
Deposits on Pending Sale	10,000.00
Voided Checks	105.00
TOTAL	$ 2,649,072.22

Page No. 11, Item No. 11H - Other Admin. Expenses

Telephone & Telegrams	$ 62,254.12
Printing, Postage & Office Expense	827,881.25
Employees Benefit Funds	330,399.87
Employees Food, Education, Etc.	72,652.18
Dues and Subscriptions	8,435.69
Employment Agency Fees	33,489.16
Meeting Expenses	5,440.92
Investment Maint. Chgs. -- Utilities, Repairs, Etc.	486,875.97
TOTAL	$ 1,827,429.16

Page No. 11, Item No. 14B

A/C Receivable - Klingman & Modern	$ 42,016.06
A/C Receivable -- Travel Advances	850.00
Purchase - Fixed Assets	975,831.68
Prepaid Pensionees Withheld Taxes	98,752.07
Mortgage Discount - Schedule No. 2 - Allocation	43,407.58
Losses on Oper. R/E - Schedule No. 2 - Allocation	2,155,324.57
TOTAL	$ 3,316,181.96

CENTRAL ST[illegible], SOUTHEAST AND SOUTHWEST AF[illegible] PENSION FUND

W.D. 110777

Page 13, Schedule No. 3 -- D-2, 1/31/75 Page 1 of 2

Name (1)	Position (2)	Gross Salary (3)	Allowances (4)	Expenses (5)	Total of (4) (5) (7)
D.J. Shannon	Exec. Director	$ 46,811.39	$	$ 1,088.41	$ 1,088.41
J.J. Hank	Asst.Exec.Director	24,440.63		649.57	649.57
R. Heeren, Jr.	Operations Director	16,937.03		330.45	330.45
D.V. Maxfield	Controller	26,109.91		307.07	307.07
E.J. Murtha	Pension Accts.Mgr.	35,985.76		1,520.00	1,520.00
J. Lanigan	Asst. Controller	11,793.35		-o-	-o-
B. Trojak	Asst. to Exec.Dir.	10,047.90		1,390.12	1,390.12
J. Yarbrough	Date Proc. Mgr.	12,457.54		646.14	646.14
W. Sachs	Mgr.Techl. Svcs.	13,090.48		31.98	31.98
M. Balint	Mgr.Pens. Proc.	11,112.00		-o-	-o-
J. M. McCareins	Dir. Mgmt.Svcs.	10,650.92		196.12	196.12
J. Woods, Jr.	Dir.-Operations	10,447.25		60.00	60.00
W.H. Murtha	Mailroom Supv.	12,613.50		-o-	-o-
P. Guinto	Chief Acctnt.	8,808.98		-o-	-o-
C.P. Chuckray	Admin. Asst.	32,856.95		39.08	39.08
P.R. Packer	Auditor	53,499.86		4,244.94	4,244.94
C. Morse	Property Mgr.	14,400.00		1,109.44	1,109.44
R. Forshee	Property Mgr.	14,025.00		-o-	-o-
N.B. Schwarz	Property Mgr.	13,250.00		6,548.08	6,548.08
R.W. Spaner	Property Mgr.	18,800.00		-o-	-o-
T.D. Phillips	Pilot	11,413.84		2,603.05	2,603.05
E.E. Frederickson	Chief Pilot	15,725.72		3,331.34	3,331.34
F.J. Murtha	Ret. Admin.	21,600.00		-o-	-o-
J. Blumetti	Collections Mgr.	25,822.88		7,722.11	7,722.11
Balance of Salaries shared with Affiliated Fund for Office Help Information Available on Request		1,646,551.10		1,061.38	1,061.38
W. Presser	Trustee		26,800.00	2,134.69	28,934.69
F.H. Ranney	Trustee		59,840.00	16,519.86	76,359.86
T.J. Duffey	Trustee		59,684.00	11,623.17	71,307.17
D. Peters	Trustee		27,980.00	5,164.47	33,144.47
O. Smith	Trustee		920.00	334.18	1,254.18
A. Massa	Trustee		39,560.00	4,799.23	44,359.23
W.J. Kennedy	Trustee		25,380.00	2,798.33	28,178.33
H.A. Lueking	Trustee		28,160.00	5,618.75	33,778.75
A.D. Matheson	Trustee		39,183.30	5,317.83	44,501.13
B.S. Goldfarb	Trustee		13,420.00	4,053.15	17,473.15
R. Holmes	Trustee		2,420.00	1,264.66	3,684.66
J.A. Sheetz	Trustee		5,480.00	2,875.58	8,355.58
J. Spickerman	Trustee		780.00	1,188.02	1,968.02
R. Williams	Trustee		-o-	105.10	105.10
V. Teague	Trustee		-o-	242.91	242.91
American Actuarial Consultants	Actuary			1,231.27	1,231.27
CARRIED FORWARD		$2,119,251.99	$329,607.30	$ 98,150.48	$427,757.78

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND

Form No. D-2. 1/31/75 W.P. No. 110777

Page No. 12, Schedule No. 2 -- Receipts from Sale of Assets

Category Sold	Cost	Book Value	Gross Sales Price Cash	Gross Sales Price Other	Amount Received
U.S. Gov't. Bonds	$ 8,505,266	$ 8,505,266	$ 8,505,266	$ -o-	$ 8,505,266
Short Term Notes	750,967,692	750,967,692	750,967,692	-o--	750,967,692
Other Bonds	24,140,189	24,140,189	20,150,581	-o-	20,150,581
Common Stocks	46,519,217	46,519,217	34,892,459	-o-	34,892,459
Mortgage & Coll. Loans	1,000,000	1,000,000	930,598	-o-	930,598
R/E Mtgs. -- Reallocated to other Categories	30,642,057	30,642,057	30,642,057	-o-	30,642,057
Cost Adjustment on Prior Years Sale of Mortgages	43,408	43,408	43,408	-o-	43,408
Operated Real Estate	17,985,494	17,985,494	18,020,403	-o-	18,020,403
Loss on Operations -- Operated Real Estate -- Allocated - Net	1,987,465	1,987,465	1,987,465	-o-	1,987,465
Non-Operated Real Estate	14,672,705	14,672,705	14,942,396	-o-	14,942,396
Non-Operated Real Estate -- Reallocated to Other Categories	8,109,711	8,109,711	8,109,711	-o-	8,109,711
Fixed Assets	-o-	-o-	100	-o-	100
TOTALS	$904,573,204	$904,573,204	$889,192,136	$ -o-	$889,192,136

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND

W.P. 110777

Page 13, Schedule No. 3 -- D-2, 1/31/75 Page 2 of 2

Name (1)	Position (2)	Gross Salary (3)	Allowances (4)	Expenses (5)	Total of (4) (5) (7)
BROUGHT FORWARD		$2,119,251.99	$329,607.30	$ 98,150.48	$427,757.78
Alvin Baron	Attorney			24,390.26	24,390.26
Teitelbaum, Wolfberg & Guild	Attorneys			541.47	541.47
American National Bank	Investment Advisor			2,625.09	2,625.09
Frank Greissenger & Assoc.	Management Svcs.			1,364.33	1,364.33
TOTALS		$2,119,251.99	$329,607.30	$127,071.63	$456,678.93

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND

D-2, 1/31/75 W.P. No. 110777 Page 1 of 4

Page No. 13 -- Schedule No. 4

Name (1)	Purpose (2)	Fees (4)	Total (5)
American National Bank	Service Fees	$ 424,891.31	$ 424,891.31
Loomis Sayles	Investment Mgr.	59,073.09	59,073.09
T. Rowe Price	Investment Mgr.	39,316.40	39,316.40
Wright Investors	Investment Mgr.	18,188.67	18,188.67
Continental National Bank	Investment Mgr.	24,768.82	24,768.82
Federated Counselling Co.	Investment Mgr.	55,500.65	55,500.65
Kassler-West	Mtge. Serv. Fees	44.65	44.65
Universal Mortgage Co.	Mtge. Serv. Fees	1,226.71	1,226.71
LaSalle National Bank	Mtge. Serv. Fees	2,136.19	2,136.19
Valley National Bank	Mtge. Serv. Fees	1,520.00	1,520.00
City National Bank	Mtge. Serv. Fees	147.83	147.83
American Actuarial Consultants	Actuary	44,000.00	44,000.00
Harold Silverberg	CPA	56,000.00	56,000.00
George Becker & Co.	Appraiser	35,816.33	35,816.33
Max Krasnick	Appraiser	23,400.00	23,400.00
Coldwell Banker Mgmt. Corp.	Appraiser	3,450.00	3,450.00
George Phifer	Appraiser	1,500.00	1,500.00
Arthur Young & Co.	Accountants	6,450.00	6,450.00
Blumenfield, Weiser & Co.	Accountants	2,714.80	2,714.80
Elmer Fox & Co.	Accountants	720.00	720.00
Arthur Anderson & Co.	Management Services	65,770.38	65,770.38
Capital Management Systems Div.	Management Services	2,500.00	2,500.00
Management Inform. Search	Management Services	1,350.00	1,350.00
Micrographics, Inc.	Management Services	1,211.69	1,211.69
Frank K. Geissenger & Assoc.	Management Services	669.98	669.98
Drefel Burnham & Co.	Management Services	574.80	574.80
Hay, Assoc. & Mgmt. Consult.	Management Services	30.00	30.00
Dept. of Health, Educ. & Welfare	Outside Processing	295,540.73	295,540.73
Metropolitan Key Punch Ser.Inc.	Outside Processing	20,711.18	20,711.18
Marcard Sales Corp.	Outside Processing	6,394.23	6,394.23
Creative Design Board	Outside Processing	3,105.00	3,105.00
Computer Research Corp.	Outside Processing	2,901.00	2,901.00
I.B.M. Corp.	Outside Processing	1,953.06	1,953.06
Progress Printing Co.	Outside Processing	1,597.50	1,597.50
Program Products, Inc.	Outside Processing	923.19	923.19
General Bonding Corp.	Outside Processing	918.14	918.14
Vital Records	Outside Processing	897.52	897.52
Plotnick Communications	Outside Processing	728.06	728.06
Chollanavga Transfer & Storage Co.	Outside Processing	300.00	300.00
Albert D. Geller	Outside Processing	160.98	160.98
Forfex Date Corp.	Systems & Programming	94,031.21	94,031.21
Communico	Systems & Programming	11,686.00	11,686.00
National Assoc. of Industrial Insurers	Systems & Promgramming	4,270.11	4,270.11
BALANCE CARRIED FORWARD		$1,319,090.21	$1,319,090.21

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREA PENSION FUND

D-2, 1/31/75 W. O. NO. 110777 Page 2 of 4

Page No. 13 -- Schedule No. 4

Name (1)	Purpose (2)	Fees (4)	Total (5)
System Develop. Corp.	Systems & Programming	$ 3,900.00	$ 3,900.00
Panasonia Systems, Inc.	Systems & Programming	750.00	750.00
Suburban Key Punch	Systems & Programming	334.85	334.85
Amalgamated Ins. Co.	Systems & Programming	156.00	156.00
V. Migata	Systems & Programming	13.98	13.98
Right Girl Temporary Services	O/S Labor - Non-Prof.	33,838.00	33,838.00
Norma Rondino	O/S Labor - Non-Prof.	235.62	235.62
Priscilla Feinstein	O/S Labor - Non-Prof.	173.74	173.74
Donna Burton	O/S Labor - Non-Prof.	36.07	36.07
Mike Rooney	O/S Labor - Non-Prof.	28.36	28.36
Tom O'Malley	O/S Labor - Non-Prof.	28.35	28.35
Brian McGovern	O/S Labor - Non-Prof.	10.50	10.50
Mark Mullins	O/S Labor - Non-Prof.	10.50	10.50
Herman D. Ruth & Assocs.	Engr. Services	30,296.79	30,296.79
Pafford Associates	Engr. Services	23,681.55	23,681.55
L. T. Evans, Inc.	Engr. Services	23,471.38	23,471.38
Construction Master, Inc.	Engr. Services	12,000.00	12,000.00
Rowe, Surveying & Engr.	Engr. Services	6,604.73	6,604.73
Quinton-Redgate	Engr. Services	5,400.00	5,400.00
Don Read Corp.	Engr. Services	3,700.00	3,700.00
Johnson Engr.	Engr. Services	2,500.00	2,500.00
Rolling Meadows Ranch	Engr. Services	500.00	500.00
Andell Engr.	Engr. Services	90.00	90.00
Robert St. Pierre	Prof. Fees - Investig. & Analysis	8,426.14	8,426.14
Thomas Clements & Assoc.	Prof. Fees -- Geologist	2,770.00	2,770.00
D. W. Goske	Fee - Rep. & Mtce.	2,295.00	2,295.00
Title Insurance Co.	Fees - Title	2,275.08	2,275.08
Anthony Rossetti	Fee - Security Service	1,775.00	1,775.00
T. E. Arrington	Fee - Rep. & Mtce.	1,702.02	1,702.02
Jorge M. Castillo	Fee - Rep. & Mtce	1,550.00	1,550.00
James Ratliff	Fee - Rep. & Mtce.	1,495.00	1,495.00
Wm. C. Ten Eyck	Fee - Rep. & Mtce.	1,229.36	1,229.36
Nels Sjobin	Fee - Rep. & Mtce	962.17	962.17
Norman L. Holle	Fee - Rep. & Mtce	654.00	654.00
Ray Dischner	Fee - Rep. & Mtce.	610.00	610.00
Robt. Sherand	Fee - Rep. & Mtce.	460.00	460.00
Title Ins. Co. of Minn.	Fees - Title	300.00	300.00
Bill Lieber	Fee - Rep. & Mtce.	275.00	275.00
T.E. Elias	Fee - Rep. & Mtce.	160.00	160.00
R. A. Heckard	Fee - Rep. & Mtce.	146.50	146.50
Fred Schmidt	Fee - Rep. & Mtce.	110.00	110.00
R. S. Greiger, Jr.	Fee - Rep. & Mtce.	100.00	100.00
Hosp. Admin. Service	Fee - Statistical Report	25.00	25.00
Rhyne & Rhyne	Legal	264,633.38	264,633.38
BALANCE CARRIED FORWARD		$1,758,804.28	$1,758,804.28

CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS PENSION FUND

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Name (1)	Purpose (2)	Fees (4)	Total (5)
Benjamin Henley, Jr.	Legal	$ 209,442.02	$ 209,442.02
Teitelbaum, Wolfberg & Guild	Legal	150,754.95	150,754.95
Goldberg, Previant & Uehlman	Legal	115,812.86	115,812.86
McDonald, Carano, Wilson & Bergin	Legal	95,223.52	95,223.52
Alvin Baron	Legal	91,344.11	91,344.11
Harris, Burman & Sillets	Legal	69,206.07	69,206.07
Schaeffer, Dale, Vogel & Tarrow	Legal	35,756.11	35,756.11
James Flanagan	Legal	35,000.00	35,000.00
Joseph Radom	Legal	34,473.02	34,473.02
Frank Edelman	Legal	31,208.88	31,208.88
Paul Beer	Legal	25,000.00	25,000.00
McGuire, Levy & Collins	Legal	25,991.94	25,991.94
Jenkins & Perry	Legal	21,008.67	21,008.67
Gallabee, Denniston & Edington	Legal	20,384.94	20,384.94
Quinton & Redgate	Legal	20,263.21	20,263.21
Coughlan & Joyce	Legal	17,057.20	17,057.20
Harry Hausknecht	Legal	16,921.99	16,921.99
Morrison, Freveter, Holloway, Etal.	Legal	15,230.41	15,230.41
Fairly, Henack, Montich	Legal	14,957.10	14,957.10
Chapin & Chapin	Legal	9,600.00	9,600.00
Elster's	Legal	7,500.00	7,500.00
Goldford and Ruznik	Legal	7,110.22	7,110.22
Alfred Bornstein	Legal	6,775.00	6,775.00
Matheson, Bienaman, Yeale & Parr	Legal	6,255.59	6,255.59
Lenard Meldman	Legal	5,895.89	5,895.89
Alfred Donati	Legal	5,685.99	5,685.99
Fulop, Ralston, Burns & McKittrick	Legal	5,358.95	5,358.95
Englander & Burnett	Legal	5,171.00	5,171.00
John Pectal & R.Rendell, his atty	Legal	5,000.00	5,000.00
Hoffa, Chodak & Robinen	Legal	4,452.66	4,452.66
American Nat'l. Bank, Denver	Legal	4,250.03	4,250.03
Sherman & Sherman	Legal	4,241.65	4,241.65
Norman Oletsky	Legal	3,750.00	3,750.00
LaTourette, Weyerich & Co.	Legal	2,668.95	2,668.95
Rawls, Golden, and Hinkle	Legal	2,609.90	2,609.90
Member, Chapman, Epstein & Fosauer	Legal	2,552.24	2,552.24
Ward, Howell, Burns & Long	Legal	2,476.09	2,476.09
J. D. Brockman Assoc.	Legal	2,292.35	2,292.35
Wm. McMann & Assoc.	Legal	2,286.00	2,286.00
Fillenworth & Fillenworth	Legal	2,005.43	2,005.43
Astor, Fine, McHugh, Etal	Legal	1,946.23	1,946.23
Donald Weyerich	Legal	1,898.55	1,898.55
Jolley, Walsh, Gordon & Saab	Legal	1,752.83	1,752.83
BALANCE CARRIED FORWARD		$2,907,376.83	$2,907,376.83

CENTRAL ST[illegible] SOUTHEAST AND SOUTHWEST AP[illegible] NSION FUND

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Page No. 13 -- Sc[illegible]le No. 4

Name (1)	Purpose (2)	Fees (4)	Total (5)
Schmier, Falk & Ellis	Legal	$ 1,590.94	$ 1,590.94
Delange, Hudspeth, Pitman & Katz	Legal	1,551.03	1,551.03
Gorshom, Stanley & Nabors	Legal	1,500.00	1,500.00
Chicago Title Ins. Co.	Legal	1,253.50	1,253.50
Coleman & Lipson	Legal	1,050.00	1,050.00
Robbins, Davis & Lyons	Legal	965.96	965.96
George H. Logan	Legal	945.00	945.00
Getter & Katz	Legal	600.00	600.00
James A. Richards, Jr.	Legal	600.00	600.00
Hazelgrove, Carr, Dickerson, Etal.	Legal	581.57	581.57
Main Lafranz & Co.	Legal	580.00	580.00
Knee, Snyder & Parks	Legal	550.00	550.00
Byrnes, McCaffrey, Inc.	Legal	500.00	500.00
Haxson, Nagel & Sherman	Legal	424.07	424.07
Thomas J. Graham	Legal	380.52	380.52
Asher, Greenfield & Gibbons	Legal	294.00	294.00
Long & Levitt	Legal	265.50	265.50
Wilk, Rimer & Sweat	Legal	250.00	250.00
Law Bulletin	Legal	228.22	228.22
Donald E. Nye	Legal	224.35	224.35
Marvin R. Baum	Legal	196.20	196.20
Wolte, Rossenberg & Assoc.	Legal	182.10	182.10
Wolfolk, Myers, Curtis, Craig & Gibson	Legal	165.00	165.00
James Moore	Legal	150.00	150.00
Nael & Nael	Legal	135.60	135.60
The John Lynch Co.	Legal	120.00	120.00
Hecht Ins. Agency	Legal	112.80	112.80
C. T. Corporation	Legal	100.00	100.00
Realty Research Corporation	Legal	75.00	75.00
The Xchange National Bank	Legal	75.00	75.00
Rolf D. Ratten	Legal	58.74	58.74
O. Rebortend	Legal	54.75	54.75
Sinos, Doomis, Brake & Turner	Legal	46.20	46.20
Lovette & Lewis	Legal	45.00	45.00
McCauley & Casey	Legal	25.00	25.00
Realty Tax Service	Legal	20.00	20.00
TOTALS		$2,923,272.88	$2,923,272.88

Part IV.--Section D
P[illegible]-in-Interest Transactio[illegible]

List here all investments held at [illegible] end in bonds or stocks of parties-in-interest, which are not listed or registered as described in footnote[1], and in mortgage loans or other property. (Include identity of each security, mortgage loan or property. Give name of party-in-interest and relationship.) (1)	Out-Standing Balance (2)	Present Value (3)	Balance % of Total Fund (Asset (4)
Ace Freight Terminal, Inc. Akron, Ohio Sister Co. Contributor	$1,067,084.97	$2,500,000.00	.000897
Admiral Merchants Motor 2625 Territorial Road St. Paul, MN 55114 Contributor	65,410.40	-	.000055
A.L. Kaplan, Trustee (Peoples Outfitting) Detroit, Michigan Contributor	285,070.83	750,000.00	.000630
Wayne E. Long Long Transportation Detroit, Michigan	508,567.14	1,750,000.00	.000427
Schwerman Truckers Milwaukee, Wisconsin Contributor	1,368,715.30	1,929,000.00	.001151
Local Union #795, IBM Wichita, Kansas Contributor	84,285.52	112,000.00	.000070
Teamsters Joint Council #56 Kansas City, Missouri Contributor	1,486,821.58	-	.001250
American National Bank as Trustee of Kay Waldorf (Public Pontiac) Chicago, Illinois	814,942.24	1,000,000.00	.000685
Davis-Wellborn Trustee (Local Union #512) Contributor	35,055.90	60,000.00	.000029
Teamster Union No. 190 Contributor	20,420.20	31,000	.000017
Teamsters Union #413 Dale Mann Bldg. Contributor	468,246.67	540,000	.000392
Council Plaza St. Louis, Missouri Contributor	4,574,963.14	-	.003847
La Salle National Bank, Trustee Kay-Waldorf (Public-Pontiac) Chicago, Illinois Contributor	881,743.28	1,350,000.00	.000741

[illegible] amount of fund assets (as valued on the Statement of Assets and Liabilities) which have been pledged as security for loans or encumbered in any other manner	$ None
17. a. Indicate total amount of liabilities (as included on the above prior year's Statement of Assets and Liabilities) liquidated or reduced, during the reporting year, without disbursement of cash. (See Instructions)	$ None
b. Indicate total amount of assets (as valued on the Statement of Assets and Liabilities) acquired during the reporting year, in any manner other than by purchase. (See Instructions)	See Schedule D-2, Page 12 for Reallocation of Assets in categori
c. Indicate total amount of assets (as valued on the above prior year's Statement of Assets and Liabilities) which, during the reporting year, have been disposed of in any manner other than by sale. (See Instructions)	$ None
18. If any employer contributions are overdue for 6 months or longer, enter the total amount of such arrearage here to the extent that such amount is known or determinable	Not Determinable at this time due to Programming EDP System

Indicate accounting basis by check. ☐ Cash ☒ Accrual

Plans on a cash basis must attach a statement of significant unrecorded assets and liabilities.

State basis of determining the amount at which assets listed in Part IV, Section A, Items 1 through 8, are carried and reported

Cost and/or Equity Value (See Attachments)

Senator PELL. Who does this fund use as investment counsellor?

Do they have a series of them, or crystal ball, or how do they make their decisions?

Mr. HUTCHINSON. Senator, that is one of the areas we are exploring in our investigation, to try to determine how assets are managed and invested, and by what process.

I do not believe that it would be appropriate for me to characterize how they were being handled in open session.

Senator PELL. From the viewpoint of the public knowledge, from the viewpoint of the members of the unions, who do they think is managing their investment funds?

Is there any statement that such and such investment firm is, or so and so?

Mr. HUTCHINSON. I would assume most members of the plan have the perception there the trustees have overall responsibility for management of assets of that plan.

Senator PELL. Would you be able, in open session, to say how many investment counselors there are, if there is just one, or comment in any way as to what the present overt method of reaching decisions with regard to investments is?

Mr. HUTCHINSON. The plan has been advised by more than one advisor over the course of the years.

I would prefer to provide that information in closed session.

Senator JAVITS. If the Senator would yield, is it not a fact that under ERISA they are required to give certain information to the Department as a matter of public record?

Mr. HUTCHINSON. That is correct, Senator.

Senator JAVITS. Could Mr. Hutchinson refer to that public record, and answer Senator Pell's question.

Mr. HUTCHINSON. I will obtain that.

There has been one official filing under ERISA of the plan description and form. We will provide a copy of that for the committee as well.

Senator JAVITS. I think more than that, if the Senator would allow me to try to help him explore his point, I think what the Senator wants is to know now so he can make a connection while we are still in session. Could somebody get hold of the questionnaire and see if any investment counselors are mentioned and give him at least the name or names which are public?

Mr. HUTCHINSON. We shall.

Senator PELL. Thank you.

How many trustees are there now, and who are those trustees?

Mr. HUTCHINSON. There are 16 present trustees at the Central States Fund. There are eight representatives of the Teamsters Union and eight representatives of various management groups that have employees represented by the Teamsters.

I would provide for the record a current copy of the trust agreement of the fund that was provided to us, which lists the 16 trustees by name, and their affiliations.

Senator PELL. Also, will you be submitting for the record the information with regard to the public record showing of investment advisers, who they may be?

Mr. HUTCHINSON. That is right.

[The information investment advisers are included with the Employee Welfare or Pension Benefit Plan Annual Report form inserted at p. 151.]

Senator PELL. Thank you very much.

Senator JAVITS. I would like to suggest that you also give us the names of counsel trustees and that you also give us whatever information you can on what you yourself mentioned that is published.

We understand the privileges as to executive session.

You mention, for example, on the list of debtors, there may be parties in interest of some kind. Whatever is published, whatever you can tell us in open session, we would like to have that.

Also, if any of those loans have been refinanced since ERISA went into effect by the same pension fund, we would like to have that.

In short, we want to hear now whatever information of that kind is in the public record before the Department, to whatever extent you can give it.

Mr. HUTCHINSON. Senator, I am only aware of one matter of public record. It came to us as a request for ruling. It indicated a fact situation that you are describing.

Senator JAVITS. Well, you can give us that.

[The information referred to follows:]

(FEBRUARY 1976)

Plan Description

OMB No. 44—R1596

This form is prescribed under the reporting and disclosure provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Code references are to the Internal Revenue Code of 1954.

NOTE: Due to the use of certain specialized terms, it is important to refer to the instructions on an item-by-item basis when completing the form. Answer each item, or enter "None" or "N/A" (Not Applicable), as appropriate.

A. Is this: ☒ an initial filing, OR ☐ an amended filing

Department of Labor Use ONLY	A	B	C	D	E	F	G	H	I

B. 1. If an amended filing, is this:
- ☐ a termination not involving a transfer of assets or liabilities to another plan
- ☐ a transfer of assets or liabilities to another plan involving a termination
- ☐ a transfer of assets or liabilities to another plan not involving a termination
- ☐ another amendment

2. If assets or liabilities were transferred to another plan, enter sponsor name, EIN and PN for other plan. _____

3. What is the effective date of the amendment? Month | Day | Year

4. Does the amendment result in a reduction of accrued pension benefits to participants? ☐ Yes ☐ No

C. What was the date of the latest general distribution of a summary plan description to participants and beneficiaries receiving benefits under the plan? November, 1973, plus subsequent distributions to new Participants.

PART I ALL PLANS

366044243 987 WB
TRUSTEES CENTRAL SOUTHWEST AND SOUTHEA
ST AREAS PENSION PLAN
8550 WEST BRYN MAWR AVE
CHICAGO IL 60631

1. (b) Employer identification number: 3 6 6 5 1 4 7 6 4
1. (c) Telephone number: (312) 693-5300
1. (d) Employer taxable year ends: N/A
1. (e) Business code number: 4210

2. (a) Name of plan administrator (if other than sponsor): Same
Address (number and street)
City or town, State and ZIP code

2. (b) Administrator's employer identification no.: 3 6 6 5 1 4 7 6 4
2. (c) Telephone number: (312) 693-5300

3. Check appropriate box to indicate the type of plan entity (check only one box).
- (a) ☐ Single-employer
- (b) ☐ Plan of controlled group of corporation or common control employers
- (c) ☒ Multiemployer plan
- (d) ☐ Multiple-employer collectively-bargained plan
- (e) ☐ Multiple-employer plan (other)

4. (a) Name of plan: Central States, Southeast and Southwest Areas Pension Plan
4. (b) Plan number: 001

5. Department of Labor WP file number (if any) WP-	6. Initial effective date of plan Month	Day	Year	7. Ending date of plan's fiscal year Month	Day
110777	02	01	55	01	31

8. Number of active and retired participants and beneficiaries as of the end of the plan year (welfare plans complete only (a) (iii), (b), (c) and (d)): (from actuarial valuation of January 31, 1975)

(a) Active participants (employed or carried as active)	(i) Number fully vested	83,477	
	(ii) Number not fully vested	340,840	
	(iii) Total		424,317
(b) Retired participants receiving benefits			55,185
(c) Participants separated from employment and entitled to future benefits			Ø
(d) Subtotal, sum of (a), (b) and (c)			479,502
(e) Beneficiaries receiving pension benefits			4,707
(f) Total, (d) plus (e)			484,209

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete.

May 27, 1976
Date

Signature of plan administrator

FORM EBS-1 (2-78)

9. Check at least one item in (a) or (b) and applicable items in (c):

(a) ☐ Welfare benefit plan

(b) Pension benefit plan:

(i) Defined benefit plan—(Indicate type of defined benefit plan below):

(A) ☐ Fixed benefit (B) ☐ Unit benefit (C) ☒ Flat benefit (D) ☐ Other (specify) ▶ _____

(ii) Defined contribution plan—(Indicate type of defined contribution plan below):

(A) ☐ Profit-sharing (B) ☐ Stock bonus (C) ☐ Target benefit (D) ☐ Other money purchase

(E) ☐ Other (specify) ▶ _____

(iii) ☐ Defined benefit plan with benefits based partly on balance of separate account of participant (section 414 of the Code)

(iv) ☐ Annuity arrangement of a certain exempt organization or a governmental unit (section 403(b) of the Code)

(v) ☐ Custodial account for regulated investment company stock (section 403(b)(7) of the Code)

(vi) ☐ Trust treated as an individual retirement account (section 408(c) of the Code)

(vii) ☐ Employee stock ownership plan not part of a qualified plan (section 301(d) of the Tax Reduction Act of 1975)

(viii) ☐ Other (specify) ▶ _____

(c) Other plan features:

(i) ☐ Thrift-savings (ii) ☐ Keogh (H.R. 10) plan

(iii) ☐ Employee stock ownership as part of a qualified plan (check only if you checked a box in (b)(ii) above)

10. Is the plan administrator designated as agent for the service of legal process? ☐ Yes ☒ No

If "No," enter the person designated:

Name Daniel J. Shannon, Executive Director

Business address (Number and street) 8550 West Bryn Mawr Avenue

City, town or post office, State and ZIP code Chicago, Illinois 60631

11. Indicate the persons who perform functions for the plan. Mark X in all applicable boxes.

Function	Persons Performing Function				
	Plan Sponsor (1)	Plan Administrator (2)	Trustee (3)	Insurance Carrier (4)	Other (Specify) (5)
(a) Receives and/or deposits contributions	☐	☒	☐	☐	☐
(b) Maintains records of plan participants	☐	☐	☐	☐	☒ Executive Director
(c) Authorizes payment of plan administrative expenses	☐	☒	☐	☐	☐
(d) Pays plan administrative expenses	☐	☒	☐	☐	☒ Executive Director
(e) Determines investment policy	☐	☒	☐	☐	☐
(f) Invests plan assets	☐	☒	☐	☐	☐
(g) Selects insurance carrier or service organization	☐	☒	☐	☐	☐
(h) Selects corporate trustee	☐	☒	☐	☐	☐
(i) Receives claims for benefits under the plan	☐	☐	☐	☐	☒ Executive Director
(j) Determines eligibility of claimants for receipt of benefits	☐	☒	☐	☐	☒ Pension Payment Comm
(k) Determines benefit amount	☐	☒	☐	☐	☒ Pension Payment Comm
(l) Makes determination on appeal of claim denials	☐	☒	☐	☐	☒ Pension Pymt. Appeals
(m) Authorizes payment of benefits	☐	☒	☐	☐	☒ Pension Pymt. Commit
(n) Makes payments of benefits	☐	☒	☐	☐	☒ Executive Director

NOTE: Information furnished above will not be determinative as to whether a party is a fiduciary to a plan.

12. Is this a plan established or maintained pursuant to one or more collective bargaining agreements? ☒ Yes ☐ No

DO NOT SUBMIT COPIES OF COLLECTIVE BARGAINING AGREEMENTS

13. Mark X in the appropriate box(es) which indicate the type of document(s) establishing or affecting the plan: DO NOT SUBMIT COPIES OF PLAN DOCUMENTS

(a) ☒ Plan (c) ☒ Regulations and rules

(b) ☒ Trust (d) ☒ Contracts (other than collective bargaining agreements)

14. This plan includes as participants (mark X in all applicable boxes):

(a) ☐ All types of employees

(b) ☒ Hourly employees

(c) ☐ Salaried employees

(d) ☒ Employees covered by collective bargaining

(e) ☐ Employees not covered by collective bargaining

(f) ☒ Other (specify) Union Employees who have been proposed by the Union and accepted by the Trustees; and Central States Southeast and Southwest Areas Health and Welfare and Pension Fund Employees who have been accepted by the Trustees.

Employer's Contribution

(a) ☐ Fixed rate
- (i) ☐ Per hour
- (ii) ☒ Per day
- (iii) ☐ Per week
- (iv) ☐ Per month
- (v) ☐ Per annum

(b) ☐ Based on profits . . . Formula
(c) ☐ Based on profits . . . Discretionary
(d) ☐ Percentage of payroll
(e) ☐ Actuarial rate of determination
(f) ☐ None
(g) ☐ Other (specify) _____

Employee's Contribution

(h) ☒ Voluntary
☐ Mandatory

(i) ☒ Fixed rate
- (i) ☐ Per hour
- (ii) ☐ Per day
- (iii) ☒ Per week
- (iv) ☐ Per month
- (v) ☐ Per annum

(j) ☐ Percentage of compensation
(k) ☒ Part of dues to union
(l) ☐ Assessment by union
(m) ☐ None
(n) ☒ Other (specify) Self-payments (employee contributions) are acceptable under certain circumstances such as "lay-off".

16. Indicate the method used for the accumulation of assets and for disbursement of benefits (mark X in all applicable items):

Type of funding entity:	Accumulation of Assets (1)	Disbursement of Benefits (2)
(a) Trust (benefits provided in whole from trust funds)	☒	☒
(b) Trust or arrangement providing benefits partially through insurance and/or annuity contracts	☐	☐
(c) Trust or arrangement providing benefits exclusively through insurance and/or annuity contracts	☐	☐
(d) Custodial account described in section 401 (f) of the Code and not included in (c) above	☐	☐
(e) Other (specify) _____	☐	☐

17. Indicate procedure for presenting claims for benefits and review of claims which are denied (mark X in all applicable boxes):

(a) Does the plan provide a procedure for presenting initial claims for benefits? ☒ Yes ☐ No
(b) Does the claimant have to initiate action for review of claims which have been denied? ☒ Yes ☐ No
(c) Indicate by marking X in the applicable boxes, the plan official or other person who makes decisions on claims and the plan official or other person who makes determinations on appeals of claims denied in whole or in part.

	Claims (1)	Appeals of Claims Denied (2)
(i) Administrator	☒	☒
(ii) Board of Trustees . . (same as Administrator) . .	☒	☒
(iii) Employer	☐	☐
(iv) Insurance Company	☐	☐
(v) Other (specify) _____	☐	☐
(vi) None	☐	☐

(d) Does the plan provide for independent arbitration of claim denials? ☐ Yes ☒ No
(e) If the benefits under the plan are collectively bargained, is there provision for binding arbitration of claims? N/A ☐ Yes ☒ No

PART II PLANS WITH PENSION PROVISIONS

18. Indicate the general eligibility requirements for participation under the plan:

(a) Age None Service None (Number of years) or Age N/A Service N/A (Number of years)

(b) Maximum age (after which employees are not admitted) (specify) None

(c) Other (specify) None

19. Indicate the general vesting provisions of the plan for employer contributions:

(a) Vesting Schedule:

(i) ☐ Full (100%) and immediate

(ii) ☐ Full (100%) vesting after 3 years of service

(iii) ☐ Full (100%) vesting at 10 years of service

(iv) ☐ Rule of 45: (5 years of service and where the sum of the participant's age and years of service equal or exceed 45)

(v) ☐ 25% vesting after 5 years, 5% additional for each of the next 5 years, and 10% additional for each of the next 5 years

(vi) ☐ Full (100%) vesting within 5 years after contributions are made (Class Year Plan Only)

(vii) ☐ For each year of employment, commencing with the 4th such year, vesting not less than 40% after 4 years of service, 5% additional for each of the next 2 years, and 10% additional for each of the next 5 years

(viii) ☒ Other (describe) Age 50 and 20 years service with minimum on contributory service or, any age and 30 years service with minimum on contributory service.

(b) Check if you exclude the following years of service under the vesting provisions of the plan:

N/A

(i) ☐ Years of service before age 22

(ii) ☐ Years of service for period during which the employee declined to contribute to plan requiring employee contributions

(iii) ☐ Years of service during which the employer did not maintain the plan or a predecessor plan

20. Does the plan have any features of portability or reciprocity with:

(a) Employer(s) participating under the plan? ☒ Yes ☐ No

(b) Employer(s) not participating under the plan? ☒ Yes ☐ No

21. Indicate how length of service is determined for participation, vesting and full benefit accrual:

(a) Mark X in the appropriate boxes to indicate the computation period:

Participation	Vesting	Full Benefit Accrual
(i) ☐ Employment commencement date	(iii) ☒ Calendar year	(vi) ☐ Calendar year
(ii) ☒ Other (specify) Calendar year in which contribution first made to the Pension Fund on behalf of the Employee.	(iv) ☐ Plan year	(vii) ☐ Plan year
	(v) ☐ Other (specify)	(viii) ☐ Other (specify)
		(ix) ☒ Not applicable

(b) Indicate hours required for one year of service for purposes of participation, vesting and full benefit accrual:

Participation	Vesting	Full Benefit Accrual
1 week of contributions (Hours)	35 weeks of contributions (Hours)	N/A (Hours)

(c) Mark X in the appropriate boxes to indicate whether employees are credited for hours:

	Participation (1)	Vesting (2)	Full Benefit Accrual (3)
(i) Actually worked	☒	☒	☐ N/A
(ii) Sickness	☐	☐	☐
(iii) Vacation	☐	☐	☐
(iv) Disability	☐	☐	☐
(v) Layoff	☐	☐	☐
(vi) Other	☐	☐	☐

22. Does the plan contain break in service rules? ☒ Yes ☐ No

(a) Mark X in the appropriate boxes to indicate the computation period for a break in service:

Participation	Vesting
(i) ☐ Employment commencement date	(iv) ☐ Calendar year
(ii) ☐ Plan year N/A	(v) ☐ Plan year
(iii) ☐ Other (specify)	(vi) ☒ Other (specify) Continuous period during which no contributions were made to the Pension Fund on behalf of a Participant.

(b) Indicate the minimum number of hours needed to avoid a break in service:

Participation	Vesting 1/	Full Benefit Accrual
N/A (Hours)	(Hours)	N/A (Hours)

1/ Contributions again commencing to the Pension Fund on behalf of a Participant within a 60 consecutive month period between February 1, 1955 and April 1, 1969; and, within 36 consecutive month period after April 1, 1969.

the requirements for attaining the benefits provided.

Type of Benefit	Requirements for Benefits				
	No age or Service (1)	Age Only (2)	Service Only (3)	Combination Age and Service (4)	Other (5)
(a) ☐ Normal Retirement	☐	____ Yrs	____ Yrs	57 Yrs 20 Yrs	☐
(b) ☐ Early Retirement	☐	____ Yrs	30 Yrs	50 Yrs 20 Yrs	☐
(c) ☐ Deferred Vested	☐	☐	☒	☐	☐
(d) ☐ Disability	☐	____ Yrs	15 & 10 1/ Yrs	____ Yrs ____ Yrs	☐
(e) ☐ Death	☐	____ Yrs	20 & 10 2/ Yrs	____ Yrs ____ Yrs	☐

24. (a) Mark X in the block which best describes the basis on which normal retirement benefits under the plan are computed and fill in the dollar or percentage figures as appropriate:

(i) ☐ Money Purchase
(ii) ☐ _____ % of the employee's earnings for each year of service
(iii) ☐ _____ % of the employee's required contributions
(iv) ☐ _____ % of the employee's earnings on which contributions to Social Security are required up to $_____ and _____ % of the balance of earnings for each year of service
(v) ☐ _____ % of the employee's earnings for each year of service less _____ % of primary social security benefits

(vi) ☐ $_____ Per month for each year of service
(vii) ☐ _____ % of earnings not related to service
(viii) ☐ $_____ Per month not related to earnings or service

(ix) ☒ Other (describe) Benefits from $90 to $550 per month determinable in accordance with Employer Contributions and age at Retirement.

(b) Mark X in the block which best describes the years of earnings used to compute normal retirement benefits N/A

(i) ☐ Career Average
(ii) ☐ Terminal Average - 3 years
(iii) ☐ Terminal Average - 5 years
(iv) ☐ Terminal Average - 10 years
(v) ☐ Other (specify) _____

25. (a) Are there any circumstances causing:

(i) Ineligibility to participate once having become eligible? ☒ Yes ☐ No
(ii) Denial, loss, forfeiture or suspension of benefits once having become vested or in pay status? ☒ Yes ☐ No

(b) If the circumstances are other than re-employment under the plan or break in service, explain Failure to notify the Pension Fund of a change of address will result in a suspension of benefits unless and until the Pensioner again reports his whereabouts, in which event retroactive as well as current payment is made to the Pensioner.

26. For plans that provide retirement income benefits in the form of a lifetime annuity:

(a) Does the plan provide for a qualified joint and survivor annuity upon attainment of normal retirement age or actual retirement? ☐ Yes ☒ No
(b) If the plan provides for early retirement, does the plan provide a joint and survivor annuity election at the earliest date on which a participant is eligible for early retirement benefits? ☐ Yes ☒ No

1/ Disability Pension and Lump-Sum Disability, respectively.
2/ Survivor Pension and Lump-Sum Death, respectively.

27. What is the disposition of an employee's own contribution if his participation in the plan ends before benefits are received (mark X in all applicable boxes):

	Death (1)	Withdrawal (2)	Disqualification (3)
(a) Contribution returned without interest	X	X	X
(b) Contribution returned with interest	☐	☐	☐
(c) Contribution not returned (explain)_____	☐	☐	☐
(d) Other (specify)_____	☐	☐	☐

PART III PLANS WITH WELFARE PROVISIONS

28. Mark X in all applicable boxes for which the plan provides benefits and mark X or otherwise complete the information indicating the requirements for attaining the benefits provided:

Type of Benefit	Requirements for Benefits: Immediate (1)	Waiting Period (Specify) (2)	Other (3)
HEALTH			
(a) ☐ Hospital	☐		
(b) ☐ Convalescent care	☐		
(c) ☐ Home health care	☐		
(d) ☐ Surgical	☐		
(e) ☐ Medical	☐		
(f) ☐ Maternity	☐		
(g) ☐ Major medical	☐		
(h) ☐ Dental	☐		
(i) ☐ Prescription drugs (out of hospital)	☐		
(j) ☐ Diagnostic X-ray and laboratory services (out of hospital)	☐		
(k) ☐ Vision care	☐		
(l) ☐ Other health benefit (specify)_____	☐		
OTHER WELFARE			
(a) ☐ Life insurance	☐		
(b) ☐ Accidental death and dismemberment	☐		
(c) ☐ Temporary disability income (accident and sickness)	☐		
(d) ☐ Long term disability	☐		
(e) ☐ Supplementary unemployment benefits	☐		
(f) ☐ Severance pay	☐		
(g) ☐ Apprenticeship and other training	☐		
(h) ☐ Scholarship	☐		
(i) ☐ Prepaid legal services	☐		
(j) ☐ Other (except health) specify_____	☐		

29. Indicate circumstances (other than termination of employment or retirement) causing ineligibility, denial, loss, forfeiture or suspension of welfare benefits:

(a) ☐ Illness
(b) ☐ Layoffs
(c) ☐ Strikes
(d) ☐ Other (specify)_____

PART IV ALL PLANS

30. Give the name and address of each fiduciary (including trustee) to the plan.

Name	Address
SEE ATTACHED SCHEDULE A.	

ATTACHMENT A TO EBS-1 FILING FOR CENTRAL STATES,
SOUTHEAST AND SOUTHWEST AREAS PENSION FUND

EMPLOYER IDENTIFICATION NO. 366514764
PLAN NO. 001

Plan Fiduciaries

Trustee Frank E. Fitzsimmons
General President
International Brotherhood of Teamsters
25 Louisiana Avenue, N. W.
Washington, D. C. 20001

Trustee Robert Holmes
Local Union No. 337
2801 Trumbull Avenue
Detroit, Michigan 48216

Trustee Joseph W. Morgan
Southern Conference of Teamsters
1250 Hallandale Beach Boulevard
Hallandale, Florida 33009

Trustee Donald Peters
Local Union No. 743
300 South Ashland Boulevard
Chicago, Illinois 60607

Trustee Frank H. Ranney
3100 Northwest 112th Avenue
Coral Springs, Florida 33065

Trustee William Presser
Local Union No. 555
2070 East 22nd Street
Cleveland, Ohio 44115

Trustee W. W. Teague
P. O. Box 548
Auburndale, Florida 33823

Trustee Roy L. Williams
International Director
Central Conference of Teamsters
8550 West Bryn Mawr Avenue
Chicago, Illinois 60631

Trustee Thomas J. Duffey
Motor Carriers Labor Advisory Council
111 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Trustee Bernard S. Goldfarb
GOLDFARB & REZNICK
1825 The Illuminating Building
55 Public Square
Cleveland, Ohio 44113

Trustee William J. Kennedy
Supreme Express & Transfer Co., Inc.
3311 Chouteau
St. Louis, Missouri 63103

Trustee Herman A. Lueking, Jr.
Lueking Transfer Co.
1531 East 14th Street
St. Louis, Missouri 63106

Trustee Albert D. Matheson
MATHESON, BIENEMAN, VEALE & PARR
100 West Long Lake Road
Bloomfield Hills, Michigan 48013

Trustee A. G. Massa
C. W. Transport, Inc.
7300 West 71st Street
Bridgeview, Illinois 60455

Trustee Jack A. Sheetz
Southwest Operators Association
615 Blanton Towers
3300 West Mockingbird Lane
Dallas, Texas 75235

Trustee John F. Spickerman, Sr.
9197 Bay Hill Boulevard
Orlando, Florida 32802

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SOUTHEAST AND SOUTHWEST AREAS PENSION FUND
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PLAN NO. 001

Plan Fiduciaries (Continued)

Mr. Daniel J. Shannon
Executive Director
Central States, Southeast and Southwest
Areas Pension Fund
8550 West Bryn Mawr Avenue
Chicago, Illinois 60631

American National Bank and Trust
Company of Chicago
33 North La Salle Street
Chicago, Illinois 60602

Cleveland Trust
900 Euclid Avenue
Cleveland, Ohio 44101

Equibank, N. A.
Fifth Avenue at Smithfield
Pittsburgh, Pennsylvania 15222

Mr. John J. Hank
Assistant Executive Director
Central States, Southeast and Southwest
Areas Pension Fund
8550 West Bryn Mawr Avenue
Chicago, Illinois 60631

Chemical Bank
277 Park Avenue
New York, New York 10017

Crocker Investment Management Corp.
44 Montgomery Street
San Francisco, California 94104

The National Bank of Georgia
34 Peachtree Street, N. W.
Atlanta, Georgia 30301

Possible Plan Fiduciaries

Staff

Mr. Jack Yarbrough
Assistant to the Executive Director
Central States, Southeast and Southwest
Areas Pension Fund
8550 West Bryn Mawr Avenue
Chicago, Illinois 60631

Mrs. Kathleen Rasmason
Director of the Executive Division
Central States, Southeast and Southwest
Areas Pension Fund
8550 West Bryn Mawr Avenue
Chicago, Illinois 60631

Mr. Donald V. Maxfield
Controller
Central States, Southeast and Southwes
Areas Pension Fund
8550 West Bryn Mawr Avenue
Chicago, Illinois 60631

Mr. Bruce C. Trojak
Director of Legislative Services
Central States, Southeast and Southwes
Areas Pension Fund
8550 West Bryn Mawr Avenue
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SOUTHEAST AND SOUTHWEST AREAS PENSION FUND
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Possible Plan Fiduciaries

Staff (Continued)

Mr. John M. Mc Careins
Pension Group and Personnel Director
Central States, Southeast and Southwest
Areas Pension Fund
8550 West Bryn Mawr Avenue
Chicago, Illinois 60631

Mr. Charles Chuckray
Director of Loan Administration Division
Central States, Southeast and Southwest
Areas Pension Fund
8550 West Bryn Mawr Avenue
Chicago, Illinois 60631

Miss Joanne Angelo
Cash Manager
Central States, Southeast and Southwest
Areas Pension Fund
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Chicago, Illinois 60631

Mr. Edward J. Murtha
Administrator of Pension Benefits Divisi
Central States, Southeast and Southwest
Areas Pension Fund
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Mrs. Mary Jacobs
Manager, Executive File Department
Central States, Southeast and Southwest
Areas Pension Fund
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Chicago, Illinois 60631

Mr. Keith Ringburn
Investment Coordinator
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Areas Pension Fund
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Chicago, Illinois 60631

Accountant

SILVERBERG & LEVIN
Certified Public Accountants
225 West 34th Street
New York, New York 10001

Actuary

A. M. KUNIS & CO., INC.
184 Grand Avenue
Englewood, New Jersey 07631

THE WYATT COMPANY
1629 "K" Street, N. W.
Washington, D. C. 20006

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SOUTHEAST AND SOUTHWEST AREAS PENSION FUND
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39 South La Salle Street
Chicago, Illinois 60603

MC DONALD, CARANO, WILSON, BERGIN
& BIBLE
Post Office Box 2670
Reno, Nevada 89505

(OTHER LAW FIRMS ALSO PROVIDE SERVICES RELATING TO PLAN ASSETS)

REVISED AND AMENDED TRUST AGREEMENT FOR CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND

This AGREEMENT and DECLARATION of TRUST, made and entered into this sixteenth day of March, 1955, by and between CENTRAL CONFERENCE OF TEAMSTERS, CENTRAL STATES DRIVERS COUNCIL, SOUTHERN CONFERENCE OF TEAMSTERS, and their affiliated Local Unions, hereinafter referred to collectively as the "UNION" and the SOUTHEASTERN AREA MOTOR CARRIERS LABOR RELATIONS ASSOCIATION; SOUTHWEST OPERATORS ASSOCIATION; NATIONAL AUTOMOBILE TRANSPORTERS LABOR COUNCIL; MOTOR CARRIERS EMPLOYERS CONFERENCE — CENTRAL STATES; CARTAGE EMPLOYERS MANAGEMENT ASSOCIATION; CLEVELAND DRAYMEN ASSOCIATION, INC.; and NORTHERN OHIO MOTOR TRUCK ASSOCIATION, INC.; for and on behalf of themselves, their constituent members, and such other Employers who are or may become parties hereto, hereinafter collectively referred to as the "EMPLOYER" and the individual Trustees, hereinafter referred to as the "TRUSTEES" selected as hereinafter described, who have affixed their respective signatures hereto, accepting the Trust obligations herein declared:

WITNESSETH:

WHEREAS, the Union and the Employer believe that it is in the best interest of the employees of such Employer represented by the Union, and the families and dependents of such employees, to provide for retirement benefits and for that purpose to establish a Trust Fund as hereinafter provided; and

WHEREAS, the Union and the Employer have heretofore entered into collective bargaining agreements under the terms of which it is provided that the Employer shall contribute certain agreed-upon sums of money therein set forth to a Pension Fund, which shall be known as the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND; and

WHEREAS, FRANK E. FITZSIMMONS, ROY L. WILLIAMS, JACKIE PRESSER, ROBERT HOLMES, DONALD PETERS, JOSEPH W. MORGAN, FRANK H. RANNEY and W. W. TEAGUE, Employee Trustees, and ALBERT D. MATHESON, THOMAS J. DUFFEY, JOHN F. SPICKERMAN, SR., HERMAN A. LUEKING, JR., JACK A. SHEETZ, WILLIAM KENNEDY, BERNARD S. GOLDFARB and A. G. MASSA, Employer Trustees, have been designated as the Trustees of the Trust in accordance with the provisions of this Agreement;

NOW THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements

herein contained, the Union and the Employer hereby accept and adopt all of the provisions herein contained, and the Trustees declare that they will receive and hold the contributions and any other money or property which may come into their hands as Trustees (all such contributions, money and property being hereinafter referred to as "the Trust Fund"), with the powers and duties, uses, and purposes as hereinafter set forth, to-wit:

ARTICLE I
DEFINITION OF TERMS

Sec. 1. Employer — The term "Employer" as used herein shall mean any employer who is bound by a collective bargaining agreement with the Union, or any employer not presently a party to such collective bargaining agreement who satisfies the requirements for participation as established by the Trustees and agrees to be bound by this Agreement.

Sec. 2. Union — The term "Union" as used herein shall mean the CENTRAL CONFERENCE OF TEAMSTERS, THE CENTRAL STATES DRIVERS COUNCIL, THE SOUTHERN CONFERENCE OF TEAMSTERS, and their affected affiliated Local Unions, and such other unions as the Trustees may agree upon.

Sec. 3. Employee — The term "Employee" as used herein shall include:

(a) A person who is employed under the terms and conditions of a collective bargaining agreement entered into between an Employer as herein defined and a Union as herein defined, and on whose behalf payments are required by such collective bargaining agreement or applicable law to be made to the Fund by the Employer; or

(b) All persons employed by the Union, upon being proposed by the Union and after acceptance by the Trustees; and as to such Union personnel the Union shall be considered an Employer solely for the purposes of contributions within the meaning of this Agreement and Declaration of Trust and shall, on behalf of such personnel, make payments to the Trust at the times and at the rate of payment equal to that made by any other Employer who is a party to the Trust for the same benefits; or

(c) All persons employed by the Central States, Southeast and Southwest Areas Pension Fund or Central States, Southeast and Southwest Areas Health and Welfare Fund upon acceptance by the Trustees; and as to such Trust personnel the Trustees shall be deemed an Employer, solely for the purpose of contributions, within the meaning of this Agreement and Declaration of Trust and shall, on behalf of such personnel, make payments to the Trust at the times and at the rate of payment equal to that made by any other Employer who is a party to the Trust for the same benefits.

(d) In all instances the common law test, or the applicable statutory definition, or master-servant relationship shall control employee status.

(e) The continuation of employee status once established shall be subject to such reasonable rules as the Trustees may adopt according to law.

Sec. 4. Trustees — The term "Trustees" or "Board" as used herein shall mean the Trustees designated in this Agreement and Declaration of Trust together with their successors designated and appointed in accordance with the terms of this Agreement.

Sec. 5. Trust Fund or Fund — The term "Trust Fund" or "Fund" as used herein shall refer to all property of whatever nature which shall be in said Trust created by this Agreement.

Sec. 6. Employer Contributions — The term "Employer Contributions" as used herein shall mean payments made by Employers to the Trust Fund herein created.

ARTICLE II
CREATION OF TRUST FUND AND BOARD OF TRUSTEES

Sec. 1. Designation — The Union and the Employer hereby create and establish, with the Trustees herein provided for, a Trust to be known as the CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND which shall be comprised of assets derived from Employer contributions made pursuant to the collective bargaining agreement between the parties (plus any additional sum or sums, from Employer contributions which may hereafter be agreed upon by the Employers and the Union set forth in written collective bargaining agreements), together with all insurance and annuity contracts (including dividends, refunds, or other sums payable to the Trustees on account of such insurance and annuity contracts) and all investments made and held by the Trustees on account of such insurance and annuity contracts, all investments made and held by the Trustees, all moneys received by the Trustees as contributions or as income from investments made and held by the Trustees or otherwise, and any other property received and held by Trustees for the uses, purposes, and trusts set forth in this Agreement and Declaration of Trust, where any of the foregoing is derived from the Employer contributions.

Sec. 2. Board of Trustees — There is hereby created a Board of Trustees consisting of eight (8) persons representative of the Employer and eight (8) persons representative of the Employees. The Employer Trustees shall be designated as follows:

One (1) Trustee shall be designated by each of the following Employer groups:

A. Southeastern Area Motor Carriers Labor Relations Association

B. Southwest Operators Association

C. National Automobile Transporters Labor Council

One (1) Trustee shall be designated jointly by the following Employer groups:

D. Cleveland Draymen Association, Inc. and Northern Ohio Motor Truck Association, Inc.

Two (2) Trustees shall be designated by each of the following Employer groups:

E. Motor Carriers Employers Conference — Central States

F. Cartage Employers Management Association.

The Employee Trustees shall be designated jointly by the Union as defined in Section 2 of Article I hereto.

Sec. 3. Term of Trustees — Each Trustee shall serve as such Trustee until he shall die, become incapable of acting hereunder, resign, become unqualified for the position under applicable law, or be removed as herein provided.

Sec. 4. Manner of Acting in Event of Deadlock — In the event a deadlock develops between the Employer and Employee Trustees, or between the Trustees, the Trustees shall appoint a neutral party empowered to break such deadlock within a reasonable length of time. Such neutral party may be appointed in advance of any such deadlock. In the event the Trustees are unable to agree upon a neutral party, or in the event such neutral party is unable to act, either the Employer or the Employee Trustees may petition the District Court of the United States for the Northern District of Illinois, Eastern Division, for appointment of a neutral person, as provided in Section 302(c) of the Labor Management Relations Act, 1947, as amended.

Sec. 5. Vacancies in Board of Trustees — In case of vacancies by death, legal incapacity, resignation or otherwise of the Employer Trustees or Employee Trustees, a successor thereto shall be appointed as provided in Article II, Section 2, hereof. Any Trustee or Trustees shall have the right to resign on ten (10) days' written notice given to the remaining Trustees, and to the Executive Director.

Sec. 6. Removal of Trustees — Any Employer Trustee may be removed, with or without cause, at any time by the Employer Association or Group appointing such Employer Trustee; in the event of such removal of such Employer Trustee, the Employer Association or Group removing such Trustee shall appoint a Successor Trustee. Any Employee Trustee may be removed, with or without cause, at any time by the Union. The Trustees shall also have the authority and duty to act to remove a Trustee holding office in violation of law.

Sec. 7. Designation of Successor Trustee — In the event of a vacancy under either Sections 5 or 6 above, the Successor Trustee shall be designated in writing by the appointing authority, and such Successor Trustee shall accept such appointment in writing in a form satisfactory to

the Trustees. Both the designation and acceptance shall be filed with the Executive Director of the Fund.

Sec. 8. Limitation of Liability of Trustees — No Trustee shall be liable or responsible for any acts or defaults of any co-Trustee, any other fiduciary, any party in interest or any other person except in accordance with applicable law.

Sec. 9. Office of the Fund — The sole and principal office of the Fund shall be in Chicago, Illinois, for the transaction of business of the Fund, the exact location of which is to be made known to the parties interested in such Fund. At such office, and at such other places as may be required by law, there shall be maintained all, or any of, the books and records pertaining to the Fund and its administration.

Sec. 10. No One Is Agent Without Written Authority — No individual or person may act as agent for the Fund unless specifically authorized in writing by the Trustees. No Employer or Union nor any representative of any Employer or Union, in such capacity, is authorized to interpret the Plan, nor can any such person act as agent of the Trustees. Only the Board of Trustees, the Pension Payment Committee or the Pension Payment Appeals Committee are authorized to interpret the Plan within the scope of their respective authorities.

ARTICLE III
CONTRIBUTIONS AND COLLECTIONS

Sec. 1. Amount of Contributions — Each Employer shall make continuing and prompt payments to the Trust Fund as required by the applicable Collective Bargaining Agreement between the parties. The obligation to make such contributions shall continue during periods when the Collective Bargaining Agreement is being negotiated, but such contributions shall not be required in case of strike after contract termination, unless the parties mutually agree otherwise.

Sec. 2. Time of Payment — The Trustees shall, by regulation, fix the time of payment for contributions and shall send a copy of such regulations to each Employer required to contribute.

Sec. 3. Receipt of Payment and Other Property of Trust — The Trustees are hereby designated as the persons to receive the payments heretofore or hereafter made by the Employers to the Trust Fund, and the Trustees are hereby vested with all right, title and interest in and to such moneys and all interest accrued thereon, and are authorized to receive and be paid the same. The Trustees agree to receive all such payments, deposits, moneys, insurance and annuity contracts, and other assets and properties described or referred to in Article II and this Article, and to hold same in Trust hereunder for the uses and purposes of the Trust herein created.

Sec. 4. Collections and Enforcement of Payment — The Trustees, or such committee of the Trustees as the

Board of Trustees shall appoint, or the Executive Director when directed by such committee or by the Trustees, shall have the power to demand and collect the contributions of the Employers to the Fund. Said Board of Trustees shall take such steps, including the institution and prosecution of, and intervention in, any legal proceedings as the Trustees in their discretion deem in the best interest of the Fund to effectuate the collection or preservation of contributions or other amounts which may be owed to the Trust Fund, without prejudice, however, to the rights of the Union to take whatever steps which may be deemed necessary for such purpose. The Trustees are authorized to receive all Employer contributions and apply such contributions first to any interest due, and then to the oldest unpaid balance of contributions due. Nothing herein shall give any Employer the right to designate how any contributions shall be applied.

Sec. 5. Production of Records — Each Employer shall promptly furnish to the Trustees, upon reasonable demand, the names and current addresses of its employees, their Social Security numbers, the hours worked by each employee and past industry employment history in its files and such other information as the Trustees may reasonably require in connection with the administration of the Trust. The Trustees may, by their representatives, examine the pertinent records of each Employer at the Employer's place of business whenever such examination is deemed necessary or advisable by the Trustees in connection with the proper administration of the Trust. All Employers shall annually furnish to the Trustees, if requested by them, a statement showing whether

(a) the organization is a corporation and the names of all of its officers;

(b) if not a corporation, a certificate stating that it is either a partnership or an individual proprietorship and the names of the partners or the name of the individual proprietor.

The Union will comply with any reasonable request of the Trustees to examine those records of the Union which may indicate the employment record of any employee whose status is in dispute. The names and addresses of participants and beneficiaries are confidential information not to be disclosed by the Trustees except as required by an order of a court of competent jurisdiction, except where necessary for determination of benefits in accordance with the provisions of this Trust Agreement, or as required by law.

ARTICLE IV

POWERS AND DUTIES OF TRUSTEES

Sec. 1. The Trustees shall have authority to control and manage the operation and administration of the Trust in accordance with applicable law.

Sec. 2. The Trustees shall hold, manage, care for, and protect the Trust Fund and collect the income therefrom and contributions thereto.

Sec. 3.

(a) The Trustees shall have the power, in their sole discretion, to invest and reinvest the principal and income of the Trust Fund in such securities, common and preferred stock, mortgages, notes, real estate or other property as shall be permissible investments for Trustees in accordance with applicable law, and may sell or otherwise dispose of such securities or property at any time and from time to time as they see fit; provided, however, the Trustees may, in their sole discretion, invest the Trust Fund or any part thereof in retirement annuity contracts, annuity contracts, retirement income contracts, group contracts, and such other forms of contracts, provided all such contracts are issued by legal reserve life insurance companies authorized to do business in the State of Illinois, as may be selected by the Trustees, for the purpose of providing for all or a part of the benefits provided under this Trust. The Trustees shall also have power (in addition to and not in limitation of common law and statutory authority) to invest in any stocks, bonds, or other property, real or personal, including improved or unimproved real estate and equity interests in real estate, where such an investment appears to the Trustees in their discretion and in accordance with their fiduciary obligations to be in the best interest of the Fund and its beneficiaries, judged by then present day business conditions and standards, and to exercise in respect to any stocks, bonds, or other property, real or personal, held by them as Trustees, all such rights, powers and privileges as might be lawfully exercised by any person owning similar stocks, bonds, or other property in his own right.

(b) The Trustees, if they so desire, are authorized to allocate only to a committee of Trustees or to one or more "Investment Managers" as defined in Section 3 (38) of the "Employee Retirement Income Security Act of 1974", appointed by the Trustees, such duties and responsibilities with respect to the Trust assets, including the responsibility to invest or reinvest such assets, as they shall specify in such allocation or appointment. In connection with any such appointment, the Trustees shall from time to time adopt appropriate investment policies and also may delegate to such Investment Manager the right to custody and possession of the Trust assets, or any part thereof. Any such appointment may be revoked at any time by notice in writing from the Trustees to such Investment Manager.

Sec. 4. All Trust Funds not invested shall be deposited by the Trustees in such depository or depositories as the Trustees shall from time to time select, and any such deposit or deposits, or disbursements therefrom, shall be made in the name of the Trust in the manner designated by the Trustees and upon the signature(s) designated by the Trustees.

Sec. 5. The Trustees shall keep true and accurate books of account and a record of all their transactions.

Sec. 6. The Trustees shall engage one or more independent qualified public accountants and enrolled actuaries to perform all services required by and in accordance with applicable law and such other services as the Trustees deem necessary.

Sec. 7. The Trustees, to the extent permitted by applicable law, shall incur no liability in acting upon any instrument, application, notice, request, signed letter, telegram, or other paper or document believed by them to be genuine and to contain a true statement of facts, and to be signed by the proper person.

Sec. 8. Any Trustee, to the extent permitted by applicable law, may rely upon any instrument in writing purporting to have been signed by a majority of the Trustees as conclusive evidence of the fact that a majority of the Trustees have taken the action stated to have been taken in such instrument.

Sec. 9. The Trustees are hereby authorized to formulate and promulgate any and all necessary rules and regulations which they deem necessary or desirable to facilitate the proper administration of the Trust, provided the same are not inconsistent with the terms of the Agreement, and the Articles in the Central States, Southeast and Southwest Areas Agreements creating the Pension Fund. All rules and regulations adopted by action of the Trustees for the administration of the Trust Fund shall be binding upon all parties hereto, all parties dealing with the Trust, and all persons claiming any benefits hereunder.

Sec. 10. Any Successor Trustee appointed in accordance with the provisions of this Agreement, upon accepting in writing the terms of this Trust, in a form satisfactory to the Trustees, shall be vested with all of the rights, powers and duties of his predecessor.

Sec. 11.

(a) The Trustees may assign, from time to time, various administrative matters to such committees and subcommittees of Trustees, experts, or other individuals or organizations as they may deem appropriate or necessary in their sole discretion. Committees and subcommittees of Trustees shall consist of an equal number of Employer and Employee Trustees. Only the Trustees shall have the authority to approve, modify the terms of, or terminate any loan. The Trustees, from time to time as appropriate, shall determine and modify the loan and investment policies of the Fund, including the diversification of investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(b) The Trustees shall appoint an Executive Committee, to consist of not less than four (4) nor more than six (6) of their members which shall supervise the operation of the Fund between meetings of the Trustees. Pending the convening of a meeting of

the Board of Trustees, it shall decide and pass upon matters requiring immediate action, subject to ratification, modification or rescission at the next meeting of the Board of Trustees to whom a report shall be made of any such immediate action. The Executive Committee shall screen or cause to be screened all applications for loans, or modifications of existing loans, and make recommendations with respect thereto to the Trustees. Any recommendation made by the Executive Committee may be adopted, modified or rejected by the Trustees.

(c) The Trustees shall appoint a Pension Payment Committee, consisting of not less than four (4) nor more than six (6) Trustees, which shall have the responsibility for pension and other claims, authorizing payments therefor, and supervising litigation concerning benefit claims. Any beneficiary or participant, who is the subject of adverse action by the Pension Payment Committee, may appeal in writing such adverse action to the Pension Payment Appeals Committee, which shall consist of the members of the Pension Payment Committee, plus two additional Trustees designated by the Trustees. Any adverse action of the Pension Payment Appeals Committee may be appealed in writing to the Board of Trustees. The Trustees may adopt such rules of procedure as may be appropriate to afford any beneficiary or participant the right to present his views to the Pension Payment Committee and the Pension Payment Appeals Committee at an informal hearing, which need not be on the record.

(d) The Trustees shall appoint an Executive Director, who shall, subject to the directions of the Trustees with respect thereto, be responsible to the Trustees and/or any committee thereof for coordinating the administration of the Fund's assets, office and personnel, for the coordination and administration of accounting and actuarial services, for the preparation of all reports and other documents required to be filed or issued in accordance with law, for the performance of ministerial duties in conformance therewith, and for such other duties duly assigned to him by action of the Trustees. The Executive Director shall be the custodian of the documents and other records of the Fund.

Sec. 12. No party dealing with the Trustees shall be obligated:

(a) to see the application to the trust purposes, herein stated, of any money or property belonging to the Trust Fund, or

(b) to see that the terms of this Agreement have been complied with, or

(c) to inquire into the necessity or expediency of any act of the Trustees.

Every instrument executed by the Trustees shall be conclusive evidence in favor of every person relying thereon:

(1) that at the time of the delivery of said instrument the Trust was in full force and effect,

(2) that the instrument was executed in accordance with the terms and conditions of this Agreement, and

(3) that the Trustees were duly authorized and empowered to execute the instrument.

Sec. 13. The Trustees shall, by regulation, establish rules relating to payments of contributions by Employers for employees during periods of such employees' illness or disability and related matters but not contrary to applicable collective bargaining agreements.

Sec. 14. The Trustees are hereby empowered, in addition to such other powers as are set forth herein or conferred by law:

(a) To enter into any and all contracts and agreements for carrying out the terms of this Agreement and Declaration of Trust and for the administration of the Trust Fund, and to do all acts as they, in their discretion, may deem necessary or advisable, and such contracts and agreements and acts shall be binding and conclusive on the parties hereto and on the employees involved.

(b) To keep property and securities registered in the names of the Trustees or in the name of any other individual or entity duly designated by the Trustees.

(c) To establish and accumulate as part of the Trust Fund a reserve or reserves, adequate, in the opinion of the Trustees and in accordance with applicable law, to carry out the purposes of such Trust.

(d) To pay out of the funds of the Trust all real and personal property taxes, income taxes, and other taxes of any and all kinds levied or assessed under existing or future laws upon or in respect to the Trust Fund, or any money, property, or securities forming a part thereof.

(e) To do all acts, whether or not expressly authorized herein, which the Trustees may deem necessary or proper for the protection of the property held hereunder.

(f) To sell, exchange, lease, convey, mortgage or dispose of any property, whether real or personal, at any time forming a part of the Trust Fund upon such terms as they may deem proper, and to execute and deliver any and all instruments of conveyance, lease, mortgage and transfer in connection therewith.

Sec. 15. The Employer Trustees and Employee Trustees shall not be paid any compensation for their services

hereunder for attendance at regular or special meetings of the Trustees; but the Trustees may be reimbursed for expenses properly and actually incurred for attending regular or special meetings of the Trustees or committees or subcommittees or while performing specific assignments; provided, further, that the Trustees who are not receiving full-time pay from an Employer, Employer Association or Union may be paid reasonable compensation on a per hour and/or per day basis for services rendered as a member of a committee, subcommittee, or while performing specific assignments, which rate shall be established and reestablished by the Trustees from time to time. Any such request for expense reimbursement and/or compensation shall be submitted on a voucher form approved by the Trustees.

Sec. 16. The Trustees shall use and apply the Trust Fund for the following purposes:

(a) To pay or provide for:

(1) the payment of all reasonable and necessary expenses of collecting the contributions and administering the affairs of this Trust, including the employment of such administrative, legal, actuarial, expert, and clerical assistance as may be reasonably necessary,

(2) the purchasing, owning or leasing of such premises as may be necessary for the operation of the affairs of the Trust, and

(3) the purchase or leasing of such materials, supplies and equipment as the Trustees, in their discretion, find necessary or appropriate to the performance of their duties.

(b) To pay or provide for the payment of retirement and related benefits to eligible employees in accordance with the terms, provisions and conditions of the pension plan to be formulated and agreed upon hereunder by the Trustees.

Sec. 17. The Trustees, by majority action, shall have the power to construe the provisions of this Agreement and the terms and regulations of the Pension Plan; and any construction adopted by the Trustees in good faith shall be binding upon the Union, Employees and Employers.

Sec. 18. The Trustees, by resolution, shall provide for fidelity bonds, in such amounts as they may determine, for their employees and for the Trustees, the cost of which shall be paid by the Fund. The Trustees may purchase insurance coverage to protect the Fund from liability arising out of any error or omission of any Trustee or employee of the Trust, in accordance with applicable law, the cost of which policy shall be paid by the Fund.

ARTICLE V

CONTROVERSIES AND DISPUTES

Sec. 1. In any controversy, claim, demand, suit at law, or other proceeding between any participant, beneficiary,

or any other person and the Trustees, the Trustees shall be entitled to rely upon any facts appearing in the records of the Trustees, any instruments on file with the Trustees, with the Union or with the Employers, any facts certified to the Trustees by the Union or the Employers, any facts which are of public records, and any other evidence pertinent to the issue involved.

Sec. 2. All questions or controversies, of whatsoever character, arising in any manner or between any parties or persons in connection with the Fund or the operation thereof, whether as to any claim for any benefits preferred by any participant, beneficiary, or any other person, or whether as to the construction of the language or meaning of the rules and regulations adopted by the Trustees or of this instrument, or as to any writing, decision, instrument or accounts in connection with the operation of the Trust Fund or otherwise, shall be submitted to the Trustees, or in the case of questions related to claims for benefits, to a Pension Payment Committee or Pension Payment Appeals Committee, and the decision of the Pension Payment Committee or Pension Payment Appeals Committee or the Trustees shall be binding upon all persons dealing with the Fund or claiming any benefit thereunder.

Sec. 3. The Trustees may, in their sole discretion, compromise or settle any claim or controversy in such manner as they think best, and any decision made by the Trustees in compromise or settlement of a claim or controversy, or any compromise or settlement agreement entered into by the Trustees, shall be conclusive and binding on all parties interested in this Trust.

ARTICLE VI

OPERATION OF BOARD OF TRUSTEES

Sec. 1. Officers — The Board of Trustees shall at each meeting designate a presiding Chairman. The Chairmanship shall be rotated between the Employee Trustees and the Employer Trustees.

Sec. 2. Quorum — A quorum of the Trustees for the transaction of business, except as otherwise specifically provided herein, shall consist of at least ten (10) Trustees, five (5) of whom shall be representative of the Employers and five (5) of whom shall be representative of the Employees. A quorum of a committee shall consist of a majority of the members thereof. Upon each matter voted upon at any meeting of the Trustees, the Employee Trustees and the Employer Trustees shall each have the same number of votes based upon the larger number of Employee or Employer Trustees in attendance, as the case may be; provided, however, that the vote or votes cast by each such Trustee shall be cast as an individual Trustee and not as a part of a block. All actions of the Trustees at meetings shall be by majority vote of those present and voting, a quorum being present. No Trustee may vote by proxy.

Sec. 3. Records of Trustee Action — The Trustees shall make and maintain a record of the actions of the Trustees taken at any meeting thereof. Any action, which may

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be taken at a meeting of the Trustees, may be taken without a meeting if a consent in writing, setting forth the action so taken, should be signed by all of the Trustees.

Sec. 4. Reports — All reports required by law to be signed by one or more Trustees shall be signed by all of the Trustees, provided that all of the Trustees may appoint in writing one or more of their number to sign such report on behalf of the Trustees.

Sec. 5. Power to Act in Case of Vacancy — No vacancy or vacancies in the Board of Trustees shall impair the power of the remaining Trustees, acting in the manner provided by this Agreement, to administer the affairs of the Trust notwithstanding the existence of such vacancy or vacancies.

Sec. 6. Expenses — All proper and necessary expenses incurred by any Trustee, including costs of defense in litigation arising out of the Trusteeship of this Fund, shall be paid out of the Trust Fund if permitted by law.

Sec. 7. Meetings — Regular meetings of the Trustees shall be held at least four (4) times a year. Any two (2) Trustees may request a meeting of the Trustees at any time by notifying the Executive Director, who shall arrange the time and place thereof. Written notices of meetings may be delivered in person, by mail, or by telegram. Meetings of the Trustees may also be held at any time without notice if all the Trustees consent thereto.

ARTICLE VII

ESTABLISHMENT OF PENSION PLAN

Sec. 1. Formulation of Plan — The Trustees shall formulate a plan for the payment of such retirement pension benefits, permanent disability pension benefits, death benefits, and related benefits, as are feasible. Such plan shall at all times comply with all applicable federal statutes and regulations and with the provisions of this Trust Agreement. The Trustees shall not be under any obligation to pay any pension if the payment of such pension will result in loss of the Fund's tax exempt status under the then applicable Internal Revenue Code and any regulations or rulings issued pursuant thereto. The Trustees shall draft procedures, regulations, and conditions for the operation of the plan, including, by way of illustration and not limitation: conditions of eligibility for covered employees, procedure for claiming benefits, schedules of type and amount of benefits to be paid, and procedure for the distribution of benefits. The Trustees may also provide for the payment of partial pensions, and may enter into agreements with other Trustees of Pension Plans which conform to the applicable sections of the then applicable Internal Revenue Code for purposes of tax deductions for the reciprocal recognition of service credits and payments of pension benefits based upon such service credits.

Sec. 2. The Trustees shall provide participants and beneficiaries such information as is required by law.

Sec. 3. Amendment of Plan -- The Pension Plan may be amended by the Trustees from time to time, provided that such amendments comply with the applicable sections of the then applicable Internal Revenue Code, all applicable federal statutes and regulations, the contract articles creating the Pension Fund, and the purposes as set forth in this Agreement. Additionally and not by way of limitation, the Trustees may amend the Plan, in future, or retroactively, where they deem it necessary to maintain the continuation of the Fund's tax exempt status or to preserve compliance with the then applicable Internal Revenue Code, applicable federal statutes, and any regulations or rulings issued with respect thereto. A copy of each amendment of the Pension Plan shall be adopted and filed by the Trustees as part of the records and minutes of the Trustees, and one copy thereof shall be distributed to the Union and to each Employer or Employer Group signatory to this Trust Agreement.

ARTICLE VIII
SPENDTHRIFT CLAUSE

All benefit payments to participants or beneficiaries, if and when such payments shall become due, shall, except as to persons under legal disability, or as provided in Article IX, be paid to such participants or beneficiaries in person and shall not be grantable, transferable, or otherwise assignable in anticipation of payment thereof, in whole or in part, by the voluntary or involuntary acts of any such participants or beneficiaries, or by operation of law, and shall not be liable or taken for any obligation of such participants or beneficiaries.

ARTICLE IX
PAYMENTS TO PERSONS UNDER LEGAL DISABILITY

In case any benefit payments hereunder become payable to a person under legal disability, or to a person not adjudicated incompetent but, by reason of mental or physical disability, in the opinion of the Trustees, is unable to administer properly such payments, then such payments may by paid out by the Trustees for the benefit of such person in such of the following ways as they think best, and the Trustees shall have no duty or obligation to see that the payments are used or applied for the purpose or purposes for which paid:

(a) directly to any such person;

(b) to the legally appointed guardian or conservator of such person;

(c) to any spouse, parent, brother, or sister of such person for his welfare, support and maintenance;

(d) by the Trustees using such payments directly for the support, maintenance and welfare of any such person.

ARTICLE X
AMENDMENT OF AGREEMENT

It is anticipated that in the administration of this Trust conditions may arise that are not foreseen at the time of the execution of this Agreement, and it is the intention of the Parties that the power of amendment, which is hereinafter given, be exercised in order to carry out the provisions of this Trust, among which is to pay the largest benefits possible, which are consistent with the number of participants becoming and likely to become eligible for such payments, the amounts of funds which are available and which will probably become available, and the following of sound actuarial practice. Therefore, the power is given to the Trustees to amend this Agreement by majority vote, at any time and from time to time, and all parties to the Trust, and all persons claiming an interest thereunder shall be bound thereby, and no participant, employee member, beneficiary, or any other person shall have any vested interest or right in the Trust Fund or in any payment from the Trust Fund, except as provided by law. The Trustees have full authority to amend, repeal, add to, or take away any right of payment, retroactively or otherwise, that they deem proper for the preservation of this Trust; providing, however, in no event shall the Trust Fund be used for any purpose other than the purpose set forth in this Trust Agreement, and for the purposes of paying the necessary expenses incurred in the administration of this Trust. All amendments to this Agreement shall comply with the applicable sections of the then applicable Internal Revenue Code, applicable federal statutes, and the Contract Articles creating the Pension Fund.

ARTICLE XI
TERMINATION OF TRUST

Sec. 1. This Trust shall cease and terminate upon the happening of any one or more of the following events:

(a) In the event the Trust Fund shall be, in the opinion of the Trustees, inadequate to carry out the intent and purpose of this Agreement, or to meet the payments due or to become due under this Agreement to persons already drawing benefits.

(b) In the event there are no individuals living who can qualify as employees hereunder.

Sec. 2. In the event this Trust shall terminate for any of the reasons set forth in Section 1 of this Article XI hereof, the Trustees shall allocate the Trust Fund among participants and beneficiaries of the Plan in the following order:

(a) First, to that portion of each individual's accrued benefit which is derived from the participant's contributions to the Plan.

(b) Second, in the case of benefits payable as an annuity —

(1) In the case of the benefit of a participant or beneficiary which was in pay status as of

the beginning of the 3-year period ending on the termination date of the Plan, to each such benefit based on the provisions of the Plan (as in effect during the 5 year period ending on such date) under which such benefit would be the least,

(2) In the case of a participant's or beneficiary's benefit which would have been in pay status as of the beginning of the 3-year period ending on the termination date of the Plan if the participant had retired prior to the beginning of the 3-year period and if his benefits had commenced (in the normal form of an annuity under the Plan) as of the beginning of such period, to each such benefit based on the provisions of the Plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

For the purposes of Subparagraph (1) the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period.

(c) Third, to all other non-forfeitable benefits (other than benefits becoming non-forfeitable solely on account of termination of the Plan) subject to the limitation that such non-forfeitable benefits shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the lesser of —

(1) his average monthly gross income from his employer during the 5 consecutive calendar year period during which his gross income from that employer was greater than during any other such period with that employer, or

(2) $750 multiplied by a fraction, the numerator of which is contribution and benefit base (determined under Section 230 of the Social Security Act) in effect at the time the Plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974.

(d) Fourth, to all other non-forfeitable benefits under the Plan.

(e) Fifth, to all other benefits under the Plan.

(f) If the assets available for allocation under any priority category (other than 2 (d) and 2 (e) above) are insufficient to satisfy in full the benefits of all individuals, the assets shall be allocated pro rata among such individuals on the basis of the present value as of the termination date of their respective benefits. To the extent funded, the rights of all participants to benefits accrued as of the date of termination are non-forfeitable.

ARTICLE XII
EXTENSION OF PLAN

The Trustees are authorized to extend the coverage of this Agreement and Trust to such other Employers and employees as such Trustees shall agree upon, provided such Employers and employees are required to conform to the terms and conditions of the Trust and to make the same rate of payments required of the Employers herein, for the same benefits.

ARTICLE XIII
VESTING OF RIGHTS

The Trustees shall establish standards for the vesting of benefits which conform to no less than the minimum standards required by law. No employee or other person shall have any vested interest or right in the Trust Fund except as provided by the Trustees in conformance with applicable law.

ARTICLE XIV
MISCELLANEOUS

Sec. 1. In no event shall the Employers, directly or indirectly, receive any refund on contributions made by them to the Trust, except in case of bona fide mistake, and as to which contributions are returned within one year after payment of the contributions, nor directly or indirectly participate in the disposition of the Trust Fund or receive any benefits from the Trust Fund. Upon transfer of each contribution to the Trustees, all responsibilities of the Employers for such contributions shall cease, and the Employers shall have no responsibilities for the acts of the Trustees. No employee shall have any individual right, title, interest, or claim against any Employer, Employer's contribution, or the Trust Fund, except as may be expressly provided for in this Agreement or under federal law.

Sec. 2. The Union or the Employer may, at any time, demand of the Trustees an accounting with respect to any and all accounts upon agreement to pay necessary expenses thereof. The Trustees shall be entitled, at any time, to have a judicial settlement of their accounts and judicial determination of any questions in connection with the administration or distribution thereof. Any Trustee who has resigned, been removed from office, or not been reappointed shall execute all instruments necessary to transfer the Trust Fund.

Sec. 3. In the event any question or dispute shall arise as to the proper person or persons to whom any payments shall be made hereunder, the Trustees may withhold such payment until an adjudication of such question or dispute, satisfactory to the Trustees, in their sole discretion, shall have been made, or the Trustees shall have been adequately indemnified against loss to their satisfaction.

Sec. 4. Non-payment by an Employer of any moneys due shall not relieve any other Employer from his obligation to make payment. In addition to any other remedies to

[illegible] Employer shall be obligated to pay interest at the rate of eight (8) per cent per annum on the moneys due to the Trustees from the date when the payment was due to the date when the payment is made, together with all expenses of collection incurred by the Trustees, including, but not limited to, attorneys' fees and such fees for late payment as the Trustees determine as permitted by law.

Sec. 5. Where used in this Agreement, words in the masculine shall be read and construed as in the feminine, and words in the singular shall be read and construed as though used in the plural, in all cases where such construction would so apply.

Sec. 6. The Article titles are included solely for convenience and shall, in no event, be construed to affect or modify any part of the provisions of this Agreement or be construed as part thereof.

Sec. 7. This Agreement shall in all respects be construed according to and governed by the laws of the State of Illinois, including but not limited to the laws applicable to the rate of interest in the State of Illinois, except as such laws may be preempted by the laws and regulations of the United States.

ARTICLE XV
BENEFICIAL RIGHTS

No Employer or Union, or employees, shall have any right, title or interest in or to the Trust Fund or any part thereof other than vesting under the Plan except in accordance with applicable law. There shall be no pro-rata or other distribution of any of the assets of the Fund as a result of any Union, Employer or Group of Employees of Employers ceasing their participation in this Fund for any purpose or reason except as required by law.

ARTICLE XVI
SAVINGS CLAUSE

Should any provision of this Declaration of Trust be held to be unlawful, or unlawful as to any person or instance, such fact shall not adversely affect the other provisions herein contained or the application of such provision to any other person or instance, unless such illegality shall make impossible the functioning of the Plan. No Trustee shall be held liable for any act done or performed in pursuance of any provision hereof prior to the time such act or provision shall be held unlawful by a court of competent jurisdiction.

IN WITNESS WHEREOF, in accordance with the powers conferred in Article X of this Trust Agreement, the Trustees, Union and Employers adopt the aforementioned Trust Agreement and all amendments incorporated therein, effective December 31, 1974, as amended.

EMPLOYEE TRUSTEES:

Frank E. Fitzsimmons

Joseph W. Morgan

Jackie Presser

Donald Peters

Roy L. Williams

Robert Holmes

Frank H. Ranney

W. W. Teague

EMPLOYER TRUSTEES

Albert D. Matheson

Thomas J. Duffey

Jack A. Sheetz

John F. Spickerman, Sr.

William J. Kennedy

Herman A. Lueking, Jr.

Bernard S. Goldfarb

A. G. Massa

UNION

CENTRAL CONFERENCE OF TEAMSTERS

By:

CENTRAL STATES DRIVERS COUNCIL

By:

SOUTHERN CONFERENCE OF TEAMSTERS

By:

EMPLOYERS

SOUTHEASTERN AREA MOTOR CARRIERS LABOR RELATIONS ASSOCIATION

By:

SOUTHWEST OPERATORS ASSOCIATION

By:

NATIONAL AUTOMOBILE TRANSPORTERS LABOR COUNCIL

By:

MOTOR CARRIERS EMPLOYERS CONFERENCE — CENTRAL STATES

By:

CARTAGE EMPLOYERS MANAGEMENT ASSOCIATION

By:

CLEVELAND DRAYMEN ASSOCIATION, INC.

By:

NORTHERN OHIO MOTOR TRUCK ASSOCIATION, INC.

By:

MORTON J. HARRIS
IRA M. BURMAN
HARVEY M. SILETS
THEODORE A. SINARS
JOHN J. JIGANTI
ALLAN L. YUSIM
ROYAL B. MARTIN, JR.

LAW OFFICES
HARRIS, BURMAN AND SILETS
7 SOUTH DEARBORN STREET
CHICAGO 60603

AREA CODE 312
236-2994

February 27, 1976

Mr. James D. Hutchinson
Administrator of Pension and
Welfare Benefit Programs
U. S. Department of Labor
Washington, D. C. 20216

Dear Sir:

This is to advise you that on February 5, 1976, the undersigned filed, as attorney for Central States, Southeast and Southwest Areas Pension Fund, a Request for Ruling under Sec. 4975(e)(2) of the Internal Revenue Code in connection with the proposed loan to M & R Investment Company, Inc. A copy of said Request is enclosed.

It is respectfully requested that your office co-ordinate the processing of such Request with the Internal Revenue Service.

Very truly yours,

HARRIS, BURMAN AND SILETS

Morton J. Harris

MJH:mk
Encl.

MORTON J. HARRIS
IRA M. BURMAN
HARVEY M. SILETS
THEODORE A. SINARS
JOHN J. JIGANTI

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CHICAGO 60603

AREA CODE 312
236-2994

February 5, 1976

Commissioner of Internal Revenue
Washington, D.C. 20224

Attention: E:EP:PT

Re: M&R Investment Company, Inc.

Dear Sir:

Request hereby is respectfully made for a Ruling in connection with the proposed transaction described below. The issue herein presented is whether the above corporation (hereinafter referred to as "M&R"), as a result of said transaction, would be a "disqualified person" under Section 4975 (e)(2) of the Internal Revenue Code of 1954, as amended (hereinafter referred to as the "Code").

M&R, a Nevada corporation, is a wholly owned subsidiary of CONTINENTAL CONNECTOR CORPORATION, a New York corporation (hereinafter referred to as "CONTINENTAL"). CONTINENTAL is also the owner and holder of all of the issued and outstanding shares of stock of WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter referred to as "TRANSPORTATION").

TRANSPORTATION is engaged in the trucking business as a common carrier, and, as a result thereof, was required to obtain authority from the Interstate Commerce Commission (hereinafter referred to as the "I.C.C.") as a prerequisite of commencing business. In order to obtain such authority, it was necessary for TRANSPORTATION to acquiesce in certain restrictions imposed by the I.C.C. as to borrowing and dividends. Generally, the I.C.C. imposed restrictions on (i) loans, the proceeds of which were to be used for non-carrier purposes, and (ii) the declaration and payment of dividends. Said restrictions are more fully described in Exhibit "A" attached hereto and made a part hereof. Moreover, a sale involving the issued and outstanding shares of stock of TRANSPORTATION directly or indirectly to an existing common carrier would be subject to the ordinary rules of the I.C.C., which rules would require its advance approval of any sale thereof.

The employees of TRANSPORTATION are covered by a collective bargaining agreement with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Pursuant to the terms of said contract, TRANSPORTATION makes contributions to CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND (hereinafter referred to as the "PENSION FUND") for the purpose of funding pension benefits for its employees. The PENSION FUND is a trust described in Section 401(a) of the Code which is exempt from tax under Section 501(a) thereof.

M&R is the owner and operator of the Dunes Hotel in Las Vegas, Nevada. PENSION FUND issued its commitment letter, dated January 24, 1975, to M&R for a loan in the amount of Forty Million ($40,000,000.00) Dollars for the purposes of constructing additional room and remodeling certain areas of the Dunes Hotel. Such proposed loan has not been disbursed, however, because it was subsequently determined that the same would constitute a progibited transaction under Subsection (c)(1)(B) of Section 4975 of the Code by virtue of Subparagraphs (e)(2)(C), (e)(2)(E) and (e)(2)(G) contained therein.

The Board of Directors of CONTINENTAL has determined in its business judgment that the economic benefits accruing to its subsidiary, M&R, from the authorized use of the proposed loan proceeds would far outweigh the economic loss, if any, if it were to sell the shares of stock of TRANSPORTATION solely for the purpose of eliminating the applicability of Code Section 4975. Therefore, in order to effectuate the foregoing, it is proposed that the following steps be taken:

(1) Subject to the removal by the I.C.C. of the restrictions on borrowing and dividends, TRANSPORTATION shall obtain a commitment for a loan in the amount of Two Million Five Hundred Thousand ($2,500,000.00) Dollars from an independent third party with a maturity date in excess of six (6) months, and, thereafter, loan the proceeds to WESTRAN CORPORATION, an Illinois corporation (hereinafter referred to as "WESTRAN"), subsequent to the execution of the Agreement hereinbelow described. One hundred percent (100%) of the issued and outstanding shares of common stock of WESTRAN is owned by the current president of TRANSPORTATION.

(2) CONTINENTAL shall sell all of its shares of stock of TRANSPORTAION, which comprise all of the issued and outstanding shares of stock thereof, to WESTRAN pursuant to the Agreement which is attached hereto as Exhibit "B" and made a part hereof

(hereinafter referred to as the "Agreement"). A summary of the pertinent provisions contained therein are as follows:

(a) The purchase price of the shares shall be the greater of (i) the book value of TRANSPORTATION as of December 31, 1975, plus the sum of Two Million ($2,000,000.00) Dollars, i.e. Six Million ($6,000,000.00) Dollars, or (ii) the fair market value of the issued and outstanding shares of stock of TRANSPORTATION as of December 31, 1975, which value is to be determined by an independent appraiser within six (6) months from the date of Agreement. In the event said determination is not made in accordance with the terms of Agreement within such period of time, the purchase price shall be the former.

(b) Concurrently with the execution of Agreement, WESTRAN shall issue its Promissory Note to CONTINENTAL, secured by all the shares of stock of TRANSPORTATION being purchased thereby (in accordance with the Pledge Agreement which is attached to Exhibit "B"), in the amount of Six Million ($6,000,000.00) Dollars (subject to being increased by a superceding Promissory Note in the event the purchase price shall be in excess of Six Million ($6,000,000.00) Dollars, which superceding Promissory Note shall be identically secured), providing for a down payment of twenty-nine percent (29%) of the purchase price on a date six (6) months from the date thereof. In the event such amount is less than the sum of Two Million Five Hundred Thousand ($2,500,000.00) Dollars, the difference shall be paid to CONTINENTAL on February 1, 1977. The terms of payment of the outstanding principal and interest thereon is fully described in Paragraph 2 of the Agreement.

(c) The security for the purchase price shall be held in escrow.

(d) CONTINENTAL is expressly prohibited from exercising any control, whether direct or indirect, over the business operations of WESTRAN and TRANSPORTATION.

(e) In the event of a default by WESTRAN under the provisions of Agreement or in the payment of any sum due in accordance with the Promissory Note, as aforesaid, CONTINENTAL shall be entitled to foreclose on said collateral. Such collateral shall be sold at auction to the highest bidder, in accordance with applicable law, subject to the approval of the I.C.C. in the event the same shall be required; and, in the event the proceeds shall be insufficient to liquidate the then unpaid balance of the purchase price and interest thereon, WESTRAN shall be liable for such deficiency. In no event, however, is CONTINENTAL permitted to purchase the collateral. During the period commencing with the date of the foreclosure and ending with the date the buyer legally acquires the defaulted shares, the operation of TRANSPORTATION would be under the sole control of its managment (not CONTINENTAL).

(f) A default by WESTRAN regarding any indebtedness having a maturity date in excess of six (6) months which is incurred subsequent to the Agreement date shall be deemed a default of the Promissory Note as aforesaid.

(3) The down payment as more fully described in Paragraph 2(b), above, shall be funded to the extent of Two Million Five Hundred Thousand ($2,500,000.00) Dollars by the proceeds of a loan theretofore made by TRANSPORTATION to WESTRAN and shall be subject to the provisions of default hereinabove described.

(4) The amounts due to CONTINENTAL in accordance with the Promissory Note as hereinabove described and the down payment in excess of Two Million Five Hundred ($2,500,000.00) Dollars shall be funded, at least in part, by dividends paid to WESTRAN with respect to the shares of stock of TRANSPORTATION.

It is the position of PENSION FUND that a prohibited transaction will not occur under Section 4975(c)(1)(B) of the Code when the PENSION FUND disburses the subject loan to M&R (or at any time thereafter) if, prior thereto, CONTINENTAL sells its shares of stock of TRANSPORTATION to WESTRAN in accordance with the transaction as hereinabove described. Cf. Code Sections 4946(a)(1)(C) and 4946(a)(1)(E); Reg. § 53.4946-1(a)(6).

Accordingly, a Ruling hereby respectfully is requested that from and after the date CONTINENTAL sells the shares of stock of

TRANSPORTATION to WESTRAN in accordance with the transaction as hereinabove described:

(1) M&R will not be a "disqualified person" under Code Section 4975(e)(2) with respect to the PENSION FUND, and

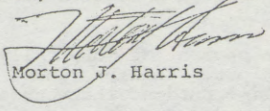
(2) The disbursement of the subject loan will not constitute a prohibited transaction under Code Section 4975(c)(B).

A Power of Attorney authorizing the undersigned to act hereunder is enclosed.

If you have any questions, or require any further information, or propose to take any action other than to issue a favorable Ruling, kindly telephone the undersigned, collect, at the above number.

Respectfully submitted,

HARRIS, BURMAN AND SILETS



Morton J. Harris

MJH:cav
Enclosures

The CHAIRMAN [presiding]. Senator Durkin.

Senator DURKIN. Just to follow up on Senator Pell's question, I know time is a problem, but could you read those 16 names into the record?

Mr. HUTCHINSON. The trustees listed in the current copy of the trust agreement that has been made available to the Department of Labor are: Frank E. Fitzsimmons, Joseph W. Morgan, and Jackie Presser.

It is our impression he has since been replaced by William Presser, since that document was published. Donald Peters, Roy L. Williams, Robert Holmes, Frank H. Ranney, and W. W. Teague.

The employer trustees are: Albert D. Matheson, Thomas J. Duffey, Jack A. Sheetz, John F. Spickerman, Sr., William J. Kennedy, Herman A. Lueking, Jr., Bernard S. Goldfarb, and A. G. Massa.

I have copies of that trust agreement with me, and we would be happy to provide it to the committee right now, if you wish.

Senator DURKIN. Mr. Chairman, while he is doing this, the full cast of characters that are here be introduced for the record? By that I mean the group that is here with the Secretary and their relationship to this issue.

Have they been introduced?

The CHAIRMAN. They have been.

Senator DURKIN. Has the second row been introduced?

The CHAIRMAN. The second row has not been.

These are described as your cast of characters, Mr. Secretary.

I wonder if you would give us the playbill cast.

Mr. HUTCHINSON. Immediately behind me on the end is Lawrence Lippe, the director of the special investigations staff.

Next to him is Lester Seidel, counsel for the special investigations staff.

Next to him is James Hogue. I am sure you are familiar with him. He is special assistant counsel to the Secretary.

Next to him is Ken Duberstein, who is the new deputy under secretary for legislation affairs, Department of Labor.

Next to him is Stephen Sacher, who is the associate solicitor of labor.

Senator DURKIN. Mr. Hutchinson, I gather from your testimony that you have all the legislative tools that you feel are necessary to complete the task at hand.

Mr. HUTCHINSON. At this point, Senator, we believe we do.

Senator DURKIN. Second, I gather you are not accepting speaking engagements.

I mean, you have no speaking engagements that possibly might conflict?

Mr. HUTCHINSON. I not only have responsibility for this investigation, but the overall administration of ERISA in the department, and on many occasions I am addressed publicly.

Senator DURKIN. Have you addressed many teamster groups?

Mr. HUTCHINSON. No. I have not.

Senator DURKIN. How long do you contemplate the investigation taking?

Mr. HUTCHINSON. I really prefer to respond to that in executive session.

Senator DURKIN. Fine.

There may well be a change of command downtown this year. How is your group insulated from the political fallout?

Mr. HUTCHINSON. Every employee involved in this investigation, besides myself, is a career public servant.

Senator DURKIN. You serve at the pleasure of the Secretary?

Mr. HUTCHINSON. That is right.

Senator DURKIN. Does the second row, for the most part, serve at anyone's pleasure?

Mr. HUTCHINSON. They are career personnel.

Senator DURKIN. Did I gather from your testimony that there is a reluctance by the IRS to share information with you?

Mr. HUTCHINSON. I hope not. That was not my intention.

We have prepared formal disclosure requests to them under 6103(g) of the code. We have made those requests, and we have received the information we have asked for, sir.

Senator DURKIN. Has there been any change in the relation of the interdepartmental groups since the Secretary's Las Vegas speech?

Mr. HUTCHINSON. None.

Senator DURKIN. No change of any sort?

Mr. HUTCHINSON. We have not even found occasion to meet since that time.

Senator DURKIN. So, in other words, you have no evidence one way or the other.

Mr. HUTCHINSON. That is right.

Senator DURKIN. Mr. Chairman, why do we only have one faction of the so-called interdepartmental group here today?

Mr. HUTCHINSON. Senator, there is a representative from the Department of Justice who will be making comments and offering testimony later.

Senator DURKIN. So all segments are represented?

Mr. HUTCHINSON. That is right.

Senator DURKIN. Mr. Chairman, I have one other question.

Why are we proceeding in executive session? Is there any possibility that we may compromise an ongoing investigation? With the history of leaks from Congress, is there any possibility that we would be receiving evidence that would compromise this investgation?

The CHAIRMAN. Your question goes to whether there is a risk of information coming to us in executive session, and then being somehow released?

Senator DURKIN. Well, I am not referring to this subcommittee, but both sides of the Capitol have a history of leaking an awful lot of information. I am just questioning the advisability of an executive session if it in any way might compromise, deter, or hinder the investigation, or any resulting prosecutions.

The CHAIRMAN. Of course, the reason for going into executive session, is first to receive information we feel is necessary for our understanding of what is being done by the task force. We are doing this to meet our responsibility.

Now, in meeting our responsibility, the question appropriately arises whether there is any risk that we will in any way be adversely affecting the department's activity.

It seems to me that we weigh this all the time. We have concluded, or I have, and Senator Javits has, and we have not discussed this

through the entire committee, and perhaps we should, that we can meet our responsibilities fully.

That is, to receive the information and treat it properly.

Now, we will not be able to go into executive session immediately, and there will be time for us, without witnesses, to talk the problems over.

Senator JAVITS. Mr. Chairman, if the Chair would yield, there are three points I would like to contribute to this.

One, the executive session must be voted by the committee, and must be a record vote.

Second: As Senator Durkin might recall, the Senate recently passed a set of rules and regulations for its own members, invoking the removal power, and the Senator may remember that accountability here is absolutely essential.

Third: Equally important to all the others, Mr. Chairman, is that nobody is God. Not the Government, the Departments, not we. Therefore, if we are given the choice between our congressional knowledge and congressional oversight, and letting the Department run itself because we are afraid of ourselves, I would choose the former. I think the public's right to know is better safeguarded, and Governmental honesty and efficiency is best served, if the Congress does know, even though the information is confidential, and there is a danger of leaks. I would vote for an executive session, because I think we ought to know everything that is going on, and the public is better protected if we do than if we do not.

Senator DURKIN. I have one further question, Mr. Hutchinson.

I realize you serve at the pleasure of the Secretary, and you may come here with him in the same limousine. But, do you think the Secretary's appearance at the Teamsters convention in Las Vegas was proper in light of what the Department is involved in?

Mr. HUTCHINSON. Yes, I do.

Senator DURKIN. Do you think his statement that he would go again next week is also proper in light of the feud that has ensued?

Mr. HUTCHINSON. Yes, I do.

Senator DURKIN. Do you think that has compromised your objectivity?

Mr. HUTCHINSON. It has not.

Senator DURKIN. I have no further questions.

The CHAIRMAN. Mr. Giuliani, do you have a statement?

STATEMENT OF RUDOLPH W. GIULIANI, ASSOCIATE ATTORNEY GENERAL, OFFICE OF DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. GIULIANI. Yes, I do, Mr. Chairman.

Mr. Chairman, I appreciate the opportunity to appear before you and this committee to outline to the extent I can the Department of Justice's role and participation in the investigation of the Teamsters Central States pension fund.

I say to the extent I can because, as you know, the Justice Department's primary responsibility in this investigation is to review and

where sufficient evidence exists to prosecute violations of the Federal criminal statute.

Consequently, concern for jeopardizing potential criminal prosecutions, the confidentiality surrounding evidence presented to a grand jury mandated by rule 6(e) of the Federal Rules of Criminal Procedure, and the time honored prohibition against revealing as yet uncharged and unresolved allegations of misconduct which are discovered during criminal investigations prohibit me from revealing or even suggesting any particulars as to matters that may presently be under criminal investigation by the Department of Justice.

In executive session, if you vote to go into executive session, I can be somewhat more specific, but still would be prohibited from identifying particular subjects or detailing factual situations presently under investigation.

I say this at this point so that my inability to supply factual details is not misunderstood as an attempt to conceal any facts relevant to this committee's inquiry.

The Department of Justice is of the view that this committee not only has the right and jurisdiction to oversee the progress of this investigation, but given the impact of this investigation on the members of the Teamsters Union, and on the public in general, it has the obligation to do so.

In my discussions over the past 6 or 7 months with members of your staff, I have been most impressed with their ability to collect the facts from both the Justice Department and the Labor Department that are necessary to assist you and the other members of the committee in forming a judgment as to the progress of the investigation and yet to do so without unnecessarily interferring with and prejudicing a very serious investigation.

In my view, the working relationship has been excellent, has accommodated the legitimate interests of both branches of Government, and most uniquely in this day and age has all been done in a most professional and courteous manner.

Within the bounds set out for one in the position of a Federal prosecutor, I will endeavor to explain to you in general terms the Justice Department's participation in this investigation.

The criminal statute that applies most directly to the Justice Department's responsibilities in this investigation is 18 United States Code, Section 1954, which makes it a Federal felony for anyone to offer, accept or solicit anything of value to influence operations of an employee benefit plan.

However, experience teaches that criminal misconduct involving pension plans, if it exists, spans a much wider spectrum of title 18 violations, often including false statements to the Government, mail fraud, fraud by wire, interstate transportation in aid of racketeering enterprises, and perjury.

As to such violations, the Department of Justice must often act both as investigator and prosecutor. The Department also has exclusive responsibility for prosecuting any and all criminal violations of the Internal Revenue Code, either corporate or individual, that might arise from an investigation such as this.

Although the Justice Department's responsibilities with regard to this investigation are indeed significant and in some areas run concurrently with those of the Department of Labor and the Internal Revenue Service, the Department of Justice's responsibilities are also in many areas quite distinct and overall not as broad and pervasive.

Thus, you could, if you chose, compartmentalize the separate responsibilities of each of these Departments and agencies of Government, and each one could proceed on its own without consultation or coordination.

Obviously, this would serve no purpose except at best to insure that no one agency or department had an overall appreciation of the activities of the fund and, at worst, that each one of us proceeding on our own could irreparably prejudice each others investigations. There is, to be sure, no justification for proceeding separately; for proceeding by pretending that we are not in actuality all investigating the same entity.

Realizing the benefit that would accrue to the Government by complete and total cooperation with each other and aware of the dangers that inhere in any other approach, the Departments of Labor and Justice determined at the very beginning of this investigation to assure that they would work together at all levels. Specifically, as far back as last summer, Deputy Attorney General Harold Tyler and Mr. Hutchinson met on several occasions to discuss the need for complete cooperation and the best way to achieve that goal.

These discussions culminated, as Secretary Usery pointed out, and Mr. Hutchinson pointed out, in a memorandum of understanding executed on December 1, 1975, by the former Secretary of Labor John Dunlop and by the Deputy Attorney General Harold Tyler, which provides for a policy committee and for a joint task force to actually conduct the investigation.

The rationale of this memorandum is to insure cooperation and free interchange of information at all levels of both departments and particularly on the working level.

The policy committee, as its name implies, is to discuss and decide general questions, such as the relative staff to be devoted by each one of the departments, the situations that should be spun off for criminal investigation as opposed to civil investigation, and the appropriate remedies that should be used in particular situations.

Also it would be to insure that no one of us takes precipitous action that could prejudice the ongoing investigation being conducted by the other department of Government.

The working level task force, would, of course, actually conduct the investigation, gather the information collected from books, records, and witnesses, and analyze that information.

The theory of cooperation is, as you can see, quite sound. Its application, however, is another, and, one would anticipate a more difficult matter. However, I can personally testify that the cooperation has been better, more complete and more satisfactory than I, for one, anticipated it would be.

On March 25, 1976, I had the pleasure of presiding for the Deputy Attorney General at a policy committee meeting, and both departments—by both departments, I mean the Department of Labor and

the Department of Justice—were and continue to be in complete agreement on how to proceed.

For the Justice Department, I can say that we are entirely satisfied with the progress of the investigation and with the exchange of information. Indeed, to date, the daily support and impetus for the investigation must, in large measure, be credited to the Labor Department. This is, of course, most appropriate at this stage.

The Department of Justice has assigned two attorneys from the Criminal Division to analyze all information gathered by the labor investigators to determine the potential for criminal investigation. Although I cannot indicate in open session whether any such decisions have, in fact, been made, if and when such decisions are made, additional Criminal Division attorneys, Assistant United States Attorneys in the various districts, and FBI special agents will be assigned to thoroughly investigate, where appropriate, using the grand jury, all allegations of criminal activity that arise from this investigation.

It is most important that prosecutors review this information at an early stage so that decisions can be made whether to pursue a criminal or a civil investigation and so that these decisions are made by assessing the full panoply of remedies, criminal and civil, and determining which would be the most helpful way to proceed.

Mr. Chairman, before being appointed Associate Deputy Attorney General, I was the Executive Assistant U.S. Attorney in the Southern District of New York and an Assistant U.S. Attorney for 5½ years. During that time, I have prosecuted, supervised, participated in and observed many complex investigations of sophisticated crime. I have seen many such investigations succeed mainly because Federal, State and local prosecutors and law enforcement agencies subordinate their chauvinistic instincts and cooperate freely and openly, keeping in mind the public good and not just the desire to gain publicity for themselves and their agencies.

I have, on the other hand, seen investigations of serious criminal activity harmed and, at times, irreparably prejudiced by law enforcement agencies acting unilaterally, without any assessment of the impact of what they are doing on the entire investigation.

This is too important an investigation to let that happen.

To his credit, Mr. Hutchinson realized these potential dangers at a very early stage and has done everything humanly possible to effect complete cooperation between the Justice Department and the Labor Department. I think he would agree with me that he has received the total support and cooperation in this endeavor of the Deputy Attorney General and of all those he and his staff have worked with in the Justice Department.

I do not mean to presume on this committee's function, but may I suggest it would be most appropriate pursuant to this committee's oversight responsibility, to satisfy yourselves with regard to this investigation which vitally affects the interest of so many citizens that each department and agency with responsibility for investigating Central States is fully and properly coordinating its efforts with all other departments and agencies.

I can assure you that this is being done at all levels of both the Labor and Justice Departments.

I can assure you also that within the Department of Justice, as in the Department of Labor, this investigation is a matter of very high priority and will receive total and complete support.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Javits.

Senator JAVITS. Speaking as a representative of the Department of Justice, you have heard the testimony of Mr. Hutchinson with respect to the investigation.

I would rather not go into all those questions with you.

Do you adopt his explanation of the factual relationship, the extent of the cooperation with the Department of Justice, to be what you would testify to if asked the same questions?

Mr. GIULIANI. Yes, Senator.

Senator JAVITS. You have heard the questions also as to the morale of the staff. Do you testify to the same thing he did as to the lack of influence in regard to their investigation?

Mr. GIULANI. I do not know of any adverse effect that the Secretary's reported comments have had on the Justice Department personnel working on the investigation.

Senator JAVITS. When you say any adverse effect, any material effect, there is no effect?

Mr. GIULIANI. I seriously doubt there would be any, Senator. Prosecutors generally try to avoid reading the newspapers and paying too much attention to what is said about them or others.

Senator JAVITS. Now, has there been any change in your instructions from the Attorney General with respect to this cooperation since the Secretary's remarks?

Mr. GIULIANI. No, sir. Absolutely not.

Senator JAVITS. None whatsoever?

Mr. GIULIANI. No.

Senator JAVITS. Has the Attorney General in any way talked to you about it?

Mr. GIULIANI. It has been discussed, yes, with the Attorney General and with the Deputy Attorney General.

Senator JAVITS. No change in instructions?

Mr. GIULIANI. Absolutely not.

Senator JAVITS. Or in the extent or degree of your cooperation with the Department of Labor?

Mr. GIULIANI. That is absolutely correct, sir.

Senator JAVITS. That is all I have, Mr. Chairman.

The CHAIRMAN. We have had a suggestion by both Secretary Usery and Mr. Hutchinson. It was really more than a suggestion.

We have learned that there are materials and activities and information that they have in pursuit of their investigation of the Central States Pension Fund that cannot be given to us in public session.

We can decide with a majority here that we will move to an executive session for the receipt of this material if we feel that the rules of the Senate that enumerate the bases for going into executive session have been met.

I believe this is the paragraph of authority for us to consider going into executive session. It is subparagraph 4 of rule 7, which says:

"The testimony to be taken at such meeting or meetings will disclose the identity of any information or law enforcement agent or disclose any information

relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interest of effective law enforcement.

Now, that is the grounds that impress me for our considering executive session from the testimony given to us by Secretary Usery and Mr. Hutchinson.

Senator JAVITS. Mr. Chairman, a parliamentary inquiry.

Do the rules require a vote?

The CHAIRMAN. A record vote is required on this.

Senator DURKIN. Mr. Chairman, before we get to that——

Senator JAVITS. Senator Durkin, as I understand, is not a member of the subcommittee, is he?

The CHAIRMAN. He is. After his baptism in OSHA, I think if he is not, he had better be made one. He is a member.

Senator JAVITS. If you will allow me just to move, so we can have it before us, and then we can discuss it.

Mr. Chairman, I move, pursuant to the rules, that after the completion of this hearing with the Department of Justice and Mr. Lippe, that the committee go into executive session for the purpose of hearing these witnesses on matters to which they refuse to testify in public session, and we can then determine whether or not they were right or wrong and go back into public session.

But, in the first instance, I move that we go into executive session.

The CHAIRMAN. Senator Randolph.

Senator RANDOLPH. I second the motion.

Senator DURKIN. Mr. Chairman.

The CHAIRMAN. Any discussion?

Senator DURKIN. I do not want to sound like I am reading late night spooky stories, but if we go into executive session, what assurance do we have that this room is secure? The fact that this hearing was going to be held in this room was publicized at least for one day.

My concern is that we not in any way compromise this long overdue investigation of the Central States Pension Fund.

Are we putting ourselves in a position to compromise evidence and possibly the case by setting the stage down the line for others in the Justice Department to have information about this case because of some intended or unintended leak?

I think if we are going to receive the type of data which may be prejudicial, we should make sure the room is secure as well as taking precautions with staff.

The CHAIRMAN. We have been in this situation, or somewhat similar situation before when we were in certain areas of our work on the Mine Workers' legislation and oversight of the Mine Workers' activities. I do not believe we faced any problem of adversely affecting the law enforcement being done by the Department of Justice. Yet, we were privy to information.

As a matter of fact, our investigation was the foundation for a considerable amount of the prosecution, and nothing to use the colloquial, leaked from this committee.

There is a procedure we can use if we decide that we will receive as a committee, matters in exceutive capacity. We could do it, as Senator Javits said, limiting the information to a need to know basis.

Senator DURKIN. Would you explain that?

Senator JAVITS. Senator Durkin, I have done it in other committees.

I thought the precautions we ought to take are the following: We ought to first, of course, deal with the committee staff. There we are jointly responsible.

Second, I thought we ought to limit each member who wanted another assistant here to one, only one, with the understanding that if there was any leak from that assistant, it would be a leak from the member. The member is absolutely responsible for that assistant.

To reassert what the chairman has said before, what I am saying now in this particular committee we are going to crack down on any leak and trace it down and hold the people responsible. There is going to be no spirit of camaraderie about letting these things go. That is if I can help it, and I can.

That is the best assurance I can give.

Senator DURKIN. As I say, I just do not want to see the investigation indirectly compromised. I suppose my problem is solved as long as the chairman and the ranking member are satisfied that all procedures and precautions have been taken to insure that the investigation will not even inadvertently be compromised.

It is sort of like the blind man feeling the elephant. We are not sure what we are up against. I do not know if we know what information we are going to receive. It maybe is relatively inconsequential. But if information is leaked defendants could be advised to take evasive action. I would hate to see us do anything that could lead to that situation.

Senator JAVITS. The Senator is absolutely right because information has already leaked. I believe that nothing has leaked from this committee.

The CHAIRMAN. Well, let us clarify that, Senator Javits. That deals with another matter altogether.

I mean, the number accounts of the IRS, certainly we had no knowledge of that. There was no leak here. We had no information.

Senator JAVITS. Nonetheless, the Senator is right in the precautions.

What I am trying to do is to see if we can construct a means to give the greatest assurance possible. If there is any disquiet about the room, it should be completely checked out with people that are competent to check it out so that when we do come back in executive session, there will be no suspicion on that score. Also, there is no reason why, if members are willing that the executive session cannot be confined to members only and committee staff only.

I generally do not like to be the guardian on that. Members are entitled to have at least one staff person present, and it is understood they are personally responsible for that person.

Senator DURKIN. Could I ask one further question? Maybe this shouldn't be discussed until we go into the so-called executive session, but what is the rule of this subcommittee? Are we going to be an oversight committee with respect to prosecutions resulting from this investigation?

The CHAIRMAN. The enforcement of the law that was drafted here.

Senator DURKIN. Does that mean that, if need be, we are going to become the oversight committee for the prosecution? In essence, are we becoming a superprosecutor?

The CHAIRMAN. I do not agree with you that this is a superprosecution, but having passed the law, and with its broad and profound application to society, we have an obligation to see whether the law is being effectively administered, and that is what we are doing here.

Obviously, everybody knows that charges have been made all over the place about the administration of this pension fund.

We have to find out to be satisfied that this is being investigated thoroughly, efficiently, and vigorously.

Senator DURKIN. Mr. Chairman, does the fact that we are meeting infer that the investigation is not being carried on?

The CHAIRMAN. On the contrary. We had a continuing review of the Department's inquiry for nearly a year, and only in an effort to know whether the law that we fashioned is working, does work, and we have learned a great deal here this morning.

Mr. Hutchinson has responded that we have fashioned the remedy and possibilities as broad as are needed to effectively deal with the proper administration of these pension funds.

I think prior to this the only major remedy was to withdraw the tax qualification which is Draconian—is that the word—Senator Randolph? Now we have various remedies.

Senator SCHWEIKER. Mr. Chairman, I just want to say that if we are really concerned about a secure room, I see there is a vote on, and being a former member of the Intelligence Committee, the Joint Atomic Energy room is swept every day, if it is available, we could reconvene in there and be secured instantly without having to wait on people with sweeping devices.

Senator PELL. Good suggestion.

Senator JAVITS. I think the Chair can be relied on as to arranging what is needed, and fix the time. I think what we need to determine now is one question—do we wish an executive session, who shall be permitted to be present. I think other members would like to know the view of the Chair.

Does it want the staff, or no staff at all? Does he feel——

The CHAIRMAN. Let me ask you this, Senator Javits, I think members who did not want to be part of this particular thing would not have to be, No. 1.

No. 2, those who feel, from the committee, who want to be, should be entitled to have a member of his staff to be with him, so it would be a member and one staff, as I would suggest it.

Senator JAVITS. With the member fully responsible for his own staff.

Senator PELL. If the member could not be there, could his staff member be there?

The CHAIRMAN. I would be hesitant to have it that way.

Senator JAVITS. That would not do it, Mr. Chairman.

The CHAIRMAN. As far as the timing of the executive session, it will have to be viewed in light of the Senate's schedule later today and tomorrow, and there is no necessity to proceed from here to executive session, in my judgment.

Senator RANDOLPH. Mr. Chairman.

The CHAIRMAN. The motion has been made and seconded.

Senator JAVITS. I asked for a rollcall.

The CHAIRMAN. All right, we will call the roll.
The CLERK. Senator Randolph?
Senator RANDOLPH. Aye.
The CLERK. Senator Pell?
Senator PELL. Aye.
The CLERK. Senator Nelson?
[No response.]
The CLERK. Senator Hathaway?
Senator HATHAWAY. Aye.
The CLERK. Senator Mondale?
Senator MONDALE. Aye.
The CLERK. Senator Durkin?
Senator DURKIN. Aye.
The CLERK. Senator Javits?
Senator JAVITS. Aye.
The CLERK. Senator Schweiker?
Senator SCHWEIKER. Aye.
The CLERK. Senator Taft?
Senator JAVITS. Vote by proxy.
The CLERK. Senator Stafford?
[No response.]
The CLERK. Mr. Chairman?
The CHAIRMAN. Aye.
The CLERK. Unanimous.
The CHAIRMAN. Unanimous vote.

We will recess now, and Mr. Lippe, I think we can conclude this part of the testimony, the public portion, and we will vote and return.

[Short recess.]

The CHAIRMAN. Can we come to order?

We now have to be very brief, because there will be another rollcall.

We announced Mr. Lippe will be a witness.

Senator JAVITS. I requested, Mr. Chairman, that he be a witness. I have since been apprised of facts which induce me to withdraw that request in the interest of the investigation for the following reasons, and I ask unanimous consent that I be permitted withdrawal.

My reasons are these: One, Mr. Lippe is active in handling the investigation, and the minute he starts on the public testimony route it will chew up his time, as we so very well know, and I believe the highest priority must be the investigation.

Second: He is a man most intimately concerned with the investigation, and we must contemplate the possibility of criminal proceedings. I would not wish in any way to jeopardize the proceedings of the courts in respect to criminal matters.

Third, the Department, I understand, is agreeable to our asking for him in executive session if we feel we need him, and under all those circumstances, Mr. Chairman, I ask unanimous consent to be permitted to withdraw my request for the appearance of Mr. Lippe as a witness.

The CHAIRMAN. That certainly is agreed to.

Senator Durkin had a question of Mr. Giuliani.

Senator DURKIN. Yes.

Mr. Giuliani, in response to a question by Senator Javits you stated that there were no adverse effects moralewise as a result of the Secre-

tary's appearance in Las Vegas, as far as the Justice Department is concerned. Did you detect any adverse effects on the Labor Department's participants?

Mr. GIULIANI. I did not mean to imply that I did. I have not perceived any adverse effect on anyone that is concerned with the investigation by virtue of the Secretary's remarks.

Senator DURKIN. As a member of the interdepartmental group, charged with a very serious responsibility, do you think the Secretary's appearance and performance at Las Vegas was proper?

Mr. GIULIANI. I do not really know that I am in a position to judge either the necessity for his appearance, or even his remarks.

All I can say—tell you, Senator, is I do not think it has any effect at all on our investigation.

Senator DURKIN. You do not serve at the pleasure of the Secretary of Labor?

Mr. GIULIANI. I certainly do not. I serve at the pleasure of the Attorney General of the United States.

Senator DURKIN. You are declining to comment on whether or not the actions of the Secretary in appearing and endorsing the president of the Teamsters were questionable?

Mr. GIULIANI. I am not declining to comment. I do not know whether my comments would be particularly helpful.

Officially, from what I can see, from my official position, the comments have had absolutely no effect on the investigation.

Senator DURKIN. How about the effect on the people scattered around this country that have serious questions about efficacy of the so-called Washington establishment?

Mr. GIULIANI. You want my personal opinion?

I think the Secretary's comments this morning are of much greater significance to me than some occasional remarks taken out of context that he made at a public gathering, and his comments this morning indicate to me, and I would think to the public, that he is firmly dedicated to doing what he has to do with regard to the Central States Pension Fund.

Senator DURKIN. You say that in light of his comments, that in view of that which transpired, and if the convention were held next Wednesday, he would still go and still make that same comment?

Mr. GIULIANI. Senator, I do not think he said the latter. He said that he would go, and I imagine he believes, and he can speak for himself, I imagine he believes that going to the Teamsters convention was in fact appropriate, and part of his responsibility as Secretary of Labor.

I do not know that he would make the same remarks again. I do not find the answer that he gave was particularly offensive, or in any way the kind of thing that would interfere with the investigation being conducted by professional prosecutors in the Justice Department, and lawyers, and career civil servants in the Labor Department.

I cannot imagine that that would in any way interfere with their conduct of this investigation.

Senator DURKIN. But you are not considering the impact of the people back home, who will be the ultimate jury?

Mr. GIULIANI. I do not know that I am any better able to do that

than anybody else in this country, to assess how other people are going to react to what the Secretary said.

I would hope that they would listen to, and pay attention to his remarks made this morning, and then assess the results of this investigation.

Senator DURKIN. Mr. Chairman, I have no further questions.

I would like to state clearly and unequivocally, so that there are no misconceptions that my questions this morning were jurisdictional in nature. I was questioning whether the most effective way to conduct a comprehensive investigation of the Teamsters was by the Permanent Investigations Subcommittee or this subcommittee. I accept your answer.

As an attorney, my second concern is that we exercise extreme caution so we do not compromise possible court proceedings 3 months, 6 months, or a year from now. This investigation is extremely important to an awful lot of people all across the country and we don't want to find out something we did purposely or inadvertently resulted in some prosecution being thrown out.

I think the task force in the interdepartmental group has a serious responsibility. I think this committee has a serious responsibility. The whole country is waiting for an awful lot of answers with respect to the Central States Pension Fund, the Teamsters Pension Fund, and the Teamsters themselves.

The CHAIRMAN. Very well.

This is going to conclude this first public session on our inquiry of the Departments involved.

As you know, we have voted to have an executive session for the information that cannot be given in public session. We will have it tomorrow morning at 8:30, and I am sure the security can be established for this room.

Mr. Hutchinson, Mr. Giuliania, and your staff are essential at that time.

If we feel that from that testimony it would be necessary to call Secretary Usery, we will advise you, Mr. Secretary. I do not believe it will be necessary tomorrow morning that you be here.

IRS would like to have expressed a desire to be represented, and have someone at the executive meeting. They are a necessary agency in the overall picture, and they will be here, too.

As far as our staff present, we have a limitation on the staff that can be part of the receipt of information from the IRS, and the staff members that will be present will be limited to the IRS authority, and an approved list that has been given them, and tomorrow morning at 8:30 we will go to executive session.[1]

[Whereupon, at 1:40 p.m., the subcommittee recessed, to reconvene at 8:30 a.m., Friday, July 2, 1976.]

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[1] The closed hearing of July 2, 1976, with questioning of witnesses from the Department of Labor and the Internal Revenue Service concerning their progress in the examination of the above hearing will not be printed for distribution.

APPENDIX A

The following communication from Mr. Charles S. Rhyne was introduced and made a part of the record at the Executive Session Hearing on July 2, 1976. Also appended are relative comments from Mr. Hutchinson and Mr. Lippe, and a statement from Mr. Fitzsimmons excerpted from a recorded interview.

RHYNE & RHYNE
400 HILL BUILDING
WASHINGTON, D. C. 20006
(202) 347-7992

CHARLES S. RHYNE
BRICE W. RHYNE (1917-1972)
COURTS OULAHAN
ALFRED J. TIGHE, JR.
DAVID M. DIXON
WILLIAM S. RHYNE
DONALD A. CARR
RICHARD J. BACIGALUPO
DENIS D. McKENNA
BARRY A. PONTICELLI

CABLE ADDRESS
CHASRHYNE

June 25, 1976

Honorable Harrison A. Williams, Jr.
Chairman, and
Honorable Jacob K. Javits
Ranking Minority Member
Senate Committee on Labor and
Public Welfare
United States Senate
Washington, D. C. 20510

Dear Senators:

Due to the enclosed story from the Washington Star, as well as four other "leak" newspaper articles (clippings from the past 2 days attached), I am, as counsel for the Central States, Southeast and Southwest Areas Pension Fund (Fund), writing this letter to inform you briefly of the Fund's cooperation with the Task Force investigation. In the course of depositions by the Task Force of the Fund's Trustees you can be personally certain that full and complete disclosure of all relevant facts will be made.

We are most anxious that, as the earlier press clipping seems to imply, you not pre-judge the efficiency and performance of the operations of the Fund. No business or Fund operates today as it did in 1955 when the Pension Fund was created, and neither does the Pension Fund.

Since 1973 when Mr. Fitzsimmons and the Trustees installed Daniel J. Shannon as Executive Director of the Fund, there has been a major program to complete updating and modernization of its operations and records. Its records on pensioners and truckers are now almost all computerized and by the end of this year all such records will be contained on computer tapes so modern and carefully prepared they will be second to none in the pension field.

I would be glad to send you complete descriptions of this modernization of the Fund's operations if you desire that information.

In these days of recession, inflation and similar troubles, I am not representing that everything is perfect in the Fund's operations. But I remind you that we have recently witnessed problems in banks, insurance companies, multi-nation corporations and other areas due to these problems.

I also do not want you to judge the Fund by its operations in 1955, but rather by its operations in 1976. When you have all the facts, I believe you will conclude that the Trustees of the Fund are making every effort to modernize the Fund's operations. I also believe you will be convinced that the Trustees are taking every prudent precaution in so investing pension funds as to insure that each pensioner's pension is as large as possible.

The Fund and its sixteen Trustees have consistently followed a policy of full cooperation with Federal and State law enforcement authorities. The Task Force is no exception and, in fact, President Fitzsimmons met with both the Secretary of Labor and the Attorney General of the United States to urge that the Task Force proceed with a complete investigation, offering the full cooperation of the Fund, their Trustees, Fund employees and full file disclosure of relevant records. The Fund is providing on-site facilities for the personnel of the Task Force at its offices in Chicago. Since January 19, 1976, when the investigators began their on-site review of the Fund's operations, there have been, at times, up to 20 Task Force auditors and lawyers at the Fund's offices in Chicago. The Fund has provided to the Task Force approximately 50,000 copies of Fund documents, not under compulsion, but pursuant to an agreement under 29 U.S.C. §1134 (a) (2). In addition, Fund Board minutes have been furnished along with minutes of Fund committees; Fund staff have been interviewed; the Fund has consented to examination of the records of those with whom it conducts business, especially the American National Bank, in Chicago, and many copies of papers relating to Fund accounts have been made there.

On May 21, 1976, the Task Force issued subpoenas to Fund Trustees compelling their appearance in Washington, D. C., both to testify and to produce documents from January 1, 1958 to the present, during the period June 2 to June 20, 1976, covering the time of the I.B.T. Convention.

After lengthy negotiations to achieve a reasonable postponement of these depositions, the Task Force has proposed a rescheduling of the depositions between Wednesday, July 7, 1976 and Monday, July 26, 1976. This arrangement was worked out to avoid this I.B.T. Convention conflict.

The fairness of the Task Force investigation is certainly cast in doubt by the enclosed articles from the New York Times, the Washington Post, the Washington Star and the Wall Street Journal, written by different writers but stating essentially the same charges. It is clear that these charges could only have originated from one source.

Due process of law means hearing both sides and considering the evidence presented by both sides before a decision is announced. Particularly is this true when a matter is highly controversial and greatly in dispute. Yet, here in the enclosed news items, which we understand have been distributed nationwide two weeks before the closed door hearings of the Task Force are schedule to start, it seems that the decisions they intend to make and the defendants they are aiming to charge are identified. This method of trial by media makes a mockery of every concept of justice embodied in our renowned Bill of Rights and Constitution. Either every person has these rights and these constitutional protections or none of us have rights. This method of trial by media violates express commitments which the Task Force made to the Fund in January and February of this year to conduct their investigation without leaks.

I protest to you this pre-judgment, this leaking to the media and this rendering of surmise and decision without a hearing of any kind and under circumstances where those who are being investigated have come forward with every record requested and have made their staff available for the answering of every possible question. That the "source" admits the outlandish claims made by the "source" may not be supported by evidence, since based upon "possible" over-valuation of real estate and other property, is a fact which in and of itself demonstrates a desire to secure a public judgment which is known to be unsupportable by any known evidence. This is not American justice by any standard known to the rule of law we honor as our rule of life.

We are pleased that you are monitoring the work of the Task Force because we do not believe that you Senator Williams, or you Senator Javits, have ever approved the method of procedure of trial by unsupported innuendo in the media by unknown sources and upon which judgments are now predicted upon evidence yet to be offered.

Regardless of the past as is stated above, Frank Fitzsimmons and the other seven Trustees who represent Teamster Union members and the other eight Trustees who represent owners of trucks have since the arrival of Mr. Shannon, as noted above, gone to monumental efforts to make the performance of the Funds the very best that is humanly possible. We would hope that you would use your influence and your record of fairness to insist that the Task Force hearings be conducted on evidence placed in the record from this point forth and under oath rather than the example here demonstrated of one-sided leaks by unsworn, biased, unknown sources who go to the media to achieve sensational headlines, while hiding behind that wall of secrecy so abhorrent to our Bill of Rights.

I am sending a copy of this letter to the members of the Task Force, and especially to Messrs. Lippe and Seidel, so that they will know of our protest of "leaks" of innuendo and our insistence that the Task Force's investigation be conducted without such "leaks" and without participation by the newspapers' "leaker."

I regret my inability to deliver this letter in person and to have the opportunity to discuss this tremendously important matter in person with you. I am leaving for Geneva to attend a 5-day Conference by the World's experts on refugees and to deliver a Bicentennial address at the request of Ambassador Francis Dale.

As I believe Senator Javits is well aware, I have devoted much of my pro bono publico time in recent years to improving, expanding and implementing the international legal protections for refugees. The enclosed pamphlet on International Refugee Law Day, one of our Geneva documents, should be of interest to you both due to your own interest in this all-important subject.

I will return July 1 and be available to see you at your convenience thereafter.

On behalf of the Fund and Trustees, I also would be happy indeed, to arrange for your personal inspection of the Fund's operations and facilities in Chicago, so that you may witness for yourselves the great strides the Fund has made, and is making, toward becoming a service organization second to none in its field. I believe you will find its computerized operations are the best in the pension field.

Sincerely,

Charles S. Rhyne

cc: The Honorable William J. Usery, Jr.
Secretary of Labor

cc: The Honorable Edward H. Levi,
Attorney General of the United States
Labor/Justice Interdepartmental Policy Committee:
James D. Hutchinson,
Administrator of Pension and Welfare Benefit Programs
William J. Kilberg, Solicitor of Labor
Rex E. Lee,
Assistant Attorney General, Civil Division
Richard L. Thornburgh,
Assistant Attorney General, Criminal Division
Samuel K. Skinner,
United States Attorney, Northern District of Illinois
Labor/Justice Joint Central States Task Force:
Lawrence Lippe, Director
Lester B. Seidel, Staff Attorney
All Fund Trustees
Daniel J. Shannon, Executive Director
William J. Nellis, Esquire

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Administrator of Pension and Welfare Benefit Programs
Washington, D.C. 20216

JUL 14 1976

Honorable Harrison A. Williams, Jr
Chairman, and
Honorable Jacob K. Javits
Ranking Minority Member
Senate Committee on Labor and
Public Welfare
United States Senate
Washington, D.C. 20510

Dear Senators:

This letter is pursuant to my statement during the recent hearings held by the Committee involving the Central States Funds investigation wherein I noted my strong disagreement with the allegations contained in a letter to you from Mr. Charles S. Rhyne dated June 25, 1976, a copy of which was forwarded to the Secretary of Labor, myself and several other Department officials.

From the first meeting the Department had with representatives of the Central States Funds, including Messrs. Fitzsimmons, Shannon, and their legal counsel on October 31, 1975, the Department of Labor has taken the position that it will not discuss the status or merits of this ongoing investigation. That position has not changed.

It appears to me that the recent flurry of media interest in the Central States investigation is the direct result of Mr. Fitzsimmons' June 17, 1976, statement in Las Vegas disclosing the fact that he and others were under subpoena. Although those subpoenas were in process for sometime, the Department did not confirm that fact until Mr. Fitzsimmons' announcement on June 17, 1976.

We never have, and we do not now wish to conduct this investigation in the media, and we reject Mr. Rhyne's innuendos to the contrary.

For your information, I am enclosing a copy of a reply to Mr. Rhyne's letter prepared by Lawrence Lippe, Director, Special Investigations Staff and Lester B. Seidel, Counsel, Special Investigations Staff.

Sincerely,

James D. Hutchinson

JAMES D. HUTCHINSON
ADMINISTRATOR

Enclosure

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Office of Employee Benefits Security
WASHINGTON, D.C. 20216

July 14, 1976

Charles S. Rhyne, Esquire
Rhyne & Rhyne
400 Hill Building
Washington, D.C. 20006

Dear Mr. Rhyne:

This is in response to your June 25, 1976 letter to Senators Williams and Javits, copies of which were hand-delivered to us. In your letter, among other things, you allege that the undersigned are responsible for various "leaks" to the news media concerning our investigation of the Central States Fund.

Your allegations are utterly devoid of factual basis. Indeed, we view the fact that you made such allegations, in the manner in which you did, as being merely a legal tactic used by attorneys wishing to divert attention from the substance of a controversy.

It has been and continues to be the policy of the Department of Labor and its Special Investigations Staff to conduct this investigation in a professional, nonpublic manner. The responsibility for the recent flurry of media interest in this investigation must be placed squarely on Mr. Fitzsimmons, who, in a statement made by him in Las Vegas on June 17, 1976, disclosed the fact that he and others were under subpoena. Although those subpoenas had been served during the period May 21-23, 1976, the Department did not disclose or confirm that fact until after Mr. Fitzsimmons' announcement on June 17, 1976.

It is neither appropriate nor necessary for us to respond in this letter to the other issues you raise in your letter. We are confident that the facts developed in and the way we are conducting this

investigation will speak for themselves at the proper time and in the appropriate forum.

Sincerely,

Lawrence Lippe, Director
Special Investigations Staff

Lester B. Seidel, Counsel
Special Investigations Staff

Excerpts from Tomorrow Show, with Tom Snyder, NBC

August 11, 1976

SNYDER: Mr. Fitzsimmons has reminded me that we have a little bit more to say here about the Trustees of the Central States Pension Fund and the matter of taking the Fifth Amendment. We didn't really fully discuss that.

FITZSIMMONS: I want to say to you that the Department of Labor has been investigating the C/S Pension Fund and presumably many other pension funds for several months pursuant to the mandate of the Employees Retirement Income Security Act. There is an agreement between the Fund Managers and the Labor Department Investigators that there will be no news leaks about the progress of the investigation until it has been completed. Now, the Labor Department has honored this agreement and I feel compelled to honor it also. Let me say that I personally have testified under oath for some eight hours before this committee and that the Fund's policy is to cooperate fully with the Department. Deviations, if any, from this policy are naturally dealt with properly and at the appropriate time.

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