the third week in April of each year as "National Coin Week"; to the Committee on the Judiciary.

By Mrs. COLLINS of Illinois (for herself, Mr. ANNUNZIO, Mr. KLUCZYNSKI, Mr. METCALFE, Mr. MURPHY of Illinois, Mr. ROSTENKOWSKI, and Mr. YATES):

H. Con. Res. 303. Concurrent resolution expressing the sense of Congress concerning the administration of a provision of the Federal Water Pollution Control Act; to the Committee on Public Works.

By Mr. FISH:

H. Res. 551. Resolution creating the Select Committee on the Cost and Availability of Food; to the Committee on Rules.

By Mr. HARRINGTON (for himself, Mr. BROWN of California, Ms. CHISHOLM, Ms. COLLINS of Illinois, Mr. EILBERG, Mr. HECHLER of West Virginia, Ms. HECKLER of Massachusetts, Mr. MITCHELL of Maryland, Mr. MOAKLEY, Mr. ROE, Mr. RONCALIO of Wyoming, Mr. RYAN, Ms. SCHROEDER, Mr. SEIBERLING, and Mr. STARK):

H. Res. 552. Resolution to amend the Rules of the House of Representatives to create a standing committee to be known as the Committee on the Central Intelligence Agency, and for other purposes; to the Committee on Rules.

By Miss JORDAN:

H. Res. 553. Resolution providing for the creation of congressional senior citizen internship; to the Committee on House Administration.

By Mr. HARRINGTON (for himself, Mr. MOAKLEY, Ms. ABZUG, Mr. BROWN of California, and Mr. DRINAN):

H. Res. 554. Resolution to investigate the involvement, if any, of the U.S. Government in the overthrow of the Allende government in Chile; to the Committee on Rules.

By Ms. HECKLER of Massachusetts:

H. Res. 555. Resolution creating a Select Committee on Privacy; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. McKINNEY:

H.R. 10406. A bill for the relief of Fillimana Colonaino; to the Committee on the Judiciary.

By Mr. VEYSEY:

H.R. 10407. A bill for the relief of Terry J. Kirkland, Thomas R. Rogers, Robert W. Lay, and Robert K. Bell; to the Committee on the Judiciary.

By Mr. WYATT:

H.R. 10408. A bill for the relief of L. B. & L. Logging Co.; to the Committee on the Judiciary.

By Mr. YOUNG of Alaska:

H.R. 10409. A bill for the relief of Bill Ray Co.; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

283. The SPEAKER presented a petition of the Board of Chosen Freeholders, Union County, N.J., relative to financial assistance to disaster victims; to the Committee on Banking and Currency.

SENATE—*Wednesday, September 19, 1973*

The Senate met at 9:15 a.m. and was called to order by Hon. DICK CLARK, a Senator from the State of Iowa.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

O God, our hope is in Thee, for Thou art our Creator, Redeemer, and Judge. Make us thankful for all Thy mercies, humble under Thy corrections, fearful to offend Thee. Work in our hearts a true faith, a pure love, an unfailing trust in Thee, zeal in Thy service and reverence in all that relates to Thee. May our passion for men proliferate more than our weapons, and may the power of love overcome all evil forces. May we labor with quiet confidence until our tasks are completed. Then grant us the accolade "Well done, good and faithful servant." Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 19, 1973.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. DICK CLARK, a Senator from the State of Iowa, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

Mr. CLARK thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, September 18, 1973, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PRESERVING GRIZZLY BEARS

Mr. MANSFIELD. Mr. President, I ask unanimous consent, in view of the importance of the question involved, to have printed in the RECORD a commentary by Mr. Lewis Regenstein which appeared in the Washington Post of September 11, 1973, under the title "Preserving Grizzly Bears," and a letter addressed to the chief of the editorial page of the Washington Post by Nathaniel P. Reed, Assistant Secretary of the Interior, under date of September 12.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PRESERVING GRIZZLY BEARS

(By Lewis Regenstein)

For centuries, the grizzly bear was the dominant animal of the West. But hunting, trapping, and government "management" programs are steadily pushing it to extinction.

The grizzly is North America's largest and most awesome land mammal—nearly 1,200 pounds of muscle, claws, and teeth, with gargantuan strength, lightning quick reflexes, and an insatiable appetite. When standing on its haunches, a full-grown grizzly may attain a height of eight to 10 feet. It is capable of sprinting at 30 miles per hour, and can kill a bull moose with one blow of its mighty paw.

Probably the strongest land mammal in North America, the grizzly is a highly intelligent animal as well, ranking near the chimpanzee on intelligence tests. Although the bear's high degree of intelligence has not been widely recognized, its ferocity has, and it has unjustly gained the reputation as an aggressive, dangerous animal.

Few if any, animals have been subjected to as cruel, intense, and unjustified persecution as the grizzly. Fully 16 different species and subspecies of grizzly have been slaughtered into extinction.

It was the invention of high-powered rifles that marked the beginning of the end for the grizzly. Steel traps—which often maimed or crippled the bears—and poisons were later added to help finish off the species. From 1937 to 1972, the U.S. Department of Interior claims credit for having shot, trapped or poisoned about 25,000 bears, a significant percentage of which were surely grizzlies.

At the present time, the outlook for the grizzly is bleak indeed. The Interior Department estimates that there are no more than 700-1,000 grizzlies left in the entire lower 48 states: about 10 each in Idaho and Washington: "a few" in Colorado; 300 in Wyoming; and 375–700 in Montana. Thus, in little more than 100 years, the white man has reduced the grizzly population from about 1.5 million to probably less than 800.

Until recently, the largest concentration of grizzly bears remaining in the United States was found in the ecosystem of Yellowstone Park. Although ostensibly protected there, the grizzly population of Yellowstone is seriously threatened by an extermination campaign (euphemistically called a "management" plan) being carried out by Interior's National Park Service (NPS).

The situation in Yellowstone is particularly tragic, since this is the last large refuge of the grizzly in the United States. In an effort to remove grizzlies from the garbage dumps at which they have become accustomed to feeding for almost 100 years, NPS—in a plan supported by Assistant Interior Secretary Nathaniel Reed—precipitously closed down the dumps, instead of gradually phasing them out and luring the bears into remote areas. This not only disoriented the bears and threatened many with starvation, but also presented a danger to campers in the Park.

The bears that continue to frequent campsites and populated areas of the Park are shot by rangers. As a result, the death rate of the Yellowstone grizzlies in 1970–71 was double the birth rate, with 91 bears dying, more

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

than half the estimated Yellowstone population. And according to Frank and John Craighead, consultants to the Interior Department who are recognized as the world's foremost authorities on the grizzly, "The present NPS management program, if continued, will very probably exterminate, or nearly exterminate, the Yellowstone grizzly population in about 20–25 years."

But most incredible of all, the Interior Department has inexplicably removed the grizzly from its list of endangered species and refuses to reinstate it. Moreover, the U.S. Forest Service still allows hunting of grizzlies in the national forests of Wyoming and Montana, even though only small remnant populations remain there.

As far back as 1913, naturalist William Hornaday warned that the grizzly was becoming endangered, and pointed out that Yellowstone Park was the only area where the bear was protected. Now, in the last three years, even Yellowstone has been destroyed as a refuge. The grizzly bear is a part of our nation's wildlife heritage, the embodiment of wilderness, and a reminder of what early America must have been like. It is the most spectacular carnivore that walks the earth. If it is to have a place in the wildlife heritage of future generations, action must be taken now to save the grizzly.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., September 12, 1973.

Mr. PHILIP GEYELIN,
Editor, Editorial Page, Washington Post, Washington, D.C.

DEAR MR. GEYELIN: The National Park Service Bear Management Policy and Program for Yellowstone National Park has come under inaccurate and emotional criticism in the daily and conservation press.

It may be of help to your readers in finding their way through the recent rhetoric as exemplified by Mr. Regenstein's article of September 11 to outline in brief the status of the National Park Service Bear Management Program.

In September 1969, the National Park Service Science Advisory Committee composed of Dr. A. Starker Leopold, University of California at Berkeley; Dr. Stanley A. Cain, University of Michigan; Dr. Charles E. Olmsted, University of Chicago, and Sigurd Olsen, Ely, Minnesota, recommended the present policy of closing of the dumps in Yellowstone National Park and reestablishing a population of free ranging grizzlies in Yellowstone.

When I took office in May 1971, I was warned by some of America's best known biologists that I would be criticized by well-meaning bear lovers and the perpetual Park Service critics if I reaffirmed the policy. I was also advised that if I had the courage to follow through with the policy that after an initial loss of bears which could not adjust to living in a non-garbage dump ecosystem a healthy natural population would evolve that were free roaming, fully self sustainable and indeed wild. Frankly I do not consider that Yellowstone National Park, the mother park, should be the show place of garbage-dump bears. I reaffirmed that recommendation. This committee had the advice of Dr. Frank C. Craighead, Moose, Wyoming; Dr. John J. Craighead, University of Montana; Dr. Fredrick C. Dean, University of Alaska; and Dr. Albert Erickson, University of Minnesota.

By scrupulously removing human food from the bear's diet, through dump closures and through regulation of food handling in campgrounds, the bear-people interaction has been reduced considerably, and bear-people encounters have occurred only through the carelessness of people. As a matter of fact there appear to be more cubs this year than before; the population seems quite healthy and no bears have had to be destroyed this season thus far.

Due to the controversy, which Starker Leopold has called "one of the most complex and difficult biological decisions of our day," I fielded a study team consisting of a researcher from each of the Federal agencies involved in the Yellowstone area—the U.S. Forest Service, the Bureau of Sport Fisheries and Wildlife and the National Park Service. I assigned overall direction of this research team to Dr. Charles Loveless, Assistant Director of the Bureau of Sport Fisheries and Wildlife and Chief of Research. Dr. Loveless is recognized by his peers as an objective, honest and highly reliable researcher. The team is completing its first summer's work not only in Yellowstone National Park but in the adjacent lands of the Yellowstone ecosystem.

As further evidence that we are concerned and responsible managers of our Nation's wildlife resource, Secretary Morton requested the National Academy of Sciences to study the population dynamics of the Yellowstone grizzly population. This committee is under the chairmanship of Dr. Ian McTaggart Cowan, Dean, Faculty of Graduate Studies, University of British Columbia, and includes Dr. Douglas G. Chapman, University of Washington; Dr. Robert S. Hoffman, University of Kansas; Dr. Dale R. McCullough, University of Michigan; Dr. Gustave Swanson, Colorado State University; and Dr. Robert B. Weeden, University of Alaska. This study committee is charged with reviewing all the population data on the grizzly in Yellowstone area and determining insofar as possible the status of the grizzly population. This committee's findings and recommendations will be forthcoming later this year and will be made public by the Secretary. I look forward to receiving factual information on which to base policy from the field team and the National Academy's Review Committee.

The grizzly is not on the Endangered Species List. It is found in sizable populations in certain Canadian Provinces and Alaska. Its status in the lower 48 is far less encouraging as it takes literally thousands of acres per bear to provide the natural foods on which it exists. Man has invaded much of his former domain and man has been very hard on the grizzlies. Legal hunting seasons have been regulated by the states which still have grizzly bears to insure a continuation of this species.

I hope this reply indicates my personal concern and the Department's concern for one of the great American animals. It is time to put rhetoric aside and allow non-biased experts the opportunity of making their findings and appraisals available to us and the public. I am not interested in name callings. I am vitally interested in the Yellowstone grizzly bear.

Sincerely yours,

NATHANIEL P. REED,
Assistant Secretary for Fish and Wildlife and Parks.

FINAL AMERICAN TOLL IN INDOCHINA

Mr. MANSFIELD. Mr. President, lest we forget, I note in the most recent issue of the U.S. News & World Report, for September 24, 1973, a commentary entitled "Final Toll for U.S. in Indochina." I have not marked the list as to which State, on a percentage basis, had the most casualties in that ill-begotten, ill-starred, dreadfully tragic war, but I do note that my own State of Montana ranks among the very highest—third or fourth, I believe—on the basis of deaths per 100,000 population. The figure for my State is 35.2 percent. That is 35.2 percent too many. So far as all the States are concerned, it is 100 percent too many.

Mr. President, I ask unanimous consent that this story, which indicates that 56,371 Americans died in the tragic and unnecessary war in Indochina, and the accompanying tables, be printed in the RECORD.

There being no objection, the article and table were ordered to be printed in the RECORD, as follows:

FINAL TOLL FOR U.S. IN INDOCHINA

Now that the U.S. role in the fighting is over, it is possible to add up the final American toll of the war in Indo-China.

From Defense Department records:

Of the 56,371 American dead since Jan. 1, 1961, 6 out of every 10 were in the Army, nearly 3 of the remaining 4 were Marines. More than 60 per cent of those killed had been in uniform less than two years. More than 500 were recruits with less than six months of service when they fell. Fewer than 13 per cent had been in the military for more than five years.

As the accompanying charts illustrate, the largest number of deaths, 14,053, occurred among 20-year-olds, and 12 servicemen were only 17 when death struck. Of the total, 69 per cent were 21 years old or younger when they died; fewer than 8 per cent were 30 or older. Servicemen of the rank of private or corporal accounted for 69 per cent of the deaths.

The bulk of combat deaths, 39 per cent, resulted from rifle or other small-arms fire, and 2 out of every 10 deaths—a total of 10,306—were from accidents and other non-combat causes.

Defense officials estimate that 1 in 3 of those who died was a draftee. Some 12 per cent—7,192—of the Americans killed were blacks.

Still to be resolved is the fate of 1,249 servicemen who remain listed on official Defense Department rolls as captured or missing.

DEATHS IN COMBAT AND FROM NONHOSTILE CAUSES

By branch of service

Army	37,772
Marine Corps	14,621
Navy	2,323
Air Force	1,648
Coast Guard	7
	56,371

By rank

Officers	5,533
Warrant officers	1,227
Noncommissioned officers	25,044
Enlisted men	24,567

By cause of death

Death was from a variety of causes. Most common:

Enemy small-arms fire	19,498
Booby traps, other multiple fragmentation wounds	9,510
Grenades and mines	7,424
Aircraft crashes and losses	7,318
Artillery and rocket fire	4,880

By age

Age:	*Deaths*
17	12
18	3,093
19	8,246
20	14,053
21	9,660
22	4,765
23	3,461
24	2,609
25	1,961
26 to 30	4,091
31 to 40	3,761
Over 40	659

CASUALTIES, STATE BY STATE

	Deaths	Deaths per 100,000 population
Alabama	1,179	33.6
Alaska	54	16.6
Arizona	599	30.8
Arkansas	575	29.1
California	5,398	26.4
Colorado	597	25.3
Connecticut	583	18.9
Delaware	119	21.1
District of Columbia	235	31.4
Florida	1,886	26.0
Georgia	1,537	32.6
Hawaii	270	33.4
Idaho	204	27.0
Illinois	2,858	25.4
Indiana	1,496	28.3
Iowa	808	28.0
Kansas	599	26.5
Kentucky	1,032	31.3
Louisiana	863	23.2
Maine	328	31.9
Maryland	984	24.3
Massachusetts	1,290	22.3
Michigan	2,584	28.5
Minnesota	1,034	26.5
Mississippi	626	27.7
Missouri	1,366	28.7
Montana	253	35.2
Nebraska	383	25.1
Nevada	141	26.8
New Hampshire	216	28.0
New Jersey	1,428	19.4
New Mexico	389	36.5
New York	4,002	21.8
North Carolina	1,554	29.8
North Dakota	187	29.6
Ohio	2,999	27.8
Oklahoma	965	36.6
Oregon	678	31.1
Pennsylvania	3,045	25.5
Rhode Island	199	20.6
South Carolina	875	32.8
South Dakota	186	24.3
Tennessee	1,261	31.7
Texas	3,292	28.3
Utah	344	30.6
Vermont	98	21.2
Virginia	1,259	26.4
Washington	1,004	29.2
West Virginia	711	39.9
Wisconsin	1,128	25.0
Wyoming	116	33.6

Note: Population is U.S. Census Bureau estimate for mid-1972.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the minority leader desire to be recognized?

MEMBER OF PHILADELPHIA ORCHESTRA RETURNED HOME

Mr. SCOTT of Pennsylvania. Mr. President, I am very glad to report that working with a number of people we have been successful in our efforts to get a member of the Philadelphia orchestra out of the People's Republic of China to return home because of the tragic death of his 9-year-old daughter from leukemia. Mr. Phillips' departure is being expedited through the courtesy of officials in the People's Republic of China and officials in Washington and we are all grateful for that act of compassion.

NOMINATIONS OF U.N. DELEGATES

Mr. SCOTT of Pennsylvania. Mr. President, there are some names reported from the Committee on Foreign Relations having to do with the membership of our delegation on the United Nations. I have asked that those be held temporarily because I am informed that a quorum was not present at the time this action was taken. I think we should proceed in order in these matters. On behalf of the Senator from Minnesota (Mr. HUMPHREY) and myself we are very much opposed to the action taken by the committee. I did not know the action was going to be taken. I left the committee hearings at noon and I was not aware that this restriction would be imposed at that time. I blame no one; this is my own fault and certainly it is my responsibility.

I feel that the rights of ambassadorship to certain persons named should not be removed, particularly because the No. 3 person did have the rank of ambassador, but on being promoted to No. 2 the rank was taken away. This is an Alice in Wonderland procedure. I am not at all certain that that was the intent. At some point I wish to discuss this matter. I have not had a chance to talk to the chairman of the committee because this situation arose, or I was aware of it yesterday afternoon. But I hope we can arrange for the committee to recall these names in fairness to the persons involved because the action of the committee has been a great shock to them and it has vastly affected the morale of our delegation in New York. I hope the full committee will consider this matter carefully, because I do not believe this is the wish of the majority of the committee, if we can get it to a vote with the full committee present.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. SCOTT of Pennsylvania. I yield.

Mr. GRIFFIN. Mr. President, I join the Senator in his remarks. I, too, am a member of the committee and I happened to be present when the subject was discussed. I urged that, rather than seeking to establish this principle by taking action in connection with particular named individuals, that we proceed by considering some resolution that would apply prospectively in the future if there were a desire to limit the number of ambassadorships, after having hearings and after having established what is the practice and procedure in the United Nations so far as the counterparts of these people are concerned.

The minority leader is correct. The committee did proceed and vote the nominations out, without the rank of ambassador. There was a feeling that there was some need to move expeditiously because the United Nations now has assembled and has undertaken its work.

I hope that the action which the minority leader is suggesting, that there will be a followthrough quickly by the committee would be followed because it is important that our representatives there be confirmed as soon as possible.

Mr. SCOTT of Pennsylvania. I thank the distinguished Senator from Michigan. Can the Senator advise me whether at the time the action was taken a quorum was or was not present?

Mr. GRIFFIN. It would be my recollection that a quorum was not actually present.

Mr. SCOTT of Pennsylvania. I was not told the action would be taken. I understood the Senators suggested we debate this as a prospective possibility rather than sending a shock wave through our delegation in the United Nations. After all, we are all a part of the United States.

Mr. GRIFFIN. I also wonder about the parliamentary situation. The question arises in my mind as to whether or not in the exercise of our power of confirmation we can in this way actually change the scope of the nomination that has been sent to the Senate. It is not a question on which I have done any research but it would seem to me it would be up to the Senate to confirm or not to confirm a particular nomination and not change the scope or the titles involved.

Mr. SCOTT of Pennsylvania. I would think that if a man's name is sent up as Deputy Attorney General or Under Secretary of Defense, the committees in charge would hardly consider naming him as Assistant Attorney General or Assistant Secretary of Defense; and yet a committee has taken unto itself the responsibility of changing the designation of the appointees and the rank to be held.

Mr. GRIFFIN. Unless an office were established by law and then, of course, it could be changed by law.

Mr. SCOTT of Pennsylvania. Of course.

Mr. GRIFFIN. But not by action of the committee.

Mr. SCOTT of Pennsylvania. I thank the distinguished Senator.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar beginning with new reports.

The ACTING PRESIDENT pro tempore. The nominations on the Executive Calendar beginning with new reports will be stated.

INTERNATIONAL ATOMIC ENERGY AGENCY

The second assistant legislative clerk proceeded to read sundry nominations in the International Atomic Energy Agency.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

DEPARTMENT OF STATE

The second assistant legislative clerk proceeded to read sundry nominations in the Department of State.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

OVERSEAS PRIVATE INVESTMENT CORPORATION

The second assistant legislative clerk read the nomination of Marshall Tram-

mell Mays, of South Carolina, to be President of the Overseas Private Investment Corporation.

Mr. THURMOND. Mr. President, today we are considering for confirmation the nomination of Mr. Marshall T. Mays as President of the Overseas Private Investment Corporation. He has been associated with OPIC since its creation in 1971, serving with distinction as General Counsel and more recently as Acting President. Previously, from 1969 to 1971, Mr. Mays joined the Agency for International Development and began to reshape the AID program for private investors abroad into the program which was created by legislation 2 years ago.

He has done such a fine job as General Counsel at OPIC, displaying the characteristics of great talent and leadership, that he is now being proposed by the administration for promotion to President. The Nation has truly benefited by the outstanding services of this dedicated American, and his confirmation for the top job in the agency he serves will bring even greater rewards to our country.

Mr. Mays is a graduate of the U.S. Naval Academy and the University of South Carolina Law School and has done graduate work at Harvard Law School. Following service in the Navy, he engaged in the practice of general civil law and served for a time in the South Carolina House of Representatives. Mr. Mays has also rendered excellent service to a number of civic, charitable, and public institutions.

Mr. Mays is a man of immense ability and dedication, and his confirmation as President of OPIC will be a service to the country. I hope the Senate will promptly confirm him.

Mr. President, I ask unanimous consent that a more detailed biographical outline of Mr. Mays' career be printed in the RECORD.

There being no objection, the biographical sketch was ordered to be printed in the RECORD, as follows:

MARSHALL TRAMMELL MAYS

PERSONAL

Born 21 July 1924 Greenwood, South Carolina.

Married 5 June 1953 to Jane Brooks Marshall Mays.

Three sons, ages 13, 11, 9.

Religion: Episcopal, vestryman and warden.

Fraternities: Sigma Alpha Epsilon (social); Phi Delta Phi (legal); Omicron Delta Kappa (leadership).

EDUCATION

Public schools, Greenwood, South Carolina.

The Citadel, Charleston, South Carolina 1941–42.

U. S. Naval Academy, Annapolis, Maryland 1942–45, B.S.

University of South Carolina School of Law, 1947–50, LL.B.

Harvard Law School, 1950–51.

PROFESSIONAL

General civil practice of law.

Mays, Featherstone & Bradford, Associate 1951–52, Partner 1954–56.

Mays & Mays, Partner 1956–68.

University of South Carolina School of Law 1947–50; Editor in Chief, South Carolina Law Quarterly 1950; Wig and Robe (scholastic society); and Phi Delta Phi.

Harvard Law School 1950–51, special graduate student, Lincoln's Inn.

South Carolina Bar Association; Committee on Grievances 1956; Chairman, Special Committee on Revision of Corporation Law, 1960–62; Annual Review of Law, South Carolina Law Quarterly, Sections on Corporations and Partnership, 1957–60; and

Chairman, Committee to Study Revision of State Constitution.

American Bar Association: Section on Real Estate, Probate and Trust Law; Committee on Trust Law; Committee on Mortgage Law.

MILITARY SERVICE AND TRAINING

Midshipman, USN, 1942–45.

Ensign, USN, 1945–47, stations: USS Randolph (CV15); Staff, Commander Carrier Division SLX, Communications Watch Officer.

Lieutenant, USNR, active duty, 1951–54; stations: Staff, Commander in Chief United States Naval Forces Eastern Atlantic and Mediterranean, Communications Watch Officer and Legal Assistance Officer.

Staff, Commander in Chief, U.S. Forces, Europe, Foreign Military Rights Branch (negotiating bi-lateral agreements concerning status of forces with allied governments).

Lieutenant Commander, USNR, Commanding Officer, Naval Reserve Electronics Division 6–40, Greenwood, S.C., 1959–62.

National Resources Conference, Jacksonville, Florida 1957.

Industrial College of the Armed Forces, correspondence course, "Economics of National Security" 1960.

GOVERNMENT AND POLITICAL

Member, South Carolina House of Representatives 1958–60 (did not seek re-election).

Judiciary Committee.

Labor, Commerce and Industry Committee.

Special Committee to Investigate Insurance Rates (drafted report).

Co-author of legislation which reorganized S.C. Insurance Department.

Republican candidate for Lieutenant Governor 1966.

Alternate, Republican National Convention 1968.

Republican Coordinating Committee, Task Force on Crime and Delinquency 1967–68.

BUSINESS

Officer and Director of various closely held corporations.

Trustee, individual trusts approximating $750,000.00.

CIVIC

Junior Chamber of Commerce 1954–57 Distinguished Service Award, "Young Man of the Year, 1959".

Greenwood Chamber of Commerce, Director 1959, 1957–68.

Greenwood Rotary Club, 1955–68, Director 1957.

Advisory Board, Juvenile and Domestic Relations Court (Greenwood County) 1955–56 (initial board establishing court).

Board of Trustees, Greenwood City and County Public Library, 1957–58 (building committee for new library), 1967–68.

Director, Greenwood County Crippled Children Society 1954–56.

Greenwood Little Theatre, President, 1955; Director 1968.

Greenwood County Historical Society President 1959.

Cambridge Academy, Director 1968.

TRAVEL AND LANGUAGE ABILITY

United States and Canada; Caribbean; Mid-Pacific, Mediterranean, and Europe, Naval Service in Naples, Italy, Frankfurt, Germany, and Paris, France.

Casual knowledge of Italian and German, fair translation and interpretation of French.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is confirmed.

The second assistant legislative clerk read the nomination of Herbert Salzman, of New York, to be a member of the Board of Directors of the Overseas Private Investment Corporation.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is confirmed.

The second assistant legislative clerk read the nomination of Anthony J. Jurich, of Virginia, U.S. Negotiator on Textile Matters, to be minister.

Mr. MANSFIELD. Mr. President, for the information of the distinguished Republican leader, I think that this is worthy of note. We are overburdened with ambassadors nowadays, but to have a man appointed minister is, indeed, not something unusual any more. I just wish to note that we have at least one minister, not to a country, but with a title to go with his position as a U.S. negotiator on textile matters. I make that statement for the record. We have one minister I know of and we should have more ministers and fewer ambassadors.

Mr. SCOTT of Pennsylvania. If we are going to do this we should do it with full notice to the agency affected and after full debate. We should do it prospectively rather than to have the Committee on Foreign Relations sit as a committee on titles and let the committee decide who is going to have what title. We hear so much about executive privilege, we have legislative power and legislative privilege and I am very seriously in doubt as to whether the committee has the right to do this in the first place, and certainly the Senate has the right to reverse it if it wishes.

Mr. MANSFIELD. The rank of minister was not allocated by the Committee on Foreign Relations.

Mr. SCOTT of Pennsylvania. I am not speaking of the minister here; I am speaking of the ambassadors that I referred to in my previous remarks.

Mr. McGEE. Mr. President, reserving the right to object——

Mr. MANSFIELD. Mr. President, I am prepared to withdraw it.

Mr. SCOTT of Pennsylvania. No; we are not asking them to be withdrawn; we are just trying to get something on the record.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. McGEE. Mr. President, I withdraw the objection.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

INTERNATIONAL MONETARY FUND

The second assistant legislative clerk read the nomination of Arthur F. Burns, of the District of Columbia, to be U.S. Alternate Governor of the International Monetary Fund.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT; INTER-AMERICAN DEVELOPMENT BANK; AND ASIAN DEVELOPMENT BANK

The second assistant legislative clerk read the nomination of William J. Casey,

of New York, to be U.S. Alternate Governor of the International Bank for Reconstruction and Development, Inter-American Development Bank, and Asian Development Bank.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

UNITED NATIONS

The second assistant legislative clerk proceeded to read sundry nominations to the United Nations.

Mr. MANSFIELD. Mr. President, I ask that all the nominations to the United Nations go over.

The ACTING PRESIDENT pro tempore. The nominations will go over.

Mr. MANSFIELD. Mr. President, I ask that the President be immediately notified of the confirmation of the nominations.

The ACTING PRESIDENT pro tempore. Without objection, the President will be so notified.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

There being no objection, the Senate resumed the consideration of legislative business.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Oklahoma (Mr. BARTLETT) is recognized for not to exceed 15 minutes.

ABORTION

Mr. BARTLETT. Mr. President, the distinguished Senator from New York, (Mr. BUCKLEY) has, in his introduction of the human life amendment, dealt eloquently with the various aspects of the recent Supreme Court decision on abortion. As a cosponsor of the amendment, I add my voice to his and present my personal feelings on the Court's decision.

Though Chief Justice Burger says:

> Plainly the Court today rejected any claim that the Constitution requires abortion on demand.

The first and most important point to be observed is that the decision does pave the way for abortion on demand for the first 6 months of pregnancy or until viability. In the first 3 months, or first trimester, according to the Court, the abortion question is totally up to the woman and her attending physician. In the second trimester, the State may regulate, but not proscribe, the abortion procedure—and so for the second trimester, the decision of the pregnant woman and her physician is compelling. In the final trimester, the State suddenly takes on a "compelling interest" in the matter, and may proscribe abortion except "where it is necessary for the preservation of the life or health of the mother." But the Court then accepts a definition of health which includes "psychological as well as physical well-being," that is, "all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being" of the mother.

In other words, Mr. President, a woman now has a constitutional right to pursue the abortion of her unborn child if giving birth would be socially inconvenient, or would make her emotionally upset. The right to life is no longer a right, but is now dependent on the comfort and well-being of the mother. A human being is reduced to an expendable social convenience.

How did the Court arrive at such a position? It did so by a gross distortion of history, of the Constitution, and of the nature of man. Basically, the Court based the decision on its conclusions that abortion is historically neither wholly uncommon nor unlawful; the right of privacy includes the decision of a woman to terminate her pregnancy as she and her doctor desire; and the fetus, regardless of "potential" human status, is not a legal person and thus is not entitled to human rights.

Now it is true that abortion has been practiced, legally and illegally, throughout history. But slavery has been practiced throughout history, too. Should we, therefore, repeal the laws which proscribe slavery?

The Court was content merely to list periods in history where abortion was sanctioned, and thus saw only what it wanted to see. Justice Blackmun, for example, was impressed with the fact that "Roman law afforded little protection to the unborn."

Mr. President, our history is the story of a progression, though imperfect and unsteady, from barbarism to civilized society. Though the Romans were more civilized than other ancient cultures, they were barbaric in that they did not understand the sanctity and dignity of human life. And thus Seneca, the Roman philosopher, argued:

> Mad dogs we knock on the head; the fierce and savage ox we slay; sickly sheep we put to the knife to keep them from infecting the flock; unnatural progeny we destroy; we drown even children who at birth are weakly and abnormal.

This is the voice of barbarism, and in a society which accepted slavery, crucifixion, and the killing of newborn children, we should not expect the killing of a fetus to seem abnormal.

The Judeo-Christian philosophy, with its emphasis on human rights and individual freedom, emphasized the basic dignity and sanctity of human life. The Didache, an analymous Christian writing of the early second century, includes under the "second commandment of the teaching" the precept. "Thou shalt not procure abortion." And this precept has continued as a basic concept of our Western civilization for almost 2,000 years. The advancement of our culture, measured by the increasing recognition of the rights of the unborn, is evidenced historically in the increasing protection by law of unborn life.

Mr. President, the Supreme Court decision is applauded by some as "progressive," but in reality it is regressive, a throwback to the primitive and barbarian past when human life was without innate value. The Court's interpretation of history is one-sided, and this is documented in a comprehensive brief filed by the attorneys in the Byrn against New York City Health and Hospitals Corp. case which was on appeal to the Court at the time the Court handed down its decision on abortion.

Perhaps an even greater misinterpretation, Mr. President, is found in the Court's discovery of a constitutional right to privacy which includes the right of a woman to destroy her unborn child. Not surprisingly, there was much disagreement among the members of the Court as to where this right of privacy is situated—some found it in the ninth amendment; others found it in the first, fourth, or fifth, even the entire Bill of Rights. However, the majority "felt," to use its own language, that this right is contained in the 14th amendment's concept of personal liberty and limited government.

In order to find this right in the 14th amendment, the Court has had to totally ignore the expressed intent of the Framers. Justice Rehnquist in his dissenting opinion pointed out that at the time of the adoption of the 14th amendment there were 36 laws enacted by State or territorial legislatures limiting abortion, and he declared—

> The only conclusion possible from this history is that the drafters did not intend to have the Fourteenth Amendment withdraw from the States the power to legislate with respect to this matter.

Obviously, this also applied to the amendments adopted prior to the 14th amendment.

The intent of the framers, as pointed out in the Byrn brief, was clearly to—

> Protect every live human being regardless of age, stage, condition of wantedness.

Congressman John Bingham, who sponsored the 14th amendment in the House, stated that it was "universal" and applied to "any human being," and his Senate counterpart noted that the amendment covers "the humblest, the poorest, the most depised of the race." Even a cursory glance at history shows that the opinion and mood of the age were unquestionably opposed to abortion. Are we to assume, Mr. President, that the framers did not mean what they said? In the words of dissenting Justice White:

> The Court simply fashions and announces a new constitutional right for pregnant mothers and with scarcely any reason or authority for its action invests that right with sufficient substance to override most existing state abortion statutes.

Finally, after misinterpreting history and the Constitution, the Supreme Court has thrown both established scientific fact and commonsense out the window by declaring that the fetus is not a legal person and thus not entitled to human rights.

The Court is unequivocal on this matter:

> . . . The word "person", as used in the Fourteenth Amendment, does not include the unborn.

And they are aware that the validity of their case hinges on this point:

> If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life is then

guaranteed specifically by the Fourteenth Amendment.

Given these conditions, one would expect a thorough and cogent analysis. What is evidenced in the decision, however, is a jumble of illogic and confusion. The basic question to be resolved, before one can even begin to consider the rights of unborn children, is the issue of when human life begins.

But the Court chose to totally disregard this matter by saying:

When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer . . . We need not resolve the difficult question of when life begins.

Now, as a matter of fact, there is considerable agreement among scientists, biologists, philosophers, and theologians as to when human life begins. It begins at the moment of conception: when the ovum is fertilized by the sperm—forming that unique genetic organism called the zygote—fetus—which 7 days later implants itself in the womb.

But let us assume, for the sake of argument, the Court's uncertainty about when life begins. Now, when there is doubt about the possible effects of an action, commonsense dictates that one take the safer course. Thus, if there is a possibility that abortion is the taking of human life, one would naturally forbid abortion until the matter can be decided conclusively one way or the other. The Supreme Court, however, does not concern itself with the issue of whether or not abortion is murder. It closes its eyes to this all-important issue and, busying itself with sophistry, discusses only the purely legal issue of the definition of "person" in the 14th amendment.

Yet even this slender reed falls before the historical evidence which shows that the framers, in harmony with the common law and moral sentiment of their age, intended the 14th amendment to apply to unborn children. I quote from the Byrn brief:

The Framers intended that every live human being, every member of the human race, even the most unwanted, fall within the aegis of the Due Process and Equal Protection Clauses. History does not support the proposition that the Framers intended to exclude unborn children.

Moreover, from a strictly logical standpoint, the argument that the unborn child is not a human being or "person" and is not entitled to human rights is a manifest absurdity. A principal argument of proabortionists is that before birth the fetus is merely a part of the mother's body, like any other organ or appendage. Because it is common practice to remove an organ or appendage when it becomes dangerous to the mother, we are therefore asked to sanction abortion as we would sanction the removal of a gangrenous leg or diseased kidney. The extermination of a living being whose heart beats at 3 weeks, who moves after 6 weeks, and who by 12 weeks is sucking his thumb, swallowing, digesting, and urinating is to the proabortionist no different than an appendectomy. By virtue of its dependence on the mother for survival, then, the fetus is deemed an expendable part of the body.

While a mother may claim that a fetus is a part of her body, it is interesting that the umbilical cord attaching the fetus to the mother is produced by the fetus, and not by the pregnant woman.

But for months and years after birth the child is also dependent on the mother for survival. By the logic of the argument of whether the child is dependent on the mother, we could also exterminate newborn children and, by extension, the elderly and sick who are unable to take care of themselves. It is true that the fetus lives inside of a womb and a child outside—but why should this factor be at all relevant? Scientists and theologians alike agree that birth, the severing of the umbilical cord, is an arbitrary point in the development of the child.

The absurdity of this dependency argument becomes clear as we progress to its logical conclusions. The court assumes that birth is the point at which the child becomes a person. Is he not a person when one-third of the way out, as well as a person when two-thirds of the way out? Is the baby a human being which may be destroyed 1 second before birth begins, and a "person" possessed of inalienable rights 1 second after birth begins?

A guarantee of the conditions of life for a human being during the first 9 months are perhaps more important than those of any succeeding 9 months.

If a human being's life is terminated in the first 9 months, he is absolutely denied all of his inalienable rights and has no second chance to regain them—ever.

Mr. President, the Declaration of Independence states:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness.

The Supreme Court is apparently now prepared to say that some men are not created equal, and that the desire, convenience, health, or comfort of some give them the power of life or death over others. This value system, denying the inalienable right to life of an unborn child until some arbitrary state of development, is a shameful regression to the barbarism which ignores human dignity and value.

It is the mentality by which Stalin massacred millions of innocent Russian peasants, and Hitler exterminated millions of innocent Jews. And now, in our time, this doctrine is loosed with full force upon the most innocent of all beings: the defenseless unborn child.

What is there to say about a court which cares more for the life of a convicted murderer than the life of an unborn child?

Justice Douglas, in his concurring opinion, said that—

A woman may be deprived of a preferred life style and have forced upon her an "undesired future" because the vicissitudes of life produce pregnancies which may be unwanted.

Pregnancy is not some mysterious accident over which human beings have no control. I thought they were teaching in our high schools that sexual intercourse between a man and a woman causes pregnancy. He is saying that man is no longer a free and autonomous being, no longer capable of controlling his destiny so as to become a businessman, a doctor, a father, a farmer, a poet—that, stripped of dignity and responsibility, man is now a mere biological organism which floats passively on the tide of events, tossed about by the "vicissitudes of life." Given this view of humanity, it is inevitable that human beings should be reduced to expendable social utilities and conveniences.

Some will protest that to draw such implications from this Supreme Court decision is imprudent. I ask them to examine the wording of the Court's decision. The Court states that the unborn are not recognized by the law as "persons in the whole sense," and uses as a prerequisite for human status the criterion that one be "capable of meaningful life."

What does this mean? Quite simply, it means that human life may not have value; that it is subordinate to other considerations. What are such considerations? For instance, that the mother may have to—

. . . Abandon educational plans; sustain loss of income . . . (and) endure the discomforts of pregnancy.

It is for the "discomforts of pregnancy" that the Court is now willing to sacrifice innocent human life. The right to life is no longer an inalienable right, but a matter of chance.

Mr. President, as soon as one questions the value of human life, there is nothing in principle that prevents him from expanding the circumstance under which human beings may be exterminated. It is only a matter of degree to shift from the extermination of the fetus to the extermination of children with birth defects to the extermination of the elderly, the sick, the crippled, and others who are "less than whole persons."

Mr. President, one must always value human life. The right to life is not the gift of a state, a judiciary, or any other organization or individual. It is innate in the nature of man.

The decision of the Supreme Court is a direct attack on this fundamental human right. It is offensive not only to commonsense and established scientific fact, but to that precious moral tradition which is the product or ages of human endeavor—a moral tradition which has culminated in the American philosophy. It places the rights and liberties of each individual and all human life ahead of the state.

To hold that many of us can solve our problems only by killing others is a blow to human development and justice.

Mr. President, I urge my colleagues to join me in supporting the human life amendment. Nothing less is at stake than that respect for the dignity and sanctity of human life which is the prime characteristic of a free and civilized society such as ours.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its read-

ing clerks, announced that the House had passed without amendment the bills (S. 155) for the relief of Rosita E. Hodas and (S. 666) for the relief of Slobodan Babic.

The message also announced that the House insists upon its amendments to the bill (S. 1141) to provide a new coinage design and date emblematic of the Bicentennial of the American Revolution for dollars, half dollars, and quarter dollars, to authorize the issuance of special gold and silver coins commemorating the Bicentennial of the American Revolution, and for other purposes, disagreed to by the Senate; agrees to the conference requested by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PATMAN, Mrs. SULLIVAN, Mr. KOCH, Mr. MITCHELL of Maryland, Mr. BARRETT, Mr. GONZALEZ, Mr. YOUNG of Georgia, Mr. STARK, Mr. MOAKLEY, Mr. WIDNALL, Mr. WYLIE, Mrs. HECKLER of Massachusets, Mr. MCKINNEY, Mr. RINALDO, and Mr. RONCALLO of New York were appointed managers of the conference on the part of the House.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8070) to replace the Vocational Rehabilitation Act, to extend and revise the authorization of grants to States for vocational rehabilitation services, with special emphasis on services to those with the most severe handicaps, to expand special Federal responsibilities and research and training programs with respect to handicapped individuals, to establish special responsibilities in the Secretary of Health, Education, and Welfare for coordination of all programs with respect to handicapped individuals within the Department of Health, Education, and Welfare, and for other purposes.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senator from Tennessee (Mr. BAKER) be recognized for 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The remarks Senator BAKER made at this point on the introduction of S. 2437, dealing with a study of the reallocation of military manpower, are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

DEATH OF TOM VAIL

Mr. MANSFIELD. Mr. President, I wish to announce to the Senate that one of the officials attached to this body, Mr. Tom Vail, passed away last night. Those of us who knew Tom, who was general counsel of the Committee on Finance, had a great admiration for his capacity, for his integrity, his intelligence, and his sense of fairness. He was a gentle man; he was a good man.

I understand that the distinguished chairman of the Committee on Finance is at the present time visiting at his home and he left to go there as soon as he heard what had happened to a trusted confidant.

We will all miss this gentle, this good man, and we are very sorry to see him leave when he was really in the prime of life. May his soul rest in peace.

Mr. CURTIS. Mr. President, will the Senator from Wisconsin yield?

Mr. NELSON. I yield.

Mr. CURTIS. Mr. President, I thank my distinguished friend.

Mr. President, I wish to express my sorrow at the death of Tom Vail. Tom Vail was a very faithful public servant. He was knowledgeable in the field of taxation. He worked long and hard. He was faithful to his task. He was always courteous; he worked under stress, and sometimes there would be several Senators trying to get his attention or asking questions but his even temper helped him carry along. He was an eager man with an excellent mind.

Some months ago he was stricken with an illness and spent many months in the hospital. During that time he continued to be interested in his work. His conversation was cheerful and forward looking.

I wish to extend to his wife and his children and his other loved ones sympathy and our prayers that their faith will carry them through these days.

Our chairman, the distinguished Senator from Louisiana (Mr. LONG) called my home early this morning. I had already gone to another engagement when this note was passed to me. "Tom Vail passed away last night." It is signed by Senator LONG. I know that he would like to be here to share in these remarks at this time. However, as has already been stated, he is with the Vail family now. So in behalf of Chairman LONG and all the other members and former members of the Committee on Finance, I wish to express our deep concern and the offer of prayers to Mrs. Vail and the family.

Mr. BENTSEN. Mr. President, I wish to say a few words expressing my regret as to the untimely death of Mr. Tom Vail, chief counsel of the Senate Finance Committee.

Tom Vail served the Finance Committee with competence and dedication for almost 10 years. Tom's service with the committee was marked not only by his professional capabilities but also by his human qualities and his concern for others. He was a decent, compassionate man whom we all will greatly miss. I wish to extend my special sympathy to his wife and children and to his mother who resides in San Antonio, Tex.

Mr. TALMADGE. Mr. President, with the passing of Mr. Tom Vail, the chief counsel of the Committee on Finance, the U.S. Senate has lost an unselfish and dedicated servant.

Much will be said today and in the future about Mr. Vail's contributions in the development of legislation involving billions of tax dollars and affecting the welfare of millions of Americans. Much will be said about Mr. Vail's conscientious efforts to protect the Public Treasury and his heartfelt concern for the needy and the disadvantaged. Much will be said about the exemplary manner in which Mr. Vail discharged his duties as chief counsel and the loyalty and respect he earned and commanded from the Senators and professional staff of the Committee on Finance. Much will be said about Mr. Vail's devotion to his lovely wife, Nancy, his four children, his church, and his community. I will simply say that Mr. Tom Vail was my friend. He was the most capable and most dedicated public servant I have known.

Indeed, Mr. President, much will be said about the generous quantities of intelligence, vigor, integrity, and compassion with which our Maker endowed Tom Vail. These cannot be overstated but, somehow, words fall short of adequately describing all of the things Tom Vail was and what he meant to us.

However, let us never forget that because our Maker was generous in endowing Tom Vail with these qualities, He was also exceedingly generous to those of us who knew and worked with Tom. Moreover, He was generous to those whom Tom ultimately served—the American people, who have not known, but whose lives have been influenced by Tom's work.

We mourn his passing today, but we can take consolation in the fact that Tom Vail was with us and that he touched our lives in a very special way.

Mr. FULBRIGHT. Mr. President, I join my colleagues in expressing my sorrow at the death Tuesday of Tom Vail, chief counsel of the Committee on Finance, at the age of 45.

For 22 years he dedicated himself to the service of Congress and the American public and he excelled in his work. Since 1965 he had been chief counsel of the Finance Committee and it was in this position that I came to know him and to rely on him. Tom was always willing to be of assistance to me and to members of my staff, and he had a thorough knowledge of the diverse and important subjects with which the committee deals.

In addition to his exceptional professional ability, Tom Vail was exceptional on the personal level as well, a man who was not only well respected but well liked. He was truly an outstanding man and served well this Senate.

Mrs. Fulbright joins me in extending condolences to Mrs. Vail and the family.

Mr. BIBLE. Mr. President, it is with great regret that I learned today of the death of Thomas L. C. Vail, who served the Senate as chief counsel of the Senate Finance Committee. In my many years in the Senate, it has been my continuing impression that Mr. Vail stood on the very highest rung of the ladder as far as professional competence and service to the Senate and the public.

His modest character is indicated by his two-line biography in the Congressional Staff Directory noting his residence, his marriage, and the award of his LL.B. from George Washington University.

Although his time and counsel were sought from every quarter, Mr. Vail was never too busy to give some of these precious commodities to the improvement of the tax laws and tax proposals for small business. His good counsel contributed materially to the enactment of the Small Business Investment Tax Credit Amendment of 1966 and to the formulation of the Small Business Tax Simplification and Reform Act of 1973 which is now before the Committee on Ways and Means.

Thus, small businessmen all over the country owe a debt of gratitude to Mr.

Vail. Beyond this, his sterling qualities as a man and as a staff aide to the U.S. Senate have made this a better country. Our deepest sympathies go to his wife and children. I hope that they are comforted by the thought that we in the Senate will also miss Tom Vail very much.

Mr. FANNIN. Mr. President, it was with great sadness that I learned today of the death of Tom Vail, chief counsel of the Committee on Finance.

My colleague from Louisiana, Chairman LONG, paid an eloquent and fitting tribute to Tom Vail, and I certainly concur in these statements.

The Senate and the Nation has lost a valuable and dedicated public servant, a man of great warmth and firm principles.

As a member of the Finance Committee it had been my privilege to work with Tom Vail on many occasions over the years.

He had an immense knowledge concerning the many complex issues of vital importance to the American people which have come before our committee.

He was held in the highest of esteem by the minority as well as the majority members of the Finance Committee. Because of his expertise, his administrative ability, and his great integrity, we relied fully and confidently on his guidance regardless of our political philosophy or party affiliation.

He was a fine gentleman, and we shall miss him greatly.

I join the Senate in extending condolences to Mrs. Vail and their children.

Mr. ROTH. Mr. President, I join my colleagues on the Senate Finance Committee in my great sorrow at the death of our chief counsel, Tom Vail.

Though I am a new member of that panel, and knew Tom for only a brief period, I have a great appreciation for the reputation he leaves behind. As a truly professional staff counsel, he earned the respect and confidence of Senators from both sides of the aisle.

My very distinguished predecessor, John Williams, culminated his career as ranking minority member of the Finance Committee, and his admiration for Tom was profound. In my mind, no man could earn a higher recommendation.

Tom stood for, and achieved, the highest standards of nonpartisan ethics in his many years of service to the committee and to the Senate as a whole. His excellent example of careful thought and clear presentation is one we were proud to enjoy, and should be anxious to emulate.

My deepest sympathy goes to Tom's family, and friends who have lost so much.

I ask unanimous consent to have a statement by Senator WILLIAMS printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR WILLIAMS

Tom Vail was a highly respected and trustworthy public official. I had the privilege of working with Tom in his capacity as Chief Counsel of the Senate Finance Committee and I never knew a more dedicated public servant.

Tom was recognized by members of both parties as a young man of high integrity and his wise counsel on complicated problems coming before the Finance Committee was invaluable.

With his passing I have lost a personal friend and I extend my sympathy to all the members of his family.

Mr. MONDALE. Mr. President. I was deeply saddened to learn of the death last night of Tom Vail.

I was just appointed to the Finance Committee earlier this year, so my relationship with Tom was relatively brief. During that time I found him to be unfailingly able, professional, courteous, and fair. Even though Tom was seriously ill and in the hospital for much of this year, the committee staff continued to maintain the high professional standards that he set. That is a tribute to both him and them.

Tom will be sorely missed by all of us. I extend my deepest condolences to his wife and family.

Mr. HANSEN. Mr. President, I want to take this opportunity to express my profound regret at the passing of Tom Vail. I am familiar with the feelings and the sentiments held by every member of the Committee on Finance and those other persons with whom Tom Vail worked so closely.

Over the years, as the distinguished chairman of the Finance Committee well knows, Tom Vail was instructed to recruit a nonpartisan staff, a staff of professional people who were competent and who could be objective and provide the kind of information that would be most helpful to those in whose hands rest the responsibility of deciding many issues of extreme importance to this country of ours. As a member of the other party, I say to my distinguished chairman that I found Tom Vail to be extremely eager and desirous to discharge that responsibility. He had people who respected him and admired him just as much on the Republican side of the aisle as he was respected and admired by those on the Democratic side of the aisle.

Tom Vail was an unusual person. He had a great many interests. His knowledge and professional competence amazed me—that anyone could have taken the time to have learned so much in the relatively few years that he pursued problems of enormous proportions.

He was competent in any number of extremely complicated and involved areas of professionalism that would have been a worthy assignment for several people.

Tom Vail, though, will be remembered by his family as a devoted, kindly, and loving father and husband.

I am sure that his family must know how deeply cherished was his friendship by those of us on the Finance Committee.

I share the profound regret that has been expressed by my chairman, Senator LONG, in noting the passing of this very distinguished and dedicated public servant.

Mr. LONG. Mr. President, I ask unanimous consent that the following members of the staff of the Committee on Finance be accorded the privilege of the floor: Michael Stern, Jay Constantine, Robert Willan, Rose Marie West, Jeanne Abrams, and Helen Donelan; and from my office, Marsha Schramm; and from the joint committee staff, Larry Woodworth.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LONG. Mr. President, it is with a deep feeling of sadness that I take this time to inform my colleagues of the passing of Tom Vail, chief counsel of the Committee on Finance. Mr. Vail, who was well known to the Members of this body, died last night in Northern Virginia Doctors' Hospital at the age of 45.

It is no overstatement for me to say that Tom Vail was the most gifted and dedicated public servant I have encountered in my 25 years as a Member of the Senate. For a moment I would like to review the many contributions Mr. Vail made to the Finance Committee, to the Congress, and to this country.

When I assumed the chairmanship of the Finance Committee, the committee was virtually without a professional staff. The committee was relying primarily on external sources for staff support. Mr. Vail, who had joined the committee staff in 1964, represented the committee's sole professional staff member. My predecessor as chairman, the late Harry Byrd, Sr., father of the distinguished Senator from Virginia, had named Mr. Vail chief counsel in 1965.

It had long been my view that the Finance Committee should have its own individual professional staff in addition to these other sources of information and assistance. Upon assuming the chairmanship, I reappointed Mr. Vail chief counsel and directed him to recruit a nonpartisan professional staff to assist the committee in its work. Mr. Vail was uniquely qualified to undertake this assignment. From 1951 to 1964, he had been a member of the staff of the Joint Committee on Internal Revenue Taxation, a staff with a well-deserved reputation for professional competence in the field of taxation.

In the months and years that followed, Mr. Vail recruited such a professional staff. More importantly, he instilled in them a tradition of objectivity and professional excellence which became a valuable asset not only to the members of the committee, but to the Senate and to the Congress as a whole.

Tom Vail's great gifts as an administrator, however, are matched by his many contributions as an individual professional staff member. Over the years, Senators who were members of our committee, and Senators who served on other committees, came to rely on Tom Vail for advice and counsel in the many areas which fall within the Finance Committee's jurisdiction. Whether the subject was trade legislation, tax policy, medicare, or social security, welfare reform, the public debt, or even questions concerning the financing of political campaigns, Tom Vail possessed not only a tremendous reservoir of knowledge, but also an extraordinary ability to present policy issues for decision.

Let me give a few examples:

In 1965, the Congress established the medicare and medicaid programs and directed that they begin operation the following year. As might have been expected in the initiation of such large new programs, problems were encountered in their implementation. At the committee's request, and under Tom Vail's direction, the committee staff undertook a

year-long comprehensive study of the medicare and medicaid programs and prepared a staff report detailing the problems which were being encountered and suggesting alternatives for their solution. This staff report formed the basis for subsequent legislation to improve the administrative quality, and cost control in the medicare and medicaid programs. In this work Tom Vail made a very large contribution not only to the administration of these programs, but also to the health and well-being of millions of Americans.

Similar examples of Tom Vail's contributions to the legislative process and to public policy can be found in the fields of social security, welfare reform, taxation, trade and the other areas within our committee's jurisdiction. These examples illustrate Tom Vail's competence as a professional staff member and as an administrator with the committee staff, but also, I think, his unusual dedication to public service.

Mr. Vail's extraordinary value to the Finance Committee was not only his ability to master the technical details of legislation, but also his ability to present, in an objective manner, the questions to be decided in the context of our country's domestic and foreign policies. It was this unusual ability to take the broader perspective, as well as the depth of his technical knowledge, that earned Tom Vail the genuine respect of Senators of both parties, of the heads of agencies in the executive branch, and of other participants in the legislative process.

More important than his many professional achievements were the personal qualities Tom Vail brought to his daily dealings with other people. Tom Vail elicited the best in others. He was a leader, who led through personal example. He was a kind and sensitive man who fully realized that the work of the committee directly affects the lives of millions of people. Tom Vail was a man of generous, unselfish nature, a man who personally and professionally enjoyed the respect and admiration of all who knew him. Tom was a man of the highest moral character and his personal and professional integrity were without question. These were qualities which Tom never lost, despite the pain and anxieties brought on by his illness of the past 2 years.

His loss is mourned not only by the past and present members of the Finance Committee and of the Senate, but also, and more especially I believe, by the members of the committee staff who were privileged to serve under his leadership and to learn from his example. His untimely death tragically curtails a 22-year career as an outstanding employee of the Congress.

Mr. President, Tom Vail's recognized talents caused him to be sought after throughout private industry. He declined numerous offers of attractive positions in the private sector because he felt so strongly about the contributions he could make with the Finance Committee and, the Congress for the general welfare of the country.

Tom Vail was a loving husband and devoted father. He thoroughly enjoyed his homelife with his wife Nancy and their four children. This was most apparent in his conversations. His idea of an enjoyable weekend was camping and hiking with his family. He had a tremendous interest in young people and frequently took boy scouts on weekend trips to share with them his knowledge and love of the outdoors.

His loss will be felt not only by those of us here in the Senate but also by his many friends and neighbors who knew him so well. It has been said that the greatest legacy a man leaves to his fellow man is that of a shining example. Truly Tom Vail leaves that with all of us.

Mrs. Long joins me in expressing our deepest condolences to Mrs. Vail and to their four very fine children.

Mr. President, it took some doing to persuade the Department of Defense to make an exception to a recent regulation which restricted the number of former servicemen who could be interred at Arlington.

I am happy to say that just the day before Mr. Vail passed away, this consent from the Department of Defense, for Mr. Vail to be buried alongside his brother in Arlington, came through.

This is a fortunate circumstance, because those of us in the Senate, I am sure, will want to find ways to make Arlington Cemetery available to more of our dedicated public servants who have been excluded from Arlington by the pressure of circumstances in recent years. I believe there are ways we can meet that problem, and will.

In Mr. Vail's case, I recall him telling me that after the Civil War, the Reconstruction Congress had confiscated all the properties of Robert E. Lee and fearing that future Congresses might feel more kindly toward that former general of the U.S. Army and restore these confiscated properties to his heirs, they decided to make that a burial ground for Yankee soldiers.

Tom pointed out to me that while Congress did not have Robert E. Lee's interest at heart, no higher honor could have been paid him because many of the Nation's greatest patriots and servicemen, including former Presidents, were, in the future, buried there.

It is fortunate that we were able to obtain the cooperation of the Department of Defense so that Tom Vail can be there with a great number of other Americans who, likewise, gave far beyond the call of duty for their country.

Mr. President, I ask unanimous consent that the permanent RECORD remain open for a period of 2 weeks so that Senators who wish to extend their remarks in the RECORD, or make additional statement on behalf of Tom Vail, may do so.

The PRESIDING OFFICER (Mr. BURDICK). Without objection, it is so ordered.

Mr. LONG. Mr. President, I would like for the RECORD to show that present with us in the Chamber at this moment are Robert Hunter of my office, who did a great deal of work in collaboration with Tom Vail and worked so hard to make possible the interment of Tom Vail at Arlington. Also Wayne Thevenot of the committee staff who also had the privilege of working with Tom Vail for a number of years.

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The PRESIDING OFFICER (Mr. ABOUREZK). Under the previous order the Senate will now proceed to the consideration of the unfinished business, S. 4, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER. The pending question is on amendment No. 505 to amendment No. 497 by the Senator from Wisconsin (Mr. NELSON), which the clerk will state.

The assistant legislative clerk read as follows:

In title VII, on page 30, line 13, strike "$100,000" and insert "$60,000".

On page 47, line 22, strike $100,000" and insert "$60,000".

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. NELSON. Mr. President, amendment No. 505 is designed to put a ceiling on the amount of pension that may be supported by tax deductible dollars. The Senate Finance Committee bill provides first, that there is, for all practical purposes, no limit on a pension that may be paid to a corporate executive of an ordinary corporation as contrasted with a proprietary or closely held corporation.

More precisely the limit is 100 percent of his salary but, of course, there is no limit on salary of corporate executives. The Finance Committee leaves that aspect of the law alone. So the amendment that was reported by the Finance Committee does not affect or change the current law respecting ordinary corporations but it does set a $75,000 limit on pensions for the proprietary and closely held corporations.

Therefore, first, the bill discriminates against proprietary and closely held corporations as contrasted with General Motors and all other ordinary corporations. Secondly, I consider $75,000 limit on a pension paid out of tax-deductible dollars to be excessive. The question then is, What should the limit be? The amendment I have offered to the Finance Committee bill provides two things: First, it places a limitation of $45,000 on the pension that can be paid to anyone from tax deductible dollars; and second, the limitation applies across the board. It applies to professional or proprietary corporations—doctors and lawyers when they are incorporated; it applies to all other ordinary corporations, large or small. So the limit proposed in my amendment treats the largest and the smallest corporations exactly alike.

There have been many complaints in the tax law regarding pension discrimination against small businessmen. In order to make the tax code as equitable as possible and considering how much taxpayers' money we are giving away here, I think all corporations ought to be treated the same.

The second aspect of my amendment simply reduces the limit on the maximum

pension that can be paid. Instead of allowing 75 percent of compensation up to a maximum of $100,000—in other words, instead of a maximum pension of $75,000 a year—my amendment would provide for a maximum pension of $45,000 a year that could be paid by tax deductible dollars.

A feature common to this amendment and to the Finance Committee provisions is that a pension fund could be established by an older manager or by an owner of a business, say 55 years of age, and the business could still pay into the pension fund a sufficient amount of money to pay that 55-year-old executive a pension of $45,000 a year for him at age 65. The pension would have to be funded over a 10-year period.

I consider that to be certainly a very fine and adequate pension. If the individual is 45 years old. The corporation can put enough money in so that within 15 years the tax-deductible dollars put into the pension fund will be sufficient to pay that individual at age 65, a maximum of $45,000 in pension per year.

What we are talking about here is a very fundamental principle. How many dollars—tax-deductible dollars—should we allow to be set aside to pay pensions for highly salaried executives? That is the question.

One might argue that nothing should be set aside from tax-deductible funds, or $10,000 should be the maximum pension, or $30,000, or $40,000, or $75,000, or 100 percent of the final salary, which could go as high as $200,000 or $300,000 a year in pension.

I think $45,000 a year in a pension funded by tax deductible dollars is quite high enough, if not too high, but certainly it is a very fine pension.

Private pensions now cost the Treasury $4 billion a year. Some 40 million employees in this country are not covered by any private pension plan at all, but they are paying taxes and they have to pay taxes to make up the $4 billion Treasury loss from the part of the pension fund that is supporting high salaried executives, as well as middle income and lower salaried employees. If General Motors or IBM or IT&T or any of the rest of the great American corporations want to pay $100,000 a year or $200,000 a year in pensions, they are free to do so. We let them put in tax deductible dollars sufficient to pay up to $45,000 a year in pensions, and if that is not sufficient, if they consider the executive they have hired or desire to hire worth much more, fine. He may very well be worth much more money. But they ought to take that from money on which they pay taxes.

There are many people that corporations figure are worth more than $45,000 in pensions. I have a list here of random examples of pensions provided certain executives. Dow Chemical, for example, paying one of their executives an annual salary of $322,257, is making contributions which will allow him to have an annual pension of $157,400. I have no complaint about that as long as it is not a pension paid from tax deductible dollars in excess of $45,000. That is what the debate is about.

I would not like to be on a platform before any audience of American citizens and try to defend the use of tax deductible dollars to pay pensions of $137,000 a year. It is unconscionable to spend that amount of tax deductible dollars for pensions.

The whole tax structure is shot through with gaping loopholes, and this is another huge loophole.

No wonder the American public is losing confidence in Congress, in public officials, in the whole political system. If we allow this gaping loophole to remain, they will lose even more confidence in Congress.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator from Wisconsin has 18 minutes remaining.

Mr. NELSON. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CURTIS. Mr. President, I yield myself 10 minutes.

Mr. President, if I could have the attention of the distinguished Senator who has offered this amendment, I would like to ask him a few questions.

Would the Senator tell us what group would be affected by the Senator's pending amendment? Does it affect all corporations?

Mr. NELSON. Yes. In my amendment the maximum pension that may be paid to any individual is 75 percent of $60,000—75 percent of the highest 3 years of earnings computed against an income that may not be more than $60,000.

Mr. CURTIS. I understand what the figures are. My question is, To what corportations does the Senator's present amendment apply?

Mr. NELSON. All of them. It applies to professional corporations, proprietary corporations, closely held corporations—all corporations, large and small, are to be treated alike under this amendment.

Mr. CURTIS. I think there is a serious question about that. I believe the distinguished Senator's amendment does not affect any of the corporations that he alluded to with these high retirements. I believe that the Senator has amended that section of amendment 496 which deals only with some of the so-called smaller corporations.

Mr. NELSON. Mr. President, counsel advises me that the Senator may be right.

Mr. CURTIS. Yes. I think that the amendment we are being called upon to vote on would not touch any of those corporations the Senator has mentioned in his remarks. However, I would like to ask the Senator for some information.

Mr. NELSON. Mr. President, if it does not, we will amend it so that it does.

Mr. CURTIS. Mr. President, I would like to ask another question or two. Is it not true that wages and salaries paid in a business are tax deductible?

Mr. NELSON. The Senator is correct.

Mr. CURTIS. Mr. President, would the Senator regard a salary—whether it is low or medium or high—as tax subsidized due to the fact that it is deductible from gross income for the taxpayer?

Mr. NELSON. A salary is deductible, if it is reasonable in amount, because it is paid out to the employee and because under the tax laws this is classified as a deductible business expense. But in the case of amounts set aside for pensions which the amount is not currently paid over to the employee, the tax law in several respects limits the deduction. In the case of a professional corporation we are talking about a person, or group of persons, earning income for services performed, doctors, lawyers, or whatever they may be. So, the salary that that executive receives himself in reality is out of what would in any event be his own personal income.

Mr. CURTIS. Frankly, I know of no Nebraska complaint against fixing a limit perhaps even below the Senator's suggested figure for retirement because we do not have that kind of retirements.

However, I think the issue involved here is whether the Government shall embark upon a program of determining what retirement benefits shall be. If we say that pension contributions can be regulated because the contributions are tax-deductible, then it follows that the Government can put a ceiling on salaries because they are tax deductible. So, I think what we have to weigh is tolerating some abuses on the one hand that we propose the directors, in a sense proprietary and others, will or do something about embarking upon a policy of putting a ceiling on salaries.

Perhaps that should be done. I do not know. I am not advocating it. However, are we to say to our potential geniuses, whether they are 15 years old, 5 years old, 25 years old, that the Government of the United States is not going to have the sky as the limit, but that this is going to be the limit. That is the issue involved.

Mr. BENTSEN. Mr. President, would the Senator from Nebraska yield?

Mr. CURTIS. I yield.

Mr. BENTSEN. Would the Senator from Nebraska advise the Senator from Texas if it is not correct that if a justice of the Supreme Court who has been in the service of the Supreme Court and in Government service for 15 years can retire at age 65 and retire at full salary, $60,000, and the Chief Justice can retire at full salary, $62,500, the net result of this amendment would be to impose more restrictive limits in the retirement plans of private enterprise than are imposed on pension plans for retiring public officials?

Mr. CURTIS. I think the Senator has put his finger on something that is very important. Certainly the Government should impose on its own employees that which we impose on nongovernment employees.

If there is a ceiling on salaries for everyone else, there should be a ceiling for the President of the United States. There should be a ceiling for a President's widow. There should be a ceiling for the Justices of the U.S. Supreme Court. I believe their retirement would be beyond the ceiling contained in the Senator's amendment. There should be a ceiling for the members of the Supreme Court.

I thank my distinguished friend, the Senator from Texas, for bringing out that point.

Mr. BENTSEN. Mr. President, would

the distinguished Senator from Nebraska yield for another question?

Mr. NELSON. Mr. President, would the Senator yield for the purpose of my offering a correction to my amendment. Mr. Woodworth advises me that the Senator was correct in saying my earlier amendment omitted the feature which relates to covering all employees. This was an unintentional omission.

Mr. BENTSEN. Mr. President, I do not have control of the time.

Mr. CURTIS. Mr. President, I am happy to yield to the Senator for that purpose.

Mr. NELSON. Mr. President, I ask unanimous consent that the text of amendment No. 506 be added at the end of amendment No. 505. That will correct the error of omission which the distinguished Senator from Nebraska pointed out. If these two separate amendments are considered together, what I intended to do will be accomplished.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Wisconsin? The Chair hears none, and it is so ordered.

The amendment, as modified, is as follows:

In title VII, on page 30, line 13, strike "$100,000" and insert "$60,000".

On page 47, line 22, strike "$100,000" and insert "$60,000".

In title VII, on page 60, after line 17, add the following:

"(f) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS ON BEHALF OF CORPORATE EMPLOYEES.—Section 404 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan) is amended by adding at the end thereof the following new subsection:

"'(g) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS ON BEHALF OF CORPORATE EMPLOYEES.—Notwithstanding the provisions of subsection (a), no deduction shall be allowed for a contribution made for or on behalf of a corporate employee to or under a defined benefit plan or a defined contribution plan if the amount of such contribution or if the benefit provided under the plan exceeds the amount specified as an alternative limitation on deduction or benefits for proprietary employees in subsection (e) (4) and section 401 (j) (2), whichever is applicable'.".

Mr. CURTIS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CURTIS. Mr. President, in that event, would it be possible to call for a division and have a separate vote on each of the two parts of the Senator's amendment?

The PRESIDING OFFICER. The Chair will rule that the amendment is still subject to division because it was not asked by the sponsor of the amendment that it be considered en bloc.

Mr. NELSON. Mr. President, a parliamentary inquiry.

Mr. CURTIS. Mr. President, I yield for that purpose.

Mr. NELSON. Mr. President, I wonder about the ruling. Any amendment is divisible if it is a separate issue.

The PRESIDING OFFICER. The Senator is correct.

Mr. NELSON. Mr. President, that is the rule. It is not because this amendment was offered at this stage that it becomes divisible?

The PRESIDING OFFICER. No.

Mr. CURTIS. There may be some here who feel that the larger corporations, some of which were involved in the illustrations or examples cited by the distinguished mover of the amendment, should have a ceiling, but they are not ready to disturb the ceiling for the small corporations.

I do not know at this time whether I will call for a division of the amendment. However, there are two propositions to be considered here.

Mr. BENTSEN. Mr. President, would the Senator from Nebraska yield?

Mr. CURTIS. I will be happy to yield in a moment.

The PRESIDING OFFICER. The 10 minutes of the Senator have expired.

Mr. CURTIS. Mr. President, I yield myself 5 additional minutes.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 5 additional minutes.

Mr. CURTIS. Mr. President, I want the record to show clearly here that I am not speaking here in favor of any high, unreasonable retirement. I do not think that is the issue. I think that some of the retirement benefits are too high.

I think the issue is whether the Congress should undertake to put a ceiling on compensation. A retirement benefit is compensation.

If we are to assume that all money belongs to the Government, and therefore if something becomes tax-deductible it thus becomes a subsidized operation, if that is our premise, then we must assume that all income to a corporation belongs to the Government, and if the corporation pays out something in a salary and gets a tax deduction, that that is a subsidized salary.

Maybe we should have a ceiling on compensation. Conceivably, I could vote for it after there been a public hearing on the subject, and we go into it and have a formula presented here that would meet the situation and do justice. But there has been no hearing on whether the Government should limit compensation.

I yield to the distinguished Senator from Texas.

Mr. BENTSEN. Mr. President, I say to the distinguished Senator from Nebraska that I share his concern and that of the distinguished Senator from Wisconsin about excessive pensions with a tax-deductible feature; but I also have some concern that if we impose limits on the retirement benefits of company executives that are too restrictive we would encourage these executives to reduce retirement benefits for all employees down the line. We might thus have a rippling effect, and hurt the very people we do not want to hurt, the employees.

I think that is a matter of concern that we ought to carefully consider because the average, low-income man who works as an employee of a corporation is the very person who most needs an adequate retirement benefit and who we are trying to protect with comprehensive pension legislation.

Mr. CURTIS. I thank the distinguished Senator for his contribution. I believe also we should go into this with our eyes open. If we can place a ceiling on compensation for executives, we can place a ceiling on compensation for workers. It is entirely possible. Public sentiment might be mobilized in certain instances where the demands of a particular group of workers were considered excessive, unfair to consumers, and unsound public policy.

Are we to move in and regulate compensation by law? In raising that question, I repeat, I am concerned about the principle involved, and I am not speaking up in defense of anyone's retirement compensation that is excessive, unreasonable, or out of line with what it ought to be. I am raising some questions about what the right approach should be.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. CURTIS. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. Doesn't the present wage and price control program limit compensation? Mr. President, the distinguished Senator from Nebraska makes the argument that setting a limit on pensions somehow is not defensible. I would just like to point out, as the Senator well knows, that we are not setting a limit on pensions. General Motors or anyone else can pay pensions of $100,000, $200,000, or $300,000. What we are setting a limit on is the annual pension that may be paid for from a pension fund funded by tax deductible dollars. If employers want to pay more, let them just pay the taxes on their net income.

I am a little bit puzzled by the argument, because the Senator himself, in the Finance Committee, voted for exactly the same principle, except at the level of $75,000. The Finance Committee adopted a principle precisely the same as in this amendment, and the Senator from Nebraska supported it. The only difference was in the total amount of the limitation.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. NELSON. Yes, on the Senator's own time.

Mr. CURTIS. I introduced a comprehensive bill on this entire subject. It contained no limitations. The committee subsequently fixed a $7,500 limitation on small corporations, which I did not favor. The affirmative vote that I cast was to liberalize what the committee had already done.

Mr. NELSON. In any event, exactly the same principle is in the Finance Committee bill, setting a limitation on the amount of pension that can be paid from a pension fund funded by tax-deductible dollars. Furthermore the distinguished Senator from Nebraska makes the argument that the source provision should apply to Government employees as well as private employees.

So far as Congress is concerned and all Federal employees, except Federal judges whom Congress as a matter of policy and for reasons they thought sufficient treated differently, there is a maximum on pensions that can be paid to Federal employees. That maximum for Members of Congress is $34,000. You can have a pension of a maximum of 80 per-

cent of $42,500 after some 32 or 33 years of service. That is $11,000 less than the $45,000 limitation in this amendment.

So, in order to meet the argument of the distinguished Senator from Nebraska we would have to take my amendment and bring it down to $34,000. I also might point out the Federal pension plan is a contributory plan with Federal employees making contribution to their own pension with after-tax dollars.

The distinguished Senator rests most of his argument on the ground that we should not set a limit on salaries. I think it is a very fine argument, but it has nothing to do with this amendment, because we are not setting any limits on salaries. We are just simply saying we are not going to ask the working man, who is making $7,000, $9,000, or $12,000 a year, to make up the billions of dollars of deficit in the Treasury through supporting pensions of $137,000 a year. It is as simple as that.

You cannot have any system that is perfect, but I want to see anyone justify taxing a man or a woman who makes $7,000, $8,000, or $9,000 a year in order to pay some one else a pension of $137,000 a year. That is absolutely unconscionable, and I do not think it could be defended in any forum in America. The only reason that this injustice exists in our tax law is because it is so complicated that few ever figure out what is done, but the people are going to find out if I can get my voice heard, because I do not think anyone in his heart and soul can defend it. How much more do you want?

The PRESIDING OFFICER. Who yields time?

Mr. LONG. Mr. President, I ask the Senator from Nebraska, may I have a moment to speak?

Mr. CURTIS. I am very happy to yield my chairman some time. But, Mr. President, I think this is a rather important subject and I wonder whether, following the remarks of my chairman, we could have a quorum call with the time not to be charged to either side.

Mr. ROBERT C. BYRD. Mr. President, I am going to have to object to quorum calls today not being charged to either side. We did that all day yesterday. Over 4 hours remain on the bill. That time can be used.

Mr. CURTIS. Mr. President, I should like to plead a little bit with our distinguished leader. It is not a question of how many quorum calls we have or how much time we consume but the question of whether we carry on the legislative process. I rather think that Senators would like to know what they are voting on and would like to make some little contribution to this debate.

Mr. ROBERT C. BYRD. The distinguished Senator can charge time against the bill. He has ample time if he wishes a quorum call.

Mr. CURTIS. Mr. President, I yield to my Chairman such time as he desires.

Mr. LONG. Mr. President, the amendment offered by the Senator from Wisconsin is offered on the basis of tax equity and uniformity. As a practical matter, if we are talking about raising revenue from those who are able to pay in order to reduce the tax burden on the rank and file taxpayers, it is worth noting that, in any event, whether we take the Nelson amendment or the committee amendment, we are not going to raise enough money to wad a shotgun in terms of fiscal support of the government.

If we want to raise a large amount of money by reducing the deductibility or the nontaxability of the amounts deferred for pension funds, one would take the amendment which the committee agreed to in the first instance, which would reduce the amount that could be set aside and deducted for pensions for people in incorporated law practices, incorporated medical practices, owner-manager corporations, to about $7,500 a year. That is what the committee proposed in the first instance. Why is it not here now? That would raise about $125 million, which would partially offset the increased tax deferment proposed for self-employed people under the H.R. 10 type of retirement plan. One provision would raise revenue to partially offset the other.

But why did not the committee bring out the $7,500 limitation for proprietary employees of corporations? The reason we did not is that we heard so much protest and so much complaint from across the land, and so much expression of dissatisfaction addressed to Congress, including the committee, that we met a second time and decided we would not limit it to $7,500 for the reason that we did not think we could sustain it on the floor of the Senate.

So far as I am concerned, that was a rather pragmatic decision, to say that if we could limit the tax deferment to $7,500, let us see on what basis we could put a lid on it.

The provision regarding proprietary employees of corporations that we now bring to the Senate will not raise any great amount of money—just about $10 million—but we do limit the deferment to 75 percent of the first $100,000 of compensation, which means that a person could defer enough income to put into his pension plan to have a retirement of $75,000 a year.

One can say, "Well, that is a very liberal amount to let a person set aside." And it is. But, one should keep in mind that the alternative under present law would let him set aside any amount. A person could set aside $1 million a year toward his own retirement if he owned his own corporation, which offends us all, in the sense of tax equity and social and economic justice. So what the committee proposed was simply to place a limitation on the amount that could be set aside on the owner-manager corporations.

One could say, "Why do we not do the same thing with regard to large corporations?" The answer is that that is not where the problem exists. If the president of General Motors, say, wanted to set aside $1 million a year for a pension fund for himself, I am sure that many shareholders would file a shareholders' lawsuit on the basis that that was an excessive compensation for that officer.

In addition, he would also have to provide a similar retirement benefit for the other salaried employees, all of which would have to be approved by the board of directors and the shareholders at their meetings and they would have to pass on it.

In addition, when labor went to negotiate the next contract, they would insist on their retirement plan being brought in line for their wage employees to conform to what had been made available to the salaried employees.

So that, as a practical matter, it is conceivable that large corporations could do something like that. But, it cannot be done as a practical matter. The facts of life about large corporations do not permit any executive to set aside the entire earnings of a corporation in a retirement plan for himself. But where one owns 100 percent of the stock in a corporation, he can take all the earnings of his corporation and put them aside in a pension plan for himself and there is no shareholder to sue him.

So the abuses that could occur among owner-manager type corporations, incorporated law practices, and incorporated medical practices—things of that sort—caused the Finance Committee to say that there should be a limitation placed on it.

As I say, there was a tremendous amount of protest against what the Finance Committee had originally recommended, which we thought was equitable and would put the owner-manager type of corporations and incorporated law practices and incorporated medical practices on the same basis as self-employed lawyers and self-employed doctors. We were convinced that we could not sustain that position so we recommended the position that we thought we could sustain.

I have since been informed that the Association of General Contractors supports that recommendation of the committee. By no means all of the members of the association support it. Some have a more generous retirement plan which they will have to forego, or pay taxes on part of that money set aside for retirement, but they are willing to support the recommendation that we have here. That is about as good a cross section of small business as one can look to, generally speaking, the general contractors of the country. I suppose there will be a few who will complain about it—not a great number—very few.

Now what the Senator from Wisconsin wants to do is to go beyond what the committee recommended and reduce the amount that could be provided under "regular" corporate pension plans. I think that would serve very little purpose. The amount of revenue that would be raised is small, so that it would seem to me that if we are going to try to restrict contributions and benefits more than what the committee did, we should reserve that for some future date and consider trying to go back to what the committee recommended to begin with—that is, that one could not set aside more than $7,500 a year and make it tax exempt. But what the Senator recommends would raise little revenue. It would not achieve the objective already there, which is that there should be a lid on what can be set aside. It is a mere gesture in the direction that we might want to go at some future date when we get

a substantial reduction down to perhaps $7,500, which the committee recommended to begin with.

So, I say, very little would be achieved by the amendment. There is broad support now for the position the committee recommended and I hope very much that the committee position will be supported by the Senate.

Therefore, Mr. President, regrettably, I say that I do not feel I can support the amendment.

The PRESIDING OFFICER (Mr. HOLLINGS). Who yields time?

Mr. CURTIS. Mr. President, may I inquire how much time I have left on the amendment?

The PRESIDING OFFICER. Five minutes remain.

Mr. CURTIS. I reserve that time.

The PRESIDING OFFICER. Who yields time?

Mr. TAFT. Mr. President, will the Senator from Nebraska yield me 1 minute?

Mr. CURTIS. I yield 2 minutes to the Senator from Ohio.

Mr. TAFT. I thank the Senator.

Mr. President, I just want to raise a question for the purpose of clarification.

If we limit the permitted contributions to $45,000 for a top paid member of the plan, do we not limit the percentage of compensation that can be paid to all other members of the plan as well? Therefore, are we not in effect cutting back on the level of participation of all members of the plan? The Internal Revenue regulations as I understand, call for a like percentage contribution on all participants in the plan.

Mr. NELSON. The regulation is that you cannot discriminate against the highly paid employee. You may discriminate in favor of the low paid one.

However, as to the precise point raised, if an executive desires, under my amendment, to achieve a pension of $45,000, he can have a pension that is 75 percent of $60,000. In achieving that, he has to set aside a higher percentage for lower paid employees than if that percentage were applied against $100,000. It takes 15 percent of $100,000 to get $15,000. It takes 30 percent of $50,000 to achieve it. So if he is going to give the same percentage to everybody, the ceiling I have put on here is beneficial to the low paid employee.

The PRESIDING OFFICER. The 2 minutes of the Senator have expired.

Mr. CURTIS. Mr. President, I yield 3 minutes on the amendment and 2 minutes on the bill, a total of 5 minutes, to the distinguished minority leader, the Senator from Pennsylvania (Mr. SCOTT).

Mr. SCOTT of Pennsylvania. Mr. President, the difficulty with establishing categories, aside from being discriminatory, and the difficulty of establishing limits is the same, and that is a diversity of treatment of Americans, depending on the degree to which they have been able to climb the economic ladder and the degree to which they have been able to establish their executive competence.

For example, I am sure that any attempt here now to limit pensions of wage earners would immediately run into collective bargaining difficulties. Yet, it is argued that we can limit the pensions of one group of wage earners, but the limitations are different on the pension benefits of another group. Congress generally abhors discriminatory legislation, and I think it should be so here.

For example, in the search for talent in this country, people who are looking for executives engage in a highly competitive examination, and they also make competitive offers to the most talented executives in the country. Take the ball-bearing industry, where many of us are concerned with imports from abroad, which are a very considerable percentage—some 34 percent. I can conceive of the search for an executive of a ball-bearing company who is best able to cope with this whole import problem. What is he trying to do? He is trying to make ball bearings in America. He is trying to employ as many people as possible; 17,000 people have lost their jobs in this industry already, including the States of New Hampshire, South Carolina, New York, and Pennsylvania, and we are meeting on it. Other States are involved.

In this search for talent, these ball-bearing companies need the best executive they can find. Some are small companies, some are large. If they cannot offer him a competitive pension, they will not be successful in obtaining his services, because wages today in executive areas are not the whole consideration, as any employee will point out. It is the fringe benefits that are negotiated for in collective bargaining. It is the same with an executive. He negotiates for the fringe benefits. If we are going to say here that he cannot have the fringe benefits beyond a limitation, what are we saying to him? We are saying, "Don't take the job." I will tell Senators why.

I saw some statistics today on our own salaries. For anyone who earned $40,000 3 or 4 years ago, it is necessary to earn $52,500 today to stay even. Yet, there are Members of Congress who are extremely delicate about the question of increasing their own salaries, even though they have suffered approximately a $12,500 disadvantage in the economic race, because salaries have not been raised for 5½ years, and many people are afraid that the public will invoke all sorts of sanctions on them. So we go along here at the salary of $42,500, and that means that $53,000 or $54,000 is what we ought to have to stay even with where we were 3 or 4 years ago.

The same thing is going through the mind of the executive. If his pension is limited now in 1973 dollars, in 1977 and 1980 and 1983 he is going to have a great deal less in constant dollars. That is the trouble with dollar limitations of this kind. It should be left to the competitive operations of the market. Therefore I am opposed to the amendment.

The PRESIDING OFFICER. The 5 minutes of the Senator have expired.

Who yields time?

Mr. NELSON. Mr. President, how much time does my side have remaining?

The PRESIDING OFFICER. Ten minutes on the amendment.

Mr. NELSON. How much time remains on the bill?

The PRESIDING OFFICER. The Senator from Wisconsin has 67 minutes on the bill.

Mr. NELSON. Mr. President, I should like to make a brief response to the comments of the distinguished minority leader.

He objects to setting limits on pensions to be paid, and he objects to discrimination. The bill before the Senate, which was reported by the Finance Committee, sets a limit. The question is, What should the limit be? There are some, of course, who do not want any limit. But the Finance Committee bill says that the maximum compensation shall be 75 percent of the highest 3 years of earnings, not to exceed 75 percent of $100,000—therefore, a maximum of $75,000 a year. My amendment simply says that the maximum shall be $45,000 a year. So the principle in both bills is exactly the same.

On the question of discrimination, the Finance Committee bill does clearly discriminate. The Finance Committee bill sets the $75,000 limitation on pensions that can be paid, applicable to proprietary corporations, professional corporations, closely held corporations, but does not set that limit on General Motors or other ordinary corporations.

So, in one respect both measures are the same, in the sense that they both set a limitation throughout a different level. This amendment goes one step further and eliminates the discrimination in the bill between the various types of corporations.

I am really astonished to hear the arguments here that we have to allow unlimited pensions to be paid for out of tax-deductible dollars. There is no limit in this bill on deferred income that can be paid after retirement or on total amount of pension.

If they want to pay a pension of $100,000 or $200,000, they can do it. But they can only pay the first $45,000 out of a pension plan supported by tax-deductible dollars. That is what this is all about. Who in this country is getting this kind of break? The most affluent, the richest, the most privileged people are those getting the $100,000 pensions. Should middle and low income people pay taxes to support a deficit in the Federal budget caused by high pensions paid with tax deductible dollars? I think not.

This is the same old argument we have been hearing for years. Back in the thirties they talked about the trickle down theory of economics. The trickle down theory was the concept that if the privileged people in society are provided with great abundance the surplus crumbs will fall off the table and trickle down to the little people who will be greatly benefited thereby. I heard that discussed time and time again. I heard the theory explained at a picnic at Balsam Lake, Wis., back in the depression when the speaker discussed the theory to a large audience of farmers. He said the trickle down theory argues that "If you want to make the sparrows healthy and happy, feed the horses more oats."

Mr. CURTIS. Mr. President, I yield 5 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SCOTT of Pennsylvania. Mr. President, at some time in every debate we get into the trickle-down theory and we shed tears, crocodile tears over the damage we are doing to the poor people while we visibly conceal the protection we are affording ourselves. For example, the

$45,000 limitation—75 percent. Every Member of Congress is entitled to 80 percent but we say to the people in the country that Congress only gets 75 percent.

Mr. NELSON. Mr. President, will the Senator yield?

Mr. SCOTT of Pennsylvania. I know what the Senator is going to say. We make taxpaying contributions, and I agree, and we are worth every cent, I agree. On the trickle-down theory the Senator is worried about, the Chief Justice gets a pension of $65,000, the Justices get $60,000, the President gets $60,000, and the President's widow gets $20,000. Members of Congress, if they stay here long enough through the courtesy of their constituents, can get 80 percent of $42,500, which is $34,000.

Why does the Senator not make his proposal for $30,000 and penalize every Member of Congress $4,000. Then I will believe in the trickle-down theory.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. I yield myself whatever time is necessary.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. NELSON. Mr. President, it is a very interesting argument, but when the distinguished Senator gets to the end, what he is saying is that Congress is limited to a maximum of $34,000 even if a Member of Congress stays here for 40 years. My amendment allows $11,000 more to be paid in the private pension field than the maximum in Federal pensions.

I think this amendment is very generous. What this amendment will allow is a maximum pension of $45,000, which is $11,000 more than the maximum authorized for Federal employees except for the President and the Federal court.

Another factor I think is overlooked here is that one can start a pension plan at age 55 and fully fund it in 10 years to achieve a maximum of $45,000 per year in pension benefits. In other words you can put enough money, tax-deductible dollars, into that pension plan annually so that in 10 years, just 10 years, you can have a retirement pension of $45,000 a year. That is a sufficient amount to fund with the free dollars.

So we are saying to the corporate executive, "You can take out of your corporation, off the top, tax deductible dollars in 10 years, enough money to create a fund of about $500,000, all tax free so you can pay yourself a benefit of $45,000 a year." Is that hard in any way? I should think not.

If he wants to pay himself $100,000 let him take it out after the corporation has paid the taxes. That is what the argument is about. How far are we going to go? We agreed on a limit. It is in the bill. This is simply a lower more justifiable limit.

Mr. SCOTT of Pennsylvania. Mr. President, will the Senator yield to me for 2 minutes?

Mr. CURTIS. I yield.

Mr. SCOTT of Pennsylvania. Mr. President, the Senate is the greatest magic show in the world. We ought to charge admission because of what we are engaged in here is this act of prestidigitation—now you see it, now you do not. I expect to see my distinguished friend from Wisconsin pull more rabbits out of the hat, more canaries out of his pocket, and more silver coins out of the hair of his colleagues, because what his amendment proposes to do, it does not do, and the reason his amendment does not do it is simply because he forces those people who have to arrange the pensions to go the deferred payment or deferred income system, and it simply eliminates the pension plans of many people throughout the country. By the Senator's own admission this can be done any way but it would have to be done in deferred payments.

What we are trying to do is to bring about a workable system in which everyone can be enveloped who wishes to be in the system. Just as we Senators sit here, fat and high on the hog, enjoying the pension system, at the same time we would force these people into the deferred plan. It is magic; it is magic; it is red, white, and blue pinwheels; but it does not change what would happen in the long run except to force people into a different way of doing it.

Mr. TAFT. Mr. President, will the Senator yield to me for 2 minutes?

Mr. CURTIS. I yield.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. TAFT. Mr. President, I thank the Senator for yielding. I wish to comment on the reply of the Senator from Wisconsin a moment ago to the question I asked about percentages limitations. His reply was interesting and it was probably accurate under the current Internal Revenue regulations.

Mr. President, only one-half to one-third of the employees in this country today are covered by private pension plans, and the creation of such plans is entirely voluntary. Management decides whether to set up a plan.

If we add a provision which automatically reduces the compensation to the executives who set up the plan, I believe the practical affect will be to reduce benefits to all employees and discourage creation of new plans.

The percentage of compensation allowed to all should be the same. That is one of the incentives of such a plan. We are trying to increase the number of pension plans in this country. This amendment would decrease new plans being created and would decrease the possibility of benefits being increased under present plans.

Mr. CURTIS. Mr. President, I yield myself 5 minutes.

There are several observations I wish to make. Again I repeat that I am not here to defend excessively high retirement or unreasonable retirement income. I want to direct the attention of the Senate to what this amendment does and what it does not do, as well as the principle involved. A retirement benefit is part of the employee's compensation, and so this is a decision that involves placing of a ceiling on compensation.

Salaries and wages are tax deductible, just as a payment into the retirement fund is to the taxpayer. Both are compensation. So we embark upon fixing ceilings on compensation. It would also fix a limit below what the Government pays. It would affect the small corporations. The distinguished Senator from Wisconsin has not cited a single abuse. The list from which he read was of the larger corporations.

Also, some persons might gather from this argument that the head of a company can just go in and fix himself a retirement and get it all tax free, and that is that. Corporation management cannot do it unless they provide the same percentage for all of their employees covered under the plan.

There is only one exception. An allowance can be made for age in defined benefit pension plans. If there are older people in the company who worked long before it had a retirement system, more money has to be paid in than it has to be for the younger persons.

Even if one believed that we should embark on a system of limiting compensation, let us do it after a hearing. The distinguished Senator from Wisconsin is a member of the Committee on Labor and Public Welfare. They brought a bill in here. It did not have one line in it which made a limit. The Labor and Public Welfare Committee did not have a single witness to recommend such a limit. But the Senator proposes it. Somebody should hold a hearing.

Here is another thing: This amendment has already been doctored up once. It was first offered against the so-called smaller corporations, the professional and proprietary corporations. No abuses were cited there. They may exist; I do not know. It was amended then to include the others. Well, it needs a little more doctoring, aside from bringing Government pensions down.

The law business is pretty good in some places. I know of a referee in bankruptcy who had to beg around and look for some people, even though he was offering $30,000 to young lawyers starting out in that specialty. It is not unreasonable to expect that a young lawyer, aged 25, might establish an H.R. 10 system for himself and put in $7,500 a year. If he did that at 25 years of age and kept it up until age 65, do Senators realize he would accumulate $1,160,700? That would provide him an annuity of about $120,000 a year.

I am not here suggesting what a pension shall be. I am here suggesting that if we adopted the distinguished Senator's amendment, it would end up placing a ceiling on some people's retirement—less than 50 percent of what others could provide.

What does that mean? It means that if we are going to undertake this business, we ought to have a hearing. We ought to have something drawn that would be the result of the necessary legal research. The affected parties ought to be given a chance to present their case.

Maybe there is something to the theory expounded by the distinguished Senator from Pennsylvania (Mr. SCOTT), our minority leader, that we should call witnesses and ask them.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. CURTIS. Mr. President, I yield the floor.

Mr. NELSON. Mr. President, how much time have I remaining on the amendment?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. NELSON. I yield myself 5 minutes—3 minutes on the amendment and 2 minutes on the bill.

Mr. President, on the argument made by the Senator from Nebraska on the question of discrimination—that is to say, that no employer in this pension field can grab a big bundle for himself and discriminate against his employees—I think the Senator should know that under the law a doctor can contract for secretarial and other services and avoid employing many employees.

Mr. CURTIS. Mr. President, will the distinguished Senator tell us whether his amendment would cover a doctor practicing individually? It would not.

Mr. NELSON. He can incorporate.

Mr. CURTIS. But if he chooses not to incorporate, he will not be touched by the Senator's amendment.

Mr. NELSON. The Senator is absolutely correct; there is no argument about that. He is limited to $7,500 a year.

Mr. CURTIS. He can build up a $120,000 pension payment under that limitation.

Mr. NELSON. Yes, but to do that he must set aside $7,500 for something like 40 years. In the more normal period of 25 years for building up a pension at $7,500, he is able to retire at age 65 at about $41,000 a year.

Mr. CURTIS. Between age 25 and age 65, he can have $125,000.

Mr. NELSON. That may well be.

Mr. CURTIS. And the Senator's amendment would not touch him.

Mr. NELSON. No; I simply point out that he can incorporate; he can contract for the service; he can have even one employee or none. He can pay a very high salary, set aside 50 percent. He could have an income of $200,000. He can set aside $100,000, tax free.

He can then have a stenographer to whom he pays $9,000 and set aside 50 percent, $4,500, a magnificent tax loophole.

All I am trying to do is to provide some equitable limitation on what the taxpayer should have to pay to support tax plans for the affluent.

Mr. President, I assume that my time on the amendment has expired.

The PRESIDING OFFICER. It has.

Mr. NELSON. I am prepared to yield back the remainder of my time and to vote.

The PRESIDING OFFICER. All time has expired, unless the Senator desires time on the bill.

Mr. NELSON. No.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the amendment of the Senator from Wisconsin, as modified. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Alaska (Mr. GRAVEL) and the Senator from Michigan (Mr. HART) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is absent on official business.

I also announce that the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Wyoming (Mr. HANSEN), and the Senator from Ohio (Mr. SAXBE) are necessarily absent.

I further announce that the Senator from Oklahoma (Mr. BELLMON) and the Senator from Kansas (Mr. PEARSON) are absent because of illness.

The result was announced—yeas 32, nays 59, as follows:

[No. 395 Leg.]

YEAS—32

Abourezk	Fulbright	Metcalf
Allen	Hartke	Mondale
Bayh	Haskell	Moss
Burdick	Hathaway	Muskie
Byrd, Robert C.	Hughes	Nelson
Case	Humphrey	Pell
Chiles	Kennedy	Proxmire
Church	Mansfield	Stevenson
Clark	McGee	Symington
Eagleton	McGovern	Williams
Ervin	McIntyre	

NAYS—59

Aiken	Eastland	Packwood
Baker	Fong	Pastore
Bartlett	Griffin	Percy
Beall	Gurney	Randolph
Bentsen	Hatfield	Ribicoff
Bible	Helms	Roth
Biden	Hollings	Schweiker
Brock	Hruska	Scott, Pa.
Brooke	Huddleston	Scott, Va.
Buckley	Inouye	Sparkman
Byrd, Harry F., Jr.	Jackson	Stafford
	Javits	Stennis
Cannon	Johnston	Stevens
Cook	Long	Taft
Cotton	Magnuson	Talmadge
Cranston	Mathias	Thurmond
Curtis	McClellan	Tower
Dole	McClure	Tunney
Domenici	Montoya	Weicker
Dominick	Nunn	Young

NOT VOTING—9

Bellmon	Goldwater	Hart
Bennett	Gravel	Pearson
Fannin	Hansen	Saxbe

So Mr. NELSON's amendment, as modified, was rejected.

Mr. CURTIS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. LONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 506

The PRESIDING OFFICER (Mr. HOLLINGS). Under the previous order, the Senator from South Carolina is recognized to call up his amendment.

Mr. NELSON. No, under the previous order the other amendment of the Senator from Wisconsin is the pending business, by unanimous-consent agreement.

Mr. THURMOND. That is correct.

The PRESIDING OFFICER. Amendment No. 506 was combined with amendment No. 505 on the vote we just had.

Mr. NELSON. I call up amendment No. 506.

The PRESIDING OFFICER. Does the Senator from Wisconsin offer that amendment separately?

Mr. NELSON. Yes.

The PRESIDING OFFICER. The clerk will state amendment No. 506.

The assistant legislative clerk proceeded to read the amendment.

Mr. NELSON's amendment (No. 506) is as follows:

In title VII, on page 60, after line 17, add the following:

"(f) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS ON BEHALF OF CORPORATE EMPLOYEES.—Section 404 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan) is amended by adding at the end thereof the following new subsection:

"'(g) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS ON BEHALF OF CORPORATE EMPLOYEES.—Notwithstanding the provisions of subsection (a), no deduction shall be allowed for a contribution made for or on behalf of a corporate employee to or under a defined benefit plan or a defined contribution plan if the amount of such contribution or if the benefit provided under the plan exceeds the amount specified as an alternative limitation on deduction or benefits for proprietary employees in subsection (e)(4) and section 401(j)(2), whichever is applicable'.".

Mr. NELSON. I yield to the Senator from Montana.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on all rollcalls from now on there be a time limitation of 10 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. NELSON. Mr. President, now that the Senate has done its duty and taken care of the rich and the affluent with the defeat of the last amendment, let us adopt this amendment that at least says you cannot raid the Treasury for any more money than it takes to pay a $75,000 a year pension.

This amendment (No. 506) simply provides that the provision in the Finance Committee bill which says that pensions for closely held corporations and professional corporations are limited to a maximum of 75 percent of the highest 3 years of earnings, not to exceed $100,000 average earnings—in other words, the maximum is 75 percent of $100,000 that can be paid in pensions from funds supported by tax deductible dollars—shall apply to all corporations.

That limitation of $75,000 now applies to professional corporations and to closely held corporations, but it does not apply to any other corporations. So the limit that we place on the small corporations and closely held corporations does not apply to General Motors, Westinghouse, IBM, ITT, or any other major corporation in the country.

If we are going to allow a pension this high, let us set the limit to apply equally across the board. Heaven knows, if the Senate is prepared, as it has just demonstrated, to raid the Treasury and make the little people of this country pay taxes for pensions above $45,000, let us at least limit it to $75,000. That is all this amendment is about.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. NELSON. I yield the Senator from New York whatever time he needs.

Mr. JAVITS. Mr. President, this amendment goes to that part of the bill which is authored by the Committee on Finance rather than that part of the bill which is authored by the Committee on Labor and Public Welfare, which has been the special care of the Senator from New Jersey (Mr. WILLIAMS) and myself. Therefore I am not speaking for this one as manager of the bill with the Senator from New Jersey (Mr. WILLIAMS) on the side of the bill as it came out of our committee, but I am speak-

ing as an individual Senator. I shall vote for the amendment although I voted against the last one. I lay aside Senator NELSON'S heartfelt, I am sure, denunciation of our action allegedly favoring the rich. I consider it no such act whatever. I think that the vote on the last amendment simply shows that we realize it takes two to make an economic system—that is, labor and management; and that we do not want incentive taken away from management any more than we want incentive taken away from labor.

If his argument for the $45,000 should be a valid one, then we should go the way that Franklin D. Roosevelt the elder wanted us to go, that is, to limit all incomes to $25,000 a year, or maybe even less. The average yearly wage of the rank-and-file worker in this country today is something in the area of $12,000. Obviously, that is not done in this society. It certainly has not worked in any other society either. So that I think the Senator acted properly in what it did respecting an artificial roof on everything.

There are many other safeguards in the bill as to equality, nondiscrimination, limitation of tax deductibility, and so forth. But this particular amendment falls in a different category. For the Finance Committee has maturely considered this issue and has decided it is a fair limitation when applied to a given class—to wit, a participant in what is called the proprietary corporations. That has been a loophole in the law as contrasted with the limitation of $75,000 for the individual self-employed person. The Finance Committee, therefore, having come to a considered, factual decision on this issue, I think that the Senator from Wisconsin (Mr. NELSON) is right, that if the fact is it is a good decision for the proprietary corporations, then it is a good decision for other corporations as well.

So I hope that the majority of the Senate, laying aside whatever the Senator from Wisconsin (Mr. NELSON) has said about the rich and the poor, which is hardly calculated to win friends or influence people right now, considering the previous vote, will, nonetheless, look at the substantive objective of the amendment, which is justified and I shall vote for it.

Mr. LONG. Mr. President, will the Senator from Nebraska yield me 5 minutes in opposition to the amendment?

Mr. CURTIS. I yield to my distinguished chairman such time as he may need.

The PRESIDING OFFICER (Mr. HASKELL). The Senator from Louisiana is recognized.

Mr. LONG. Mr. President, the logic of this amendment is that in view of the fact we have set a limit on incorporated law practices, incorporated medical practices, and small business corporations at $75,000 for pensions for purposes of deductibility and tax deferral, the same thing should apply to General Motors.

So, here is the argument, then.

We say, well now, $75,000 a year for a pension should be as much as a man can defer for his retirement as in the case of an individual practicing law in the corporate form since we have even tighter limits on lawyers practicing law in a partnership. Similarly, we thought there should be some limitation on a doctor who has incorporated his private medical practice, since there are restrictions on doctors practicing outside of a corporation. Such a $75,000 limit is appropriate where the corporation is earning money largely for this man alone, or for a group similarly situated. However, the same limit should not apply to a man running a corporation and directing his activities toward the making of money for 5 million shareholders. In other words, just because a man working largely for himself is limited to a $75,000 pension for tax deferment purposes, the argument is made that same limitation should apply to a man making money for 5 million families in this country.

What kind of sense does that make? None at all. It would seem to me that we should be willing to let a man making money for many millions of people have a little more consideration than someone only making money for himself. Furthermore——

Mr. PASTORE. Mr. President, will the Senator from Louisiana yield?

Mr. LONG. In a moment.

Now, Mr. President, the Senator from Wisconsin has not cited the first case of abuse. We legislated with regard to the small business corporations, the incorporated law practices, and the incorporated medical practices, because we were familiar with abuses in a number of cases involving these situations. But with regard to the larger corporations, there has not been one case of pension abuse cited.

Mr. President, I hold in my hand a list which is a cross-section—and about the best that could be provided for us by the Treasury Department, because it comes from public sources—and I ask unanimous consent that the list be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

SOME COMPARABLE FIGURES FOR HIGHLY COMPENSATED EMPLOYEES IN CORPORATE PENSION PLANS

Corporation and name of officer	Annual compensation	Estimated annual retirement plan benefits	Benefit as percent of compensation
Columbia Broadcasting Corp.:			
Clive J. Davis	$122,885	$59,073	48
Harvey L. Schein	57,500	42,277	74
Dow Chemical Co.:			
Donald K. Ballman	190,120	88,000	46
C. B. Branch	322,247	157,400	49
Carl A. Gerstacker	184,698	94,800	51
Singer Co.:			
Lloyd L. Kelly	106,667	48,908	46
Donald G. Robbins, Jr.	99,792	55,249	55
R.C.A.:			
Anthony L. Conrad	154,167	119,687	77
Charles M. Odorizzi	70,000	44,093	63
Robert L. Werner	132,500	65,345	49
T.W.A.: C. P. Meyer, Jr.	67,800	32,434	48
Tenneco, Inc.: W. E. Scott	173,150	64,135	37
Union Electric Co.:			
Charles J. Dougherty	145,000	66,087	46
W. E. Cornelius	86,250	45,516	53
Loews Corp.: Lester Pollack	$70,055	$42,952	61
Western Bancorporation: Sherman Hazeltine	88,700	50,724	57
I.B.M.:			
Arthur K. Watson	113,904	50,000	44
Albert L. Williams	100,000	41,250	41
Raytheon, Co.: Thomas L. Phillips	231,131	101,391	44
Bell & Howell: Everett F. Wagnor	115,000	45,000	39
Allied Stores Corp.: Theodore Schlesinger	100,000	35,000	35
Abbot Laboratories:			
Charles S. Brown	82,431	36,048	44
George R. Cain	162,404	76,944	47
Edward J. Ledder	146,070	61,068	42
A.B.C.:			
Everett H. Elerick	157,200	41,699	27
Simon B. Siegel	49,948	33,110	66
Average		61,000	50

Source: From SEC filings selected at random.

Mr. LONG. Mr. President, Senators will note that on this list there are such corporations as the Columbia Broadcasting Corporation; RCA; Tenneco, Inc.; Raytheon; Bell & Howell; Allied Stores; Abbot Laboratories; ABC; Dow Chemical; Singer Sewing Machine Co.—it shows that the average pension retirement works out to $61,000, which is below the amount we agreed to that people in the incorporated law practices could provide for themselves.

Mr. PASTORE. Mr. President, will the Senator from Louisiana yield?

Mr. LONG. I yield.

Mr. PASTORE. I think that the Senator overlooks a very important point. It may be true, the chances are that the president of General Motors is working with people who work in factories making automobiles.

But why is it not just as important for Dr. Salk who makes serum that saves human lives?

What is the Senator doing, balancing automobiles against humanity? Doctors serve humanity. There may be another Dr. Salk who will create a serum to cure diseases, just as Dr. Salk created the serum that eradicated polio. Now you say to Dr. Salk, "You do not hire people. It is just you, one individual, with one brain. You are only serving yourself." The fact is that Dr. Salk is serving humanity, yet the Senator is saying that the president of General Motors deserves this benefit,

because he makes automobiles. That just does not make sense.

Mr. LONG. Dr. Salk, of course, is a very exceptional person and certainly has served humanity as few people have. Despite this, as far as his income is concerned, this serves Dr. Salk. Actually, I do not believe that Dr. Salk in his great work was motivated either by income or by a pension.

Mr. PASTORE. But the Senator will agree that he works for all humanity, does he not?

Mr. LONG. Of course, he has been serving humanity, but we are talking about a tax deduction for retirement reserves from the income of that man or any other man.

Mr. President, there are a lot of limitations that apply to large corporations that do not apply to individuals and there are limitations which apply to closely held corporations which do not apply to other corporations.

For example, if a corporate executive sets up a retirement plan which is excessive when viewed in conjunction with his salary any shareholder can take him to court and say that the combination is excessive. In addition, he has to provide the same kind of benefits for other employees so the retirement program is nondiscriminatory. Furthermore, when he goes to negotiate with labor, labor is entitled to take a look at that pension plan and demand the same thing for themselves.

Here is the list I previously referred to. I have placed it in the RECORD. Take a look at the names of the officers in these corporations. It may be that perhaps we should look into this thing and see if there should be some limitation on the corporate plans, but unless someone will produce one single example of abuse—just one—then I do not think, Mr. President, that we are justified now in legislating across the board with regard to a problem when, at a maximum, it may deserve further consideration.

Now, the largest proposed retirement allowed anywhere in this list would be for Mr. C. B. Branch of the Dow Chemical Co., at $157,000. The second largest proposed retirement on the list would be Anthony L. Conrad of RCA, at $119,000. But all these plans have been approved by not just the man who set it up for his benefit, but by the directors of the corporation; and every shareholder has a right to challenge it.

I submit, Mr. President, that any abuse in this area has not been demonstrated. Of the proposed pension retirement plans, the average for the executives of large corporations submitted to us by the Treasury Department works out to $61,000, which is less than the $75,000 which we would limit to incorporated law practices, incorporated medical practices, and small business corporations.

Mr. President, I submit that before we raise the taxes of people, it is only fair that those people be accorded a hearing, an opportunity to present their case, to tell their side of the argument, to make suggestions as to what they think would be fair and proper under the circumstances. It would be appropriate for the Treasury to have the opportunity to make its suggestions, as the Treasury would like to do. The Treasury has informed me that the problems that exist in this area are much greater and deserve much more consideration than those which exist with regard to smaller corporations.

So I hope that this amendment will not be agreed to.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. Mr. President, I am prepared to yield time to anyone who wishes to comment on the bill.

I suggest the absence of a quorum, and I ask unanimous consent that the time be charged equally against each side on the bill.

Mr. CURTIS. Mr. President, I object, and the responsibility has to be on the majority leadership. They have declined to let us have quorum calls with the time not to be charged, and I think they are wrong in doing so. Therefore, I am going to object. We have very little time.

Mr. ROBERT C. BYRD. Mr. President, on behalf of the majority leader, may I say that at the close of yesterday, 4 hours and 20 minutes remained on the bill. That is ample time, it seems to me, to allow for quorum calls. But if the Senator wants to object to an equal division of the time for a quorum, I suggest to the distinguished Senator from Wisconsin that he simply ask for the quorum out of his own time.

Mr. NELSON. That is generous of the Senator. [Laughter.]

Mr. President, I am the one who is being courteous to the distinguished Senator from South Carolina, on the other side of the aisle, and his side objects to the time being charged equally.

Mr. THURMOND. Charge it against my 2 hours.

Mr. NELSON. The distinguished Senator from South Carolina suggests that the time be charged against the remainder of the 2 hours he did not use yesterday.

Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time be charged against the remainder of the time on the amendment of the Senator from South Carolina.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll. The time will be charged against the remainder of the time of the Senator from South Carolina (Mr. THURMOND).

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

FEDERAL HOUSING POLICY—MESSAGE FROM THE PRESIDENT

The PRESIDING OFFICER (Mr. HASKELL) laid before the Senate a message from the President of the United States, which was referred to the Committee on Banking, Housing and Urban Affairs. The message is as follows:

To the Congress of the United States:

Six months ago, in my State of the Union Message on Community Development, I announced a sweeping study of Federal housing policy. I said then that its results would be used in formulating new Administration recommendations in this extremely important field.

That study has been completed—and my recommendations are ready. In keeping with the breadth of the issues involved in housing, both the study and my proposals cover a wide spectrum.

—Some of the actions discussed in this message are designed to ease the tight credit conditions in the current housing market.

—Others are intended to improve prospects for potential homebuyers to obtain mortgages over the longer term.

—Some of these proposals reflect my conviction that the housing needs of lower income families require a different approach than we have taken in the past.

—Still other actions are designed to meet other special needs and to update and improve current Federal programs which have been working.

The measures I suggest today can bring us closer to a long-established goal. As I indicated in my message last March, this Administration will not waver in its commitment to the objective of the Housing Act of 1949: "a decent home and a suitable living environment for every American family." While our Nation has made tremendous strides toward that objective in the quarter-century since it was first enunciated, those very strides have carried us into new terrain, presenting new problems and new opportunities. The nature of the challenge has been changing—and our response must change accordingly.

A PROUD RECORD

The housing record of recent decades should be a source of pride for all Americans. For example, the proportion of our people who live in substandard housing dropped from 43 percent in 1940 to only 7 percent in 1970. During the same period, the proportion of Americans living in houses with more than one person per room dropped from 20 percent to 8 percent and the proportion of our housing which is considered "dilapidated" fell from over 18 percent to less than 5 percent.

To be sure, these indicators are imprecise—and we need to improve the ways we collect housing data. But all of these measures, however crude, point to an inescapable conclusion: very substantial progress has been made in the housing field and the benefits have been shared by Americans of all races and economic groups in all regions of the country.

In recent years, housing production in America has reached unprecedented levels. The average number of housing starts in the last 12 months was more than double the average for the previous two decades and we expect the next 12 months to be another excellent year for housing.

The ability of our economy to provide vastly expanded housing has been one of the strongest indications of its fundamental vitality. Our people have been able to match their growing desire for housing with growing purchasing power. Our housing industry has been able to expand its production and update its product. And our credit institutions have been able to finance this massive wave of construction in a way which has enabled a broad cross-section of Americans to participate in its benefits.

The state of America's housing will continue to depend on the state of America's economy more than on any other factor. Specific policies aimed at housing can help. But—as our housing study concludes—the forces which will do the most to shape the future of housing in America will be the forces of the marketplace: families with sufficient real income and sufficient confidence to create an effective demand for better housing on the one hand, and builders and credit institutions able to respond to that demand on the other.

But even as good housing has become a reality for most Americans, it is clear that certain important problems still exist. Two are especially significant. First, we are facing certain problems in providing adequate housing credit—and we must move promptly to resolve them. Second, too many low-income families have been left behind: they still live in substandard, overcrowded and dilapidated housing—and we must help them meet their needs. This message and the legislation I will seek from the Congress focus primarily on these two challenges.

I. MAKING HOMEOWNERSHIP EASIER

Credit is the life-blood of housing. Without an adequate supply of credit repayable over an extended period of time at reasonable interest rates, very few families could afford to purchase their own homes. Nor could landlords either develop an adequate supply of rental housing or make it available at reasonable rental charges.

One of the most important actions the Federal Government has taken in the housing field was its decision in the 1930's to restructure our housing credit system. The introduction then of Federal insurance for low downpayment, long-term mortgages—first by the Federal Housing Administration (the FHA), and later by the Farmers Home Administration (the FmHA) and the Veterans Administration (the VA)—encouraged lenders to provide home mortgages on attractive terms to millions of American families.

At the same time, the Federal decision to insure savings deposits meant that billions of additional dollars began to flow into our banks and into thrift institutions, such as savings and loan associations. Other Federal policies led these instiutions to invest most of this money in housing loans, creating vast new pools of housing credit.

Although these systems have served us well for a long time, the need for improvement has become increasingly evident in recent years. More and more, we find ourselves facing either feast or famine with respect to housing credit.

When interest rates are relatively stable, we find that we have an abundance of mortgage credit available on reasonable terms, as was true in 1971, 1972 and earlier this year. Whenever interest rates move up rapidly, however, mortgage credit becomes extremely scarce. This occurred in 1966 and 1969 and it has been happening again in recent months. As a result, it has become more difficult for an American family to buy or sell a home. Even where credit is available, the combination of higher interest rates and higher downpayment requirements is pricing too many of our families out of the housing market.

Why does this feast or famine situation exist?

As I pointed out in my message of August 3rd on the reform of financial institutions, one principal reason is the fact that our thrift institutions are unable to compete effectively for depositors' funds when interest rates rise quickly. The problem is a structural one: savings and loan associations are now required to invest most of their deposits in residential mortgages, which carry fixed interest rates over long periods of time. When other interest rates rise rapidly, the interest rates on their mortgage portfolios cannot keep pace—and as a consequence neither can the rates they pay to their depositors. The result is that depositors often draw their savings out of the thrift institutions—or at least cut down their rate of saving—leaving the thrift institutions with much less money to invest in housing. I believe this special problem can be met through the recommendations I described in my message of August 3rd.

But structural difficulties are only part of the problem. A number of additional factors also help explain why mortgage money is becoming so expensive.

One major cause is the housing boom itself, which has led to unprecedented demands for credit—and rising costs for money. In addition, inflationary fears have influenced lenders to raise their interest rates as a matter of self protection. Finally, the Federal Reserve Board has been working to restrict the money supply in order to fight inflation. Such restrictions are important, for without them we might win the immediate battle in housing but lose the long-range war in the rest of the economy, including the housing field.

But even as we pursue a responsible monetary policy, we must avoid choking off the consumer credit which families require to meet their needs. That would also be dangerous to the economy. I am particularly concerned that the burdens of fighting inflation not fall unfairly on those who want to buy a home—or sell one.

We have a delicate and difficult balance to maintain. We cannot relent in the fight against inflation, which is our number one domestic problem. Nor can we expect to insulate housing from the effects of that effort. In fact, all of our measures to control inflation—including our efforts to hold down Federal spending—are essential in keeping down both the price of housing and the price of money in the long run. This requirement necessarily limits what can be prudently done to stimulate housing credit in the short run.

Nevertheless, there are some actions that can be taken on the credit front—and I intend to take them. In fact, we have already launched a number of efforts. The Committee on Interest and Dividends has instituted voluntary guidelines designed to encourage banks to keep up their levels of mortgage lending. The Federal Reserve Board has engaged in similar efforts. The Federal National Mortgage Association has stepped up its mortgage commitment and purchasing operations to free up funds for further lending. The Federal Home Loan Bank Board has lowered the reserve requirements for lending operations of its member institutions and has stepped up its advancement of funds to them.

I am today announcing a number of additional administrative actions and legislative proposals designed to do two things: first, to help alleviate the immediate housing credit problem; and second, to improve for the longer term the supply of housing credit and the ability of our people to use it.

EASING CURRENT CREDIT CONDITIONS

1. *Increasing the incentive for savings and loan associations to finance housing construction.*

As money has become tighter, savings and loan institutions have become increasingly reluctant to commit housing construction loans for delivery at future dates. The reason is their uncertainty as to whether they will have enough funds to lend then at the interest rates which exist now.

Accordingly, the Federal Home Loan Bank Board will authorize a new program of "forward commitments" to savings and loan associations, promising to loan money to them at a future date should they need it to cover the commitments they now are making. This authority will cover up to $2.5 billion in loan commitments.

2. *Providing interest rate assistance to Federally insured borrowers.*

The Department of Housing and Urban Development will also join in the effort to ease the current mortgage credit problem by reinstituting the so-called "Tandem Plan" under the auspices of its Government National Mortgage Association. Under this plan, the GNMA will provide money for FHA-insured mortgages at interest rates somewhat below the market level. To encourage new construction, only mortgages on new housing starts will be eligible for this assistance. Up to $3 billion in mortgages for new housing will be financed under this arrangement, making loans available at attractive rates to tens of thousands of American homebuyers.

3. *Increasing the size of mortgages eligible for Federal insurance.*

The Federal Government presently encourages lenders to put money into housing by insuring mortgages involving low downpayments and long repayment periods. The Government guarantees, in effect, that lenders will be protected in the event of a default on the loan. Such mortgage insurance, whether it is provided by the Federal Government or by private institutions, is particularly important in making mortgages available

to younger families and others who do not have enough savings to make a large downpayment or enough income to make the higher monthly payments that come with shorter mortgage terms.

The Congress periodically sets limits on the size of a mortgage loan which the FHA can insure and adjusts the downpayment requirement. The last time this was done was in 1968. Although realistic then, the current ceiling and downpayment terms are unrealistic in today's housing market. As a result, FHA insurance for multifamily units has been completely cut off and FHA-insured financing is impossible for any home purchase in a large and growing number of areas across the country.

To remedy this problem, I ask the Congress to authorize the FHA to insure larger housing loans on a low downpayment basis both for single and for multifamily dwellings.

Such a change would revive Federal insurance activity in areas where it has been curtailed. In addition, it would permit at least a partial resumption of housing loan activity in certain States where anachronistic usury laws impose interest ceilings lower than current market rates and therefore shut off mortgage lending. Many of these States exempt federally insured loans from such interest ceilings—which means that Federal insurance is a prerequisite for obtaining a housing loan in these jurisdictions. This makes it all the more important that the Congress act promptly on my proposal to expand the reach of our Federal mortgage insurance programs.

MAKING LONG-TERM IMPROVEMENTS IN THE CREDIT SYSTEM

1. *Permitting home buyers to pay market-level interest rates and still be eligible for Federal insurance.*

In an effort to hold down the cost of borrowing, the Congress has limited the interest rates which a home mortgage can carry and still be eligible for FHA and VA insurance. Unfortunately, setting the interest rate below market rates does not accomplish this intended purpose.

The reason is that lenders will simply not make their money available for housing at a lower rate than they can get from a comparable investment elsewhere. If the Government's interest limit for a mortgage is set below the general market level interest rate, the lender who still puts money into housing will supplement this artificially low interest rate by requiring a special additional payment. This payment—which is really prepaid interest—is made in a lump sum at the time the loan is made and is commonly called "points."

Although points are usually charged to the seller of a house, they are generally added to the selling price and thus are paid by the buyer just the same.

This practice can have a number of unfortunate side-effects. By raising the overall price of the home, points can also raise the size of the downpayment. Moreover, when the price of a house goes up, so does the cost of insuring that house, of paying property taxes on it and of making monthly mortgage payments. An added inequity arises when a home is resold before the mortgage term has run its course—which is the usual case. Since the points were paid to compensate the lender for what he would lose on interest over the full term of the mortgage, the lender can reap an unfair profit when the mortgage is paid off early.

In short, the ceiling on interest rates does just the reverse of what it was intended to do. To end this practice, I again urge the Congress to allow the FHA and the VA to insure mortgages carrying market rates of interest. This proposal would end the need for charging points; indeed, it would prohibit charging such prepaid interest points on these insured mortgages. Hopefully, those States which also have ceilings on mortgage interest rates will take similar action to eliminate their ceilings.

2. *Authorizing more flexible repayment plans under Federally insured mortgages.*

Many innovative changes in housing finance have been introduced by the Federal Government. It is important that we continue to pursue such innovation—and one area that is particularly ripe for new experiments involves the schedule for repaying mortgages.

To further such innovation, I will seek legislation permitting the Secretary of Housing and Urban Development to allow greater flexibility in repayment arrangements for Federally insured loans on an experimental basis.

One possibility which would be tested under this authority is that of gearing the level of repayments to expected changes in family income. Rather than making the same flat payment over the life of the loan, families would make smaller payments in the earlier years—when they are hardest pressed—and larger payments later on—when their incomes are higher. This provision could help younger families purchase homes earlier in life than they can today and it could help them make an earlier purchase of the home in which they will eventually live, rather than making frequent moves from one home to another as their incomes rise.

3. *Establishing a mortgage interest tax credit.*

As another means of ensuring a steady supply of housing credit, I will propose legislation which would allow investors a tax credit on the interest they earn when they put their money into residential mortgages. This proposal would make investment in housing loans more attractive in two ways: first, it would make them more attractive to those institutions which traditionally have provided mortgage money; and second, it would give organizations which pool mortgages a better chance to compete for funds in the so-called "secondary market"—from pension funds, insurance companies, various State institutions and the like.

Under my proposal, a tax credit of up to 3½ percent would be provided on interest earnings to financial institutions which invest a certain percentage of their investment portfolio in residential mortgages. The greater the proportion of the portfolio invested in mortgages, the higher the tax credit on interest earned by all the mortgages in the portfolio. When at least 70 percent of a portfolio was invested in mortgages, the tax credit on the interest those mortgages earn would be 3½ percent—the equivalent, at current interest levels, of an additional interest yield of more than one-half of 1 percent.

4. *Furthering the development of private mortgage insurance companies.*

Another significant proposal in the credit area concerns private mortgage insurance companies. These companies perform a function similar to that of the FHA, the VA, and the FmHA—they insure residential mortgages with lower downpayments and for longer terms than would ordinarily be available. However, the premiums they charge for such insurance are much lower than those of the Federal agencies. Such private mortgage insurance companies have become a significant factor in the housing market in recent years and we should encourage their continued development.

To help further this objective, I recommend that the Congress—along with the Administration—consider ways of allowing private mortgage insurance companies to purchase inexpensive Federal reinsurance. To this end, I will submit legislation which can provide a basis for this discussion. Such insurance would provide added protection to the owner of a mortgage and could speed the acceptance of private mortgage insurance, especially in secondary markets. It could thus make available even more sources of low downpayment, long-term home financing for prospective home buyers.

II. THE CHALLENGE OF LOW-INCOME HOUSING

Since 1937, the Federal Government has tried to help low income families by providing housing for them. Over the years, nearly $90 billion of the taxpayers' money has been spent or committed for public housing projects and other subsidized housing programs.

These programs have been particularly active during the past few years. Since 1969, the Federal Government has subsidized nearly 1.6 million units of new housing and over 400,000 units of existing and rehabilitated housing. These 2 million units will cost taxpayers an estimated $2.5 billion in each of the next few years and could cost us close to $50 billion altogether.

THE FAILURES OF FEDERAL HOUSING PROGRAMS

But what have we been getting for all this money?

Federal programs have produced some good housing—but they have also produced some of the worst housing in America. Our recent study makes this clear—and so does my own experience.

I have seen a number of our public housing projects. Some of them are impressive, but too many are monstrous, depressing places—rundown, overcrowded, crime-ridden, falling apart.

The residents of these projects are often strangers to one another—with little sense of belonging. And because so many poor people are so heavily concentrated in these projects, they often feel cut off from the mainstream of American life.

A particularly dramatic example of the failure of Federal housing projects is the Pruitt-Igoe project in St. Louis. It was nominated for all sorts of awards when it was built 17 years ago. It was supposed

to house some 2,700 families—but it simply did not work. In fact, a study of this project was published 2 years ago with the appropriate subtitle: "Life in a Federal Slum."

Last month, we agreed to tear down this Federal slum—every unit of it. Almost everyone thought it was the best thing we could do.

Pruitt-Igoe is only one example of an all too common problem. All across America, the Federal Government has become the biggest slumlord in history.

But the quality of Federally-assisted housing is by no means the only problem. Our present approach is also highly inequitable. Rather than treating those in equal circumstances equally, it arbitrarily selects only a few low income families to live in Federally supported housing, while ignoring others. Moreover, the few often get a *new* home, while many other families—including those who pay the taxes to support these programs—must make do with inferior older housing. And since recipients often lose their eligibility for public housing when they exceed a certain income level, the present approach can actually reward dependence and discourage self-reliance.

The present approach is also very wasteful, for it concentrates on the most expensive means of housing the poor, new buildings, and ignores the potential for using good existing housing. Government involvement adds additional waste; our recent study shows that it costs between 15 and 40 percent more for the Government to provide housing for people than for people to acquire that same housing themselves on the private market.

One of the most disturbing aspects of the current approach is the fact that families are offered subsidized housing on a "take it or leave it" basis—losing their basic right to choose the house they will live in and the place they will live. Too often they are simply warehoused together wherever the Government puts them. They are treated as a class apart, with little freedom to make their own decisions.

DEVELOPING A BETTER APPROACH

Leaders of all political persuasions and from all levels of government have given a great deal of thought in recent years to the problem of low-income housing. Many of them agree that the Federally-subsidized housing approach has failed. And many of them also agree on the reasons for that failure.

The main flaw they point to in the old approach is its underlying assumption that the basic problem of the poor is a lack of housing rather than a lack of income. Instead of treating the root cause of the problem—the inability to pay for housing—the Government has been attacking the symptom. We have been helping the builders directly and the poor only indirectly, rather than providing assistance directly to low income families.

In place of this old approach, many people have suggested a new approach—direct cash assistance. Under this approach, instead of providing a poor family with a place to live, the Federal Government would provide qualified recipients with an appropriate housing payment and would then let them choose their own homes on the private market. The payment would be carefully scaled to make up the difference between what a family could afford on its own for housing and the cost of safe and sanitary housing in that geographic area. This plan would give the poor the freedom and responsibility to make their own choices about housing—and it would eventually get the Federal Government out of the housing business.

Not surprisingly, our recent housing study indicates what others have been saying: of the policy alternatives available, the most promising way to achieve decent housing for all of our families at an acceptable cost appears to be direct cash assistance.

Our best information to date indicates that direct cash assistance will in the long run be the most equitable, least expensive approach to achieving our goal of a decent home for all Americans—a goal I am committed to meeting. It appears to be a policy that will work—not a policy where success will always be a mirage. However, it may develop that the advantages we now see for direct cash assistance will be outweighed by other factors not presently foreseen or that such advantages may be obtainable in alternative ways which offer additional advantages. In that event, I would, of course, reexamine the situation in partnership with the Congress before moving ahead. But right now, in my judgment, our principal efforts should be directed toward determining whether a policy of direct cash assistance—with first priority for the elderly poor—can be put into practical operation.

As we proceed with new policies for aiding lower income families, we must also move with caution. Too often in the past new Federal programs have been launched on a sea of taxpayers' dollars with the best intentions but with too little information about how they would work in practice. The results have been less than what was promised and have not been consistent with the Government's obligation to spend the taxpayers' money as effectively as possible.

One particular problem is that past efforts in one area of assistance have tended to ignore programs in other areas, resulting in an inequitable hodge-podge activity which satisfies no one. In this regard, the relationship between housing programs and welfare payments is particularly critical. We must carefully consider the ways in which our housing programs will relate to other programs which also assist low income persons.

Some field work has already begun with respect to direct cash assistance in the area of housing for those with low incomes. In 1970 the Congress authorized housing allowance experiments involving over 18,000 families and costing over $150 million. We expect preliminary data to emerge from these tests in the coming months and we intend to use these data as we evaluate the possibility of further efforts.

This work should help us answer some important and difficult questions.

What, for example, is the appropriate proportion of income that lower income families should pay for housing? Should this level be higher or lower for different kinds of families—for young families with children, for example, or for the elderly, or for other groups? Should families receiving Federal aid be required to spend any particular amount on housing? If they are, and the requirement is high, what kind of inflationary pressures, if any, would that produce in tight housing markets and what steps could be taken to ease those pressures? In the important case where poor families already own their own housing, how should that fact be weighed in measuring their income level? How should the program be applied in the case of younger families who have parents living with them?

All these questions are critical—and they deserve close examination.

In addition, I am also asking the Congress for authority to take two other steps to help us test the cash assistance approach.

First, we need to expand our experimental programs to test additional techniques for administration.

Second, we need to develop and put into effect the appropriate mechanisms for measuring the cost of safe and sanitary housing in various parts of the country. Sound, reliable cost information of this kind would be of vital importance to a fully operational program.

If these steps can be taken in the near future, then I believe we will have the basic information needed to make a final decision concerning this approach late in 1974 or early in 1975.

A CONTINUING NEED FOR LIMITED CONSTRUCTION PROGRAMS

During the period in which a new approach is being developed, there will be a continuing need to provide housing for some low income families. We must recognize that in some areas of the country there will simply not be a sufficient supply of housing for the foreseeable future. I therefore propose that the Federal Government continue to assist in providing a limited amount of construction for low income housing—though I would expect to use this approach sparingly.

To eliminate the many tangled problems which attend the delivery of subsidies under current construction programs, I am recommending a new approach to construction assistance by the Federal Government. Under this approach, the developer would make newly constructed units available at special rents for low income families and the Government in return would pay the developer the difference between such rents and fair market rents.

During the remainder of fiscal year 1974, the Department of Housing and Urban Development will continue to process subsidy applications for units which had moved most of the way through the application process by January 5 of this year. In addition, the Department will process applications in cases where bona fide commitments have been made.

I am advised by the Secretary for Housing and Urban Development that one of the existing construction programs—the Section 23 program under which new and existing housing is leased

for low income families—can be administered in a way which carries out some of the principles of direct cash assistance. If administered in this way, this program could also provide valuable information for us to use in developing this new approach.

Accordingly, I am lifting the suspension of January 5 with respect to these Section 23 programs. I am also directing the Secretary of Housing and Urban Development to take whatever administrative steps are available to him to eliminate any abuses from such programs and to bring them into line as closely as possible with the direct cash assistance approach.

Altogether, in order to meet bona fide commitments requiring action during this fiscal year and to carry out the Section 23 program, authorization has now been given to process applications for an additional 200,000 units, 150,000 units of which would be new construction.

IMPROVING THE OPERATION OF PRESENT PUBLIC HOUSING

There was a time when the only continuing Federal expense connected with public housing after it was built was paying the debts incurred in building it. Other expenses were met from rental income.

As time went on, however, laws were passed making the Federal Government liable for operating deficits. In recent years, as the operating costs of public housing projects has increased and as the income level and rent payments of their occupants have decreased, the cost of such projects for the Federal Government has gone up at an alarming rate. The Federal bill for operating subsidies has grown more than eightfold since 1969—from $33 million annually to $280 million annually—and an additional $1 billion has been obligated for capital improvements.

Moreover, as efforts have been made in recent years to prevent tenants from paying too much of their incomes for housing, some housing managements have been persuaded that some tenants should pay nothing at all. The Federal Government then picks up a good part of the tab, adding considerably to the costs of maintaining these projects.

This growing financial burden for the Federal Government is only one of many problems relating to public housing. Because the local housing authority is responsible for the management of public housing projects while the Federal Government is responsible for project deficits, including those due to poor management, the local authority has little incentive to improve management standards.

There are also indications that even with improved management and a more realistic approach to rents, current Federal subsidies may need to be adjusted to provide for continued operation and maintenance of these projects.

In view of these many problems, I have asked the Secretary of Housing and Urban Development to develop a set of recommendations addressing each of these problems. One of our goals will be to achieve a more equitable sharing of responsibility among the Federal Government, local communities and residents.

III. ADDITIONAL ACTIONS TO MEET OUR HOUSING NEEDS

NEIGHBORHOOD PRESERVATION

Simply providing Federal housing assistance to families without proper regard for the condition of the neighborhood as a whole too often results in unmet expectations for the families, added burdens for the municipality and a waste of the taxpayers' dollars. It is important, therefore, that all of our efforts in the housing and community development field be carried out as a partnership venture of the Federal Government, the local government, local financial institutions and the citizens of the neighborhoods involved.

Added resources such as those which would be available under my proposed $2.3 billion Better Communities Act can provide important support for these efforts. To smooth the transition to the Better Communities Act, I am directing the Department of Housing and Urban Development to make available up to $60 million in Section 312 rehabilitation loans in the current fiscal year. Priority will be given to those communities which need these loans to complete present projects or where complementary local rehabilitation efforts have already been launched.

In addition, I have directed the Secretary of Housing and Urban Development, using his research and demonstration funds, to pursue promising approaches to neighborhood preservation which might be adopted by communities on a broader basis.

IMPROVING RURAL HOUSING

The problems of providing good housing in our rural areas are especially challenging, not only because the proportion of substandard housing is greater in rural areas but also because these areas often lack the resources to foster greater economic development—and better housing. Of course, many of our housing programs and proposals are designed to assist all families, urban and rural alike. But there is also a special need to address in a special way the rural housing challenge.

Our recent housing study concludes that the basic housing problem in many rural areas is that our major financial institutions are not represented in these areas and that credit is therefore inadequate. The Farmers Home Administration has done a great deal to help change this picture—but further efforts are needed. At my direction, the Department of Agriculture and the Department of Housing and Urban Development will seek additional ways of correcting this situation and increasing credit availability in rural areas.

In my Community Development Message last March 8th, I emphasized that "in pursuing a policy of balanced development for our community life, we must always keep the needs of rural America clearly in sight." I mentioned then my continuing support for a revenue sharing approach for rural development, acknowledging that the Rural Development Act fell short of what I preferred in this regard. I went on to indicate my intention, after fully evaluating the effectiveness of this act, to seek whatever additional legislation may be needed. I repeat that pledge today.

A SUITABLE LIVING ENVIRONMENT

The housing we live in and the environment surrounding that housing are inextricably linked. In the final analysis, the quality of housing depends on matters such as transportation, proximity to educational and health services, and the availability of jobs and shopping. It also depends on economic factors which are shaped by the larger community. One important finding of our housing study was that the cost of the land on which new housing is located has risen faster than any other cost component of housing.

The Congress, too, has recognized these relationships in its finding "that Federal programs affect the location of population, economic growth, and the character of urban development [and] that such programs frequently conflict and result in undesirable and costly patterns of urban development which adversely affect the environment and wastefully use our natural resources."

It is clear that housing policy cannot be considered separately from other policies related to the economic, social and physical aspects of community development. The next Report on Urban Growth, which I shall submit to the Congress in 1974, will further address these crucial relationships.

ASSURING EQUAL OPPORTUNITY

Over the last several years, great strides have been made toward assuring Americans of all races and creeds equal and unhindered access to the housing of their choice. As I stated in 1971:

> At the outset, we set three basic requirements for our program to achieve equal housing opportunity: It must be aimed at correcting the effects of past discrimination; it must contain safeguards to ensure against future discrimination; and it must be results-oriented so its progress toward the overall goal of increasing housing opportunities can be evaluated.
>
> The administration is embarked upon this course. It must and will press forward firmly.
>
> The chief components of such a program include the firm enforcement of laws relating to equal housing opportunity, the development of appropriate equal housing opportunity criteria for participation in programs affecting housing, the development of information programs, and the development of policies relating to housing marketing practices.

Each of these components has been put into operation and we are continuing to move ahead. It is important that all Federal agencies vigorously pursue a wide range of efforts to enforce fair housing and equal opportunity laws—and all members of my Administration will continue to be particularly vigilant in this regard.

The availability of mortgage credit has also been restricted in many instances on the grounds that the applicant's financial resources, which would otherwise have been adequate, were deemed insufficient because the applicant was a woman. These practices have occurred, unfortunately, not only in home mortgage lending but also in the field of consumer credit. I shall therefore work with the Congress to achieve legislation which

will prohibit lenders from discriminating on the basis of sex or marital status.

FURTHER PROPOSALS

A number of other proposals which have grown out of our recent housing study will be included in the legislation I will submit to the Congress. They include efforts to encourage home improvements and to facilitate the purchase of mobile homes; measures to ease the Federal burdens in disposing of the large and still growing number of properties returning to the Government upon default; and steps to streamline and reduce the processing time for FHA applications, including a proposal that would move toward the Veterans Administration technique of coinsurance. I urge their prompt consideration.

The American dream cannot be complete for any of us unless it is within the reach of all of us. A decent home in a suitable living environment is an essential part of that dream.

We have done a great deal as a people toward ensuring that objective for every American family in recent years. Our success should not be a reason for complacency, however; rather, it should reinforce both our determination to complete this work and our confidence that we can reach our goal.

The measures I have discussed in this message can make a significant contribution to that great undertaking. I look forward to working closely with the Congress in advancing these efforts.

RICHARD NIXON.

THE WHITE HOUSE, *September 19, 1973.*

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. HASKELL) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations received today, see the end of Senate proceedings.)

ORDER FOR ADJOURNMENT TO 9:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 9:30 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

REMOVAL OF INJUNCTION OF SECRECY AND REFERRAL OF CONVENTION TO COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the convention between the United States of America and the Union of Soviet Socialist Republics on matters of taxation, with related letters, signed at Washington on June 20, 1973—Executive T, 93d Congress, first session—transmitted to the Senate today by the President of the United States, with accompanying papers, be referred to the Committee on Foreign Relations and ordered to be printed, and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the message will be printed in the RECORD.

The message is as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Convention between the United States of America and the Union of Soviet Socialist Republics on Matters of Taxation, with related letters, signed at Washington on June 20, 1973.

For the information of the Senate, I transmit also the report of the Department of State with respect to the Convention.

The primary purpose of this Convention is to promote economic and cultural relations between the two countries by eliminating tax barriers to the extent possible. The general content of the Convention is similar to conventions between the United States and other countries on the avoidance of double taxation on income. However, because of dissimilarities between the tax systems of the two countries and the limited experience of each with the tax system of the other, in this Convention somewhat more emphasis than usual is given to tax exemptions.

Through its system of exemptions, the Convention should largely insulate the entities and citizens of the respective parties from income tax in the other state. As with most tax conventions, a principal benefit is to free to a great extent the companies and persons involved from the compliance and administrative problems of dealing with a foreign tax system. This, in turn, can be expected to contribute to the smooth development of United States-Soviet Union trade, cooperation, and exchanges. I recommend that the Senate give prompt consideration to the convention and consent to its ratification.

RICHARD NIXON.

THE WHITE HOUSE, *September 19, 1973.*

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. JACKSON. Mr. President, I ask unanimous consent that an unprinted amendment which is at the desk may be offered following the amendment or amendments to be offered by the distinguished Senator from South Carolina (Mr. THURMOND).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARTLETT. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the distinguished Senator from Oklahoma.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR BELLMON

I would like to commend the Finance Committee and its Chairman, Mr. Long, and the Labor and Public Welfare Committee and its chairman Mr. Williams for the work and effort which they have exerted on behalf of working people across this nation. S. 4 as amended by the Nelson Amendment No. 496 and No. 497 is an extremely fine and detailed piece of legislation which has the potential to begin regulation of private pension funds, whose assets are currently about $160 billion.

While it is becoming increasingly clear that private pensions are necessary to supplement other forms of retirement benefits such as social security and other government pensions, it is also clear that the private pension plans as currently established are burdened with abuses and inadequacies. As presently structured, private pensions have been nothing but a hoax on the working people of America. Workers have contributed funds for many years only to find out that they had no entitlement because they didn't work long enough, because they changed their unions, because they were laid off or changed jobs, because they became disabled before a certain age, because the company they worked for went out of business or merged with another corporation, or because the pension fund terminated after retirement. The reform measures presented in this legislation are aimed at revamping this system.

S. 4 as amended will extend the coverage to many employees not currently covered under a private pension plan. It will strengthen the vesting requirements of private pension plans so that contributing workers will not lose the value of their investments as readily as they do now. Further, it will assure that when people receive private pension benefits these will be substantial in amount and not a mere token payment, as many plans presently provide. Further, dependent widows or widowers rights will be strengthened under this reform. And finally, those who control pension plans will be held to a tighter fiduciary standard than previously existed, thus insuring wise investments in controlled equities and income producing notes and bills. Therefore, this bill will correct the inadequate coverages, the inadequate vesting, the inadequate funding, the loss of pension benefits due to plan terminations, misuse of pension funds, and discrimination against individuals not covered by pension plans. Because S. 4 as amended will rectify this situation, it is a vital and extremely necessary piece of legislation, and I support the efforts of these committees with one reservation.

That reservation involves the so-called "proprietary employee" provisions, listed in Sections 702, 704, and 706 of Amendment No. 496. Lest you believe that these are insignificant provisions, the Treasury has estimated that 90% of all pension profit sharing plans in effect today will be adversely affected if these are approved. The effect of these provisions is to limit the tax deductibility of contributions to private pension plans in the amount of 15% of the employee's income, not to exceed $7,500 per year. Because of this discriminatory nature of this provision and other inadequacies of the provision, I would urge the Senate to support the amendment of the distinguished Senator from South Carolina, Mr. Thurmond, which would delete all reference to the proprietary employee concept and which would impose the same contribution limitations for all employees of corporations, whether large or small.

As presently structured, this provision of the bill discriminates against small, closely held corporations in favor of large corporations which have no vesting limitation. It discriminates unreasonably against employees and particularly older employees of small

corporations. Actuarially, it prevents older persons from funding adequate retirement plans, because in the early years of establishing a business, owners, must plow back earnings into the business and are only able later in life to invest in a retirement plan. So older owner managers of corporations will not be able to build up an adequate retirement plan in a limited number of years with the limitation of this provision.

Further, existing owners of small corporations will be discouraged from offering an ownership position to key employees with already accrued retirement entitlement, and such employees will refrain from seeking the same.

The provision as currently structured encourages the assimilation by big corporations of small corporations, where owners do not desire to lose their retirement benefits.

Currently this provision discriminates in favor of unincorporated businesses over small corporations, by permitting larger contributions for self-employed persons than for the owner-employee of a business which is identical in all ways except that it is unincorporated. Therefore, because of this patently unfair discrimination and unequal treatment, I would urge the Senate to adopt Mr. Thurmond's amendment and delete the proprietary employee provisions of S. 4 as amended.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the time be charged against all sides equally.

Mr. CURTIS. I object.

The PRESIDING OFFICER. Objection is heard. The time will run equally against both sides unless time is otherwise yielded.

Mr. NELSON. Mr. President, I did not hear the request.

The PRESIDING OFFICER. The Senator from Nebraska objected to the quorum call being charged equally against both sides. The objection was heard and the Chair stated that unless someone yielded time the quorum call time would be charged equally against both sides.

Mr. NELSON. Mr. President, the Senator from Wisconsin asks that the time be charged against the amendment of the Senator from South Carolina. That unanimous consent request was agreed to.

The PRESIDING OFFICER. That was done prior to the quorum call. The Senator from West Virginia asked for the suspension of the quorum call.

Mr. LONG. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. LONG. Mr. President, can time on the Thurmond amendment which is not pending be used for time on the amendment of someone else?

The PRESIDING OFFICER. By unanimous consent it may.

Mr. LONG. Well, I want to enter my objection to using time on the Thurmond amendment or any other amendment. In the event that request is made again I hope the leadership will protect me if I am not in the Chamber. If we provide 2 hours on a particular amendment, that time should be used on that amendment. I am willing for time on the bill to be used to debate an amendment but I think this could get completely out of hand.

Mr. ROBERT C. BYRD. The Senator is correct. I have stated repeatedly that there is ample time on the bill for quorum calls, and I hope the distinguished Senator from Nebraska will not object to charging quorums to time on the bill.

Mr. CURTIS. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. CURTIS. Mr. President it seems as though we took too much time to confer yesterday. Now, one of the amendments is 275 pages and the other is almost 100 pages long.

One amendment was 227 pages long. The other was 71 pages long. The record shows that these were not available until after we started consideration of the bill yesterday morning.

Of course, there had to be a slow-up. None of us had ever read it, and the normal course of procedure today seems to be objected to on the ground that we took time out yesterday.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CURTIS. I yield myself 1 additional minute.

If we are asked to enact 300 pages that the human eye has never seen, and we take time out to read it, and it displeases my distinguished friend from West Virginia, I hope that he is in the minority.

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Wisconsin, I yield myself 1 minute on the bill.

It does not displease the Senator from West Virginia. I am sorry the distinguished Senator from Nebraska is displeased. All day yesterday we had quorum calls and did not charge the time to either side. The leadership did not have any objection to that. It acceded to the request of the distinguished Senator from Nebraska yesterday that we go over until today, that we not complete action on the bill on yesterday. The leadership assured the Senator from Nebraska that the bill would not be completed on yesterday, that Senators would have time overnight to read printed copies of the bill. So the leadership did not object yesterday to the time not being charged to either side.

As I indicated to my distinguished friend, there is ample time on the bill to which quorums can be charged. If we get to the end of the day and he needs more time, I am sure the leadership will try to accommodate him.

Mr. CURTIS. I have no objection to what the Senator did yesterday; it is the fact that the Senator reversed his position that is not in the public interest.

Mr. ROBERT C. BYRD. Occasionally we have to reverse ourselves in the interest of the country, in the interest of the Senate, and in the interest of expediting the business of the Senate.

The PRESIDING OFFICER. Who yields time? Since time is not yielded, it will run equally against both sides.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished Senator from Indiana (Mr. HARTKE) may speak for not to exceed 30 minutes at this time, without the time being charged against either side on the bill. This will give the proponents and opponents of the amendment time to work out their differences, without the time being charged to anyone.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HARTKE. Mr. President, I ask unanimous consent that this statement appear in context in continuity, even though it may be interrupted for other actions.

The PRESIDING OFFICER. Without objection, it is so ordered.

PENSION REFORM: THE TIME IS NOW

Mr. HARTKE. Mr. President, for nearly a decade I have called upon Congress to enact meaningful pension reform. At stake is the welfare of millions of American workers who have invested their lives to make this country strong. They deserve to know that their work will not have been in vain and that their retirement years will not be ones of desperation and despair.

I. THE DEMAND FOR PENSION REFORM

The American people know that private pensions need reform. They know that they cannot get by on social security benefits which are their mainstay. They know that more than half the working people in the country do not have any type of private pension plan coverage whatsoever. They know that the overwhelming majority of plan participants will not obtain benefits for their plans. They know that it takes too long to qualify for benefits that the majority of working men and women, that nonunion employees, especially white-collar and management people can now be fired with impunity to defeat their pension eligibility and do not have a chance to qualify. That at best only one job rather than their lifetime of work pays off in a pension, that even vested rights may be hollow for lack of plan funds: that widows seldom get pension benefits, that inflation destroys the value of benefits, and that the retired and widows are the people most ravaged by inflation.

They know this because they live it. The people of South Bend, Ind., lived through the tragedy of the Studebaker shutdown, and that occurred under one of the best plans in the United States. People all over the country have lived through plant shutdowns, departmental discontinuances, lay-offs that are permanent, pension plans with insufficient funds, firings shortly before pension eligibility. And they found out that these were not just freak failures—they are built into the system. They learned that in June 1971 from CBS's "Sixty Minutes;" in September 1972 from NBC's award-winning report "Pensions—the Broken Promise"; in March 1973 from PBS's special: "From Immeasurable Syndicated and Regional Newspaper Stories"; from Nader's best-selling book "You and Your Pension"; from national columnists like Sylvia Porter. The people know and they are looking to Congress for a remedy. They will hold us accountable for making private pensions work fairly to provide the families of this country with the supplement to social security that all need. And the people

are beginning to hear that what has been served up as pension reform is inadequate. Read William V. Shannon's "Pension Pretense" of September 6, 1973—which I put in the RECORD on September 10. He said of the Finance Committee and Labor Committee bills that were combined—after a fashion—to make the bill now before the Senate:

There is only one thing wrong with these reform bills. Neither of them does much reforming.

Read the "Statement on Pension Legislation" of September 12—to be found in the RECORD of September 13—issued by some of the Nation's leading experts on labor relations, economists, and income maintenance. Former Secretary of HEW, Wilbur Cohen, joined in the statement which details the urgent needs of pension reform but concluded that—

The Williams-Javits bill, the Senate Finance Committee bill, and the Dent bill—all fall short of rectifying these (plan) shortcomings and thereby fall short of the needed reforms.

Others who joined in this statement include Dr. Juanita Kreps, a distinguished economist who has specialized in income problems of the elderly; Dr. James Schulz of Brandeis University, a labor economist specializing in projecting the income prospects of the aged; Profs. Newton Bernstein and Father Paul Harbrecht whose books on pension problems in the early 1960's helped draw attention to the need for reform; Dean Charles Schottland, former Commissioner of Social Security, for decades an expert on income maintenance systems; and Harvard economics professor, Otto Eckstein, formerly a member of the Council of Economic Advisers; Dr. James Morgan of the University of Michigan, one of the Nation's leading researchers on income problems; Dr. Henry Aaron of the Brookings Institution, an authority on social insurance; Dr. Harold Sheppard of the Upjohn Institute, who has worked with several Senate committees on problems affecting the elderly. These are disinterested and sober experts who warn that the measures before us fall short of the need of the working people of the country.

II. THE FATAL DEFECT—FEW WILL OBTAIN PENSIONS

A MAJORITY NOT COVERED BY PLANS

Many aspects of pension plans have been oversold. In the early 1960's both private and government sources "assumed" that 20 to 23 million working people had plan coverage. Each year the figure got bigger—as if to say that no plans failed, as if no one retired, as if no one was separated from plans—although all of these things did happen. The figures creeped up and up until recently the figure of 35 million came into common use. At least one pension student constantly questioned these data, pointing out that a 1969 Labor Department sampling of plans under the Welfare and Pension Plan Disclosure Act found little more than 19 million—not 33 million, as had been reported—participants. Only this year did the inflation of plan coverage obtain official recognition. The Treasury Department's interim report on its study of pension plan termination reported—in a footnote—that pension plans—not including profit-sharing plans—covered 23 million active workers. The Social Security Administration reported no figures but declared that earlier estimates overstated coverage and would have to be reduced.

Mr. President, I hope that the managers of the bill will understand that they are not talking about coverage for people who are ultimately going to get benefits. What they are claiming is that these are people in the pension plans who will ultimately receive little or no return.

The sober truth is that contrary to over a decade of claims, private pension plans cover decidedly less than half of the civilian work force.

This means that at any one time fewer than half of American workers have the opportunity to earn pension credits. In turn, that means that when one loses a pension-covered job, the chances of finding another job with a pension is not very good—which belies the conventional apology that one needs not worry about pension losers—they are just young workers who flit around from job to job and finally come to rest in a safe pension haven. Actual studies of the fate of Packard and Republic aviation workers indicate that the contrary is true—blue collar workers separated from pension-covered jobs are in all age brackets, that many—a majority at Republic—had fewer than 10 years service there, that older workers have a devil of a time finding and folding new jobs, and that substantial proportions—most in the Packard study—end up with lower pay jobs unlikely to carry pension coverage. The chances of working long enough at more than one company to earn vested credits are greatly reduced by the spottiness of coverage. Small companies especially lack plans even in industries in which plans are common. Even in companies with plans, low pay and part-time workers are frequently not covered, a common fix especially for women.

If private pensions are to do their job—providing a retirement income supplement to social security—for all working people, the first essential is to extend pension plan coverage.

Let me say that there is not one single contention by any proponent of this compromise bill that the bill will in any fashion whatsoever provide inducement to increase the numbers of individuals covered. Quite the contrary is true. The result of this pension bill will be a marked reduction in the number of people covered by any pension plan whatsoever.

My portability clearinghouse amendment would go far to facilitate voluntary extension of coverage—as I shall explain more fully later in this presentation.

This is the remarkable thing about portability. This type of provision is opposed by all major employers. They would like to have indentured slavery; that is, they would like to freeze people into a position where they cannot move from their jobs. That is an attribute of the Japanese pension plan system. Anybody who goes into a particular factory has to stay in that factory for the remainder of his life, because the expense of changing coverage under a pension plan is such that he cannot afford to leave.

Actually, the unions do not want workers to have portability, either. If the worker has portability, the union loses its dues-paying members. So portability will be opposed by the unions and by the leaders of organized labor. I find no fault with this, except that I am just saying this happens to be a fact of life.

Now let me talk for a moment about length of service requirements as hurdles to eligibility.

Private pension plans now are designed to pay only to a minority of their participants—they usually require at least 10 years and often 15 or 20 years of service to qualify for benefits. This results from several basic ideas. One is that an employer is obligated only to long-term employees. The fact of the matter is that when we started discussions in the Finance Committee, every member of the committee said it would be a good idea to force employees to stay with their employers for long periods of time. But that is not American.

In turn this derives from two other notions—that pension plans constitute proper corporate expenditures because they bind employees to the firm. These notions go back 30, 40, 50 years before the World War II and Korean war surge in pension plans.

With a controlled economy, wage and price controls, there is an upsurge in the number of pension plans, because this is one way to avoid a sharp increase in wages themselves. If there are wage controls, it is better to give them a little bit more money as a fringe benefit. One fringe benefit is the opportunity to participate in a pension plan. But we find that only 4 percent, as of this moment, will ever really actually participate in the benefits of those plans.

The post World War II participation was quite different. The mineworkers, autoworkers, and steelworkers pressed for private pension plans because social security was so dreadfully inadequate in the 1940's. That was the major basis for the 1949 steel factfinding decision recommending pension plans in that industry.

This justification for private pension plans—the need to supplement social security—continues even today. The design of pension plans to pay off to a few lucky ones conflicts with that justification. Practically all plans today are so inadequate as to be almost meaningless. Practically all need that supplementation and so pensions should provide it. Indeed, the people who lose pension-covered jobs need social security supplementation more than the lucky ones who stay on the job, whose earnings continue uninterrupted, who have a chance to save, and whose health insurance coverage continues.

And people who lose pension-covered jobs—and that happens to working people at all ages—frequently have difficulty finding new jobs at equal pay and with equal fringes. Studies of the Packard and Republic aviation shutdowns show

that most do not get equally good jobs, and many blue-collar workers end up in service jobs where pension coverage is rare. Recent experience in the aerospace industry shows that engineers, chemists, mathematicians, and other highly skilled persons and managers and executives find themselves in the same fix.

In sum, it will not do to shrug off pension credit losses as not especially significant because—supposedly—later jobs will make up for the loss. Hard experience shows that often is not the case—and there is only conjecture that it works out that way.

In addition, most single employer plans vary benefits in direct proportion to credited service. A person who loses out under several plans because of age and service requirements and luckily gets that last job that does pay off obtains benefits only for those years on the last job. If it is only 10 or 12 years, that means small benefits.

There is a very significant study which was made by the Subcommittee on Labor of the Committee on Labor and Public Welfare of the Senate under the date of November 1971, made pursuant to Senate Resolution 35, section 4, which is available to the Senate and was available to the committees which passed upon the bills—I say bills because we really have here a conglomerate bill before us. It was available to all of them, it was read by all of them, and its data and conclusions were ignored.

When a person loses out under several pension plans, and obtains benefits only for those late years—on page 26 of this welfare and pension plan study of 1971—we are freezing into the pension plan when we adopt this bill. It shows that the average monthly median payment under this bill will be $100 a month; $1,200 a year. That is what we are calling a giant stride forward? Mr. President, this is a crawl. This makes a sham of reform. And when the American people realize the fraud that has been perpetrated against them, our institutions will loose even more credibility.

Here is the statement:

A summary of the median payments by all plans and by size of plan for normal, early, and disability benefits is presented below. The questionnaire circulated by the Subcommittee requested data concerning the average benefit paid to retirees. (The term "median benefit" as used in this study refers to the average monthly benefit paid by all plans represented by the analysis, "median" denoting the average amount separating the upper half from the lower half of the averages.) The summary shows that the median payments for all plans and all benefits, taken together, were less than $100 a month.

The study also shows that for plans with less than 1,000 participants—I might state, for the benefit of the press gallery that this includes them—that 80 percent of them will be paid the very smallest benefits. You can look forward to your old age with horror. You people writing and communicating the news are going to be frozen into your pensions at the status quo of about $100 a month.

I just received this report: A United Press International reporter, such as we have in the galleries, receives $240 a month as a pension after 65. They have a 5-year vesting plan, with no portability. If they leave the wire service, they have to start all over again.

Not too long ago, the case came to my attention of a prominent political reporter for UPI who died, and the pension circumstances are such that this man's widow is getting the trifling sum of $102 a month to live on. This compromise bill will not care for your wives.

Let us go back, then. As an example of that, under a typical blue-collar plan, a monthly benefit of about $60 would result; for a white-collar worker, 12 years might generate a benefit of 18 or 25 or 30 percent of his final salary.

Compare, if you will, the Senate Finance Committee provisions permitting pension benefits of 100 percent of final salary for high paid executives—that was the measure on which we are interrupting the vote at this moment but they will get 100 percent of the final salary—which seems to say that such a measure is socially justifiable and warrants the favorable tax treatment accorded by the Internal Revenue Code. In my judgment, 100 percent is rather rich. But compare the congressional retirement system which contemplates benefits equal to 50 percent of final salary. Pension experts agree that low-paid workers need a larger percentage of wage replacement than do high earners because a much larger percentage of a small budget goes to essentials—food, clothing, and shelter.

Mobility of labor and capital constitute great strengths for the American economic system. It enabled us to mobilize for World War II, demobilize in amazingly short order, rearm for Korea, execute the largest public works program with private contractor employees in recorded history—the interstate highway program—I dare say one that can work a maximum of 3 years—redeploy men and women repeatedly in the post-World War II years. This mobility is essential but private pension plan design—this system on the floor of the Senate—does not fit it.

Enterprises constantly adapt to new circumstances by opening new plants and shutting down or selling existing ones. The distinguished Senator from Maine (Mr. MUSKIE) now in the chair understands that as well as anyone I know.

Mr. President, I ask unanimous consent that an excerpt from "The Future of Private Pensions," by Merton C. Bernstein, showing how one company adapted to changing circumstances be printed in the RECORD.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

A COMPANY-WIDE PATTERN—OLD AND NEW PLANTS

(From Merton C. Bernstein, The Future of Private Pensions 97 (1964))

The complexities within a single business are vividly illustrated by the recent history of one large manufacturing company. The brisk business in plant openings and closings, from 1939 through 1955, accompanied by product diversification and installation of new machinery, affected its twelve plants (*A–L*) as shown in Table IV–3. Out of a dozen plants, only three operated throughout the 16 years, in 1939 six plants, in 1947 ten plants, and in 1955 eight plants were operational. Plant *L* closed after six years of operation.

Throughout this period executive, administrative, technical, sales, and clerical employment held steady or rose; meanwhile production employment, after reaching a high around 1947, declined both in numbers and in relation to total employment.

The company's pension plan contained a vesting provision; but to qualify, 15 years of service were required. Obviously satisfaction of that condition would be extremely difficult.

Other concrete examples of plant shutdowns with large scale loss of pension credits are presented in Chapter V in the context of legal doctrines. Suffice it to observe here that such occurrences obviously are not rare.

PLANTS OF 1 COMPANY IN OPERATION AT 3 SELECTED DATES

1939	1947	1955
Plant A	Plant A	Plant A.
Plant B	Plant B	Plant B.
Plant	Plant C (started 1944)	Plant C.
Plant	Plant	Plant D (acquired 1950).
Plant E	Plant E	Plant E.
Plant	Plant F (acquired 1945)	Plant F.
Plant	Plant G (acquired 1945)	Plant G.
Plant	Plant	Plant H.
Plant I	Plant I	Closed 1954.
Plant J	Plant J	Closed 1953.
Plant K	Plant K	Closed 1950.
Plant	Plant L (acquired 1945)	Closed 1951.

Source: Derived from a tile in a study by Samuel Hill and Frederick Harbison, which resulted in their Manpower and Innovation in American Industry (Princeton, N.J.: Princeton University Press, 1959).

Mr. HARTKE. Mr. President, obviously, most of that companies employees could not satisfy a 10-year, let alone a 15-year service requirement for vesting. One west coast auto plant shut down a mere 6 years after it opened. The famed Kaiser automobile experiment did not last 5 years. All of us know of towns in our States where plants shut down leaving former workers stranded without jobs, without job prospects, and that frequently means without credits and no prospects of getting them in a later job.

In 1950, 1951, 1954, plants were opening and closing so rapidly that it was hard to keep up with them. A man certainly could not be qualified for a 10-year period, let alone a 15-year period, under these circumstances. I know of one plant which opened and closed in 6 years. We all remember the Kaiser enterprise in automobiles, an experiment that did not last 5 years.

There is not a Member of the Senate or House who does not know of towns in the States and communities where plants shut down leaving the farmers or the workers stranded without jobs or any job prospects, which frequently meant no credit or prospects of getting any credit toward any pension in later jobs.

Is it any wonder, then, that the Senate Labor Committee's study—the preliminary report on private pension study, 1971—of a large group of pension plans covering 6.9 million employees spanning the 19 years from 1950 to 1969—that is, the best, the most stable plans—showed that only 4 percent—253,118—of their participants attained benefit eligibility.

This, I think, is amazing when we see that this bill goes a long way toward reform or rectifying these problems and this is the Labor Committee's own report. In other words, 96 out of 100 plan par-

ticipants did not obtain any benefits—press release of Senators WILLIAMS and JAVITS, April 1, 1971. This compromise bill before the Senate, being hailed as pension reform, is only a pretense to reform. According to their own study, 6,700,000 individuals would obtain absolutely nothing out of the 6,900,000 people who are involved in pension plans. You call that pension reform? Hardly, and for those who left pension-covered jobs, this was the result reported by the Senate Labor Committee's interim report of February—1972:

. . . 92 percent of all participants who left plans which required 11 or more years of service for vesting and 73 percent of all participants in the plans with ten years or less for vesting . . . Did not qualify for benefits" (page 15).

Most plans requiring 11 or more years for vesting in fact, require 15 years, and most plans requiring 10 or less in fact require 10.

This gives us some idea of the utility of 10 and 15 year vesting. S. 4, as amended, would provide 100 percent vesting after 15 years. In other words, it would require pay out to only 8 of every 100 people separated from pension-covered jobs. It would require 50 percent vesting—more on that formula in a moment—to those with 10 years service—in other words, it would salvage half the benefits earned for 27 out of every 100 employees separating.

I commend the leaders of the bill, Senators JAVITS, WILLIAMS, NELSON, and BENNETT for their efforts to bring this bill up which has not been read by anyone, as of yesterday. The compromise measure is being railroaded through the Senate without giving those of us familiar enough with pension plans to formulate opposition to it which would protect the American workers who have already suffered too much in the private pension plan system.

TRAGEDY OF ALL TRAGEDIES

Even after 1981, for those with 5 years of service at separation, the bill would salvage something—but what? That is the tragedy of all tragedies in this bill.

S. 4 VESTING PRODUCES MINISCULE BENEFITS

The more liberal vesting formula that would go into operation in 1971 calls for 25 percent of a regular retirement benefit for 5 years of service. Let us apply that to some realistic situations.

Take a plan that confers a $5-a-month benefit for every year of credited service. For an employee separated with 55 years of credits, that would yield a benefit of $6.25 cents a month—$5 times $5 times 25 percent—or $75 a year. That is what is being planned as a minimum standard. It will make it possible to guarantee retirement at $75 a year. It is hardly an amount worth the trouble—or worth the name of reform.

Such a benefit is subject to erosion by inflation. An employee separated at age 45 with a vested claim to $75 a year would end up at age 65 with a benefit worth $30—assuming a very modest rate of inflation—not the President Nixon–Agnew rate of inflation of 10 percent.

In the case of a white collar worker earning $10,000 under a plan giving a 2-percent benefit per year of service, it would work out to $10,000 times 2 percent times 5 times 25 percent or $250 for an entire year—and we are talking about 1981, not tomorrow—and since the 51-year proposal takes effect in 1981, between 1976 and 1981—a benefit of about $20 a month. Between 1976 and 1981 the vesting formula would yield even smaller amounts.

Normal retirement benefit formulas are none too adequate to begin with—to vest only one-quarter of the amount the same years earn for employees who are lucky enough to stay on the job reduces most vested benefits under the bill to worthlessness.

III. WHO PAYS FOR PENSIONS?

This was a subject of great discussion. We spent a whole day before we finally came to the conclusion, which I will bring to the attention of the Senate now, that the taxpayer pays billions of dollars, and therefore plans should serve social purposes.

Out of that $150 billion in private plan reserves—I do not know whether the Senator from New York (Mr. JAVITS) is in the Chamber at this moment, but I want to call to his attention the fact that $100 billion of this $150 billion is now deposited in the banks of New York City. They are getting the 10 percent prime rate. Some people say that can go up to 20 or 25 percent, as well as capital investments. Pension reform is badly needed. Would the compromise bill correct this imbalance?

The PRESIDING OFFICER. The Senator's 30 minutes have expired.

Mr. HARTKE. Mr. President, I ask unanimous consent to proceed for another 15 minutes, under an agreement I have with Senator WILLIAMS, Senator CURTIS, Senator JAVITS, and a few other Senators who are in control of the time.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. HARTKE. I might say, parenthetically, that the truth is as I pointed out to the majority leader, that in this remarkable assignment of time on the bill, they assigned 6 hours to the bill—3 hours for the proponents from the Finance Committee and 3 hours for the proponents from the Committee on Labor and Public Welfare, with nothing for those who thought something might be wrong with this bill. I suppose that in Washington today, you are not supposed to object to anything.

Who pays for the pensions? Private plan reserves are estimated at $150 billion. Their net receipts in 1971 put at $10.3 billion.[1] Assuming earnings of 5 percent, the $150 billion in reserves would yield $7.5 billion which if taxable at average corporate rates of 50 percent would generate $3¾ billion a year in taxes. Those taxes are not collected for considerable periods, and when taxes are applied to pension benefits, the rates are much lower and in some cases nothing. These taxes foregone grow every year as the reserves are augmented. This subsidy—the equivalent of a $3.75 billion expenditure—can be justified only if it serves a high priority public purpose.

Whenever somebody avoids paying taxes—and this is a tax avoidance bill; some could call it a tax loophole bill and they would be right—somebody else has to pay the difference. That somebody else, generally speaking, is the individual who earns less than $12,000 a year, who pays most of the taxes in the United States.

B. ALL EMPLOYEES UNDER PLANS PAY—ALL SHOULD COLLECT

I have heard on the floor of the Senate and in Finance Committee meetings, that the employer pays part of the pension. That is not so.

It is true that most pension plans today are noncontributory—that is, employers make all the contributions and employees make none. So one would think that the contention that the employer is paying the bill is true.

However, these plan contributions are not a net additional cost to employers. Anyone familiar with the daily newspapers—let alone collective bargaining—knows that when unions and management bargain, they bargain about a pay package which includes fringe benefits. The bargainers cost out the cents an hour equivalent of vacations, health insurance, and pensions. The sums devoted to these purposes come from the pay of all employees. If employers did not contribute to pension plans, they would pay out the same funds in the paycheck in some other employee benefit or direct pay. In other words, every employee gives up part of his pay in order to make employer pension contributions possible. They do not expect to lose that money—they do not expect to hand it over to other employees. But that is what occurs under current pension plan design.

Only vesting after brief service will turn the pension lottery into a pension savings system. Only early vesting will end the subsidy from the least fortunate to the most fortunate employees. In other words, every employee gives up part of his pay in order to make it possible for the employer to make his contribution to the pension plan. When they have that deduction from their paycheck, they do not expect to lose the money. They do not expect to hand it over to some other employees at their expense. But that is exactly what occurs under the current pension plan design, and that is what this bill is going to endorse.

Ironically, it is the pay of the least fortunate employees, those who lose their jobs, that adds to the pension benefits of the most fortunate employees who last the longest. Those fortunate employees are frequently and generally the company owners and managers, which is not too uncommon an occurrence in small companies.

I am going to read a few examples from the Labor Committee's own report, to demonstrate again the futility of saying that this bill does anything for the majority of the people of the United States. These case histories begin on page 17 of the preliminary report of the private welfare and pension plan study.

[1] SEC, "Private Noninsured Pension Funds, 1971," Release No. 2599, June 28, 1972.

Case history No. 5: A large oil company with a pension plan that is 38 years old.

There are currently approximately 42,000 active employees and 6,500 retirees.

The plan's assets exceed $450 million.

This plan has 50 percent vesting after 15 years, increasing at five percent a year until there is 100 percent vesting after 25 years.

Of the 105,000 persons participating since 1950, more than 61,000 have left the scope of the plan with no benefits. Of that number, 13,430 had more than five years service and 3,680 had more than ten years service.

In the last five years, of 53,054 participants, 17,657 have left with no benefits, of whom 3,838 had more than five years service and 1,052 more than ten years service.

The total retirements since 1950 are less than 8,500.

I want to point out this: Since 1950, with 105,000 participants, 8,500 received benefits.

Case history No. 33: A large communications company with a pension plan that is 58 years old. I do not know whether this is one of the broadcasting industries or not. I suppose we could find out. The pension plan is 58 years old.

There are currently approximately 57,000 active employees and 3,100 retired.

The plan's assets exceed $229 million.

This plan has full vesting at age 40 with 15 years service.

That is about what this bill has.

This plan has very high forfeiture rates. Prior to 1969, the plan had no vesting provisions. Of the 320,124 persons participating since 1950, more than 231,000 have left the scope of the plan with no benefits. Of that number, 5,800 had more than 15 years service, 12,741 had more than ten years service, and 31,419 had more than five years service.

In the last five years, of 152,028 participants, 108,035 left the plan without any benefits, of whom 2,284 had more than 15 years service, 4,592 had more than ten years service and 8,778 had more than five years service.

I ought to read all these case histories into the RECORD. I wish Senators would have read them. I will say one thing: If Senators had to have their own pension plan adopted according to the standards of this bill, not one Senator would vote for it. The employees of the Senators would be so mad that they would not let the Senators come out of their offices to vote.

Case history No. 38:

This is a pension plan of a major aerospace company. It was established in 1957. The plan covers salaried employees only and has 36,903 active participants and 1,241 retired as of December, 1969.

In other words, in 12 years they had an average of 100 retirees a year.

Since the plan was established over 60,000 employees have participated with more than 20,000 employees having left the scope of the plan without entitlement to any benefit, over 5,000 of whom had more than five years of service.

Case history No. 39. This is a pension plan of a large data processing manufacturing firm. The plan presently has 169,030 active participants and has been in existence since 1945.

Under the bill before us with the provision for 50 percent benefits, it would say to this company which had 89,652 employees who left the scope of the plan and 82,326 who left with no entitlement to benefits that they would guarantee 50 percent of nothing. That is what this bill is attempting to sell as pension reform.

Mr. President, I ask unanimous consent to have printed in the RECORD case history No. 43.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CASE HISTORY NO. 43

This pension plan is applicable to a large bank and its affiliates. The current plan has been in existencee since 1954, superceding a prior plan established in 1941. There are 11,676 active participants.

There are two interesting facts concerning this plan:

1. The plan failed to report its liabilities, indicating that such information was not available; however, it gave a detailed accounting of its assets.

2. Of an estimated 11,000 employees who left the scope of the plan since 1954, an estimated 8,400 forfeited benefits (over 1,725 of this number had over five years of service and 1,000 had ten years of service).

Mr. HARTKE. Mr. President, in this case there are 11,676 active participants. Of an estimate 11,000 employees who left the scope of the plan since 1954, an estimated 8,400 forfeited benefits. That is what this bill would direct.

Mr. President, I ask unanimous consent to have printed in the RECORD, case history No. 45.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CASE HISTORY NO. 45

This pension plan is applicable to a large electrical power holding company. It has currently 11,765 active participants.

While this is a contributory plan which has been collectively bargained, the employees do not participate in the administration of the plan.

10,818 employees have left the scope of the plan since 1950. Over 50 percent have left without entitlement to benefits, and over 20 percent had more than five years of service.

Mr. HARTKE. In this case 11,818 employees left the scope of the plan since 1950 and over 50 percent have left without entitlement to benefits and over 20 percent had more than 5 years service.

Mr. President, I ask unanimous consent to have printed in the RECORD, case history No. 47.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CASE HISTORY NO. 47

This is a large pension plan in the communications industry covering many separate employers; therefore there are differing dates for when the plan was established for purposes of any one employer. However, the earliest participating employer date given is for 1937.

Of the approximately 277,000 participants in the plan since 1950, over 206,000 have left the scope of the plan and of that number 202,665 have left without entitlement to any vested benefit. Of the 202,665 over 17,000 had more than five years of service.

The plan has two provisions for vesting. The most liberal requires 15 years of service and, in addition, an age requirement of 40 years.

Mr. HARTKE. Mr. President, here is a large communications industry covering many separate employers. Of the approximate 277,000 participants in the plan since 1950, over 206,000 have left the scope of the plan and of that number 202,665 have left without any entitlement to any vested benefit and of the 202,000 over 17,000 had more than 5 years service. This plan has two provisions for vesting and the most liberal requires 15 years of service.

Mr. President, next I ask unanimous consent to have printed in the RECORD, case history No. 52.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CASE HISTORY NO. 52

This is a pension plan of a large aerospace firm; it was established in 1955 and has over 105,904 active participants. The plan is collectively bargained.

Of the over 81,000 employees who have left the scope of the plan since it was established, over 66,000 have left without entitlement to any benefit. None of the 66,000 had more than five years of service.

Mr. HARTKE. Mr. President, this is a pension plan of a large aerospace firm established in 1955 and it has over 105,904 active participants. The plan is collectively bargained. Of the over 81,000 employees who left the scope of the plan since it was established, over 66,000 have left without entitlement to any benefit, and none of the 66,000 had more than 5 years service.

Mr. President, I am surprised that the manager of the compromise bill argued one pension vesting plan for self-employed, saying because they take money out of their pocketbooks rather than paychecks they are entitled to 1 year vesting.

I am surprised they do not look at the teaching industry. The teaching industry is not the highest paid industry. It has portability throughout the United States and they are in that plan forever. If teachers of the United States can do it, then it can be done for everyone.

Only vesting after brief service will turn the pension lottery into a pension savings system. Only early vesting will end the subsidy from the least fortunate to the most fortunate employees.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HARTKE. Mr. President, I ask for another 15 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HARTKE. I yield to the Senator from Wisconsin.

Mr. WILLIAMS. That was understood to be under the opponents' time.

Mr. HARTKE. I do not know whose time I am using.

Mr. WILLIAMS. We are willing that the time be taken from the opponents.

Mr. HARTKE. I will have time under my amendments. All I am doing is taking the time of the proponents to try to educate them a little. I know they do not want to be educated. They want to pass the bill, but a little education does not hurt Senators. I do not agree with the statement that a little education is a

bad thing. That is a gratuitous statement and said with lightheartedness.

Mr. President, to continue with my remarks, I turn to another aspect.

IV. THE BIGGEST LOSERS: A. WORKING WOMEN

If private pension plans were designed to exclude women—and perhaps they were—they could not do the job more efficiently.

Women constitute about one-third of the work force. Single women, divorced women, and widows work to earn a livelihood. When they came to retire, those earnings require replacement—but social security benefits replace less than is needed.

About two-thirds of the women at work are married. What most do not realize is that among married couples, there are more families with husband and wife working, than families in which only the husband works. Table 346, 1972 Statistical Abstract of the United States 219. Almost 20 million married women work. They do so to raise and maintain family living standards. Their earnings require replacement upon retirement, otherwise the family's living standard declines seriously.

While it is common to stress that upon retirement, a couple's income needs shrink, they do not shrink as much as some may believe. Medical care costs go up and medicare meets only 40 percent of the medical expenditures of the elderly.

Although many own their own homes, those homes usually are older ones, requiring repairs that the elderly are less able to provide themselves as they once may have—in that area, income needs become larger. While it is common to count the costs of going to work as saved, what are the elderly to do with their new leisure time—simply watch television or wait for the mailman to come with third-class mail or to hear from children who seldom write. Their recreational and travel needs become greater. In fact, those needs generally are not met.

Indeed, many elderly people tell me that they give up taking the daily newspaper—if newspapers want to sell more newspapers they should get on our side on this issue.

Purchase old bread and rolls to save a few pennies, buy dented canned goods, flush the toilet as little as possible—because it takes eight gallons of water. That is what it means to be old for millions of Americans today.

Long years of work should earn a retirement of dignity and comfort—not worry and want. Long years of work should produce a pension substitute for earnings—for the tens of millions of women as well as men.

But they do not now achieve pension eligibility in substantial numbers.

Typically women work for shorter periods of time than men as the following tables show, which I ask unanimous consent to have printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

TABLE A.—MEDIAN YEARS ON CURRENT JOB

Age	All persons	
	Men	Women
30 to 34	3.9	1.8
35 to 39	5.8	2.6
40 to 44	8.4	3.2
45 to 49	10.2	4.4
50 to 54	12.6	6.2
55 to 59	14.7	8.2
60 to 64	15.1	9.4

MEDIAN YEARS—SELECTED OCCUPATIONS

	Men by age		Women by age	
	25–44	45 yr over	24–44	45 yr over
Manufacturing:				
Durable goods	4.5	14.3	2.4	8.3
Nondurable goods	5.3	15.4	2.8	9.1
Wholesale and retail trade	3.3	8.8	1.5	4.9
Operatives and kindred workers	3.8	12.8	2.1	7.7

Source: "Job Tenure" Monthly Labor Review 18–19 (September 1969).

Mr. HARTKE. These data show why pensions so seldom pay off for women. For example in wholesale and retail trade, where women so commonly work, the median years on the current job of women over 45 was 4.9 years as compared with 8.8 years for men. Women factory workers of 45 years or older had median time on the job of 7.7 years, as compared with 12.8 for men.

Most separated employees are in the lower seniority categories, so the bulk of them lose out—especially women who cannot meet the 15 and 10 years' vesting reqiurements.

Moreover, substantial numbers of women work part time and part year both because of family patterns and the availability of work regarded—and still regarded—as women's work.

If they are to participate in pensions in any meaningful way, credits for part-time and part-year pay must be mandated. Some plans do give such proportional credits, which demonstrates the feasibility of such an approach.

Section 202(c) of S. 4—as orginally reported—requires the Secretary of Labor to "prescribe standards, governing the maximum number of working hours, days, weeks, or months, which shall constitute a year of covered service." That does not do the job for part-time, part-year workers. It does not assure that adequite protection will be given to people on lengthy layoff.

But, if proportional credits are to be given, clearly vesting has to be liberal. For someone achieving one-half year's credit or a quarter-year's credit, a 5-year vesting provision that confers only 25 percent of a normal benefit is about useless.

B. WIDOWS—THE FORGOTTEN WOMEN OF PENSION PLANS

If women as workers do badly under pension plans, women as survivors do even worse. Social Security Administration information indicates that no more than 2 percent of widows receive private plan benefits. Little wonder. Pension plan design excludes them as a practical matter.

Although options under which the plan participant elects to take a smaller retirement benefit and provide a survivor's benefit to a spouse are common—that is what is provided as a minimum in this bill—employees usually do not make the election. One major reason is that the election must be made affirmatively before retirement—sometimes as long as a year or two before. These procedural complexities are enough to discourage most plan participants. In addition, the reduction in benefit during the participant's lifetime discourages the election. In sum, women, who ordinarily outlive their husbands, receive no benefits from their pensions.

I see present on the floor the distinguished assistant majority leader, the Senator from West Virginia. I want to give him an example.

One woman, for example, in West Virginia writes that her husband worked for a company for 50 years, starting in his teens, his pension was paid for 13 months after he retired; then he died and the pension stopped—he had made no election, although his plan had one. He had told his wife that the company pension would take care of them. Whether he knew of the option, understood what he had to do to exercise it, his widow just did not know. But after that length of time and after he drew his pension for a few months, she was left with two teenage daughters and no pension.

NEEDED—ASSURED WIDOWS' BENEFITS

Pension plans ought to provide a separate benefit for surviving spouses. Some few plans now do that, but most do not. Quite a few contain the joint and survivor options described, but some do not. The options are seldom exercised.

My amendment would require a joint and survivor option, assuring the spouse of at least a benefit equal to 50 percent of the retiree's unreduced benefit. In addition, the option would not be waived by failure to exercise it. Rather, waiver would require affirmative action in writing by the participant after being informed of the value of the option. In effect, this combines the survivor provisions of S. 4 and S. 1179, as they were reported, with one major difference—my amendment adds a 50-percent survivor benefit whereas, S. 1179 appears to provide for a survivor benefit of 50 percent of the amount payable to the participant, that amount being reduced in order to provide the survivor benefit. Under my amendment, in other words, not only the participant is protected, but so is his wife. Both benefits would be higher.

THE NEEDED REMEDIES: A. VESTING

Vesting is the cornerstone of pension reform. The empty cupboard at Studebaker and the revelation that so small a percentage of pension participants achieve benefits caused the popular stir that led to this debate. Unless chances for qualifying are substantially increased, there will be no meaningful reform in the eyes of the public.

I would say to those looking forward to meeting their constituents that, if there is one bill that is going to haunt them, it is going to be this compromise bill. Their vote for this bill means that they give their stamp of approval to the status quo which is already an admitted failure.

Fairness and need dictate that vesting should be immediate and complete. In that way, savings for retirement would be spread over more years and the cost per year for any level of benefits would be lower. And the last employer would not bear the cost. But, until plans become more widespread, the added pension costs for separating employees could be larger than the offsetting savings for incoming employees with substantial savings. The American business and labor communities are not ready for such a radical step.

I would have hoped that the committee, after having made a good study and having such good information in their hands and after seeing the inadequacies of the present system, would have had the good judgment to present a meaningful reform bill.

But, in being expedient—which is what the proponents of the bill are implying, and what I suppose the Senate is going to say—I do not think we can leave the present system substantially unchanged. The American public finds present pension design impractical. So do the Labor and Finance Committees. The Senate Finance Committee report summarizes one aspect:

> At present, only one of every three employees participating in employer-financed plans has a 50 percent or greater vested right to his accrued retirement benefits. Moreover, 58 percent of covered employees between the ages of fifty and sixty and 54 percent of covered employees 60 years of age and over do not have a qualified vested right to even 50 percent of their accrued retirement benefits. As a result, even employees with substantial periods of service may lose retirement benefits on separation from employment.

To transform that monstrously impractical result, mandatory earlier vesting is required. The result described results from plans in which 10-year and 15-year vesting are the rule. Under one-quarter of plan participants are under plans with no vesting. But three-quarters are in plans that now have 10- and 15-year vesting—and not graded as S. 4 and S. 1179 propose.

No one now questions that 15 years of service under a plan should qualify for 100 percent vesting. All major bills before Congress so provide. The question is whether we will continue to permit the massive pension credit losses reported on April 1, 1971, by the Senate Labor Committee.

The original S. 4 formula of 30 percent vesting at 8 years would essentially perpetuate the present situation for three-fourths of those covered under plans. It would do little to salvage benefits for many others, because most of those separated from plans with 10-year vesting—most with 100-percent vesting at that point—have nothing to show for plan participation.

The S. 1179 formula, reportedly incorporated into the revised S. 4, would commence vesting after 5 years of service—but only for 25 percent of the value of a regular retirement benefit. As already noted, the amounts thereby salvaged are negligible.

What I propose—moving over a 5-year period to a 5-year 100 percent vesting requirement—would obtain more for employees, would produce a healthier pension system, would give people who worked, more assured income and less threat of being forced into welfare or some other form of dependency. It really is an extremely moderate proposal—really not enough to meet the need—but it would meet the need better. It is moderate enough to require only modest increases in cost according to the actuarial calibrations made by the same actuary using the same methods as produced the cost figures for the Senate Labor Committee.

The fact of the matter is that with just a two-tenths of 1 percent increase in payroll, we can have this major change. I would hope that the manager of the bill, the distinguished and progressive chairman of the Labor Committee, would examine his vesting proposal on that ground and not succumb to those people who put the dollar first and the people of his country last.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HARTKE. Mr. President, I ask unanimous consent that I have an additional 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARTKE. Mr. President, I am talking about protection against improper job loss.

No vesting formula will produce real employee protection so long as employers are free to fire employees to defeat pension eligibility. Unfortunately, the Senate Labor Committee studies document many such occurrences. No statutory protection now exists to prevent such action.

I point out that most people start to work at the age of 18 and they will not become eligible until they reach the age of 30 under the provisions of the compromise bill. They have approximately 12 years of work before they become eligible.

These kids are entitled to more protection from Congress. We send them out to fight a no-good war and then get them back home and give them a no-good pension system.

Most collective bargaining agreements protect employees against discharge without good cause and provide effective enforcement machinery in arbitration proceedings whose results are enforcible under section 301 of the Labor-Management Relations Act. But roughly half of all pension participants are not unionized and so they lack such protection. Especially vulnerable are managers and executives whose substantial pension potentialities provide an incentive to their discharge before vesting. The managers of the bill ought to think twice, too. Discipline and discrimination can be so unpleasant as to amount to constructive discharge, a term used by the National Labor Relations Board. That can be the type of harassment which does not say that one is fired, but makes living such a hell that a person wishes he did not have to hang on and endure.

In recognition of that problem, section 610 of S. 4 as originally reported—made it illegal to "discharge, fine, suspend, expell, discipline or discriminate" against plan participants to defeat rights under the act or a plan. The language parallels section 8(a)(3) of the National Labor Relations Act and should do the trick—but only if an adequate enforcement machinery exists.

Section 610—as S. 4 was reported—relies on sections 602 and 603 for enforcement. Section 610 was added after 602 and 603 were drafted, and it was not redrafted to cover 610. They are limited to remedying unproprieties by fiduciaries, whereas section 610 makes illegal certain conduct by employees and unions.

In addition, sections 602 and 603 require court action. What employees need is easy access to an expert group which can rapidly bring their complaint before an administrative tribunal with some expertise in the subject. While many lawyers represent management and unions and fiduciaries, there is no so-called employees bar, little expertise among lawyers in pension matters.

Hence, I propose administrative machinery, subject to the Administrative Procedure Act, to hear complaints of violations of section 610 where a collective bargaining agreements' arbitration provisions cover the subject of the controversy and the situation meets the norms established by the National Labor Relations Board for deferring to arbitration, arbitration would be used. Otherwise the quasi-judicial machinery established by the Secretary of Labor could operate.

These are moderate proposals to meet urgent needs. The opportunity to act on them may be a long time in coming again. We ought to do the job right this time.

We ought to go straight to the heart of pension reform. Reform should be substantive rather than illusory. However, I do not find the heart in the Senate to deal with pension reform at this time. We have a case of cardiac arrest here, and it will kill the pension system in the long run. These reforms will fail to assuage the good judgement of the American people. They know that there are grave injustices which will not be corrected by this bill. The private pension plan system will ultimately have to succomb to a national system under the Social Security Administration.

Mr. WILLIAMS. Mr. President, would the Senator yield for a question?

Mr. HARTKE. I yield. I would like to thank first those Senators who yielded me time on the bill. I know that there was some confusion. I thank the assistant majority leader for helping to work out the matter.

Mr. ROBERT C. BYRD. Mr. President, the Senator is always welcome.

Mr. WILLIAMS. Mr. President, the Senator will offer various amendments.

Mr. HARTKE. Yes.

Mr. WILLIAMS. Does the Senator have an amendment that requires employers to have a private pension plan for the employees of the company?

Mr. HARTKE. No. However, I would be glad to submit one if the chairman of the Labor and Public Welfare Committee would agree to cosponsor it.

Mr. WILLIAMS. Mr. President, I just wanted to ask the question, because so much of what the Senator is going to propose would, I feel, really defeat the present system of private pension plans that are on a voluntary basis.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WILLIAMS. Mr. President, I yield myself 1 additional minute.

The PRESIDING OFFICER. The Senator from New Jersey is recognized for 1 additional minute.

Mr. WILLIAMS. Mr. President, until the Senator does impose upon employers the mandate to have pension plans, I would think that all of the provisions that the Senator would offer, put together, would just kill off any attitude on the part of the employers who do not have any pension plans to come on in.

Mr. HARTKE. Mr. President, first, let me say that it is to the contrary. I do not think that is true. I think it would provide more security. I think that the people who are able to afford the cost of pension plans are basically those in union organizations. There is nothing in the bill to encourage compliance.

What the Senator is doing is saying that we should put a stamp of approval on a no good pension plan in the United States, one that the people are fed up with. Only 4 percent of the people are actually participating in it, according to the committee's own study, and getting a maximum benefit of $100 a month. We are saying that we do not want to do anything to that program.

I find that we are surrendering. No wonder the welfare rolls are filled up when people do not want to do anything to correct this.

If we had a decent pension plan and a decent social security system, we would not have all of the hellish problems that we have today.

Mr. WILLIAMS. Mr. President, I share the concern of the Senator over the hellish problems and all other problems connected with poverty. However, this bill does really do something. I say most Members here feel very certain that it does do something, and we will get to a vote in a little while.

Mr. HARTKE. May I ask the Senator where the security is for the ordinary individual? What security does he have under the committee's own study?

Mr. WILLIAMS. As it is now, under the private pension plans, people can go for 20 years without any vesting. Under this bill, if it becomes law, there will be the first minimum vesting standards of benefits in the pension plan.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WILLIAMS. Mr. President, I think that the Senate is ready to return to the amendment now pending.

The PRESIDING OFFICER. Who yields time? The pending question is Nelson amendment No. 506. Who yields time?

Mr. THURMOND. Mr. President, I will yield myself time against the time allotted to me. I have 2 hours allotted on my amendment.

The PRESIDING OFFICER. The Chair will state that amendment is not before the Senate.

Mr. THURMOND. Mr. President, I have an amendment at the desk. I ask that it be stated.

The PRESIDING OFFICER. Does the Senator ask unanimous consent that it be in order to offer it?

Mr. THURMOND. Mr. President, I ask unanimous consent that it be in order to offer this as an amendment to the amendment No. 506 of the distinguished Senator from Wisconsin (Mr. NELSON), and that I be shown as a coauthor of the resultant amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The amendment, as amended, will be stated.

The legislative clerk read as follows:

In title VII, on page 60, after line 17, add the following:

"(f) LIMITATION ON DEDUCTION FOR CONTRIBUTIONS ON BEHALF OF CORPORATE EMPLOYEES.—Section 404 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan) is amended by adding at the end thereof the following new subsection:

"'(g) LIMITATION OF DEDUCTION FOR CONTRIBUTIONS ON BEHALF OF CORPORATE EMPLOYEES.—Notwithstanding the provisions of subsection (a), no deduction shall be allowed for a contribution made for or on behalf of a corporate employee to or under a defined benefit plan or a defined contribution plan if the amount of such contribution or if the benefit provided under the plan exceeds the amount specified as an alternative limitation on deduction or benefits for proprietary employees in subsection (e)(4) and section 401(j)(2), whichever is applicable'.".

On page 105, in lines 20–22, strike out "a proprietary employee (within the meaning of section 412(c)(1) of the Internal Revenue Code of 1954) or".

On page 120, in lines 3–5, strike out "or a proprietary employee (within the meaning of section 412(c)(1) of such Code)".

On page 191, in lines 20–22, strike out "or a proprietary employee within the meaning of section 412(c)(1)".

On page 35, lines 6 and 8, paragraphs (2) and (3) are redesignated (1) and (2) respectively.

On page 35, strike out lines 3 through 5.

On page 35, on line 6, strike out "sections 72(m)(4)," and insert "section" in lieu thereof.

On page 35, line 20, strike out ", (2), and (3)" and insert "and (2)" in lieu thereof.

Mr. THURMOND. Mr. President, my interest in this pension bill has been primarily to remove a discrimination against small businessmen. I feel that there should be equality between the small and large businessmen.

Yesterday, I offered two amendments to this most important private pension bill and these amendments were accepted without argument by the bill's supporters.

The first amendment would restore equal tax treatment of lump sum distributions and the $5,000 death benefit provisions to employers of both large and small corporations.

The second would permit employees who are also stockholders in small corporations to have the same access to the Central Portability Fund now provided in the legislation only for employees of large corporations.

I again commend the managers of the bill for their acceptance of these amendments. With the acceptance of the above mentioned amendments, the committee moved in the direction of equality of treatment concerning large and small businesses. However, we now have before the Senate another amendment: This amendment, as I explained earlier, will eliminate the "proprietary employee" limitations from the bill. Simply stated, a vote for my amendment will be a vote for equality among small and large corporations. A vote against this amendment will be a vote in favor of big business at the potential expense of small businessmen. I do not see how as representatives of all the citizens of our great Nation we can justify this discrimination against our small businessman.

Mr. President, the Comprehensive Private Pension Security Act of 1973 is in many respects a laudable bill and reflects an enormous amount of work on the part of both the Committee on Finance and the Committee on Labor and Public Welfare. Extensive hearings have been held by both committees, and the views of various interests have been heard. As a result, a bill has been produced which, if enacted into law, will go far to cure many of the inequities and potentials for abuse that are present in our private pension system today.

However, included in the bill was a provision which, in my opinion, represented a serious departure from the overall goal of strengthening and improving the private retirement system. I am referring to the limitations placed upon the plans benefiting a class denominated as "proprietary employees."

A proprietary employee is one who owns at least 2 percent of the stock of a corporation and who, when combined with all other such 2-percent stockholders, is found to own 25 percent or more in the aggregate of the benefits provided in a qualified retirement plan. Obviously such a definition would have included virtually all small corporations.

The limitations placed on the benefits available for such employees were quite extensive and were found in numerous sections of the bill. Senator NELSON and I have now agreed to amendments which will eliminate the restrictions of the original bill.

These limitations represented discrimination against small businesses—discrimination that this body has, to my recollection, never before sanctioned. Indeed, we have always taken great pains to encourage the continuation of small businesses and the creation of new business concerns. Competition is the goal to which we have dedicated our private economic sector, and the formation and continued existence of small businesses is an important spur to new competition. Without such, the continuous influx of new ideas and procedures may be curtailed and our economic growth could suffer.

To the best of my knowledge, the pro-

prietary employee provisions were not the subject of any of the public hearings that led to the formulation of this bill. In my opinion, the concept represented the rankest type of discrimination. The primary impetus for reform of the private pension system came from a number of specific cases where long-term employees were disappointed in their pension expectations by virtue of inadequate funding, lack of adequate vesting and the other causes.

So far as I know, none of these cases involved small or closely held businesses. In addition, most owners of closely held businesses are resigned to the fact that the Internal Revenue Service imposes on them more restrictive rules regarding funding, vesting, and investment of funds than are imposed in the case of pension plans of larger, publicly held corporations. This made it particularly surprising to me that closely held businesses would be singled out for punitive treatment in the pension reform area.

No one has yet explained to me the tax equity or public policy reasons behind a rule that provides that the owner of a closely held business should be treated more harshly than a highly compensated executive of a publicly held business with regard to qualified retirement plans.

The committee report states that the proprietary employee limitations are a necessary segment of a package that provides for increasing the limits on contributions for self-employed persons and creating a new system of individual savings for retirement. While two-thirds of this package was commendable and was consistent with the announced purpose of the bill, the proprietary employee provisions represented a step backward.

The real purpose of increasing the H.R. 10 limits from $2,500 to $7,500 is to narrow the discriminatory gap existing between self-employed persons and corporations. While such an increase does narrow the gap, it does not eliminate the differences in rules applicable to retirement plans for the respective entities, nor does it totally eliminate the gap on contributions allowable. To impose similar restrictions on small corporations would have run counter to the overall objective of providing equality. It would have spread the discriminatory treatment to another vast pool of employees. Such an act would have simply divided the retirement benefit treatment into two segments—liberal treatment for corporate giants and restrictive treatment for small businesses. I strongly urge that the rules applicable to qualified plans should not be dependent upon the form or the size of a business organization.

Mr. President, our amendment will now erase these distinctions between employees of large and small corporations, because there is no justification for their continuation, and also because equal treatment of small corporations will tend to encourage these small businesses to institute the very retirement plans that are now lacking in the private sector of our economy.

The report of the Senate's Special Committee on Aging, released in January of 1970, states:

> The lack of pension coverage is obviously concentrated among small employee groups.

While it cannot be stated categorically that the limitations imposed on "proprietary employee" corporations would have directly caused a dearth of retirement plans in the small business sector, there can be little doubt that such limitations would not have encouraged such small businesses to set up retirement programs.

At both present and foreseeable levels, the social security system is not adequate in and of itself insofar as retirement income is concerned. Retirement benefits under social security are presently supplemented by pension and profit-sharing benefits by a vast number of large companies operating in this country. As a result, a gulf is rapidly developing in the financial status of retirees in this country caused primarily by the size of the company by whom the retiree had been employed. This situation is neither equitable nor desirable in our economy and any pension legislation should have, as one of its primary goals, the encouragement of more small businesses to institute retirement plans of both the pension and the profit-sharing type.

According to U.S. Department of Commerce statistics, over 90 percent of all businesses in this country employ fewer than 20 people. These businesses should be encouraged to adopt and implement retirement plans. However, the effect of the "proprietary employee" limitations would have been to discourage such action.

Mr. President, I emphasize that the "proprietary employee" restriction was not proposed in any prior bill introduced in the Senate or the House of Representatives, nor was it discussed in any detail in any testimony presented to the Subcommittee on Private Pension Plans during the lengthy hearings which were held on S. 1179.

An analogous situation occurred in 1969 during our debate of the 1969 Tax Reform Act. At that time, the Finance Committee had reported favorably a provision—which had no counterpart in the House bill—that would have limited contributions on behalf of shareholder-employees of professional corporations to the maximum amounts permitted under the H.R. 10 provisions. This particular provision was deleted from the bill during Senate debate by an amendment which was passed by an overwhelming margin. In many respects the "proprietary employee" limitation represents a resurrection of the "shareholder-employee" concept previously rejected by this body.

Mr. President, I urge that the "proprietary employee" limitations should be rejected. The amendment I am offering would do that.

Now, I want to take this opportunity to thank the following Senators who joined on my original amendment and who have supported the concept that small businessmen should be placed on the same basis as large businessmen:

Senators TOWER, FANNIN, HELMS, BROCK, HOLLINGS, BARTLETT, BELLMON, GOLDWATER, EASTLAND, NUNN, GRAVEL, COOK, and MATHIAS.

At the same time, I recognize that abuses have existed in the private pension area. Accordingly, I join Senator NELSON in sponsoring the overall limitation of $75,000 as a maximum annual pension benefit to employees of both large and small corporations.

Mr. President, at this time, I join the distinguished Senator from Wisconsin (Mr. NELSON) in offering this compromise amendment and urge my colleagues to support its passage.

I am very much pleased that we have been able to reach agreement on this matter which now will place the small corporations and small businessmen on the same basis as the large businesses and large businessmen. The Senator from Wisconsin has an amendment that places a $75,000 limitation to employees of both large and small corporations, and so we are merging the two amendments into one amendment, and we are becoming cosponsors of that amendment.

Mr. President, I yield the floor at this time, but reserve the remainder of the time allotted to me.

The PRESIDING OFFICER (Mr. DOMENICI). Who yields time?

Mr. NELSON. Mr. President, this is a simple amendment to amendment No. 506. I have examined it, and the staff has examined it. It eliminates some additional distinctions between proprietary corporations and general corporations which were not eliminated in the two major amendments offered yesterday. I am prepared to accept it.

Mr. JAVITS. Mr. President, we believe that the amendment which has been agreed to between Senator THURMOND and Senator NELSON carries out the fundamental thrust of the Nelson amendment, which I am for, and therefore I shall vote for it. But, in fairness to those who voted on the Nelson first amendment, I believe there should be a rollcall vote and therefore I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. NELSON. Mr. President, may I inquire of the Senator from New York, he is asking for a rollcall vote on the amendment of the Senator from South Carolina to my amendment No. 506?

Mr. JAVITS. Yes as I understand it, it is one amendment now and the Senator has taken the amendment of the Senator from South Carolina.

Mr. NELSON. So the Senator is asking for a rollcall vote on amendment No. 506 as amended.

Mr. JAVITS. Exactly right.

The PRESIDING OFFICER (Mr. DOMENICI). The Senator from Wisconsin has not yet accepted the amendment of the Senator from South Carolina. He has not yet modified his amendment.

The pending question is on agreeing to the amendment of the Senator from South Carolina (Mr. THURMOND).

On this question the yeas and nays have been ordered——

Mr. NELSON. Then this is a vote on amendment No. 506 as amended by the amendment of the Senator from South Carolina, is it not?

The PRESIDING OFFICER. It has not been amended as yet.

Mr. JAVITS. If the Senator from Wisconsin will accept the amendment of the

Senator from South Carolina, then I ask unanimous consent that he may be permitted to modify his amendment accordingly.

The PRESIDING OFFICER. The Senator from Wisconsin has the right to modify his amendment. If he cares to do so, that is his privilege.

Mr. NELSON. Mr. President, I modify my amendment No. 506 in accordance with the amendment as offered by the Senator from South Carolina (Mr. THURMOND).

The PRESIDING OFFICER. The amendment is so modified.

Mr. JAVITS. Mr. President, now I ask for the yeas and nays on amendment No. 506 as modified.

The yeas and nays were ordered.

Mr. NELSON. Mr. President, if it has not been requested, I ask unanimous consent that the name of the Senator from South Carolina (Mr. THURMOND) be added to amendment No. 506 as modified, as a cosponsor with me.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TAFT. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield 2 minutes on the bill to the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized for 2 minutes.

Mr. TAFT. Mr. President, I thank the Senator from New York for yielding me this time. I will support the Nelson amendment as modified by the amendment of the Senator from South Carolina because it is important to remove any discrimination that may exist between large and small corporations in this respect. I have many questions as a matter of principle as to whether it is correct to put a limitation on the benefits that may be paid other than those prescribed as reasonable compensation by regulations of the Treasury Department.

I would prefer leaving the entire question as to reasonableness of the pension contribution to the Internal Revenue Code. However, as a practical matter, it seems to me that the $75,000 limitation is agreeable at this point, at least, as an acceptable substitute.

I would hope that the Finance Committee, however, in considering any future tax legislation, would reexamine the desirability of imposing such a limitation at all. Perhaps such a limitation should vary with the particular circumstances of the type of plan involved.

A flexible approach may be more sensible than having Congress vote a flat limitation on pension contributions.

Mr. HOLLINGS. Mr. President, I rise in support of absolutely equal and equitable treatment of our big business people and our small business people, and of the people who work in our big business leviathans as well as our hometown enterprises, in this matter of pension reform. There is no reason in the world why the vice president of General Motors should be treated any differently than the president of John Q. Smith in Anytown, U.S.A. Nor should a worker in the one firm be singled out for more stringent regulation than a worker in the other. We have had enough of discrimination for, discrimination against, tilting toward, tilting away, favoring particular groups with all sorts of special incentives and ignoring the rest.

Now is the time to come clean. And we can come clean on pension reform by treating everyone alike—by giving each of them the opportunity to recruit the best talent and hold out to that talent the prospect of similar reward for a similar career of hard work. Any other approach is unfair and un-American. This country was built on free enterprise, but when we come to consider ridiculous limitations such as those we have heard proposed in recent hours, we are legislating unfree capitalism. We are legislating a stagnant state capitalism—or worse.

Any pension reform legislation must provide, first and foremost, equal protection of the law. That is the root of the question before us—shall we treat everyone alike, guarantee to everyone their right to equal protection under the law—or shall we instead legislate to help the favored few.

The amendment being offered by the distinguished senior Senator from South Carolina would see to it that the equal protection of the law comes first.

It is an equitable amendment, in that everyone receives the same treatment.

It is wise because it gives incentive, instead of taking us further down the road of Government by impediment and strangulation by degree.

And it is good because it is an amendment which benefits middle America—the hard-pressed men and women who take part in business activities in hundreds of thousands of American enterprises.

It seems every time we pass a bill, we put the burden on middle America. Well, here is a chance to repair some of the damage. Here is an opportunity to recognize our responsibilities to provide for the general welfare. Here is an amendment true to our people because it is true to those great principles of fairness, equity, and equal protection of the law.

Let us act for the working men and women of America who for too long, when they are not being burdened are only being forgotten. I urge immediate passage of this important amendment, and I commend the distinguished senior Senator from South Carolina for introducing it. I am proud to support this measure. It is the only fair thing to do.

Mr. HELMS. Mr. President, as a cosponsor of the amendment submitted by the distinguished Senator from South Carolina (Mr. THURMOND), I fully concur in the decision to consolidate the Nelson amendment with the Thurmond amendment. I feel that this is a reasonable compromise, certainly for the time being and under the existing circumstances.

However, Mr. President, I have some lingering concerns. I must say that I am opposed to the efforts being made in the Senate to impose new and inequitable limitations on the retirement benefits which will be available for a class of wage earners. My opposition does not concern whether a maximum of $45,000 a year, or $75,000 a year, or some other figure is adequate to provide retirement benefits for corporate employees. It springs from a more fundamental base.

This Government was founded upon a very strong philosophical foundation. The basis for that foundation is that all men are created equal, with the same natural rights. The corollary to that principle, of course, is the fact which was recognized by our Founding Fathers that all men are unequal in their natural talents and abilities and that a man should be secure in his right to earn and possess the property which his labor has produced.

Our tax laws must conform to this philosophy if they are to be consistent with the purpose of this American Government. The only legitimate reason, in my humble opinion, for the existence of our many tax laws should be to raise revenue. Instead, what we have been witnessing here on the Senate floor is an attempt to use the tax laws to equalize the economic means of Americans.

I submit that this is wrong and contrary to our American philosophy that a person is entitled to enjoy the fruits of his labor.

Who in this body has the right and the authority to determine what is just compensation between an employer and an employee? The answer is: No Senator—that decision belongs to the individuals concerned. There has been much talk of pension plan contributions in terms of a tax loophole. This is not a loophole; every penny which is paid into a pension plan will be taxed at its full rate when it is distributed.

It is my feeling that Congress should keep its hands off this matter of deciding what retirement income is appropriate and leave the decision to the employer and employee. Let's get the tax laws back where they belong, as originally intended, based on the need of the Government to raise revenue in support of its operations—and away from the policy of promoting social and economic equality.

SMALL BUSINESS INTERESTS IN THE PENSION BILL RECOGNIZED

Mr. BIBLE. Mr. President, as chairman of the Select Committee on Small Business I would like to take a moment to pay tribute to the extraordinary work that has been done on the pending pension legislation by many Senators, committees, and staff members including the chairman of the Senate Finance Committee (Senator LONG); the Senator from Wisconsin (Mr. NELSON) who conducted the hearings on the tax aspects of pensions in the Finance Committee; the Senator from Texas (Mr. BENTSEN), who proposed S. 1179; the Senators from Utah and Nebraska (Mr. BENNETT and Mr. CURTIS), the ranking minority members of the Finance Committee and its Pension Subcommittee; the Senator from New Jersey (Mr. WILLIAMS), and the Senator from New York (Mr. JAVITS), the chairman and ranking minority member of the Senate Labor Committee and principal sponsors of S. 4.

Anyone who has had contact with deliberations on these bills must be impressed with the sheer volume of hard work forming the foundation of the bills

brought to the Senate floor: S. 4, 102 pages; S. 1179, 283 pages.

Substitutes for S. 4: A. 496, 227 pages and A. 497, 71 pages.

Behind these bills stand some 1,700 pages of testimony and public hearings, panel discussions and summaries.

After this material was presented, the next step was a series of executive sessions where the policies and the language of the bills were actually hammered out. The judgments on matters of vesting, portability, termination insurance, fiduciary standards, enforcement, and retirement savings were many, exacting and difficult. The document reporting S. 1179 to the Senate extended to 157 pages.

Following the drafting process, Senators and staff were called upon to reconcile the two major proposals. This involved intensive consultation and an extra executive session of the Senate Finance Committee with long hours and tough drafting burdens for the Joint Committee on Internal Revenue Taxation and the Senate Legislative Counsel, among others.

Although there is probably much more to this story that is better known to the major participants, these things occur to me as worthy of mention—particularly in light of some statements recently made by the President to the effect that Congress has not snapped to attention and passed every bill recommended by his administration—some of which are at best questionable.

The pension bill, which we are debating, presently affects every worker in private employment and every business—large and small. It aims at extending the retirement security so that it is within reach of every worker. It seeks to improve and reform the administration of these plans, so that men who have labored for many years cannot be deprived of the retirement income they have well earned. It affects the entire structure of private retirement and is really a monumental bill.

Because of the impact on smaller business, the select committee is proud to have played a minor role in this legislative process.

The early proposal to extend the new self-employment limitations broadly to corporations raised widespread concern among small corporations and their professional advisers. As a consequence, our committee and several of its members received comment and information from a variety of sources including their small business constituents; accountants, such as Gilbert Simonetti of the American Institute of Certified Public Accountants; and lawyers such as Louis Diamond, Steffan Tucker and Sheldon Cohen. The thought and effort put into these many presentations, including much contributed in a spirit of public service, were greatly appreciated.

In an effort to discharge our committee responsibilities, we assembled this information and made it available to the Finance Committee and the Labor and Public Welfare Committee, as well as to other interested Senators. Today, we feel it would be useful to make this data generally available to Members of the Senate in connection with this debate and the various votes on the provisions for retirement savings on the part of small, self-employed businessmen and small corporations.

Therefore, I ask unanimous consent that a sample of our correspondence together with a memorandum and a study of the impact of certain proposals on small corporations be included in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BIBLE. I take pleasure in pointing out that the Finance Committee and the Joint Committee on Internal Revenue Taxation were responsive to the varied and complex difficulties in the small business area. These were the subject of the additional executive session of the Finance Committee on September 14, which I have mentioned.

As a result, the committee amendment 497 largely resolves the small business problems of which we are aware. Some may wish for more and others less. However, all in all I believe the provisions on self-employed deductions, corporate limits, partnerships, and integration with social security are satisfactory to the small business community as far as indicated by the material which has come to us.

Further, the drafting of these provisions exhibit a sensitivity to the problems of new and growing businesses and a willingness of Senators and their staffs to shoulder the extra work involved to assure fair treatment for smaller firms as a part of this complicated and technical legislation.

I, therefore, salute all who had a part in bringing this pension legislation to the point of passage in the Senate, and I hope that the resulting bill will advance to consideration in the House and final passage in this 93d Congress.

There being no objection, the correspondence was ordered to be printed in the RECORD, as follows:

SEPTEMBER 14, 1973.

Hon. RUSSELL B. LONG,
Chairman, Finance Committee,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I understand that the pension reform bills are now scheduled to be taken up on September 18 in the Senate and are currently under consideration by the Committee on Finance

During the past month certain information regarding the extension of the proposed new self-employed deduction limitations to corporations has come to the Select Committee. It has raised concern over the possible impact of this proposal on corporations not composed of professionals.

Because of our duties to the small business community, I thought it would be appropriate to pass this data along to Senators such as yourself and your colleagues who have the heavy primary responsibilities in connection with this legislation.

I hope this material, including a memorandum prepared by the staff, will be helpful in discussions by you and the Committee incident to the further advance of these bills.

Cordially,

ALAN BIBLE, *Chairman.*

SEPTEMBER 14, 1973.

MEMORANDUM

Subject: Extension of Self-Employed Pension Limitations to Corporations.

As examination of S. 1179, the pension reform bill reported by the Finance Committee, has developed over the past month, concern over the extension of self-employed limitations to corporations has mounted. Correspondence received by the Committee and several of its members has been analyzed, and the Committee sought further information on the possible effect of this proposal.

Attached is a study of five existing pension plans, not involving "professionals," in the active portfolio of a Cleveland pension consulting and managing firm: a funeral home, lithography printer, machine shop, a general contractor, and a wholesale firm.

COVERAGE

Of course, we cannot judge the validity of the firm's assumptions, or its sample. However, it may be noted that the general construction and wholesaling firms do reflect how pensions of employees as well as owner-managers could be sizably reduced under such a rule. Although this is fragmentary, it is evidence of possible pressure to terminate an existing plan or reluctance to begin a new one, which may be generated by such a provision.

Since a significant proportion of the employees not now covered by pension plans are believed to work for smaller firms, discouraging coverage would be inconsistent with the thrust of the bill as a whole. It is estimated that small business accounts for about half of U.S. employment. The Daily Tax Report (BNE) of September 13, 1973, reports that for firms with less than 50 employees 28 percent are covered by retirement plans compared with 57 percent for 50–99 employee firms, 69 percent for 100–500 employee firms and 95 percent for 500 and over firms.

ADVERSE COMPETITIVE IMPACT

This problem seems to become more acute when the definition of owner-manager or proprietary employee is in terms of 2 percent stock ownership.

Competitive disadvantages to smaller business may arise not only from the unlimited pension funding which would still be permitted to larger firms. In addition, such a rule might inhibit the willingness of small firms to offer stock of the company as an incentive for retaining key employees.

While it seems clear from the Finance Committee report (S. Rept. 93-383, p. 119) that professional corporations are the target of this provision, it may extend much further—perhaps to all but the publicly-held corporations.

APPROPRIATENESS OF THE 2 PERCENT STANDARD

Existing analogies in the Internal Revenue Code to closely held corporations appear in section 6166(c) (i.e., 20 percent) and sections 1371(a) (suggesting 10 percent) and 1379(b) (re pensions, 5 percent). With regard to the probable structure of smaller manufacturing and service firms, possibly as illustrated by the attached examples, might not an ownership standard of 20 percent serve the purpose?

In considering this question, attention could be given to "whether self-employed persons and corporate employees . . . engage in substantially the same economic activities" (Tax Proposals Affecting Private Pension Plans, May 8, 1972, p. 8). The other variable in the formula (e.g., 25 percent of benefits) could still be adjusted to leave lati-

tude to deal with undue concentration of benefits.

POSSIBLE AVENUE TOWARD RESOLVING THE DIFFICULTY

An approach already considered in S. 1179 is in terms of limiting the ultimate pay-out of the pension to a suitable percentage of compensation. This approach has the advantage of accommodating the variable of age at the time of entry (which is considerable) and the increasing cost of living.

It has been brought to our attention that many businesses typically take several years to achieve the financial stability required to undertake a commitment to a fixed-cost plan, and thus probably enter the retirement-deferred compensation field with a profit sharing plan as to which contributions are voluntary from year to year. It would therefore seem that any rules in this area be uniform as between the various types of retirement plans.

S. 1179 adopted the position taken in Revenue Ruling 72-3 in which the Internal Revenue Service established the 100 percent standard administratively. However, if 100 percent of the highest three years of salary is deemed too high a ceiling for the statute, perhaps the Finance Committee could consider 80 percent or some other percentage. We are informed that 80 percent is the standard for Federal Government Civil Service Employees. There may be some problems with this, as the founder of the business may have many more years of past service at the time a plan is adopted. However, the technical competence of the Committees involved are more than equal to drafting a provision which would prevent unfair advantage.

This formula could also be coupled with an upper limit on the salary to which the 80 percent could apply—for example, the five exhibits attached would suggest a base in the neighborhood of $50,000.

POSITION OF SMALL BUSINESS ORGANIZATIONS

Groups such as the National Small Business Association and the National Federation of Independent Business have already expressed their concern over what they feel are serious problems inherent in this proposal, and this correspondence is before other Senators as they enter the final stages of deliberation on this important measure.

MOSKAL, JARAS,
RICCHETTI & ASSOCIATES, INC.,
Cleveland, Ohio, September 7, 1973.

Re: Senate Finance Committee Pension Proposal which discriminates against small business corporations.

Hon. ALAN BIBLE,
Chairman, U.S. Senate, Select Committee on Small Business, Old Senate Office Building, Washington, D.C.

DEAR SENATOR BIBLE: Our organization is engaged in the design, installation and administration of small employer retirement plans. Our clients are exclusively small closely held corporations employing between 5 and 100 employees. Over the past several years we have had occasion to work with several hundred small employer pension and deferred profit sharing plans.

We are quite concerned about certain provisions of the Pension Reform Bill (S. 1179) recently reported out of the Senate Finance Committee. The objectionable provision *limits retirement plan contributions for "owner-manager" employees to a maximum of 15% of compensation or $7,500.00, whichever is the lesser.* "Owner-managers" have been defined in the bill to include anyone who owns two (2%) percent or more of the corporation where 25% or more of the plan contributions are for the benefit of the "owner-manager".

This proposed limitation is obviously directed against the "professional corporation". However, the Senate Finance Committee's "shotgun approach" hits every small business corporation in the country. The ultimate impact of this proposal, if it ever becomes law, could absolutely freeze the growth of the private pension system in the entire small business sector. Small companies without retirement plans will be discouraged from adopting new plans and those that already have retirement plans will be required to substantially cut back the benefits provided thereunder, or possibly to terminate their plans outright. Certainly, it cannot be the intent of our government to so impede the growth of the private retirement system.

We feel that the Finance Committee's proposal should be removed from the Bill for the following reasons:

1. The retirement pension benefit that can be purchased with a contribution of 15% of wages (maximum $7,500) is not adequate for those older workers. (age 45 and over)

2. Considering the ever present inflation which our country is experiencing and can be expected to experience in the future, what appears to be a resasonable retirement benefit in terms of today's value of the dollar may be wholly inadequate in terms of the value of the dollar at the time of retirement. Larger pension benefits should therefore be encouraged and not restricted.

3. The contribution restriction which the proposal advocates applies only to the small business corporation. It leaves the pension benefits of the executives of large publicly owned corporations virtually unlimited. This is clearly discriminatory against the small businessman.

Out of the hundreds of retirement plans our firm has worked with, less than ten (10%) percent involve "professional corporation" plans. The great bulk of the plans we work with cover employers in non professional type businesses. (i.e. small manufacturers, tool & die shops, construction companies, etc.)

In order to illustrated the impact of this proposal on existing small business corporation retirement plans, we have taken a sampling of 5 different retirement plans administered by our firm, and have illustrated the cut back in benefits and contributions that can be expected under the Senate Finance Committee proposal. While the cut backs illustrated are required to be applied only to the "owner-manager" employees, we believe that all rank and file employee pension benefits will be correspondingly reduced right along with the owner-manager's benefits. Human nature being what it is, it is most unlikely to expect that the employees' benefits will be provided under a more generous formula than is applicable to the boss's benefits.

Respectfully yours,
MOSKAL, JARAS, RICCHETTI & ASSOCIATES, INC.

P.S. We have also enclosed herewith our "Position Report" which contains a brief summary of other objections to the Senate Finance Committee proposal.

SMALL CORPORATION PENSION PLAN (NAME OMITTED) COMPARISON OF PLAN COSTS AND BENEFITS BEFORE AND AFTER SENATE FINANCE COMMITTEE CONTRIBUTION RESTRICTION

Participants	Entry age	Retirement age	Annual salary	Under present law: Company contribution	Under present law: Monthly pension [1]	After finance committee contribution restriction: Company contribution	After finance committee contribution restriction: Monthly pension [1 2]
Funeral home:							
Owner-manager	56	69	$26,352	$5,536	$593	$3,953	$423
Employee No. 1	25	65	11,436	430	116	307	119
Employee No. 2	43	65	12,024	1,053	181	752	129
Employee No. 3	43	65	11,424	859	166	613	119
Employee No. 4							
Employee No. 5							
Total company contribution				7,878		5,625	
Lithography—printing:							
Owner-manager	55	65	50,000	9,324	666	7,500	536
Employee No. 1	51	65	17,169	1,390	133	1,117	107
Employee No. 2	34	65	15,717	318	93	256	75
Employee No. 3	34	65	17,644	480	142	386	114
Employee No. 4	37	65	19,126	642	165	516	132
Employee No. 5	32	65	14,989	303	97	243	78
Balance of covered employees				5,518		4,436	
Totzl company contribution				17,975		14,454	
Machine shop—jobber:							
Owner-manager	44	65	26,000	4,788	821	3,900	669
Employee No. 1	25	65	8,772	326	135	266	110
Employee No. 2	36	65	7,044	492	142	401	116
Employee No. 3							
Employee No. 4							
Employee No. 5							
Total company contribution				5,606		4,576	

SMALL CORPORATION PENSION PLAN (NAME OMITTED) COMPARISON OF PLAN COSTS AND BENEFITS BEFORE AND AFTER SENATE FINANCE COMMITTEE CONTRIBUTION RESTRICTION—Continued

Participants	Entry age	Retirement age	Annual salary	Under present law: Company contribution	Under present law: Monthly pension [1]	After finance committee contribution restriction: Company contribution	After finance committee contribution restriction: Monthly pension [1] [2]
Construction industry—general contractor:							
Owner-manager	50	65	$50,800	$15,136	$1,614	$7,500	$800
Employee No. 1	38	65	20,117	2,460		1,219	284
Employee No. 2	24	65	9,291	356		176	74
Employee No. 3	30	65	7,894	312		155	42
Employee No. 4	37	65	5,742	270		134	32
Employee No. 5	28	65	8,403	329		163	59
Balance of covered employees				2,685		1,330	
Total, company contribution				21,548		10,677	
Wholesaler—screw products:							
Owner-manager	64	74	25,000	13,626	900	3,750	243
Employee No. 1	24	65	9,948	726	290	196	78
Employee No. 2	44	65	15,600	2,850	455	770	123
Employee No. 3	33	65	17,904	1,859	522	502	141
Employee No. 4	34	65	8,580	937	250	253	68
Employee No. 5	20	65	6,864	442	200	119	54
Employee No. 6	50	65	5,928	1,733	173	468	47
Total company contribution				22,173		6,058	

[1] Per month.

[2] All employee benefits were proportionately reduced to correspond with the reduction required in connection with the "owner-manager" benefits.

The PRESIDING OFFICER. Who yields time,

Do Senators yield back their time on the amendment?

Mr. NELSON. Mr. President, I yield back the remainder of my time. How much time does the other side have?

The PRESIDING OFFICER. Thirteen minutes remain.

Mr. HANSEN. Mr. President, we yield back our time on this side.

The PRESIDING OFFICER (Mr. DOMENICI). All time on this amendment has now been yielded back.

The question is on agreeing to the amendment No. 506 of the Senator from Wisconsin (Mr. NELSON), as modified.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Michigan (Mr. HART), the Senator from Louisiana (Mr. LONG), and the Senator from Montana (Mr. METCALF) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), and the Senator from Kansas (Mr. PEARSON) are absent because of illness.

I also announce that the Senator from Arizona (Mr. GOLDWATER), and Senator from Ohio (Mr. SAXBE), are necessarily absent.

I further announce the Senator from Utah (Mr. BENNETT) is absent on official business.

The result was announced—yeas 89, nays 2, as follows:

[No. 396 Leg.]

YEAS—89

Abourezk	Byrd, Robert C.	Ervin
Aiken	Cannon	Fong
Allen	Case	Fulbright
Baker	Chiles	Griffin
Bartlett	Church	Gurney
Bayh	Clark	Hansen
Beall	Cook	Hartke
Bentsen	Cotton	Haskell
Bible	Cranston	Hatfield
Biden	Curtis	Hathaway
Brock	Dole	Helms
Brooke	Domenici	Hollings
Burdick	Dominick	Hruska
Byrd, Harry F., Jr.	Eagleton	Huddleston
	Eastland	Hughes
Humphrey	Montoya	Scott, Va.
Inouye	Moss	Sparkman
Jackson	Muskie	Stafford
Javits	Nelson	Stennis
Johnston	Nunn	Stevens
Kennedy	Packwood	Stevenson
Magnuson	Pastore	Symington
Mansfield	Pell	Taft
Mathias	Percy	Talmadge
McClellan	Proxmire	Thurmond
McClure	Randolph	Tower
McGee	Ribicoff	Tunney
McGovern	Roth	Weicker
McIntyre	Schweiker	Williams
Mondale	Scott, Pa.	Young

NAYS—2

Buckley	Fannin

NOT VOTING—9

Bellmon	Gravel	Metcalf
Bennett	Hart	Pearson
Goldwater	Long	Saxbe

So Mr. NELSON's amendment No. 506, as modified, was agreed to.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had passed the bill (S. 464) for the relief of Guido Bellanca, with an amendment, in which it requested the concurrence of the Senate.

The message also announced that the House had passed the bill (S. 1983) to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes, with amendments, in which it requested the concurrence of the Senate; that the House insisted upon its amendments to the bill, asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mrs. SULLIVAN, Mr. DINGELL, and Mr. GOODLING were appointed managers on the part of the House at the conference.

The message further announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H.R. 1352. An act for the relief of Robert F. Franklin;

H.R. 1948. An act for the relief of Edgar P. Faulkner and Ray H. New;

H.R. 1949. An act for the relief of Hazel W. Lawson and Lloyd C. Johnson;

H.R. 2207. An act for the relief of Joseph C. Leeba;

H.R. 2213. An act for the relief of Cornelius S. Ball, Victor F. Mann, Junior, George J. Posner, Dominick A. Sgammato, and James R. Walsh;

H.R. 2533. An act for the relief of Raphael Johnson;

H.R. 2771. An act for the relief of Leonard Diamond;

H.R. 3044. An act for the relief of James Evans, publisher of the Colfax County Press, and Morris Odvarka;

H.R. 3530. An act for the relief of Eugenia C. Lyttle;

H.R. 4589. An act for the relief of Roger Stanley, and the successor partnership Roger Stanley and Hal Irwin, doing business as the Rogert Stanley Orchestra;

H.R. 5379. An act for the relief of John B. Clayton;

H.R. 6007. An act for the relief of Swift-Train Company;

H.R. 6828. An act for the relief of Edith E. Carrera;

H.R. 7087. An act to authorize the Secretary of the Interior to sell reserved mineral interests of the United States in certain land in Missouri to Grace F. Sisler, the record owner of the surface thereof;

H.R. 7976. An act to amend the Act of August 31, 1965, commemorating certain historical events in the State of Kansas;

H.R. 8406. An act for the relief of William M. Starrs;

H.R. 9293. An act to amend certain laws affecting the Coast Guard; and

H.R. 9575. An act to provide for the enlistment and commissioning of women in the Coast Guard Reserve, and for other purposes.

ENROLLED BILLS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills:

S. 155. An Act for the relief of Rosita E. Hodas;

S. 776. An Act to authorize the striking of medals in commemoration of the one hundredth anniversary of the cable car in San Francisco;

S. 902. An Act to amend section 607(k)(8) of the Merchant Marine Act, 1936, as amended; and

S. 1352. An Act to require loadlines on United States vessels engaged in foreign

voyages and foreign vessels within the jurisditcion of the United States, and for other purposes.

The ACTING PRESIDENT pro tempore (Mr. CLARK) subsequently signed the enrolled bills.

HOUSE BILLS REFERRED

The following bills were severally read twice by their titles and referred, as indicated:

H.R. 1352. An act for the relief of Robert F. Franklin;

H.R. 1948. An act for the relief of Edgar P. Faulkner and Ray H. New;

H.R. 1949. An act for the relief of Hazel W. Lawson and Lloyd C. Johnson;

H.R. 2207. An act for the relief of Joseph C. Leeba;

H.R. 2213. An act for the relief of Cornelius S. Ball, Victor F. Mann, Jr., George J. Posner, Dominick A. Sgammato, and James R. Walsh;

H.R. 2533. An act for the relief of Raphael Johnson;

H.R. 2771. An act for the relief of Leonard Diamond;

H.R. 3044. An act for the relief of James Evans, publisher of the Colfax County Press, and Morris Odvarka;

H.R. 3530. An act for the relief of Eugenia C. Lyttle;

H.R. 4589. An act for the relief of Roger Stanley, and the successor partnership Roger Stanley and Hal Irwin, doing business as the Roger Stanley Orchestra;

H.R. 5379. An act for the relief of John B. Clayton;

H.R. 6007. An act for the relief of Swift-Train Company;

H.R. 6828. An act for the relief of Edith E. Carrera; and

H.R. 8406. An act for the relief of William M. Starrs. Referred to the Committee on the Judiciary.

H.R. 7087. An act to authorize the Secretary of the Interior to sell reserved mineral interests of the United States in certain land in Missouri to Grace F. Sisler, the record owner of the surface thereof; and

H.R. 7976. An act to amend the Act of August 31, 1965, commemorating certain historical events in the State of Kansas. Referred to the Committee on Interior and Insular Affairs.

H.R. 9293. An act to amend certain laws affecting the Coast Guard; and

H.R. 9575. An act to provide for the enlistment and commissioning of women in the Coast Guard Reserve, and for other purposes. Referred to the Committee on Commerce.

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

The PRESIDING OFFICER. Pursuant to the previous order, the Senator from Washington is recognized.

Mr. JACKSON. Mr. President, I call up my unprinted amendment.

Mr. CURTIS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senator will suspend. The Senate will be in order. The Senator from Washington has the floor and deserves to be heard. Senators will please be seated.

The amendment will be stated.

The assistant legislative clerk read as follows:

On page 19 of Amendment 496 strike lines 3 through 12 and insert the following:

(2) EMPLOYER CONTRIBUTIONS.—

(A) NONFOREFEITABLE PERCENTAGE.—A plan satisfies the requirements of this paragraph if under the plan, after one continuous year of service with an employer, an employee has a right to a percentage of his accrued benefit derived from employer contributions which is nonforfeitable other than by reason of death. The percentage shall not be less than the percentage determined under the following table:

Years of Service	*Nonforfeitable percentage*
1 through 5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

On page 75, on line 22 add:

An employer may register a qualified plan under this section with respect to less than all of his employees who are participants in that qualified plan if the group of employees is reasonably defined and the employer demonstrates with respect to that group of employees that maintaining records of plan participation for members of the group after their termination from the plan would be unreasonably burdensome in relation to the liability of the plan to members of the group.

On page 76, line 6 add:

The Corporation shall also accept for deposit into the fund any payment made from the assets of a qualified plan by and at the request of the administrator of that plan if the payment is made by a plan registered under the second sentence of section 305(c) to avoid unreasonably burdensome administrative expenses of maintaining plan participation records for terminated participants. Such payment shall discharge the existing liability of the plan to the participant with respect to the participation for which the payment was made, provided, that the plan shall be liable to the participant with respect to the participation for which the payment was made for the value of subsequent increments in the percentage of vesting of that participation.

Mr. JACKSON. Mr. President, I ask unanimous consent that Joel Merkel and Marian Troyer of my staff be accorded the privilege of the floor during the consideration of the pending measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JACKSON. Mr. President, I yield to the distinguished Senator from Vermont.

Mr. STAFFORD. Mr. President, if I might have the attention of the manager of the bill, I would like to address this question to the Senator from Wisconsin.

In relation to the $7,500 or 15 percent limit on tax deferable contributions to qualified pension plans by corporate stockholder-employees, I would appreciate knowing from the Senator from Wisconsin if this corporate stockholder-employee, who is on salary like the other employees and makes specified contributions to the same pension plan as his other employees, would be eligible to use the tax deferable deduction when the corporation of which he is a stockholder does not show a profit or sufficient profit to cover the 15-percent limit as amendment No. 497 is now written?

Mr. NELSON. The answer is an unqualified yes.

Mr. JACKSON. Mr. President, I yield to the Senator from Illinois and I would like to have the time taken from the bill.

Mr. PERCY. Three minutes on the bill.

Mr. JACKSON. I will give him 3 minutes out of my time.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. PERCY. I thank my distinguished colleague from Washington. I shall be very brief.

Mr. President, I want to commend the members of both the Senate Finance Committee and the Senate Labor and Public Welfare Committee for the cooperation which has obviously marked the development of this legislation. Through the combination of some of the best thinking in the Senate in this area, a highly commendable pension reform package has emerged.

As an original cosponsor of the Retirement Income Security for Employees Act, introduced in this Congress as S. 4, I was very concerned that an adequate and effective administrative and enforcement mechanism be established to protect employees and pension beneficiaries.

My colleagues have no doubt heard of the case of the Elgin Watch Co. in Elgin, Ill., where ineffective enforcement of existing pension tax law has resulted in meager pensions for Elgin's retirees and the possibility of a tax-free bonanza for the reorganized Elgin Corp., which has since moved to another State. These events left me firmly convinced that our existing enforcement mechanism is inadequate, and I am pleased to say that I believe this compromise legislation will remedy this situation. The creation of a new Office of Employee Plans and Exempt Organizations within the Treasury Department and a new Office of Pension and Welfare Plan Administration within the Department of Labor will assure effective enforcement of both our pension tax laws and employee rights.

My own experience in business demonstrated to me the high incidence of discrimination against the employee who for one reason or another moves from one job to another. Our increasing mobility has made the presentation of a gold watch for 50 years of service obsolete. Without realistic vesting standards and the ability to transfer a pension fund from one job to another, most of today's employees will not be able to provide adequately for their retirement.

When I testified before the Senate Subcommittee on Aging in July of 1971, I stressed my own belief that full vesting should occur in a maximum of 10 years. Although this legislation provides for a maximum work period of 15 years, I understand the concern of the bills' authors that the expansion of pension plans not be discouraged, and that additional financial burdens not be suddenly imposed on employers. I will, however, work in the future for legislation to de-

crease this maximum period for full vesting to 10 years.

We hear almost daily of cases where persons who looked forward to a secure retirement face situations of despair when they lose their pensions or receive far less than they had anticipated. Mr. President, this legislation will protect the rights of over 31 million workers in the United States. I urge the same spirit of cooperation and common dedication in the House of Representatives that we have witnessed here in the Senate so that a truly effective pension reform package can be adopted during this session of Congress. We owe no less to today's employees and tomorrow's retirees.

Mr. President, if anyone feels that 15-year 100-percent vesting is too liberal, I can point out from personal knowledge that an $80 million pension fund with vesting for 10 years at 10 percent a year has worked out very well for the past 25 years. In addition, for 50 years Sears, Roebuck has vested for 5 years at 20 percent a year. They have no fear of giving flexibility to employees and the corporation. That pension is earned and it should be portable. Employees should not be required to stay in one company until they are 65 years of age.

This measure will move us in a giant step toward equity and fairness both toward employers and employees in this country. I commend my distinguished colleagues for their brilliant leadership in this field.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. NELSON. I yield.

Mr. JAVITS. Mr. President, I thank the Senator from Illinois for his fine words. This has been a long struggle for all of us who have been deeply engaged. I wish to thank the Senator for the expert witness he makes as a result of his enormous and successful experience as the head of one of our most successful corporations.

Mr. JACKSON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JACKSON. Mr. President, was my amendment reported.

The PRESIDING OFFICER. The amendment has been reported.

Mr. JACKSON. Mr. President, on Monday I introduced my amendment number 488 to amend the vesting schedule of S. 4 to provide for earlier minimum vesting of pension benefits. I now call up a similar version of this amendment modified to reflect changes in the Senate Labor and Finance Committee compromise pension bill. My amendment would improve the vesting schedule of S. 4 by providing for 25 percent vesting of all pension credits from the 1st through the 5th year of participation in covered employment. The graded vesting schedule of S. 4 from the 6th through the 15th year is not affected. Minimum vesting is merely pushed back to the end of the first year of plan participation instead of the end of the 5th year.

I have also added a provision to allow pension plan administrators to transfer to the Portability Corporation the value of a terminated employee's participation in a pension plan if the employer can demonstrate that it would involve unreasonable administrative expenses in relation to the plan's liability to a worker to maintain records of his participation after his termination from the plan.

The lengthy study by the Senate Labor and Finance Committees on pension reform has demonstrated beyond doubt that the reasonable expectations of employees upon reaching retirement age fail to materialize in most instances. There are over 34 million workers participating in private pension plans. Statistics indicate that only 22 percent of such participants receive all the pension benefits which they have earned and which are rightfully theirs. The single most important reason for this shocking statistic is that unrealistic vesting standards often prevent the accrued pension credits of a worker from ever vesting.

A high degree of job mobility has become increasingly characteristic of our labor force. With high mobility it is impossible to adequately protect pension rights without early vesting. The economic success of this Nation and its high living standard is in large part the result of the mobility and adaptability of our labor force. And yet, these same workers—engineers, teachers, medical and laboratory workers, and many others—who contribute so greatly to our economic success are penalized when it comes to their pension rights because of the nature and demands of their employment.

A perfect example of how the highly mobile worker is injured by frequent job turnovers occurred in my home State of Washington. The Boeing Co. in Seattle terminated over 66,000 workers between 1969 and 1971 because of a decreased demand for commercial aircraft. Over 42,000 of the 66,000 employees terminated had been employed less than 5 years. Under the vesting schedule of S. 4, all of the accrued but unvested pension credits of these 42,000 workers would be permanently lost. I believe that a situation like this is just plain wrong and ought to be corrected. My amendment would correct this injustice by permitting a worker to preserve his earned but presently unvested credits. Without my amendment, mobile workers will continue to face the prospect of being left out in the cold in their retirement years.

The millions of highly mobile workers in America want and need early vesting. For example, I was pleased to note the following testimony of the National Society of Professional Engineers before the Senate Labor Committee:

> Vesting is really at the heart of the pension problem. For the engineer, whose life style of necessity . . . is one of high mobility and fast changing technological obsolescence, the results are predictable. The engineer is unable, in many cases, to stay at one place or with one employer long enough to accumulate any vested pension credits. . . . Engineers strongly favor immediate vesting. Then there would never be any lapse in the accumulative process.

Ultimately, early vesting or some similar means of preserving pension credits is the solution to the high mobility problem. I believe that S. 4 should address this question now rather than wait years for another pension reform bill to come along. I do not suggest that my amendment is the ultimate solution to high labor mobility. Indeed my amendment provides for a modest improvement in vesting. But it is a proposal that addresses the problem of high mobility in a positive way now. I believe it is important that S. 4 contain such a provision and I hope the Senate will adopt this amendment.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. JACKSON. I yield.

Mr. PASTORE. Does this amendment on vesting apply to Government workers who have been involuntarily separated because of the closing of a base?

Mr. JACKSON. The answer would be "No," because the bill here, as I understand it, addresses itself only to the private sector.

Mr. PASTORE. Does not the Senator think, if we are going to be fair, we ought to include them here? I mean, what is the difference?

Mr. JACKSON. Yes; I think there ought to be a separate title to deal with that problem, but I would say it is my understanding that civil service pension rights, of course, can later be picked up. Government employees do not lose the 1 year or the 1 month that they put into a Government retirement program. They later have to get 5 years, but they do not forfeit, as they do now in the private sector, the money that has been set aside. Government pensions are protected, I believe.

Mr. PASTORE. But the practical result, as I understand it—and the Senator put his finger on it, because we cannot prove it—is that when a person has worked a number of years, let us say, either for the Government or for private industry, and he loses his job and he seeks another job, one of the impediments to his being hired is the fact that, for some reason, the matter of pension cost to the company is a deterrent in hiring that person in another task. But if we had the assurance that he carried, as a vested right, the former pension earned while working in the former job, it might alleviate the hardship of becoming engaged in a new industry.

We spend a great deal of money retraining, and after we retrain them, there is a reluctance to hire them because of that particular factor.

Mr. JACKSON. Let me give two particular examples. An employee is employed in a private plant. Under this bill, if he does not have more than 7-years' service, he does not have any vested right to the pension benefits he has accrued.

Mr. PASTORE. That applies even to Government workers.

Mr. JACKSON. No, no; there is a difference.

Mr. PASTORE. Yes.

Mr. JACKSON. I will stand corrected if I am wrong, but I believe, to be eligible for a civil service annuity at age 62, one must have 5-years' service. But suppose an individual served only a year. He can later go back to the Government. That 1-year's payment remains in his account

unless he draws it out. He has a right to draw it out. But that 1-year's payment remains in his fund, and before age 62, or before retirement, if he can get the 5 years, he is eligible for the annuity.

Under this bill, in the private sector he would not be eligible to get the annuity, nor would he be eligible to move the 1 year or 2 years—anything less than 5 years—to another program. But one can do it under the Government program. He can take the first 5 years and move it into another part of the Government program.

Mr. PASTORE. I think we should hear from the manager of the bill. I think there is an ambiguity. I do not want to suffer any disadvantage. It strikes me that if an inequity is being perpetrated upon one who works for the Government, and he does not have a pension right—if he has a vested right and he can cash it in, there may be a reason for that—I would prefer to have him carry it along with him, because it may be easier for him to get a new job.

Mr. JACKSON. I am sympathetic with that.

I would like to be corrected if I am wrong on my interpretation of the civil service annuity provisions.

Mr. PASTORE. I would like to hear from the managers of the bill.

Mr. WILLIAMS. Mr. President, let me understand exactly what the question is. Are we talking about private employment, where an employee works for less than 5 years for a company and leaves the company? He has not established a vested right under this legislation. Now the Senator is suggesting that he comes back at a later time to the same company?

Mr. PASTORE. No; as I understood the Senator from Washington, he gave the case of the Boeing Co. in the State of Washington. He says that if a person worked for that company for 3 years, and for some reason, because they had no further work, they laid him off, his amendment would give him the right to carry his 3 years to his next employment. Is that correct?

Mr. JACKSON. He would have a vested right to a percentage of his accrued pension benefits which he could not be deprived of.

Mr. PASTORE. I have raised a question. I took the example of a person working at Quonset Point for the Government, and after 3 years he was laid off. What happens to him?

Mr. JACKSON. The question is——

Mr. PASTORE. No; I stated the question. I would like to get an answer.

Mr. JACKSON. Mr. President, is he going to work in the private or Federal sector?

Mr. PASTORE. He goes on to a private job or any job. He has been working for the Federal Government. If we are going to make it apply to some, I do not know why we should not apply it to the Government employee who lost his job through no fault of his own and then tried to get another job. What happens to him?

Mr. JACKSON. The Quonset Point employee has a vested right for the time he served.

Mr. PASTORE. Under the Senator's amendment?

Mr. JACKSON. No; under the existing law. His money stays in the civil service retirement unless he draws it out. However, in the private sector there is no vesting. He loses everything up to the first 5 years.

Mr. PASTORE. I understand the Federal law, that if one works for the Government, he has to work for the Federal Government 5 years before he has any rights under retirement.

Mr. JACKSON. The Senator is correct.

Mr. PASTORE. All right. I am talking about what happens after 3 years.

Mr. JACKSON. If he goes back to the Federal Government later and gets 5 years of employment, he is eligible for a pension.

Mr. PASTORE. What if he does not go back to the Government? What if he goes to Boeing?

Mr. JACKSON, Then he gets his money back.

Mr. PASTORE. I think it is unfair.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WILLIAMS. Mr. President, I yield myself 5 minutes and yield to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, innumerable vesting and funding proposals were presented to our committee. Some of these proposals provided faster vesting than the amendment of the Senator from Washington. What we had to balance off as far as we could was the desire to protect employee pension rights without deterring the establishment of new pension plans.

This is what we think we have accomplished. We have not drawn the ideal pension plan. If we tried to do that, I think there would be 100 versions of what one considers to be the ideal plan. In addition, we would find many employers who would be reluctant to put in new plans.

We have to remember that these are voluntary pension plans on the part of the employer. And one of the motivating reasons for putting in the plans is that employers want the employees to stay with them for a while, because they are going to spend money training those employees, as the Senator from Rhode Island said.

Then, we have to also look at the fact that if we require very early vesting, that means that the employer has to allocate more of his pension contributions to younger employees who have a higher turnover rate. As a result the older employees will be penalized. That will be the net result. More of the pension fund, under this kind of amendment, would be going to the younger employees who do not stay too long at their job, and it will be taken away from the older employees who do stay with the company.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. BENTSEN. Mr. President, I yield to the Senator from Nebraska.

Mr. CURTIS. Is it not true that if vesting is given to someone who has worked for as short a time as 1 year, it will be costly and additionally burdensome from the standpoint of the administration of the plan?

Mr. BENTSEN. That is another cost that is added on in that situation. The Senator is correct.

Mr. CURTIS. Mr. President, is it not also true that we would not be helping him very much?

Mr. BENTSEN. He is not going to have earned a substantial benefit after only 1 year. It would be a very small amount of money.

Mr. CURTIS. These plans are instituted for the purpose of building up a sum of money in the retirement fund. So, the amount would be rather small. But under this amendment, he would be entitled to 25 percent of it.

We should not confuse the need for retirement with the need for continued employment or unemployment compensation. They are two different problems.

Mr. BENTSEN. Mr. President, I agree with the distinguished Senator. Let me say that both the Labor and Public Welfare Committee and the Finance Committee looked at proposals to provide vesting formulas earlier than 5 years. Both committees turned these proposals down. The Labor and Public Welfare Committee approved a bill which did not provide vesting until after 8 years. The Finance Committee had 5 years. We have taken the more liberal of the two options decided on by the committees.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. BENTSEN. I yield.

Mr. PASTORE. Mr. President, would the Senator from Texas make a distinction between voluntary and involuntary separation? The Senator is actually talking about shiftless workers. I am talking about men who have been on the job and after some years, through no fault of their own, they are laid off and involuntarily separated from their jobs. Where are their rights? I am not talking about shiftless workers. I am talking about legitimate people who want to work, but who lose their jobs through no fault of their own. What do we do for them?

Mr. BENTSEN. I agree that this one piece of legislation does not resolve all inequities. However, we have taken a great step forward in pension reform.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JACKSON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Washington has 14 minutes remaining.

Mr. NELSON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Wisconsin has 22 minutes remaining.

Mr. BENSTEN. Mr. President, I yield to the Senator from Rhode Island.

Mr. PASTORE. Mr. President, of course, I am not prepared to solve this question on the floor of the Senate. I realize that many of the amendments arrived at on the floor concerning this very important legislation will confuse many Members of the Congress. How-

ever, as long as we admit that there are inequities here, I would like to have some assurance that this matter will be looked into, and it should be looked into. I repeat that I am not talking so much of those who leave a job voluntarily and then get another job and go here and there. I know that it makes it most difficult for the employer.

I am talking about people who want to have a job and who lose their job through no fault of their own.

Mr. BENTSEN. Mr. President, I want to say in answer to the distinguished Senator that this will be a very important piece of reform legislation if we are able to get it enacted. And I am sure that in the future we will be looking at additional inequities and trying to correct some of them.

The PRESIDING OFFICER. Who yields time?

Mr. JACKSON. Mr. President, I yield 3 minutes to the Senator from Indiana.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 3 minutes.

Mr. HARTKE. Mr. President, the Senator from Rhode Island says that this should be looked into. It has been looked into by the Labor and Public Welfare Committee. They have a report which I would be glad to show the Senator. That report demonstrates the very figure that the Senator is talking about under the present system. The Senator from Washington is attempting to provide for some type of vested interest after the money is taken out of his paycheck. It is his money, and not the employer's money. If he has some of his money in a pension plan, he ought to have a right to have a claim on the pension which he thinks he ultimately will get. At the present time he loses that money.

The pending bill places in effect all of the inequities the Senator is talking about. The Senator from Washington is trying to make a small step forward. I would go a great deal further than he would, quite honestly.

What is being done today? The Labor and Public Welfare Committee study shows that only 4 percent of the people of the United States are in the pension plan. And of 6,900,000 people in the plans, 6 million people never get a penny. That is what is wrong with the bill. This bill stamps the approval of Congress on the status quo. And the people in the marketplace are complaining about that. They are using their money and not the employers' money. The employer takes the employee's money out of his paycheck.

Let me refer to the system the teachers of the country have. Throughout this Nation, if we do what the teachers are doing, we will be much further along than what the Senator from Washington is talking about. The teacher pays for the first year. If a teacher then leaves the job or is fired, or whatever happens, that cannot be forfeited.

I think the Senator from Washington has made a good step forward. I do not see how anyone can be against it, except that they are complaining about the cost. Do not be misled on that feature: The difference between the cost of the bill with and without the amendment of the Senator from Washington is much less than with the one I have, and the one I have is only 0.2 percent of the payroll. So in cost it is minuscule, and the benefit would be great in proportion. It is a good amendment.

Mr. JACKSON. I thank the Senator.

Mr. President, I should like to modify the amendment so that, on the first page, where the table "Years of Service" appears, by adding under that item the following line: "1 through 4, on involuntary termination from the pension plan," and then the figure "25 percent." That would be in lieu of line 1.

It would cover the basic objective here that for the first 5 years it would apply only where involuntarily separated.

Mr. NELSON. Did I understand the Senator to say "involuntarily separated from the pension plan"?

Mr. JACKSON. Yes. It means the same thing.

Mr. NELSON. No, he would have to be in long enough to be covered by the pension plan to be separated from the pension plan.

The PRESIDING OFFICER. The clerk will state the modification.

Mr. JACKSON. Well, it should be "involuntarily separated from participation." I will modify it further to that extent. If the clerk will do that, "involuntarily separated from participation in the pension plan."

The assistant legislative clerk read the modified amendment as follows:

On page 19 strike lines 3 through 12 and insert the following:

(2) EMPLOYER CONTRIBUTIONS.—

(A) NONFORFEITABLE PERCENTAGE.—A plan satisfies the requirements of this paragraph if under the plan, after one continuous year of service with an employer, an employee has a right to a percentage of his accrued benefit derived from employer contributions which is nonforfeitable other than by reason of death. The percentage shall not be less than the percentage determined under the following table:

Years of service:	*Nonforfeitable percentage*
1 through 4 upon involuntary termination from participation in the pension plan	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

The PRESIDING OFFICER. The amendment will be so modified. Who yields time?

Mr. JAVITS. Mr. President, will the Senator yield me 5 minutes in opposition to the amendment?

Mr. NELSON. I yield 5 minutes to the Senator from New York.

Mr. JAVITS. Mr. President, I oppose this amendment.

The amendment gives us an opportunity to determine what really is the heart of this bill. Two important aspects of it have been mentioned. One is the statement by Senator HARTKE, "taking the money out of his paycheck," and the other is Senator JACKSON's very understandable and very proper plea for the special situation which affects engineers, like those at Boeing, who are separated from employment because of some decision of the United States or the phaseout of weapons——

Mr. JACKSON. Mr. President, will the Senator yield? This is all commercial business. This was the phaseout of the economy from 1969 through 1973.

Mr. JAVITS. Mr. President, I do not appreciate the interruption. If the Senator would follow the rules of the Senate, I would be happy to yield to him in a moment.

I said exactly what I meant. Boeing is a proper example. Engineers lost their jobs because the United States went to some other engineering program, or buyers did not buy the product, or whatever the case might be. In any case, they lost their jobs, were separated, or in some other way found themselves outside of Boeing's pension plan.

Let us look at the first case: "taking the money out of his paycheck." Anyone who has ever negotiated a labor contract knows that there are two parties on it. The employer has an interest in keeping the man on the job, and he is willing to pay something to keep a man on the job that he will not pay in hourly pay. That is why we have strikes involving pension plans, because the employer also has an interest. He wants a certain number of years of service, and he is paying more for that. That is why he does not put it in the paycheck.

Second, there is a problem about employees whose work phases out, or, because of some act of God, act of nature, or act of the U.S. Government, they are out of a job before they can vest.

That, for example, is why we have severance pay. That is a very different concept than vested pensions. The latter is a provision for retirement income. But we have lots of different kinds of payments. We have bonuses for production, if your produce over a certain minimum. We have profit-sharing. And we also have pension plans, severance pay, and other forms of fringe benefits.

Our bill takes account of that situation, and it also takes account of the problems of high mobility workers—such as engineers—because among other things, it calls upon the Secretary of Labor—I refer to page 70 of the bill section 282 to—

develop, in consultation with appropriate professional societies, business organizations, and heads of interested Federal departments and procurement agencies, recommendations for modifications of Federal procurement regulations—

This, of course, was intended to authorize the development of more adequate standards of protection against high forfeitures by aerospace scientists and engineers, as well as others similarly situated. Thus initiative—which I outlined—was designed to meet a unique problem. But it should be realized that pensions are not severance benefits, and we cannot let the problems of high mobility workers dictate maximum standards on vesting for everyone, when

what we are doing is setting the minimum floor respecting vesting.

If an employer wants to do better by his employees, there is nothing to stop him under this bill. But to take the whole bill and change it over to the system which the Senator from Washington wants to change it over to will result in doing the following:

First, we will discourage, not encourage, the establishment of pension plans, and the whole theory upon which I, Senator WILLIAMS and others based our efforts was that we wanted more than 30 million workers covered. We want to encourage pension plans, and to encourage them you have to give the employer some little break, too. That means some continuity of employment.

Second, there is a law known as de minimis. How much is a man going to vest if he has 1 year's service? How much will be get out of his pension? By the time you get through keeping all those records and certifying them to the Secretary of Labor and the Social Security Administration, and paying them out as $1.89 checks, you will wish you had never heard of pension plans, and every employer knows that, just as I have stated.

So, for the practical reasons I have stated and those which have been argued by the Senator from Texas, we had to arrive at some kind of standard of vesting which made sense in the light of all those considerations.

The PRESIDING OFFICER. The Senator's time is expired.

Mr. JAVITS. I yield myself another 5 minutes on the bill.

Now, Mr. President, as Senator BENTSEN has said, this is by no means the ultimate end product. The Senator from Indiana (Mr. HARTKE) has properly referred to the teachers' plan. It is a marvelous, successful pension plan, and there is no question about it. Apart from the fact that it deals with governmental entities, it includes private colleges, universities, and other organizations as employers, and that plan has gone on now since World War I. It is 50 years old.

I hazard a guess that we can improve the standards substantially when we have had 50 years of experience under this first reform in this whole field. After all, all the geniuses we heard on this subject did not think of coming in with what we are coming in with now, for all those years, until one of us came along and dreamed it up. Now we are doing something about it, and you have to give us a chance, too, to see how this thing works.

There is one other thing, and that is the continuity of employment. I think 5 years, for openers, is a very reasonable period within which to begin to vest. As a matter of fact, after all our investigation for the Committee on Labor and Public Welfare, we came to the conclusion that 8 years was a good starting period, though we started at a higher figure than 25 percent. But we accept the 5-year standard also.

I might say that, much as I deprecate the figures which represent pension realization now, they are not as low as those cited by Senator HARTKE. We spent a million dollars of the money the Senate gave us to investigate that, and the correct figure is approximately 16 percent qualified for benefits in the plans studied. That is no bargain, but it is 4 times 4 percent.

As to continuity of service, if Senators will refer to page 19, line 6, they will see that of the 5 years of service, the bill only calls for 3 that are consecutive. In addition, we have another provision that provides that if any employee returns to the same employer or employers contributing to the pension plan—he does not lose credit for his aggregate years of service.

When you tie together all the things that we have gone through and argued, both Senator BENTSEN and myself, with the insurance factor which is being put into the bill and with the fact that we are requiring vesting in State and local government plans and plans of tax-exempt organizations, we respectfully submit to our colleagues that we have gone about as far as we can go in all honesty and decency as to the terms. As I say, this is the first time any effort has been made in this field and we believe, to push the matter further, would break the camel's back in the sense of the effort to inaugurate a massive reform at this particular time.

Mr. PASTORE. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. PASTORE. Well, the Senator from New York has made a practical dissertation of his point of view and I applaud him for it. I do not seek to refute it in any way but merely would say that he speaks about severance pay and that is allowable even to those who have worked after 5 years. We talk about unemployment compensation and even those who work more than 5 years are entitled to unemployment compensation if they lose their job. But they have a vested interest in a retirement pension plan.

All we are saying is that there may be instances, and there are instances, of inequities so far as the people who, through no fault of their own, lose their jobs after 59 months and 10 days. In that case they are placed in a different position from someone who has held a job for 5 years and 1 day.

I would hope and I repeat, that the inequities will be studied thoroughly. What we are talking about is more cost than we are talking about equity. I would hope that we would put equity before cost.

Mr. JACKSON. Mr. President, will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. JACKSON. First, as I attempted to indicate earlier in my statement, I made it clear, in the example I gave, of the 66,000 employees being laid off at Boeing, that that was not a cutback of defense work. As the Senator is aware, at its peak, Boeing had 106,000 employees with over 90,000 engaged in commercial work. The layoff of 66,000 employees were those engaged in commercial employment. They got stuck with the business cycle. Starting in 1969, the airlines got into economic trouble and canceled orders. That is what the layoff was all about. It had nothing to do with any cutback in defense work.

The Boeing company in the State of Washington had a smaller percentage of defense work than any major aerospace company. So I want the record to show that.

The other point I want to make is that I want to commend Senators WILLIAMS and LONG for getting the best bill which in their judgment could be obtained, and I say that to the ranking minority member on the Committee on Labor and Public Welfare, the Senator from New York (Mr. JAVITS); but I must say that there is absolutely no logic to the argument that somehow or other we must start vesting only after 5 years. I see no logic in the contention that we must arbitrarily require 5 years of service.

I know that there are cost factors involved but one of the great problems we face in the labor force, and this is especially true in the skilled trades and professions not just in engineers alone, but for all highly skilled workers, these workers are becoming more and more mobile. They move from place to place. I must say that this is a matter that disturbs me greatly. The Senator has the same problem in New York, of engineers being laid off. After a short period of service, they go to another place. That is true of other skilled employees all over the United States.

The Federal Government, in its retirement program, permits a Federal employee who had less than 5 years service to keep the accrued pension benefits. It is true that in order to get an annuity, he must have served 5 years, but he does not forfeit the 1 year, 2 years, 3 years, or 4 years he has paid. All of us know that we frequently have people coming to Washington wanting jobs because they have had 4 years in Government service. They want to work 2 or 3 years to qualify for and obtain annuities.

So they have a tremendous advantage over an employee in the private sector who cannot preserve his short-term pension credits. My amendment is, I think, not unreasonable or arbitrary; I think it is completely logical. There ought to be vesting for those who are in the highly mobile category.

Mr. JAVITS. Mr. President, I yield myself 1 additional minute, then I shall have concluded.

I think the various points of view on vesting have been accurately stated. However, whatever the situation of a single employer, we are talking about an enormous diversity of employers. We are talking about making vesting apply nationwide without going the route of social security. We are going the route of private enterprise, which we think will work out infinitely better. So both the employer and the employee will have a system for the future. So we lay that argument before the Senate as the reason why feel our route is better.

I urge the Senate to reject the amendment.

Mr. BENTSEN. Mr. President, I used to sell pension plans. Whom do you sell them to? To all kinds of companies. One of the reasons why employers establish pension plans is to encourage employees to remain with the company. But it is

necessary to balance this off with a reasonable vesting formula, so that the employee does not become a slave or a chattel. That is the balance we have tried to achieve.

I do not think the Senator has offered an outrageous amendment. I think it is reasonable. We have already achieved that balance, and it will not act as a deterrent to the creation of new plans.

Again I say that the committee formula is a good one. I think we have an excellent bill. I hope that it will be passed.

Mr. JACKSON. Mr. President, I yield myself such time as I may require.

I appreciate the very fine statement of the able Senator from Texas. But we have a great many kinds of pension plans. Let us face it. Many of them have not been so good. One of the great tragedies I have to face is people coming to me who had 30 years of service, but they needed 32. They lost everything.

The committee, as I understand it, believes that this bill will bridge the bulk of that gap. But there is no logical reason why people who are mobile, by reason of their profession or their essentially high skilled trades, should be treated differently when they have served 4 years and then move to a different situation. There are people who are in the construction business who move from one location and work for a different contractor under a different pension plan. We want a highly mobile labor force. This is part of the genius of the American free enterprise system.

The bill sets the first 5 years as an exclusion. I have applied the first 5 years, under my modified amendment, only to those who are involuntarily separated—laid off. So we have made an adjustment as to the first 5 years.

I now yield to the Senator from Indiana.

Mr. HARTKE. Mr. President, what the Senator does, after he adds 5 years, does not modify the provisions of the bill before the Senate—which I think is extremely weak.

But the economic slavery argument, which the Senator from New York (Mr. JAVITS) and the Senator from Texas (Mr. BENTSEN) were involved in, is not involved in the Senator's amendment. The Senator is not talking about what is involved here. They are not talking about a man who is moving of his own volition; they are talking about a man who is involuntarily separated, who must be laid off. He is entitled at least to reap the benefits of what was negotiated for him and what was taken out of his paycheck. I do not think the Senator from New York would disagree that this is a diminution of his wages which goes into the pension fund.

All the Senator from Washington is saying is that the employee ought to be protected because he, himself, had no cause of action which separated him from his employment. He did not cause it. He is the victim of the economic system, and therefore he is entitled at least to have the protection under the pension plan of having his own money protected.

I do not think it is a very strong amendment. I am for it. I would like to go much further. This amendment is so weak that I cannot understand why the chairman will not accept it.

Mr. JACKSON. It is a modest amendment, and I hope the committee will accept it and take it to conferene.

If we are really going to do something for the mobile worker, we must at least take care of those who have been laid off or otherwise put on the unemployment list. We are making a special exception for the first 5 years, and I hope the Members of the Senate will realize that, as a matter of equity for those who are laid off in this category.

The PRESIDING OFFICER. Who yields time?

Mr. NELSON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 15 minutes remaining.

Mr. NELSON. Mr. President, I agree wholeheartedly with the principle and the argument made by the distinguished Senator from Washington and endorsed by the distinguished Senator from Indiana and the distinguished Senator from Rhode Island.

As a matter of fact, the amendment, ideally, does not go far enough. Ideally, we ought to have vesting for every day anybody works, just as we have under the social security system. If somebody works 1 day, 5 days, whatever it is, he ought to be covered and vested, and it ought to be portable.

Our problem is that we are dealing with a voluntary plan. When we get to the time that we decide that we will dramatically—if we do—expand social security or go to a compulsory retirement plan, the principle that the distinguished Senator from Washington is talking about should be in the legislation; and I would go further and say, as I just did, that there ought to be vesting and coverage for every day worked.

However, having conceded that, that is not what we are dealing with. We are dealing with a pension plan in which the Labor Committee and the Finance Committee, after extensive hearings, extensive consideration, and extensive executive sessions, designed a bill which would set certain minimum standards—not an ideal bill.

Many pension plans in this country have much better provisions in every aspect than are required as minimum standards in this bill. We designed them as minimum standards, recognizing that if we designed a bill in which the cost was too much, the employers would not come under it, because they are not compelled to come under it.

At present, about 58 percent of the employees in this country, not counting those in agriculture, are not covered by pension plans. There are hardly any required standards at all, and still they are not covered. We have established them, and if we make the cost too high, those 30 million people are never going to be covered under a private pension plan.

What did we do about vesting? I think we should take a look at where we were and how far we have come. Under the law in existence today, there generally is no requirement for vesting until the day the employee retires from his work. So, under the present law, he could work for 40 years and then be fired or laid off, or leave his employment. He is 64 years old. Not even one day of vesting generally is required under the law.

So we have gone from a situation in which, under current private pension plans, 28 percent—just 28 percent—of all the employees in this country covered by a private pension plan have vested rights. What happens when this vesting provision goes into effect? The day it goes into effect, 83 percent of all the employees in private pension plans in this country will have vested rights. So we have gone from a position of 28 percent now covered with vested rights to 83 percent the day these provisions go into effect. We have gone from a situation in which the law generally does not require any vesting whatever to a position in which it requires vesting at the end of 5 years, given participation at age 30 with at least 1 year of employment.

My objection is not to the philosophy of it. My objection is to the fact that we are going to put costs in here that will make pension plans impossible or impractical, and employers will decide not to establish them. I think we ought to recognize that, on the cost factor alone, the additional vesting costs under this bill will vary from zero for an employer whose plan has vesting provisions as good as those in this bill up to a total of 58 percent of the total cost of a plan which now does not provide vesting before retirement. That is, there are plans whose costs will be increased by 58 percent when this vesting goes into effect.

So, although I agree 100 percent with the philosophy, the objective, and everything else, I think we have gone as far with the vesting as we can go under a voluntary bill. I am one of those who would like to see us move toward a bill that has everybody covered and everybody vested and accruing rights for every day of work. That would be ideal.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. NELSON. I yield.

Mr. PASTORE. Merely as a clarification, the Senator says that his proposal gives a vested right in all existing pension plans now. In other words, a person who has not reached the maximum years in age or time, who might ordinarily lose his right under present plans, has a vested right that is enforceable under the Senator's proposal.

Mr. NELSON. Yes.

Mr. PASTORE. Could an employer, under a voluntary plan, then drop the plan entirely?

Mr. NELSON. Yes. If an employer looks at the plan at any time under this measure if enacted and says, "I want to terminate the plan," he can do so.

Mr. PASTORE. He can still do it?

Mr. NELSON. He can still do it.

Mr. PASTORE. Does not the Senator think some provision should be in the bill that would not allow him to do this? He is getting some benefits under the Internal Revenue law.

Mr. NELSON. He has to pay off all the vested and accrued benefits, but he does not have to continue the coverage.

Mr. PASTORE. But there are many within that frame who have not achieved that vested right. How do we enforce their right under a contract that does not give them a right?

Mr. NELSON. Until we go to a compulsory plan, it cannot be done.

Mr. PASTORE. My point is that, rather than incur an additional cost of 58 percent, that employer could drop the plan entirely, and everybody would be out in the cold.

Mr. NELSON. Except that employees with vested rights would have to be paid the benefits owed them.

Mr. PASTORE. Does not the Senator think there ought to be a penalty under the Internal Revenue law for doing that? The employer gets concessions under the internal revenue law.

I realize that it is not mandatory, but the fact remains that they voluntarily engaged themselves in a contract that gave the people a semblance of some kind of rights under a pension plan. Now, because Congress passes a law that compels them to grant a vested right over and above the terms of that contract, they can drop the whole contract and leave everybody out in the cold. How can they do that with immunity?

Mr. NELSON. That is what the law is.

Mr. JACKSON. Mr. President, will the Senator yield?

Mr. NELSON. I yield.

Mr. JACKSON. Would the Senator indicate whether or not the committee's bill is retroactive and, if so, to what date, and what kind of coverage is provided?

Mr. NELSON. It is retroactive in the sense that it covers any past service for any existing plan.

Mr. JACKSON. So that someone who was denied a pension right, say, last year or the year before——

Mr. NELSON. No.

Mr. JACKSON. There are many of these cases—I know the Senator is familiar with them—in which an employee worked 30 years and needed to work 31 years, and he lost his pension on the last day. Will those situations be covered retroactively?

Mr. NELSON. Is the Senator talking about the tragic cases where the plan is not in effect?

Mr. JACKSON. No, the plan is in effect. The fellow is laid off the day before he is eligible.

Mr. NELSON. It would not cover some employees and they would have no vested rights unless they had the required minimum of 5 years.

Mr. JACKSON. It is not retroactive.

Mr. NELSON. It is for anyone covered by a plan.

Mr. JACKSON. But for the worker who is no longer employed. He is out of luck.

Mr. NELSON. It would not cover him for any rights he did not have at the time of his employment.

Mr. JACKSON. Then, the retroactive part does not mean much.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. NELSON. I yield.

Mr. PASTORE. The number of people in a pension plan controls the most of the plan. I have seen cases, and this is not a figment of my imagination, where a big conglomerate comes in and buys up an industry.

Mr. JACKSON. That is right.

Mr. PASTORE. Then they begin to look at the roster of people working there. They say, "This fellow has 5 years to run and this fellow has 2 years to run. Look at the money we can save on the pension plan if we drop them and bring in new employees."

They have done that time and time again. I would say that when a conglomerate comes in and buys up an industry and drops the old help because they are under the gun, there should be a penalty imposed on them under the Internal Revenue Code.

Mr. NELSON. The concern of the Senator from Rhode Island is covered in the bill.

Mr. PASTORE. In what way?

Mr. NELSON. We have plan termination insurance so that if a company went bankrupt and the fund, because of poor investments, did not pay off, or if for any reason that plant was closed down, the termination insurance would pay for the rights of those people.

Mr. PASTORE. The Senator said "bankrupt." What if a big conglomerate comes in and buys a small factory, for instance, in Rhode Island, with 50 people, and under the plan they have to reach the age of 65 and to work for 25 years but some employees are only 64 years of age and have worked for only 24 years?

Mr. NELSON. That is covered.

Several Senators addressed the Chair.

Mr. PASTORE. I would like to get the answer.

Mr. BENTSEN. We have tried to insure that those kinds of inequities are not repeated in the future. We had provided earlier vesting, but we have not taken it to the ultimate or as far as the Senator from Washington would require.

Mr. PASTORE. How about pension plans now in existence?

Mr. BENTSEN. There will be a short period of time before the bill is fully implemented.

Mr. JACKSON. Mr. President, will the Senator yield?

Several Senators addressed the Chair.

Mr. PASTORE. Mr. President, the question I propound is this.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PASTORE. In an instance where there is an existing voluntary pension plan and a new company comes in and buys that company, and that new company discharges an individual who has worked 1 year short of the time limit and has reached an age 1 year short of the age required under the pension plan, in that particular instance, can this new company that comes in and buys the old company discharge that employee without paying anything under the pension plan?

Mr. BENTSEN. As a practical matter this becomes irrelevant once the bill becomes fully effective. It takes about 2 years for the vesting and funding provisions to be fully implemented and in effect.

Mr. PASTORE. Therefore, the answer to my question is yes, within 2 years, but not after 2 years.

Mr. BENTSEN. No.

Mr. PASTORE. What are we saying?

Mr. CURTIS. Mr. President, will the Senator yield to me?

Mr. PASTORE. This is getting more confused by the second.

Mr. BENTSEN. Mr. President——

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin has the floor.

Mr. NELSON. Mr. President, I yielded to the Senator from Rhode Island to propound a question, not an answer.

Mr. PASTORE. I usually pose the question and if you do not have the answer, I give it to you.

Mr. BENTSEN. My understanding of our legislation is that generally on January 1, 1976, the vesting and funding provisions would become effective. These provisions would apply regardless of who came in to buy the company.

Mr. JACKSON. Mr. President, will the Senator yield for a question?

Mr. BENTSEN. I yield.

The PRESIDING OFFICER. All time in opposition to the amendment has expired.

Mr. JACKSON. Mr. President, I yield on my own time.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. JACKSON. Mr. President, the Senator from Rhode Island has propounded a very important question. It is a series of questions but take the example of the man who is laid off after 30 years' service. He is out. He does not have a job any more. That company, as the Senator indicated, previously deducted the cost of the pension contributions from his taxable income as a cost of doing business. The worker gets within 6 months of retirement and is laid off.

I wish to ask the Senator from Wisconsin this question: Does this proposed legislation help that man who is no longer an employee but who worked all but a few months of achieving his 30-year requirement?

Mr. NELSON. Is the Senator talking about someone who worked for 30 years and is laid off before this bill becomes law?

Mr. JACKSON. That is correct. There are tens of thousands of them, and the employer was able to deduct the cost of covering them in the program as part of his pension plan; that is, he is able to deduct that amount from his overall taxable income.

Mr. NELSON. I think I am correct in saying no, he is not covered. The provisions of the bill do not go back and give rights to people prior to the applicable provisions of the law.

Mr. JACKSON. In other words, anyone who is laid off and is no longer employed prior to the time this bill becomes effective; anyone prior to that is stuck. Am I right or wrong?

Mr. NELSON. This bill does not retroactively convey rights to people who have been laid off from plants that closed prior to the effective date of the law.

Mr. JACKSON. That is all I asked and that is all the Senator from Rhode Island asked. Employers could get around this bill by taking those individuals off the

job before they vest. They could be laid off and they would not be eligible for their pension.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. NELSON. I yield.

Mr. PASTORE. I think I can ask this question. I am not concerned about the situation existing today without the passage of this bill. I am going to vote for this bill. I want to know what happens once we pass this bill. The Senator indicated that in order to comply, existing pensions now might have to increase up to 58 percent.

Mr. NELSON. In some plans the vesting would add moderately to the cost, in others it would add 50 percent to the cost.

Mr. PASTORE. Fifty percent of the cost. Therefore, in that case the employer has a perfect right to drop the whole pension plan.

Mr. CURTIS. No; the plan cannot avoid the obligation to pay those accrued benefits that have already vested.

Mr. NELSON. Yes.

Mr. PASTORE. Somebody said yes and somebody else said no and you are all on the same committee.

Mr. CURTIS. But he cannot escape——

Mr. NELSON. He can terminate the plan. Whatever vested and accrued rights an employee has under the plan, he has an obligation to pay but he has no obligation to continue a pension plan and continue to pay into the fund or bring people in. He is obligated under the law for whatever is vested and accrued on the date the plan is terminated. Nothing here forces him to continue a plan.

Mr. PASTORE. And under that plan a person must have worked for 20 years and to the age of 65.

Mr. NELSON. Under the terms of that plan.

Mr. PASTORE. Under the terms of that plan. Now, this law is passed and we find after this law is passed that an individual has worked for 19 years and to the age of 64 and he is fired.

Mr. JACKSON. Prior to the enactment of the law.

Mr. PASTORE. After this act is passed. What happens in that case?

Mr. NELSON. Under this bill he is covered, and he will be paid his accrued, vested rights, fired or not.

Mr. PASTORE. In other words, this bill gives vested rights to existing pension contracts?

Mr. NELSON. That is correct.

Mr. PASTORE. That existed before the bill was passed?

Mr. NELSON. Yes.

Mr. PASTORE. The Senator from Texas is disagreeing.

Mr. BENTSEN. No. Remember the effective date of the legislation is important. These provisions will not become totally effective for about 2 years.

Mr. JAVITS. Mr. President, will the Senator use his microphone? We cannot hear him.

Mr. PASTORE. Mr. President, I think we ought to have a recess and try to get a consensus before we start getting any more answers.

Mr. NELSON. I answered the question.

Mr. PASTORE. Is it the Senator's answer that after two years—after this bill passes—a person has a vested right though he worked only 19 years and was 64 years of age; but before the two years, he can be fired and get nothing, and in that case there is no penalty against the company which took advantage of the revenue law?

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. JACKSON. Mr. President, I ask unanimous consent that we may proceed for 2 minutes notwithstanding any previous order.

The PRESIDING OFFICER. There is time on the bill, if someone cares to yield it.

Mr. JACKSON. Mr. President, will the Senator from New Jersey yield me 2 minutes on the bill?

The PRESIDING OFFICER. The Senator from Washington will please suspend until we receive a message from the House of Representatives.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House of Representatives having proceeded to reconsider the bill (H.R. 7935) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rates under that act, to expand the coverage of that act, and for other purposes, returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was resolved that the said bill do not pass, two-thirds of the House of Representatives not agreeing to pass the same.

ENROLLED BILL SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled bill (H.R. 8070) to replace the Vocational Rehabilitation Act, to extend and revise the authorization of grants to States for vocational rehabilitation services, with special emphasis on services to those with the most severe handicaps, to expand special Federal responsibilities and research and training programs with respect to handicapped individuals, to establish special responsibilities in the Secretary of Health, Education, and Welfare for coordination of all programs with respect to handicapped individuals within the Department of Health, Education, and Welfare, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore.

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. JACKSON. Mr. President, will the Senator from Wisconsin yield me 2 minutes on the bill?

Mr. NELSON. Mr. President, how much time do we have left?

Mr. JACKSON. All time on the amendment has expired.

Mr. NELSON. Yes, I yield the Senator 2 minutes on the bill.

The PRESIDING OFFICER. The Senator from Washington is yielded 2 minutes on the bill.

Mr. JACKSON. Mr. President, first of all, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. JACKSON. Mr. President, I just want to make one additional observation. There has been much publicity on this pension bill. I have commended the members of the committee for plowing new ground. I think they deserve a lot of credit, because we did not have a decent pension program before. But I want to point out that we are going to get letters from people who will say that they are no longer employed, that they worked 30 years and they lost their pension rights just a few moments before their eligibility date. They will point out that their employer was able to deduct all those premiums as a matter of doing business, and they will wonder why they get nothing.

I just mention this because I think it is going to be a real problem that is going to haunt all of us because of the wide publicity about this measure. The theme of it is that we are reconstituting pension rights that have been lost, and I think we will find it difficult to answer people who tell us they have worked 30 years and they got nothing, while someone who has worked 6 years will get a vested right, and I will refer the letters to the committee.

Mr. NELSON. I want to remind the distinguished Senator from Washington that his amendment does absolutely nothing about this at all for those people who lost their jobs, whose pension plans collapsed, where the corporations went bankrupt, who for 4 or 5 years——

Mr. JACKSON. Not in this amendment. I do not pretend to do that. I am dealing with this problem, however, with the same vesting of rights we gave to Federal employees, and would give them to the private sector starting with the first year. That is what I am doing. That is a separate issue.

Mr. NELSON. Mr. President, I yield to the Senator from Indiana.

AMENDMENT OF RAIL PASSENGER SERVICE ACT OF 1970

Mr. HARTKE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2016.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 2016) to amend the Rail Passenger Service Act of 1970 to provide financial assistance to the National Railroad Passenger Corporation, and for other purposes which was to strike out all after the enacting clause, and insert:

That section 102 of the Rail Passenger Service Act of 1970 (45 U.S.C. 502), relating to definitions, is amended—

(1) by striking out paragraph (5), relating to the definition of intercity rail passenger service, and inserting in lieu thereof the following:

"(5) 'Intercity rail passenger service' means all rail passenger service other than commuter and other short-haul service in metropolitan and suburban areas, usually characterized by reduced fare, multiple-ride and commutation tickets, and by morning and evening peak period operations."; and

(2) by adding at the end thereof the following new paragraph:

"(9) 'Auto-ferry service' means service characterized by transportation of automobiles and their occupants.".

SEC. 2. (a) Section 303(a) of the Rail Passenger Service Act of 1970 (45 U.S.C. 453(a)), relating to the board of directors, is amended to read as follows:

"(a)(1) The Corporation shall have a board of directors consisting of seventeen individuals who are citizens of the United States selected as follows:

"(A) The Secretary of Transportation, ex officio.

"(B) Nine members appointed by the President, by and with the advice and consent of the Senate, to serve for terms of four years or until their successors have been appointed and qualified, of whom not more than five shall be appointed from the same political party.

"(C) Three members elected annually by the common stockholders of the Corporation.

"(D) Four members elected annually by the preferred stockholders of the Corporation, which members shall be selected as soon as practicable after the first issuance of preferred stock by the Corporation.

"(2) Any vacancy in the membership of the board shall be filled in the same manner as in the case of the original selection; except that any member appointed by the President under paragraph (1)(B) of this subsection to fill a vacancy shall be appointed only for the unexpired term of the member he is appointed to succeed.

"(3) The board shall elect one of its members annually to serve as Chairman.

"(4) Not less than three members appointed by the President shall be designated by him, at the time of their appointment, to serve as consumer representatives, of whom service, and inserting in lieu thereof the not more than two shall be members of the same political party.

"(5) Each member not employed by the Federal Government shall receive compensation at the rate of $300 for each meeting of the board he attends. In addition, each member shall be reimbursed for necessary travel and subsistence expenses incurred in attending meetings of the board.

"(6) No member elected by railroads shall vote on any action of the board relating to any contract or operating relationship between the Corporation and a railroad, but he may be present at meetings of the board at which such matters are voted upon, and he may be included for purposes of determining a quorum and may participate in discussions at any such meeting.

"(7) No member appointed by the President may—

"(A) have any direct or indirect financial or employment relationship with any railroad, nor

"(B) have any significant direct or indirect financial relationship, or any direct or indirect employment relationship, with any person engaged in the transportation of passengers in competition with the Corporation, during the time that he serves on the board.

"(8) Pending the election of the four members by the preferred stockholders of the Corporation under paragraph (1)(D) of this subsection, seven members shall constitute a quorum for the purpose of conducting the business of the board.

"(9) Any vacancy in the membership of the board of directors required to be filled by appointment by the President under paragraph (1)(B) of this subsection shall be filled by the President not more than one hundred and twenty days after such vacancy occurs.".

(b)(1) Notwithstanding any other provision of law, the term of each member of the board of directors appointed by the President under section 303(a) of the Rail Passenger Service Act of 1970 (as in effect on the day before the date of enactment of this Act) who is serving under such appointment on such date of enactment, shall expire on the thirtieth day after such date of enactment, except that each such member so serving shall continue to serve until his successor is appointed and qualified or until the expiration of the one-hundred-twenty-day period beginning on the thirtieth day after such date of enactment, whichever first occurs. No member of the board of directors referred to in the preceding sentence shall be ineligible for appointment as such a member after the date of enactment of this Act solely by reason of the enactment of such preceding sentence.

(2) Notwithstanding section 303(a)(1)(B) of the Rail Passenger Service Act of 1970, of the members of the board of directors first appointed by the President under such section 303(a)(1)(B), three shall be appointed to serve for terms of two years and three shall be appointed to serve for terms of three years.

SEC. 3. Section 305(b) of the Rail Passenger Service Act of 1970 (45 U.S.C. 545(b)), relating to general powers of the Corporation, is amended by striking out the second sentence and inserting in lieu thereof the following: "In order to increase revenues and to better accomplish the purposes of this Act, the Corporation is authorized to modify its services to provide, as a part of the basic passenger services authorized by this Act, auto-ferry service characterized by the carriage of automobiles or other property belonging to passengers, except that nothing contained in this Act shall prevent any other person (other than a railroad) from engaging in such auto-ferry service over any route if—

"(1) such person establishes to the satisfaction of the Commission that such auto-ferry service—

"(A) will not impair the ability of the Corporation to reduce its losses or to increase its revenues, and

"(B) is required to meet the demands of the public; or

"(2) such auto-ferry service is being performed by such person on the date of enactment of this paragraph under contracts entered into before October 30, 1970.

Nothing in this section shall be construed to restrict the right of a railroad that has not entered into a contract with the Corporation under section 401(a) of this Act from performing auto-ferry service over its own lines. The Corporation is authorized to acquire, lease, modify, or develop the equipment and facilities required for the efficient provision of mail, express, and auto-ferry service, or to enter into contracts for the provision of such service.".

SEC. 4. Section 305 of the Rail Passenger Service Act of 1970 (45 U.S.C. 545), relating to general powers of the Corporation, is amended by adding at the end thereof the following new subsection:

"(c)(1) When the Corporation cannot acquire by contract, or is unable to agree with the owner of property as to the compensation to be paid for, any right-of-way, land, or other property (except right-of-way, land, or other property of a railroad or property of a State or local government or other public agency) required for the construction of tracks or other facilities necessary to provide intercity rail passenger service, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which the property is located, or in one such court in the event a single property is located in two districts.

"(2) The Corporation shall file with the complaint, or at any time before judgment, a declaration of taking, containing or having annexed thereto—

"(A) a statement of the public use for which the property is taken;

"(B) a description of the property taken sufficient for the identification thereof;

"(C) a statement of the estate or interest in the property taken;

"(D) a plan showing the property taken; and

"(E) a statement of the amount of money estimated by the Corporation to be just compensation for the property taken.

"(3) Upon the filing of the declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in the declaration, the property shall be deemed to be condemned and taken for the use of the Corporation and title shall vest in the Corporation in fee simple absolute, or in any lesser estate or interest as specified in the declaration, and the right to just compensation for the property shall vest in the persons entitled thereto. Just compensation shall be ascertained and awarded in the proceeding and established by judgment. The judgment shall include, as part of the just compensation awarded, interest from the date of taking to the date of payment at the rate of 6 per centum per annum on the amount finally awarded as the value of the property on the date of taking. Interest shall not be allowed, however, on the amount deposited in the court.

"(4) Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in the proceeding. If the compensation finally awarded exceeds the amount of the money received by any person entitled to compensation, the court shall enter judgment against the Corporation for the amount of the deficiency.

"(5) Upon the filing of a declaration of taking, the court may fix the time within which, and the terms upon which, the parties in possession are required to surrender possession to the Corporation. The court may make such orders in respect to encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable.".

SEC. 5. Section 401(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 561(c)), relating to the prohibition against other persons conducting intercity rail passenger service, is amended by striking out "No railroad or any other person" and inserting in lieu thereof "Except as provided in section 305(b) of this Act concerning auto-ferry service, no railroad or any other person".

SEC. 6. Section 402 of the Rail Passenger Service Act of 1970 (45 U.S.C. 562), relating to facility and service agreements, is amended—

(1) by inserting immediately after the second sentence of subsection (a) the following new sentence: "In fixing just and reasonable compensation for the provision of service ordered by the Commission under the preceding sentence, the Commission shall, in fixing compensation in excess of incremental costs, consider quality of service as a major factor in determining the amount (if any) of such compensation."; and

(2) by adding at the end thereof the following new subsections:

"(d)(1) If the Corporation and a railroad are unable to agree upon terms for the sale to the Corporation of property (including interests in property) owned by the railroad and required for the construction of tracks or other facilities necessary to provide inter-

city rail passenger service, the Corporation may apply to the Commission for an order establishing the need of the Corporation for the property at issue and requiring the conveyance thereof from the railroad to the Corporation on reasonable terms and conditions, including just compensation. Unless the Commission finds that—

"(A) conveyance of the property to the Corporation would significantly impair the ability of the railroad to carry out its obligations as a common carrier; and

"(B) the obligations of the Corporation to provide modern, efficient, and economical rail passenger service can adequately be met by the acquisition of alternative property (including interests in property) which is available for sale on reasonable terms to the Corporation, or available to the Corporation by the exercise of its authority under section 305(c) of this Act;

the need of the Corporation for the property shall be deemed to be established and the conveyance of the property to the Corporation on such reasonable terms and conditions as it may prescribe, including just compensation.

"(2) The Commission shall expedite proceedings under this subsection and, in any event, issue its order within one hundred and twenty days from receipt of the application from the Corporation. If just compensation has not been determined on the date of the order, the order shall require, as part of just compensation, interest at the rate of 6 per centum per annum from the date prescribed for conveyance until just compensation is paid.

"(e)(1) Except in an emergency, intercity passenger trains operated by or on behalf of the Corporation shall be accorded preference over freight trains in the use of any given line of track, junction, or crossing, unless the Secretary has issued an order to the contrary in accordance with paragraph (2) of this subsection.

"(2) Any railroad whose rights with regard to freight train operation are affected by paragraph (1) of this subsection may file an application with the Secretary requesting appropriate relief. If, after hearing under section 553 of title 5 of the United States Code, the Secretary finds that adherence to such paragraph (1) will materially lessen the quality of freight service provided to shippers, the Secretary shall issue an order fixing rights of trains, on such terms and conditions as are just and reasonable.

"(f) If, upon request of the Corporation, a railroad refuses to permit accelerated speeds by trains operated by or on behalf of the Corporation, the Corporation may apply to the Secretary for an order requiring the railroad to permit such accelerated speeds. The Secretary shall make findings as to whether such accelerated speeds are unsafe or otherwise impracticable, and with respect to the nature and extent of improvements to track, signal systems, and other facilities that would be required to make such accelerated speeds safe and practicable. After hearing, the Secretary shall issue an order fixing maximum permissible speeds of Corporation trains, on such terms and conditions as he shall find to be just and reasonable."

SEC. 7. (a) Section 403 of the Rail Passenger Service Act of 1970 (45 U.S.C. 563), relating to new service, is amended by adding at the end thereof the following new subsection:

"(d) The Corporation shall initiate not less than one experimental route each year, such route to be designated by the Secretary, and shall operate such route for not less than two years. After such two-year period, the Secretary shall terminate such route if he finds that it has attracted insufficient patronage to serve the public convenience and necessity, or he may designate such route as a part of the basic system.".

(b) Section 404(b) of the Rail Passenger Service Act of 1970 (45 U.S.C. 564(b)), relating to discontinuance of service, is amended—

(1) by striking out "July 1, 1973" in paragraph (1) and inserting in lieu thereof "July 1, 1974";

(2) by amending paragraph (2) to read as follows:

"(2) Except as otherwise provided in this paragraph and in section 403(a) of this Act, service beyond that prescribed for the basic system undertaken by the Corporation upon its own initiative may be discontinued at any time. No such service undertaken by the Corporation on or after January 1, 1973, shall be discontinued until the expiration of the one-year period beginning on the date of enactment of this sentence."; and

(3) by striking out "July 1, 1973" in paragraph (3) and inserting in lieu thereof "July 1, 1974".

SEC. 8. Section 601 of the Rail Passenger Service Act of 1970 (45 U.S.C. 601), relating to Federal grants, is amended—

(1) by striking out "There is authorized to be appropriated to the Secretary in fiscal year 1971, $40,000,000, and in subsequent fiscal years a total of $225,000,000, these amounts" in subsection (a) and inserting in lieu thereof "There are authorized to be appropriated to the Secretary $106,100,000 for the fiscal year ending June 30, 1974,";

(2) by striking out "There is authorized to be appropriated to the Secretary $2,000,000 annually," in subsection (b) and inserting in lieu thereof "There are authorized to be appropriated to the Secretary $1,200,000 for the fiscal year ending June 30, 1974, to remain available until expended,"; and

(3) by adding at the end thereof the following new subsection:

"(c)(1) Whenever the Corporation submits any budget estimate or request to the President, the Department of Transportation, or the Office of Management and Budget, it shall concurrently transmit a copy of that estimate or request to the Congress.

"(2) Whenever the Corporation submits any legislative recommendation, proposed testimony, or comments on legislation to the President, the Department of Transportation or the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to require the Corporation to submit its legislative recommendations, proposed testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.".

SEC. 9. Section 602 of the Rail Passenger Service Act of 1970 (45 U.S.C. 602), relating to guarantee of loans, is amended—

(1) by inserting "and with the approval of the Secretary of the Treasury," immediately after "prescribe," in subsection (a);

(2) by amending the first sentence of subsection (d) to read as follows: "The aggregate unpaid principal amount of securities, obligations, or loan outstanding at any one time, which are guaranteed by the Secretary under this section, may not exceed $250,000,000."; and

(3) by adding at the end thereof the following new subsection:

"(g) Notwithstanding any other provision of this Act, a guarantee may not be made of any security, obligation, or loan, the income from which is not included in gross income for the purposes of chapter 1 of the Internal Revenue Code of 1954.".

SEC. 10. Section 801 of the Rail Passenger Service Act of 1970 (45 U.S.C. 641) is amended to read as follows:

"SEC. 801. ADEQUACY OF SERVICE.

"(a) The Commission is authorized to prescribe such regulations as it considers necessary to assure that the quality of service and accommodations offered passengers on board trains and at other facilities used in intercity rail passenger service is adequate, taking into account the safety regulations applicable to the Corporation that relate to the scheduling or frequency of service, or the number or type of cars in a train, or that otherwise conflict with the service characteristics established by the Secretary for the basic system.

"(b) Any person who violates a regulation issued under this section shall be subject to a civil penalty of not to exceed $500 for each violation. Each day a violation continues shall constitute a separate offense."

Mr. HARTKE. Mr. President, I move that the Senate disagree to the amendment of the House of Representatives to S. 2016 and request a conference with the House thereon; and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Presiding Office appointed Mr. MAGNUSON, Mr. HARTKE, Mr. STEVENSON, Mr. COOK, and Mr. BEALL conferees on the part of the Senate.

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. JAVITS. Mr. President, I yield myself 1 minute on the bill.

I believe the various points of view have been exposed, and, of course, we cannot relieve all the horror stories that caused us to bring this legislation before the Senate. That is why we spent $1 million for an investigation. Those already affected know we cannot do anything about them; they want us to help others similarly situated. But there is a provision in the bill that deals with the point the Senator from Rhode Island raised. It is section 669(A), on page 226 of the bill, which provides that, once the bill is passed, an employer cannot fire anybody with impunity to avoid pension responsibility. The Secretary of Labor will enforce that to protect the workers, I think that is introducing a totally new factor, and it is our effort to preserve the rights of whoever have the ability to have them preserved until this bill catches hold. That is why I think our plan is valid and the amendment ought to be rejected.

Mr. NELSON. Mr. President, I yield time on the bill to the Senator from Texas.

Mr. BENTSEN. Mr. President, the Senator from Rhode Island made an excellent point, wanting to know why the 2-year hiatus was in the bill before we effectuated this bill. The reason is purely a matter of mechanics. The Treasury testified it is going to take a great deal of time, on this major piece of legislation, to draw up all the regulations. We are talking about modifying a great many trust plans and pension provisions in this country. Two years is a short period to accomplish that and bring it to fruition. That is why we settled on 2 years. I would like it to be enforced tomorrow, to get rid of all the horror stories we heard before our committee, but we cannot act that fast.

Mr. LONG. Mr. President, will the Senator yield?

Mr. BENTSEN. I yield.

Mr. LONG. Is it not true that if we make this law too burdensome on business, they can terminate their plans and get rid of them?

Mr. BENTSEN. Certainly. If we make this too burdensome on businessmen, they are not going to install new plans, and we are going to deny millions of prospective pension plan participants the right to be in those pension plans and have retirement plans working for them.

Mr. JACKSON. Mr. President, will the Senator yield?

Mr. BENTSEN. I yield.

Mr. JACKSON. We have spoken a lot about voluntarily established pension programs. I recognize that sector in the pension business, but I would call to the attention of the Senate that a very large part, in terms of volume, of pension participation stems from the collective bargaining process. We are reminded of this by the recent settlement of the United Auto Workers with Chrysler. So let us not conclude that this is an all-voluntary matter. Pension programs are indeed a part of the wage settlements that take place. I noticed that in the case of the Chrysler agreement I believe it now provides for a 30-year retirement plan, regardless of age. I believe I am correct. This, I must say, is quite a substantial change.

I just wanted to make the point.

Mr. BENTSEN. No one is arguing that here, but the great balance of employees in the country are not represented by labor unions, and we are trying to get these people to have an opportunity to participate in pension plans. I do not think we are going to get them in if we make this bill too burdensome.

The PRESIDING OFFICER. All time on the amendment having expired, and the yeas and nays having been ordered, the question is on agreeing to the amendment of the Senator from Washington (Mr. JACKSON) as modified. The clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Alaska (Mr. GRAVEL), the Senator from Michigan (Mr. HART), and the Senator from Montana (Mr. METCALF) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is absent on official business.

I also announce that the Senator from Oklahoma (Mr. BELLMON) and the Senator from Kansas (Mr. PEARSON) are absent because of illness.

I further announce that the Senator from Arizona (Mr. GOLDWATER), and the Senator from Ohio (Mr. SAXBE) are necessarily absent.

The result was announced—yeas 14, nays 78, as follows:

[No. 397 Leg.]

YEAS—14

Abourezk	Jackson	Pastore
Bible	Kennedy	Pell
Burdick	Magnuson	Proxmire
Hartke	McGee	Ribicoff
Hollings	Mondale	

NAYS—78

Aiken	Eastland	Moss
Allen	Ervin	Muskie
Baker	Fannin	Nelson
Bartlett	Fong	Nunn
Bayh	Fulbright	Packwood
Beall	Griffin	Percy
Bentsen	Gurney	Randolph
Biden	Hansen	Roth
Brock	Haskell	Schweiker
Brooke	Hatfield	Scott, Pa.
Buckley	Hathaway	Scott, Va.
Byrd, Harry F., Jr.	Helms	Sparkman
	Hruska	Stafford
Byrd, Robert C.	Huddleston	Stennis
Cannon	Hughes	Stevens
Case	Humphrey	Stevenson
Chiles	Inouye	Symington
Church	Javits	Taft
Clark	Johnston	Talmadge
Cook	Long	Thurmond
Cotton	Mansfield	Tower
Cranston	Mathias	Tunney
Curtis	McClellan	Weicker
Dole	McClure	Williams
Domenici	McGovern	Young
Dominick	McIntyre	
Eagleton	Montoya	

NOT VOTING—8

Bellmon	Gravel	Pearson
Bennett	Hart	Saxbe
Goldwater	Metcalf	

So Mr. JACKSON's amendment, as modified, was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. CURTIS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATHAWAY. Mr. President, I call up an amendment which I have at the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The Senate will be in order. Senators will take their seats.

The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. HATHAWAY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 69 of Title VII after line 15 add the following subsection:

(c) it meets the requirements for a qualified trust which is a part of a defined benefit plan which provides benefits for employees, some or all of whom are employees within the meaning of subsection (c)(1) or proprietary employees within the meaning of section 412(b)(1), as those requirements are defined in subsections 401(j) and 401(k).

Mr. HATHAWAY. Mr. President, the purpose of this amendment is to remedy a loophole which I believe exists in title VII of the bill, which allows a partnership, in addition to deducting a maximum $7,500 for a contribution to a pension plan—

Mr. NELSON. Mr. President, may we have order? I cannot hear the Senator.

The PRESIDING OFFICER. The Senator will suspend until it is restored. The Senate will be in order. Senators will please take their seats. The Senator from Maine has the floor.

Mr. NELSON. Mr. President, will the Senator yield for a question?

Mr. HATHAWAY. I yield.

Mr. NELSON. I did not understand what the Senator said. Is he referring to the H.R. 10 $7,500 provision?

Mr. HATHAWAY. The Senator is correct. I will start over.

The purpose of this amendment is to remedy what I believe is a defect in title VII, which allows, in a partnership, each of the partners of which can deduct $7,500 one or more partners to give his deduction of $7,500 to another partner, so that if there were, say, two partners, one partner, instead of getting his limit of $7,500, could get $15,000; he could get the other partner's deduction; or, if there were more partners than that, he could theoretically get more.

I understand the purpose of this amendment, which was recommended by the Treasury Department, was to allow a partner, say at age 55, who was just starting the plan, to go over the $7,500 allowable amount to be deducted by taking a part or all of the share of younger partners, in order for the senior partner, who had only 10 years before retiring, to invest enough to give himself a satisfactory retirement income, based upon his current salary.

I have, really, no objection to that. The problem is that the section itself is not so limited. My amendment would simply limit the amount of benefits that any one partner could get to the $75,000 limitation which is now a part of the bill as a result of the amendment of the Senator from Wisconsin, which extends the $75,000 limitation which at first applied only to proprietary corporations to all corporations, so that, in effect, this limitation would apply to all pension plans, whether a partnership, a proprietary corporation, or a nonproprietary corporation.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. HATHAWAY. I yield to the Senator from Nebraska.

ORDER OF BUSINESS

Mr. GRIFFIN. Mr. President, while the majority leader is present, will the Senator from Nebraska yield for a moment, to permit him to answer a question concerning the program for the rest of the day, and how long we are likely to be here?

Mr. CURTIS. I will yield time for that.

LEGISLATIVE PROGRAM

Mr. MANSFIELD. Mr. President, in response to the question raised by the distinguished acting Republican leader, we are going to make every effort to finish the pending business today, even if it means staying in late tonight. Then we would like to get on the military procurement bill, which is a pretty large bill and will take some time. In the meantime we hope, if I may have the attention of the distinguished Senator from Alabama (Mr. SPARKMAN), to schedule tomorrow morning first thing the conference report on the International Economic Act, or whatever the name is, to be followed by the procurement measure.

I hope also it will be possible to take

up the Kissinger nomination tomorrow afternoon or sometime soon. I have been making some inquiries among Senators on this side to see what the feelings of those in opposition to the nomination are, and they have indicated that they are not interested to any extent, at least those that I have seen, in speaking. I think there will be others who will want to speak, and I think we ought to be aware of the fact that we have a very heavy schedule this week, and we will have a lot of work to do from now on if we expect to get out by October. That may include Saturday sessions.

However, getting to the business at hand, it is our intention to stay in session as long as necessary tonight to finish this measure.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

ORDER FOR THE YEAS AND NAYS ON THE KISSINGER NOMINATION

Mr. ROBERT C. BYRD. Mr. President, at the request of the distinguished Senator from South Dakota (Mr. McGOVERN), as in executive session, I ask unanimous consent that it be in order to ask for the yeas and nays on the confirmation of Henry Kissinger to be Secretary of State.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I ask for the yeas and nays.

The yeas and nays were ordered.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, September 19, 1973, he presented to the President of the United States the following enrolled bills:

S. 155. An act for the relief of Rosita E. Hodas;

S. 776. An act to authorize the striking of medals in commemoration of the one hundredth anniversary of the cable car in San Francisco;

S. 902. An act to amend section 607(k)(8) of the Merchant Marine Act, 1936, as amended; and

S. 1852. An act to require loadlines on United States vessels engaged in foreign voyages and foreign vessels within the jurisdiction of the United States, and for other purposes.

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. CURTIS. Mr. President, I ask unanimous consent that Mr. George Pritts of the staff of Senator FANNIN be accorded the privilege of the floor for the duration of the consideration of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CURTIS. My question is this: Is it not true that the way the Senator's amendment is drawn, it is not limited to partnerships, but it affects everyone under what is commonly referred to as H.R. 10, or the Keogh plan, or what sometimes is referred to as self-employed?

Mr. HATHAWAY. Yes; that is true.

Mr. CURTIS. Is it not also true that those people who take advantage of H.R. 10, after meeting certain requirements not required of corporations, one of them is that they must take care of all employees, not just classes of employees, and another one is that they must give full vesting immediately? This amendment, the Treasury tells me, will add additional restrictions but will do very little, if anything, to prevent any abuses—maybe in one case out of 10,000.

I thank the Senator for yielding.

Mr. HATHAWAY. In answer to the Senator from Nebraska it would be difficult to determine the extent of abuses. Obviously, there could be abuses in that a partnership could pool its contributions in order to give one person a large pension. I do not see that it would be an onerous burden on the Treasury Department, nor would it be a burden on those participating in the plan.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. HELMS). Is all time now yielded back?

Mr. NELSON. Mr. President this amendment puts a ceiling or a limitation on the amount of money that a partner in a partnership, for example, could use to transfer for the benefit of the senior partner, whereas under present law there is no such limit. My own point of view would be to limit it to $7,500 an individual, which was the original intent of the bill. This limitation, however, is better than nothing, but I think that the House should look at the proposition of limiting it more. It is a little better than the present situation.

Mr. JAVITS. Mr. President, I have no objection to the amendment.

Mr. NELSON. I have no objection and we are ready to accept the amendment.

I yield back the remainder of my time.

The PRESIDING OFFICER. All time on this amendment has now been yielded back.

The question is on agreeing to the amendment of the Senator from Maine (Mr. HATHAWAY).

The amendment was agreed to.

Mr. HATHAWAY. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JAVITS. Mr. President, I yield myself 3 minutes on the bill and would like to engage, if I may, in colloquy with the manager of the bill, the Senator from Wisconsin (Mr. NELSON).

I would like to inquire of the managers of the bill concerning the purpose of a provision added to S. 4 by the compromise amendment in the nature of a substitute. I refer specifically to section 424 entitled "Other Risks" which authorizes the insurance corporation to insure, subject to all the appropriate limitations, the payment of other classes of benefits under a plan wherever feasible, to prescribe the terms and conditions of such insurance and to establish and collect such premiums as may be necessary.

It is my understanding that this provision was adopted in order to deal with problems of certain plans which are negotiated in the basic metal, metal mining, and related industries.

Mr. NELSON. The Senator is correct.

Mr. JAVITS. I have been informed that in the basic metal, metal mining, and related industries, pensions are payable upon the permanent shutdown of a plant, facility, such as a mine or plant railroad, department, or subdivision thereof, to employees who are 55 years of age or older, if the sum of the age of the employee plus his years of service is 70 or more, or if, irrespective of his age, such sum is 80 or more. Further, even though, on the shutdown date, an employee may not meet the requirements, his service continues to accumulate, and, if in the 2 years from the date the layoff starts, which may be earlier than and in anticipation of the shutdown, he qualifies under the rule, and he would, if the plan were in force, be granted a pension.

The right to a pension under these circumstances does not become vested within the meaning of the bill since no employee who quits his employment may become entitled to a vested interest unless there has been a permanent plant shutdown. After such a permanent plant shutdown has occurred and the employee's pension has vested as a result, insurance coverage would of course apply under section 422(a). But sometimes—perhaps often—plant shutdowns and plan terminations may occur at the same time and under these circumstances insurance coverage would not attach because the vested pension had not been earned prior to plan termination, but in fact resulted from a plant shutdown which was coincidental with plan termination.

Mr. NELSON. The Senator is correct. He has put his finger on precisely the problem that we wanted to solve if it was feasible to do so by providing additional authority to the insurance corporation. It is, of course, very difficult to ascertain the dimensions of these risks since vested liabilities arise not as a result of the employee's length of service, but are rather triggered by permanent plant shutdowns which may or may not accompany plan termination. Since this was a rather unique type of situation which might not fit within the regular insurance framework established under the bill, we drafted a provision which would authorize the insurance corporation in section 424 to determine whether the insurance of this type of risk could be accomplished in a feasible manner and gave it discretion to establish the terms and conditions of such insurance and set such premiums as may be necessary.

Mr. JAVITS. I thank the Senator for his explanation. I am very glad that this provision was included. It would, in my judgment, be most unfortunate and inequitable if we were to permit a fortuitous sequence of events to determine the insurability of vested rights. In other words, one man would have his vested

right insured because there was a permanent plant shutdown prior to plan termination, but the other man would not have his vested right insured because the plant shutdown occurred at the same time the pension plan itself was terminated. I commend the Senator from Wisconsin for his foresight in including such a provision that would enable the insurance corporation to deal with this problem.

Mr. AIKEN. Mr. President, may I ask the Senator from New York, does this proviso apply to Americans employed in mines in foreign countries?

Mr. JAVITS. The answer is that this provision applies to plans operating here. That is the essential test—that is, is the plan a U.S. pension plan? If it is, then it would be applicable under this particular section to which the Senator from Wisconsin (Mr. NELSON) has replied.

AMENDMENT NO. 504

Mr. BUCKLEY. Mr. President, I call up my amendment No. 504 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 2, beginning at line 19 and ending at line 21, strike "exceed an amount equal to the lesser of $1,000 or his earned income paid or accrued for such taxable year." and insert "be less than the lesser of his earned income paid or accrued for such taxable year up to a deduction of $1,000, nor more than 15 per centum of his earned income paid or accrued for such taxable year, up to a deduction of $7,500."

Mr. BUCKLEY. Mr. President, I think that this amendment is self-explanatory. It would retain the existing provision allowing individuals not otherwise covered by pension plans to set aside out of their earnings up to $1,000 a year irrespective of the percentage of total earnings represented. I am suggesting that this be the minimum allowed and that the maximum allowed to be set aside be 15 percent of earnings up to a maximum deduction of $7,500.

My purpose here is to try to establish a greater degree of parity among the various categories of working Americans for which this and existing legislation provides.

Existing law provides a substantial tax benefit to millions of workers covered under pension plans by postponing the taxation of current earnings. I am not talking about the business deduction that the employer is entitled to but, rather, the fact that a wage earner is not required to pay taxes currently on the value of contributions made to a pension fund on his behalf. Rather, he will be paying taxes on this deferred income when received after his retirement, and of course he will then be in a significantly lower income bracket.

The other exemption, the other tax benefit that these workers receive, is the exemption of taxation on the income accruing on the money that has been set aside for their future use. To the extent that tax revenues are postponed on current income, there is imposed on all American taxpayers a real burden. Therefore, in a real economic sense, wage earners who are not covered by pension plans are helping to pay for those persons who are receiving the benefits of these tax provisions.

I believe that one of the most significant, constructive provisions in the bill we are now debating is the new provision that will allow individuals to deduct up to $1,000 a year if contributed to qualified individual retirement savings plans. But my concern is several fold. First of all, the $1,000 privilege, in itself, is a step in the right direction; but it falls far short of equalizing the net tax impact among all workers, all individuals, who are able to postpone taxation on current earnings.

Second, I believe that one of the purposes of the proposed legislation, which is to encourage more people to set aside earnings for their retirement years, is to a degree defeated by the thousand-dollar limitation, especially in the case of older workers.

Let us take somebody in his or her fifties who expects to retire or will be retired under a mandatory retirement employment contract at age 65. To be able to set aside $1,000 a year for 15 years does not really create a large enough principal amount to generate meaningful income in later years. Therefore, for these individuals I think the company provision fails to create a meaningful incentive for saving.

On the other hand, if my amendment were adopted and if somebody were earning in the vicinity of $35,000 a year, $5,000 a year could be set aside, and there would be a very real incentive to set earnings aside; because over a 10- or 15-year period, between $50,000 and $75,000 will have accrued, which would buy a significant annuity.

Mr. President, the reason why I selected $7,500 originally was to attempt to eliminate the disparity between the treatment of these individuals and the treatment provided for the so-called proprietary employees. The amendment of the Senator from South Carolina (Mr. THURMOND) in effect wiped out this particular distinction.

I understand that I have run into some resistance from members of the Finance Committee on some of these details. In the interest of comity, I would be happy to revise my figure downward drastically to $2,500, which would establish the principle of the entitlement of these individuals to a parity of treatment, and then let our actual experience with this new provision, and further studies conducted by the Finance Committee and by the Ways and Means Committee determine exactly where the figures ought to be set, what the conditions ought to be, in order to make sure that all Americans who are earning money and paying taxes get the same breaks insofar as providing for their retirement is concerned.

Mr. LONG. Mr. President, will the Senator yield?

Mr. BUCKLEY. I am glad to yield.

Mr. LONG. Mr. President, this provision in the law is the type of thing that has been advocated by the Senator from Nebraska (Mr. CURTIS) for a long time. The committee felt that we should try this approach. We are told that the probable cost will be about $270 million to let every citizen not in a pension plan set aside for his own plan, for his own retirement. That is a lot of money. We have not had the first person come before us to ask for this. This is just a benefit that Congress voted for the taxpayer based on the same general argument that the Senator made.

Some of us were concerned about the cost. We were thinking about $1,000. We said we would see how that worked; and based on the experience we had with the $1,000 limit, we would decide whether the limit should be increased in the future. What the committee agreed to would result in a loss of revenue of $270 million.

What the Senator from New York is talking about would cost a billion dollars revenue a year. It would have a great deal of inflationary impact. The Government is spending too much revenue now. Think of it: a billion dollars.

Mr. BUCKLEY. Mr. President, will the Senator yield?

Mr. LONG. Mr. President, may I be yielded now a few minutes for the opposition?

The PRESIDING OFFICER. Does the Senator from New York yield the floor?

Mr. BUCKLEY. I yield the floor.

Mr. LONG. Mr. President, a billion dollars is a large amount, when we have yet to have the first person come to us to ask for it for himself. The only person who has asked for it is the Senator from Nebraska (Mr. CURTIS), who thought it would be a good idea in terms of tax equity for a person wanting to buy the insurance to participate in the program himself. The Senator from Nebraska offers that concept.

If we voted for an amendment in this fashion, we would be competing with that program. People would be asking, "Can you top this?" Someone would come in with the idea that this is a good program; why not let everybody get into the act? Before we could get it to the Senate, without the first proposed beneficiary ever asking for it, we would be raising the amount from $270 million to a billion dollars.

I would be willing to cooperate to the extent that the Government might be able to offer something along this line. In the spirit of compromise, I would like to have a chance to think about this. I would urge the Senator to accept a figure of $1,500, if he would be willing to settle for that. Then we could see how the plan worked. That would cost us $70 million beyond what we are estimating. It would run the cost up to $340 million.

But I think that to go beyond that point would be irresponsible on the part of the Senate and would certainly be irresponsible on the part of the Committee on Finance, which has to think about the fiscal capabilities of the Government in order to make its analysis, to go beyond that figure at this point. We could see how this proposal would work; and if the experience dictated that a great many people liked it, a great many people responded to it, and the experience was favorable under it, then we could consider increasing the amount at a future date.

After all, I would like to point out that

the Senator from Nebraska has been fighting for this concept for many years. He offered a similar amendment on a pension bill several years ago. So if we do not go too far overboard to begin with I think there is a better chance to do something than there is when we become so ambitious in the beginning that those on the other side of the Capitol say we cannot afford it at all. The Treasury Department favors it but they would have to oppose the concept on the ground that we cannot afford that much.

Would the Senator be willing to settle for a lesser figure say $1,500?

Mr. BUCKLEY. I would be willing to consider a lesser figure but first I would like to clarify the Senator's estimate of the cost of my proposal. I think I have established in 2½ years some reputation for fiscal prudence. I have been listed as one of the six most frugal men around here. I did try to get an estimate of the cost from members of my staff who came up with a figure of $340 million at $7,500. That is a long way from $1 billion. Of course, the $1,000 proposal would cost $170 million. Therefore, my proposal would have doubled this cost.

Mr. NELSON. Mr. President, will the Senator yield for a question?

Mr. BUCKLEY. I yield.

Mr. NELSON. What is the figure the Senator used for the cost, the Treasury cost at $7,500?

Mr. BUCKLEY. $340 million.

Mr. NELSON. I am advised by counsel that the cost is $270 million per $1,000. It would be $340 million for the $1,500 limitation with the 15 percent limit on all over $1,000.

Mr. BUCKLEY. Would the Senator please give me the last figure?

Mr. LONG. The staff of the joint tax committee estimates that in 1974 the cost would be $630 million in taxes, in 1976 it would be $870 million, and in 1977 it would be $1 billion a year. The reason it would move up is that each year more people would be inclined to use it than the year before so that the cost would keep pyramiding. Of course, against that, one has to recognize the committee recommendation would be $270 million but that would be $730 million less than the cost of the Senator's proposal, which is a great amount of money.

I hope that the Senator, having been one of our great conservatives in the Senate, and having decided to go for a liberal idea, has not decided to go to the ultimate extreme. I hope he will restrain himself somewhat.

Mr. BUCKLEY. Mr. President, if the Senator will yield, I believe that one of the great principles underlying conservative philosophy and thought is equity. Conservatives believe that in any system of taxation there is an obligation to maintain equity when the Government is extracting money that in the first instance belongs to the people earning it and not to the Government. So if it costs something to establish equity, this is something we must be ready to accept in upholding that principle.

I agree that a possible additional cost of as much as $1 billion strains even my insistence on equity, knowing that the Committee on Finance will be addressing itself to the problem of establishing equality of treatment in the months and years ahead.

Would the Senator settle for a figure of $2,000? Would that be acceptable to the Senator?

Mr. LONG. I hope the Senator will not insist on that. I have discussed this with some of my colleagues. We realize the Senator has very fine intentions in this regard. We would be willing to accommodate him to the extent of a 50-percent increase in what the committee recommended. We believe the Treasury will support that. We really feel that with the additional cost of this bill, such as the increase to which the Senator makes reference, that we are talking about a group of people who have not been asking for this, who would be surprised to see it, but I am sure they would be pleased to see it. If this works out as we believe it undoubtedly will, it will cause two things to happen: first, to raise this figure and, second, to reduce what others get.

We probably will have to withdraw some of the liberality we voted for others in order to accommodate people who are not in the pension system at all.

Mr. BUCKLEY. I would like to urge one other benefit, and that is in connection with fighting inflation. My amendment would encourage salting away another $700 million in savings, thus withholding from the economy.

Mr. LONG. It does go along that line, but along with some other things, there are other ways we can encourage savings. Other Senators have other suggestions.

I hope the Senator compromises with us on this matter. I would like to accommodate the Senator. I would appreciate it if the Senator would consider reducing his amendment to $1,500 with the understanding that we will consider it in a few years. It may be that if we can prevail and make this law, in due course perhaps we can raise it to $2,000 or $2,500.

Mr. BUCKLEY. Mr. President, I have learned from sad experience that any time the chairman does not accept an amendment, it has little chance of succeeding. Under those circumstances I agree to amend my amendment by striking the figure $7,500 in line 7 and substituting $1,500.

The PRESIDING OFFICER. The Senator has the right to amend his amendment.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. BUCKLEY. I yield.

Mr. JAVITS. Mr. President, I counseled the Senator accordingly. It is a very wise course as far as I am concerned, and the amendment would be satisfactory to me. I do not know that it has been debated but we have a problem of revenue laws involved. We have an estimate of $170 million at the $1,000 figure. Now we have an estimate of $270 million. We add $80 million by this amendment and as we have argued on other amendments we have a problem of balancing the bill.

Mr. President, while I am on my feet I would like to congratuate my colleague for his enterprise and initiative in bringing up this matter. He has already achieved a remarkable concession and achievement. As far as I am concerned the admendment is acceptable.

Mr. BUCKLEY. I thank the Senator.

Mr. CURTIS. Mr. President, if the Senator will yield, as an original sponsor I thank my colleague for his contribution. I hope the time comes when it is raised 50 percent.

The PRESIDING OFFICER. Do Senators yield back their time?

Mr. BUCKLEY. I yield back my time.

Mr. LONG. I yield back my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York as modified.

The amendment was agreed to.

Mr. BUCKLEY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HARTKE. Mr. President, I send to the desk a modification of my amendment, No. 485.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. HARTKE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, ordered to be printed in the RECORD, is as follows:

Beginning on page 13, line 4, strike everything through and including page 37, line 2 and insert in lieu thereof the following:

"SEC. 201. (a) A pension plan shall not be an eligible pension plan unless the Secretary of Labor certifies to the Secretary of Treasury that such plan provides that participants shall be vested 100 per centum of the accrued portion of the normal retirement benefits of such funds attributable to covered service both before and after the effective date of this title—

"(1) after 10 years service under the fund, during the first three years following the date of enactment of this title,

"(2) after 8 years service under the fund, during the fourth and fifth years following the date of enactment of this title, and

"(3) after 5 years service under the fund following the end of the fifth year after the date of enactment of this title.

"(b) A pension plan may require as a condition of eligibility to participate, a period of service no longer than two years or age 25, whichever occurs later.

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

"(1) three of the years required to qualify for a vested right under subsection (a) shall be continuous under standards prescribed under subsection (d).

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

"(3) in the event a participant has attained a vested right equal to 100 per centum of the accrued portion of the normal retirement benefit as provided by the plan

with respect to such service, and such participant has been separated permanently from coverage under the plan and subsequently returns to coverage under the same plan, such participant may be treated as a new participant for purposes of the vesting requirements without regard to his prior service.

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

"(e) Notwithstanding any other provision of this Act, a pension plan may allow for vesting of pension benefits after a lesser period than is required by this section.

"VARIANCES—DEFERRED APPLICABILITY OF VESTING STANDARDS

"SEC. 202. (a) Where, upon application to the Secretary of Labor by plan administrator and notice to affected or interested parties, the Secretary of Labor may defer, in whole or in part, applicability of the requirements of section 201 of this title for a period not to exceed five years from the effective date of title II, upon a showing that compliance with the requirements of section 201 on the part of a plan in existence on the date of enactment of this Act would result in increasing the costs of the employer or employers contributing to the plan to such an extent that substantial economic injury would be caused to such employer or employers and to the interests of the participants or beneficiaries in the plan.

"(b) For purposes of subsection (a), the term 'substantial economic injury' includes, but is not limited to, a showing that (1) a substantial risk to the capability of voluntarily continuing the plan exists, (2) the plan will be unable to discharge its existing contractual obligations for benefits, (3) a substantial curtailment of pension or other benefit levels or the levels of employees' compensation would result, or (4) there will be an adverse effect on the levels of employment with respect to the work force employed by the employer or employers contributing to the plan.

"(c) (1) In the case of any plan established or maintained pursuant to a collective bargaining agreement, no application for the granting of the variance provided for under subsection (a) shall be considered by the Secretary of Labor unless it is submitted by the parties to the collective bargaining agreement or their fully authorized representatives.

"(2) As to any application for a variance under subsection (a) submitted by the parties to a collective bargaining agreement or their duly authorized representatives, the Secretary of Labor shall accord due weight to the experience, technical competence, and specialized knowledge of the parties with respect to the particular circumstances affecting the plan, industry, or other pertinent factors forming the basis for the application."

Mr. HARTKE. Mr. President, I ask unanimous consent that any technical changes necessary be made in the amendment to make it conform to the modified bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARTKE. Mr. President, I propose that 100 percent vesting be achieved after only 5 years of service. These more progressive rules on vesting will open the way for more frequent job changes, increases in work satisfaction, a more mobile and a more effective labor force. We owe this to the working men and women of this country. In order to demonstrate graphically the superiority of the Hartke approach, I submit the following table and ask unanimous consent that it be printed in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Age	Percent vested committee	Percent vested Hartke
20	0	0
25	0	100
30	50	100
35	100	100

Mr. HARTKE. Mr. President, the table shows what would happen to a worker beginning his job at age 20. Under the Finance Committee proposal, this worker would not qualify for participation until age 30. After 10 years of work, he would be only 50-percent vested. This worker would be 35 before he was fully vested under the committee bill, but only 25 under the Hartke proposal.

It is assumed by many that the cost of these improved vesting standards will be prohibitive. This is just not true.

Citing the cost study of mandatory vesting provisions written by Donald Grubbs for the Senate Subcommittee on Labor, my more progressive vesting provision of 100 percent after 5 years or after age 25, would increase the cost to the employer of from one-tenth to fourtenths of 1 percent in the percentage of payroll. This is only two-tenths of 1 percent greater than the costs of the very weak vesting provision in S. 4 or S. 1179, or the modified bill which has come before us.

It should also be pointed out that this cost would be shared equally among employers. No company or firm would be placed at a comparative disadvantage vis-a-vis another.

Mr. President, under the Finance Committee proposal, a qualified plan must provide at least 25-percent vesting after 5 years participation, 5-percent additional vesting for each of the next 5 years, and 10 percent each year for the next 5 years thereafter. This formula would provide for at least 25 percent after 5 years participation, 50 percent after 10 years, and 100 percent after 15 years.

Progressive vesting rights are the heart of pension reform. Weak vesting clauses make for ineffectual and superficial pension legislation. The committee's proposal gives the illusion of reform without the substance. The vesting provisions are extremely weak and inadequate. Such a scheme would discriminate against women, seasonal workers, and workers in mobile or faltering industries. A recent Senate Labor Subcommittee study found that, for plans requiring 10 years' participation or less for vesting, 78 percent of those separated did not qualify for benefits. Under these same conditions, the committee proposal would provide 50 percent vesting after 10 years' participation for only 22 percent of those who separate. I do not consider such an approach acceptable.

Achieving vested rights for women is also difficult under the committee's proposal. Most women work at a job for shorter periods than men, and often work part-time or part-year. The committee has made no provision for part-time or part-year work. While men in manufacturing have a median of 14.3 years of service, women in their later years, have only 8.3 years of service. And in retailing, women over 45 had an average of 4.9 years. As a result, a woman would achieve only 40 percent of her vested rights. This is not a recent retirement benefit.

A moderately good benefit will give $5 a month for each year of credited service. A normal retirement for a woman would be 8 years of credited service or $40 a month. But the committee's proposal would provide only 40 percent of this or $16 a month—less than $4 a week. And that benefit is subject to erosion by inflation between the time it vests and the time it becomes payable.

I am especially aware of the situation in the aerospace industry, which fact we were alerted to by the Senator from Washington (Mr. JACKSON), because aerospace is an example of a faltering industry in which many plants have shut down and many more will shut down in the future. A recent study found that 80 percent of the employees in this industry had completed fewer than 10 years of service.

At the very best, the committee's proposal would provide 50 percent vesting for these workers—too minimal a standard.

With no provision for part-year work, it will be virtually impossible for the seasonal worker to attain vested rights. Many cumulative years of service will add up to nothing in retirement.

The committee's vesting proposal would provide for little or no benefits for the majority of workers in this country. It ignores the overwhelming evidence which demonstrates that the weaker the vesting requirements, the less likely it is that the participant will ever receive his needed pension benefits.

UNANIMOUS-CONSENT AGREEMENT ON S. 2410, TO AMEND THE PUBLIC HEALTH SERVICE ACT

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. WILLIAMS. I yield.

Mr. MANSFIELD. Mr. President, insofar as it was possible to do so, all the interested parties have been contacted, and at this time I ask unanimous consent that S. 2410, a bill to amend the Public Health Service Act to provide assistance and encouragement for the development of comprehensive area emergency medical services systems, be laid before the Senate at an appropriate time—probably later this evening—with a time limitation of 30 minutes on the bill, 30 minutes on amendments, and 20 minutes on amendments to amendments, if any.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. MANSFIELD. I yield.

Mr. JAVITS. Thirty minutes seems a very short time to present this matter. Is the Senator from California (Mr. CRANSTON) agreeable?

Mr. MANSFIELD. Yes.

Mr. GRIFFIN. Mr. President, if the Senator will yield, I might add that the only amendment we are aware of is one, or possibly two, by the Senator from Kansas (Mr. DOLE), and this agreement as to time is fine with him.

Mr. JAVITS. Mr. President, may we know the time on amendments?

Mr. MANSFIELD. Thirty minutes on amendments and 20 minutes on amendments to amendments, in the usual form.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? There being no objection, it is so ordered.

Mr. MANSFIELD. Mr. President, it is the present intention of the joint leadership to take this bill up on the disposition of the pending business.

Mr. JAVITS. And finish it tonight?

Mr. MANSFIELD. Yes.

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. HARTKE. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. NELSON. Mr. President, how much time is left on the amendment?

The PRESIDING OFFICER. Twenty-nine minutes remain to the Senator from Wisconsin.

Mr. NELSON. Mr. President, precisely the same issue is involved here that was involved in the amendment proposed by the Senator from Washington.

I would like to see 100 percent vesting, as I said, not at the end of 5 years, but at the end of the first day of work—100 percent vesting and 100 percent accrued benefits. The problem is the same as the problem we discussed on the Jackson amendment, and that is cost. So reluctantly I am compelled to oppose the amendment.

I would point out, by the way, that the negotiated agreement between one of the biggest unions and most successful unions in America, if not the most successful one, and one of the most successful corporations in the country; namely, General Motors and the Auto Workers, provides for 100 percent vesting at the end of 10 years. So the proposal of the Senator from Indiana is a 100 percent vesting 5 years earlier than that proposed in the United Auto Workers contract. Furthermore, in fact, the United Auto Workers contract does not provide for any vesting for any employee until 10 years have expired, and then it is 100 percent vested immediately at the end of 10 years.

Mr. JAVITS. Mr. President, will the Senator yield me 5 minutes?

Mr. NELSON. Mr. President, I yield whatever time the Senator may need.

Mr. JAVITS. Mr. President, we have debated the basic principle which is involved under the Jackson amendment. The results are in on that. If anything, it seems to me this amendment is less attractive even than that, which was based on giving vesting during the first 5 years upon severance or termination of employment.

I will say this, or I would not have taken the time of the Senate following the fine summing up of the situation by the Senator from Wisconsin (Mr. NELSON): The Senator from Indiana (Mr. HARTKE) has been a stimulant in this matter. I said it in my original presentation. I say it again. No matter how the managers of the bill, including myself, become vexed over having to fight amendments, it is only his duty. He was one of the first on the scene with the effort to insure pension funds. He is pushing us hard on the matter of accelerating vesting time.

I am sure he will push us either now or later on another very difficult question which is the question of how to manage these enormous pension assets with the greatest social impact. That is a very big problem. He will push us on portability or transferability of pension rights through a pension bank. He will perhaps push us on many other matters. I welcome it. But as far as I am concerned, this bill is a fine beginning. I believe that in terms of work and morale, and the regularization of competition between employers to provide greater assurance of old-age income, we are starting off in an extraordinary way.

We have today quite a remarkable showing between the Finance Committee and the Labor and Public Welfare Committee on this subject.

We cannot accept Senator HARTKE's approach. However, I will not for a moment denigrate his effort. The Senator is entitled to all of the credit in the world. However, we feel that we are not able to do what he wants.

Mr. HARTKE. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Indiana has 24 minutes remaining.

Mr. HARTKE. Mr. President, the Senator from New York and the Senator from New Jersey have been champions in this field.

I will point out to the Senator from New Jersey that with respect to one matter which the Senator from Wisconsin was talking about when he said that this was the same issue as in the Jackson amendment, that that is not true.

The Jackson amendment was directed at involuntary cutoffs, involuntary disassociations from work by things such as plant shutdowns. Otherwise his amendment in no way was a modification of the bill or a modification of the committee amendment. However, the philosophy behind the amendment deals with the basic problem of trying to eliminate the threat that the welfare people will come up here and face us in the future.

As the committee report says, the median income in the present pension plan is $99 a month, less than $100 a month. That means that today, with social security, that a man is placed on welfare.

If we take the Grubbs case study for range of increase in the pension plan costs for mandatory vesting provisions, which study was made at the request of the Committee on Labor and Public Welfare, it shows the range of increase in cost as a percent of payroll that the committee proposal under part A, item 4, is 25 percent in 5 years and 100 percent in 15 years.

Mr. President, I ask unanimous consent that the entire study be printed in the RECORD.

There being no objection, the study was ordered to be printed in the RECORD, as follows:

RANGE OF INCREASE IN PENSION PLAN COSTS FOR MANDATORY VESTING PROVISIONS

[In percent]

	Present vesting—			All plans
	None	Moderate	Liberal	
Percentage of pension plan members covered under such plans	23	56	21	100
Range of present plan cost as a percent of payroll	1.8–11.2	2.2–12.5	2.2–12.7	1.8–12.7
Range of increase in cost as a percent of payroll:				
A. No past service vested:				
1. 30 percent at 8 yrs., 100 percent at 15	.2–.6	0–.2	0–0	0–.6
2. 25 percent at 5 yrs., 100 percent at 20	.2–.5	0–.2	0–.1	0–.5
3. Same as No. 2, after age 30	.2–.5	0–.2	0–.1	0–.5
4. 25 percent at 5 yrs., 100 percent at 15	.2–.6	0–.2	0–.1	0–.6
5. 100 percent at 10 yrs	.2–.6	0–.2	0–0	0–.6
6. 100 percent at 5 yrs., after age 25	.2–.7	.1–.4	0–.2	0–.7
7. Rule of 50	.2–.7	0–.3	0–.2	0–.7
B. All past service vested:				
1. 30 percent at 8 yrs., 100 percent at 15	.2–1.5	.1–.2	0–0	0–1.5
2. 25 percent at 5 yrs., 100 percent at 20	.2–1.5	.1–.2	0–.1	0–1.5
3. Same as No. 2, after age 30	.2–1.5	0–.2	0–.1	0–1.5
4. 25 percent at 5 yrs., 100 percent at 15	.2–1.5	.1–.2	0–.1	0–1.5
5. 100 percent at 10 yrs	.2–1.5	0–.2	0–0	0–1.5
6. 100 percent at 5 yrs., after age 25	.3–1.6	.1–.4	0–.2	0–1.6
C. Past service vested for members age 45 and over:				
1. 30 percent at 8 yrs., 100 percent at 15	.2–1.3	.1–.2	0–0	0–1.3
2. 25 percent at 5 yrs., 100 percent at 20	.2–1.3	.1–.2	0–.1	0–1.3
3. Same as No. 2, after age 30	.2–1.3	0–.2	0–.1	0–1.3
4. 25 percent at 5 yrs., 100 percent at 15	.2–1.3	.1–.2	0–.1	0–1.3
5. 100 percent at 10 yrs	.2–1.3	0–.2	0–0	0–1.3
6. 100 percent at 5 yrs., after age 25	.3–1.4	.1–.4	0–.2	0–1.4
Range of increase in cost as a percent of present plan cost:				
A. No past service vested:				
1. 30 percent at 8 yrs., 100 percent at 15	3.0–25.0	0–6.0	0–1.0	0–25.0
2. 25 percent at 5 yrs., 100 percent at 20	3.0–23.0	0–7.0	0–3.0	0–23.0
3. Same as number 2, after age 30	3.0–22.0	0–6.0	0–2.0	0–22.0
4. 25 percent at 5 yrs., 100 percent at 15	3.0–25.0	0–7.0	0–3.0	0–25.0
5. 100 percent at 10 yrs	3.0–26.0	0–7.0	0–0	0–26.0

RANGE OF INCREASE IN PENSION PLAN COSTS FOR MANDATORY VESTING PROVISIONS—Continued

[In percent]

	Present vesting— None	Moderate	Liberal	All plans
6. 100 percent at 5 yrs., after age 25	3.0–30.0	1.0–15.0	0–7.0	0–30.0
7. Rule of 50	3.0–28.0	0–12.0	0–5.0	0–28.0
B. All past service vested:				
1. 30 percent at 8 yrs., 100 percent at 15	5.0–57.0	1.0–8.0	0–1.0	0–57.0
2. 25 percent at 5 yrs., 100 percent at 20	5.0–56.0	1.0–8.0	0–3.0	0–56.0
3. Same as number 2, after age 30	5.0–55.0	1.0–6.0	0–2.0	0–55.0
4. 25 percent at 5 yrs., 100 percent at 15	5.0–58.0	1.0–8.0	0–3.0	0–58.0
5. 100 percent at 10 yrs	5.0–58.0	1.0–9.0	0–0	0–58.0
6. 100 percent at 5 yrs., after age 25	6.0–59.0	1.0–17.0	0–7.0	0–59.0
C. Past service vested for members age 45 and over:				
1. 30 percent at 8 yrs., 100 percent at 15	5.0–47.0	1.0–6.0	0–1.0	0–47.0
2. 25 percent at 5 yrs., 100 percent at 20	5.0–46.0	1.0–7.0	0–3.0	0–46.0
3. Same as number 2, after age 30	5.0–45.0	1.0–6.0	0–2.0	0–45.0
4. 25 percent at 5 yrs., 100 percent at 15	5.0–48.0	1.0–7.0	0–3.0	0–48.0
5. 100 percent at 10 yrs	5.0–48.0	1.0–8.0	0–0	0–48.0
6. 100 percent at 5 yrs., after age 25	6.0–49.0	1.0–16.0	0–7.0	0–49.0

Mr. HARTKE. Mr. President, under the present vesting, the rate of increase in cost as a percent of payroll is two-tenths of 1 percent. We are asking for that still. However, if we take item 6 under part A, it is 100 percent after 5 years, after age 25. That is the proposal as made. It is only four-tenths of 1 percent. The cost item should not be of great concern.

I am fully aware of what the UAW does. I find myself in a rather peculiar stance. If the employees of the UAW knew that they had a 10-year vesting, they might not be so happy in accepting the pension plan.

The UAW has the agreement presented to them. This part of the agreement is not presented to them. They have a lump-sum agreement. Therefore, they cannot accept a portability agreement. And here we have the employers of the Nation and the managers of the union who want the employees in this one particular industry to do this.

If we really believe in a philosophical approach and in mobility of the labor force, and if we really believe that we should not have economic slavery in the United States, we should not do this. The system should be changed. To come here and say that the Senate is going to put its stamp of approval on economic slavery is a far cry from that.

I know that in the committee the question was raised as to the employer needing this kind of leverage to make sure the employee stays with him. That is the contrary of what our country stands for. We have a democratic society where men should not be required to be an employee of any man.

I am fully aware that the committee and the managers of the bill have the votes to successfully take this measure down.

I believe in all good conscience that this is a position which should be taken and is one which is in the best interests of the Nation. It is not prohibitive in cost. It would be at the very heart of making this a true pension reform bill, instead of only advertising it as a pension reform.

Mr. WILLIAMS. Mr. President, I yield myself 1 minute.

Mr. President, persuasive arguments have been made in favor of the amendment. We feel very consciously and earnestly that we will not have basic reform looking forward to even broader pension reform if this amendment is agreed to.

Not having any further requests for time, I yield back the remainder of my time.

Mr. HARTKE. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Indiana. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Michigan (Mr. HART) is necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is absent on official business.

I also announce that the Senator from Oklahoma (Mr. BELLMON) and the Senator from Kansas (Mr. PEARSON) are absent because of illness.

I further announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Ohio (Mr. SAXBE) are necessarily absent.

The result was announced—yeas 9, nays 85, as follows:

[No. 398 Leg.]

YEAS—9

Abourezk	Gravel	Kennedy
Bayh	Hartke	Magnuson
Biden	Jackson	Metcalf

NAYS—85

Aiken	Fannin	Muskie
Allen	Fong	Nelson
Baker	Fulbright	Nunn
Bartlett	Griffin	Packwood
Beall	Gurney	Pastore
Bentsen	Hansen	Pell
Bible	Haskell	Percy
Brock	Hatfield	Proxmire
Brooke	Hathaway	Randolph
Buckley	Helms	Ribicoff
Burdick	Hollings	Roth
Byrd, Harry F., Jr.	Hruska	Schweiker
Byrd, Robert C.	Huddleston	Scott, Pa.
Cannon	Hughes	Scott, Va.
Case	Humphrey	Sparkman
Chiles	Inouye	Stafford
Church	Javits	Stennis
Clark	Johnston	Stevens
Cook	Long	Stevenson
Cotton	Mansfield	Symington
Cranston	Mathias	Taft
Curtis	McClellan	Talmadge
Dole	McClure	Thurmond
Domenici	McGee	Tower
Dominick	McGovern	Tunney
Eagleton	McIntyre	Weicker
Eastland	Mondale	Williams
Ervin	Montoya	Young
	Moss	

NOT VOTING—6

Bellmon	Goldwater	Pearson
Bennett	Hart	Saxbe

So Mr. HARTKE's amendment was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. MANSFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

ORDER FOR CONSIDERATION OF THE NOMINATION OF HENRY KISSINGER TO BE SECRETARY OF STATE, ON FRIDAY NEXT

Mr. MANSFIELD. Mr. President, if I may have the attention of the Senate, I ask unanimous consent, as in executive session, that when the Senate convenes on Friday morning next, after the two leaders have been given the time which the Senate has allotted to them, if they use it, there be a period of 2 hours set aside and equally divided for the consideration of the nomination, as reported by the Committee on Foreign Relations, of Dr. Henry Kissinger to be Secretary of State, the time to be under the control of the majority and minority leaders, or whomever they designate.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF HARRY F. BYRD, JR., OF VIRGINIA, ON FRIDAY NEXT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) be recognized during the course of that debate for a period of 30 minutes. I do not think he will use it all. The debate itself will be for the period of not to exceed 2 hours.

The PRESIDING OFFICER. Without objection, it is so ordered.

RETIREMENT INCOME SECURITY FOR EMPLOYEES ACT

The Senate continued with the consideration of the bill (S. 4) to strengthen and improve the protections and interests of participants and beneficiaries of employee pension and welfare benefit plans.

Mr. HART. Mr. President, in July I introduced the Retirement Benefit Fund Act with the hope of making the point that pension reform begins rather than ends with the legislation we consider today.

Pension reform is a complicated busi-

ness, and we can all understand a desire to put the subject behind us for a long time.

However, to do that would be to fail the many millions of American workers who will not benefit from the reforms we pass today.

That view does not detract from the importance of acting now on legislation setting vesting and funding requirements, fiduciary standards, and establishing portability and reinsurance programs.

Such provisions are needed to protect those long-service employees covered by pension plans who lose out, because their employer shuts the plant gates, or because the pension plan goes broke, or because of unduly restrictive qualification requirements.

Even a layman can understand, however, that these changes will not reform the basic approach of most of today's pension programs which says that many are not served so a few can benefit.

Even a nonexpert can understand the figures which show that as many as three of five workers in the private nonfarm sector do not participate in pension programs because they work for employers who do not have retirement plans—and that the proposed reforms will do little to improve these figures.

Neither will the legislation likely to pass Congress this year provide full equity for the worker who changes jobs often and for good reasons, nor for all survising spouses of pension programs participants.

The limitations of the reforms now being discussed in Congress are the limitations of a private system based on the premise that large numbers of persons must lose out if others are to benefit. The proposals under study seek to reduce the number of persons losing out by striking a balance between the interests of employees in more secure pensions and the cost to employers of providing such pensions.

We can argue whether the correct balance has been struck, but without challenging what some have called the "lottery" premise on which the present system rests, large numbers of people will continue to lose out.

Looking toward a future of an even more mobile work force and of an ever greater demand for adequate and secure retirement programs, even the layman begins to understand why we need a pension system based on including all rather than excluding many.

And we cannot get there unless we come up with a system that insures an employee that he will benefit from every pension contribution made on his behalf.

The Retirement Benefit Fund Act seeks to reach that goal while continuing a private pension system.

I will not take time today to review the explanation I made when the proposal was introduced.

But I do want to renew my plea that we understand that if we are to have a pension system which meets the needs of the future, the action we take today is the start and not the end of reform.

Mr. DOMENICI. Mr. President, today, I would like to urge my colleagues' support for the Retirement Income Security for Employees Act of 1973, a bill designed to protect the private pension of millions of American working men and women.

This bill is the amalgam of many different proposals heard jointly by the Senate Labor Committee and the Finance Committee, and, in my opinion, it represents a major breakthrough in retirement security for the millions of American workers who are now covered by corporate or self-employed plans. With its passage and enactment, we will be affirming our promise to insure that economic disaster does not befall those who have worked to earn their pensions.

For too long and for too many workers, the promise of pension benefits upon retirement has been an illusion and, indeed, a hoax.

For 3 years Congress conducted a comprehensive study of the private pension system in this country. The study was conducted by the Subcommittee on Labor pursuant to three successive resolutions of the Senate and was undertaken to ascertain the need for statutory protections for workers' pension programs and to formulate appropriate corrective legislation.

This measure is designed to eliminate the deficiencies which our study identified in the existing private pension system. Its basic goal is to assure workers that they will receive the promised pension benefits earned for their retirement during their working lives. It also responds to the proven need for a comprehensive and meaningful reform of our private pension system. It proposes fair, feasible, and effective regulatory measures which will fulfill the fundamental purpose of a pension.

The time for meaningful pension reform is long overdue. The bill now before the Senate is a critical first step toward assuring millions of Americans adequate retirement security.

This bill before us today, as I understand it, would make necessary reforms in vesting, funding, insurance, portability, fiduciary, and disclosure standards, as well as allowing for adequate remedies when a worker has been clearly abused. More specifically, the bill would—

Require a company pension plan to provide a right to a pension benefit after at least 5 years of service;

Require employers to put sufficient money in a plan to pay promised benefits;

Establish a Federal insurance program to guarantee payment of benefits if the plan was canceled without sufficient funds;

Make a start on a program to permit workers to transfer their pension rights from job to job; and

Establish strict standards of conduct for pension fund managers to prevent conflicts of interest and mishandling of funds.

At a minimum there are some 30 million workers affected by private pension plans and, in my judgment, that number will be expanded by the provisions of this bill to at least 10 to 20 million more, which would represent a very large majority of the work force of the United States.

While there can be no doubt that our private pension system has well served the needs of many workers, our study found that for countless others, the expectation of retirement benefits has proven to be built on sand.

One example of this type which has been called to my attention is that of a Mr. Robert Pratt of Hudson, N.Y., who in 1971 was laid off by his employer, the Gifford-Wood Co. Mr. Pratt had worked 47 years for this company and was to retire within 1 year at the age of 65.

However, in June 1972, Gifford-Wood was sold to another firm, and its pension plan was terminated—3 months before Mr. Pratt's 65th birthday. When he applied for retirement benefits, it is my understanding that Mr. Pratt was told he would receive no benefits although he had 47 years of service.

In addition, perhaps the most famous failure of all in the private pension system occurred in 1964 when Studebaker closed its plant in South Bend, Ind. In this case 4,500 employees lost 85 percent of their earned pension benefits. This was an economic catastrophe to the individuals involved and to the entire community of South Bend.

Each of us has specific cases in mind where some aspect of the private pension system has not worked the way it should. These examples reflect the difficulties that 23 percent of all workers covered by private pension plans—until the day they retire, if they are allowed to. Indeed, two-thirds of all pension plan participants at this moment have no vested right in their plan. They are not covered if the company they work for goes bankrupt or if the workers are laid off just prior to their receiving any retirement annuities. The simple fact is that at the present time, there is no law which guarantees that the pension promised in past years, for which workers have devoted a lifetime of loyal service, will be paid.

The time for meaningful pension reform is long overdue. The bill now before the Senate is a critical first step toward assuring millions of Americans of adequate retirement security.

AMENDMENT NO. 484, AS MODIFIED

Mr. HARTKE. Mr. President, for the information of the Senate, I have four amendments to offer for a voice vote. They will not take very long.

I send amendment No. 484, as modified, to the desk and ask that its reading be dispensed with.

The PRESIDING OFFICER (Mr. JOHNSTON). Without objection, it is so ordered, and further reading of the amendment will be dispensed with. The amendment will be printed in the RECORD.

The text of the amendment is as follows:

On page 64, strike out lines 8 through 20 and insert in lieu thereof the following:

"(11) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that a participant who is married will receive the benefit payable as an annuity under the plan in the form of a joint and survivor an-

nuity unless in writing not to receive the benefit in such form, and that the survivor annuity payable will not be of the annuity which would have been payable to that participant had he so elected."

Mr. HARTKE. Mr. President, widows are the oldest and the poorest of the aged. Although social security benefits for widows have been improved, they—widow and widower benefits—still only average $155 a month—or $1,860 a year. That may exceed some bureaucrat's definition of poverty, but it surely fails to meet the actual needs of most widows.

What I seek to do is to see that the widow's benefit is 50 percent of her husband's annuity which has not been actuarily reduced. A family works as a single unit. The wife contributes support at home so the husband may work. Therefore, it is altogether fitting and proper that in the case of a deceased husband, the widow should receive 50 percent of his benefit.

The husband has earned his pension and his wife has a right to 50 percent of it.

Mr. President, there are two deficiencies here. One of them is that if the husband wants the widow to have any of his benefits he has to make an affirmative election in favor of that situation. That generally is not done. Two, at the present time, in order for the widow to receive any benefits there has to be a reduction in the amount of the benefits that the retiree himself will receive. This incorporates the situation the actual retiree will receive his benefits until he dies and the widow will receive 50 percent of the benefits as long as she lives.

Mr. WILLIAMS. Mr. President, I should like to describe to the Senate the provision that is in the bill before us. This does provide that no less than 50 percent is mandated to the widow. The only additional requirement is that if the participant does not want that to happen, he has to take affirmative action. In other words, if nothing is done, the survivorship benefit will be there.

Mr. HARTKE. What has happened in the bill?

Mr. WILLIAMS. On page 64——

Mr. HARTKE. What has happened is that there is an actuarial reduction of the retiree's benefits; is that not correct?

Mr. WILLIAMS. It could be. The plan could have a reduction where there is a survivorship provision. It does not demand it. The legislation does not say that.

Mr. HARTKE. I understand that. There are lots of things in the legislation that do it that way. These are minimum standards under the bill which provides simply that there shall be a 50-percent benefit——

Mr. WILLIAMS. There would be a survivorship benefit and of no less than 50 percent and that will prevail unless affirmatively waived and in writing.

Mr. HARTKE. Yes, but the difference is, simply, that there is permission for actuarial deduction of the retiree's benefits. These are precluded under the bill.

Mr. WILLIAMS. I have not seen the Senator's amendment where he provides that there should not be any reduction. Is that in the Senator's amendment?

Mr. HARTKE. That is right. In other words, under my amendment—and I would hope the Senate would want to accept it—what it provides for is that the retiree will receive his benefits without actuarially having them reduced.

Mr. WILLIAMS. I am advised by the staff that that automatically disqualifies the federal system.

Mr. HARTKE. Can the staff, can someone show me where it says that in the bill? I do not read it. I see no prohibition on any actuarial reduction.

Mr. WILLIAMS. That would be the effect of the Senator's amendment as we read amendment No. 484.

Mr. HARTKE. That is right. The effect would be to provide that there cannot be an actuarial reduction of the benefits and that the widow will receive 50 percent.

Mr. WILLIAMS. The Senator is out of step and incompatible with the Federal system which is considered to be a model in this regard.

Mr. HARTKE. All I am saying here is, even though the Senator may be talking about being out of step, that I am talking about what I want to do.

Mr. WILLIAMS. The Senator wants to get himself out of step with one of the best retirement systems we have.

Mr. HARTKE. All I am saying is that a retiree shall have his benefits and that 50 percent of the benefits which go to his widow shall not cause his own benefits to be reduced. Under the bill as it is written at the present time, the pension plan can call for an actuarial reduction of the amount of the bill. If that is what the Senator intends, all right, all he has to do is to accept the amendment.

Mr. WILLIAMS. Again, we are in a complicated area here. I believe that the effect of the Senator's amendment, since it says that the trust shall not constitute a qualified plan under section 401 unless it meets your provision. Now I am here from the Committee on Labor and Public Welfare and not too familiar with the tax jurisdiction of the Finance Committee, but as I understand it from the staff of the joint committee, your provision would raise serious questions about qualification of the Federal retirement system.

Mr. HARTKE. I am talking about this law. If the Senator does not want to accept the amendment just have a vote on it. That is rather elementary. I am not arguing that. All I am trying to do is to provide that the widow get her 50 percent and the retiree get his 100 percent of benefits. If the Senator does not want to do that, he does not have to.

Mr. WILLIAMS. This would reach out and disqualify some plans which are now qualified.

Mr. HARTKE. That is true of practically everything in the bill.

Mr. WILLIAMS. Including the entire Federal civil service plan.

Mr. HARTKE. There is hardly a plan in the United States that is not going to have to be changing its operations as a result of this legislation. What the Senator is saying is that this will require some changes in the plan. I agree with that. I am not arguing that. We are not passing this legislation just to pass the time of day, but to pass it, hopefully, with some improvements in the pension system. If the Senator does not care to include the pension system, there is no reason for the law.

Mr. WILLIAMS. This, it seems to me, is incomplete unless the Senator is prepared to back it up with changes in other basic law.

Mr. HARTKE. Like what?

Mr. WILLIAMS. The law governing the Federal civil service retirement system.

Mr. HARTKE. So far as I am concerned, all I am trying to do here is to write minimum standards for a pension plan, period.

Mr. WILLIAMS. In the process, the Senator is getting other laws confused——

Mr. HARTKE. I am not confusing anyone. This is not a confusing amendment. It says simply that a retiree is entitled to 100 percent of his benefits and his widow is entitled to her 50 percent of the benefits. Under some plans today, in order for the widow to get 50 percent of the retiree's benefits, the retiree's benefits are reduced in his lifetime, and I am saying, "No."

Mr. WILLIAMS. Mr. President, I am advised that the way this amendment is drafted, it would have an effect well beyond the simple and meritorious situation the Senator wants to reach, and it would disqualify many qualified plans, includng the Federal civil service plan.

Mr. HARTKE. I did not know that this would affect the Federal system in any way.

Mr. WILLIAMS. It would.

Mr. HARTKE. No. My understanding is that we are dealing with private pension plans.

Mr. WILLIAMS. It says that a trust shall not constitute a qualified trust, and the Federal civil service system is under the qualified trust provisions. So it would have an effect that I am certain the Senator does not want.

Mr. HARTKE. I am interested in private plans. What I want to do is to provide a hundred percent for the retiree, 50 percent for the widow, and not have his hundred percent affected. I am not trying to change the Civil Service system. I am dealing with private pension plans.

With respect to the argument that this amendment would affect some plans, if this bill does not change any plans, then the bill is a non sequitur if I have ever seen one. If anything will not be changed with this bill, then let us forget the legislation.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. WILLIAMS. I yield.

Mr. JAVITS. I have read this amendment, and I really do not want to read it aloud, because I do not think it even says what the Senator from Indiana wants it to say. Words have been left out, and so forth.

Let us assume, if we understand it, that what the Senator wants is that the widow receive the same pension as the participant from whom she is widowed. Our answer to that is, "Sure," as the Senator from New Jersey has said. That would be delightful, except for all the same reasons that we cannot have a

100-percent vesting and many other things. In starting this effort, we cannot load it with this kind of provision, which the Senator wants—to wit, that the surviving widow would get exactly the same annuity as her deceased husband.

The answer is that it is not done for us, as Senators, under our own plan; it is not done under the Federal civil service plan; it is not done under the overwhelming majority of private plans.

Again, we have to draw a line somewhere as to what will inhibit private plans. We have reached out for what we consider to be an enlightened standard, which is a minimum of not less than 50 percent. That is the best we have been able to do. I think the Senator is right when he says that if we do not want to do what he wants to do, we should vote. I suggest that.

Mr. HARTKE. This proposal says that a trust shall not constitute a qualified trust under this section. It does not say anything about the civil service system. If a Senator does not want to do this, he should vote "nay." If he wants to do this, he should vote "aye."

Mr. TAFT. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. TAFT. I should like to point out that this amendment would interfere with the individual rights of the pension participants. What is being proposed by this amendment, in my opinion, is that, in effect, we are telling the participants who come into a plan they have no choice on this point. They would be required to accept the approach in the amendment. This amendment would vastly increase the cost of pension plans and may result in such cost that would prohibit creation of any pension plan. Management and labor organizations prefer a life annuity approach.

Under the present law, joint survivorship provisions may be included. This amendment would prevent any discretion on this point.

Mr. HARTKE. In substance, what the Senator from Ohio is probably confusing is the fact that what I am saying here is that this would provide for a waiver as long as he does it in writing.

The fact is that if Senators vote for this measure, they are doing exactly what the Senator from Ohio is protesting against. What you are going to do on the vesting, on eligibility, on participation, and on funding is to make these pension plans qualify, or they will have to give up their tax benefit. This is a qualification of minimum standard.

The Senator from Ohio is arguing against any modification of the system, but he is really voting against the bill. He ought to vote against the bill.

Mr. President, I yield back the remainder of my time.

Mr. WILLIAMS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Indiana.

The amendment was rejected.

Mr. HARTKE. Mr. President, I send to the desk a modification of my amendment No. 482.

The PRESIDING OFFICER. The amendment, as modified, will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. HARTKE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment, as modified, is as follows:

On page 226, line 23, following "Act." strike all that follows and insert in lieu thereof the following:

"The Secretary of Labor is authorized and directed to hear and decide disputes between employees, retirees or survivors and the employer, union, or trustee arising under or in connection with plans relating to (1) alleged violations of this subsection and (2) questions pertaining to individual eligibility, entitlement to benefits, computation of credits or benefits or any other employee, retiree or survivor claim or allegation of improper conduct by his employer or any plan trustee jeopardizing employee, retiree or survivor interests provided that such a proceeding shall not displace the grievance-arbitration proceedings provided by a collective bargaining agreement if its procedure and proceeding would satisfy the arbitration deferral principles of the National Labor Relations Board were the dispute to constitute an unfair labor practice.

"Notice and Procedure—Upon the application of an employee, retiree or survivor for a proceeding under this section, the Secretary shall notify the employer, and/or union, and/or plan administrator concerned with respect to the matters complained of and the relief requested. The proceedings shall be held, on notice to the parties, at the time and place designated by the Secretary before hearing examiners appointed pursuant to the Administrative Procedure Act. The Secretary is empowered to promulgate rules and regulations for such hearings and proceedings pursuant to the Administrative Procedure Act. It shall be sufficient to record the formal hearing stage by tape recorder, provided that a transcript becomes available for use on appeal before the Secretary or appeals to the courts, which shall be governed by the Administrative Procedure Act.

"Powers—The Secretary shall attempt to secure voluntary compliance with any decision made by him under this section; but he shall have the power to issue an order directing a person who is a party to the proceedings to comply with the terms of any such decision. For the purpose of any hearing conducted by the Secretary under this section, he shall have the authority conferred by the provisions of sections 9 and 10 of the Federal Trade Commission Act (relating to the attendance and examination of witnesses and the production of books, papers, and documents). Any district court of the United States within the jurisdiction of which any proceeding under this section is held, may, upon petition by the Secretary, in the case of a refusal to obey a subpena or order of the Secretary issued under this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

"The provisions of this section shall take effect 90 days from the enactment of this Act."

Mr. HARTKE. Mr. President, this amendment is intended to protect employees against improper employer or pension trustee action. The key to effective pension reform is early vesting, but a vesting provision is no better than the protection employees have against improper discharge—including layoff—discipline or other discrimination that puts an employee out of a job before vesting is achieved, thereby defeating his pension claim. In addition, substantive rights to promote pension eligibility, ample benefits, or other pension reform objectives are no better than the procedure available for their enforcement.

My amendment builds upon section 699(a) of the substitute amendment to S. 4 by providing a ready and inexpensive form of administrative relief for employees, retirees, and survivors who claim the violation of section 699(a) or other improper action jeopardizing pension rights.

Especially in the absence of union assistance, employees' pension rights cannot be asserted effectively if their vindication requires resort to the courts. Employees need relatively informal administrative procedure—much like the grievance-arbitration procedures now so common in industry—if they are to have a chance of asserting such rights effectively. Employees in nonunion situations do not have such protection, and many grievance-arbitration procedures do not cover the kinds of improper conduct governed by the bill and section 699(a) commonly, questions relating to pensions and pension eligibility are specifically excluded from arbitration. Where the collective agreement does cover the dispute, and the National Labor Relations Board would defer to arbitration if the alleged improper action constituted an unfair labor practice, arbitration would take place rather than the procedures provided by the amendment. The hearings and appeals would be governed by the Administrative Procedure Act.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. Senators will please take their seats.

Mr. WILLIAMS. I yield myself 2 minutes.

Mr. President, this amendment would require the Department of Labor, as I understand it, to provide an administrative procedure for resolving disputes between plan participants and the trustee concerning entitlements to benefits.

Mr. HARTKE. The difference between this proposal and the way the bill reads at the present time is that one has to go to court for a remedy. A single employee has to go to court. Under this bill, the Secretary of Labor has to set up a procedure under the Administrative Procedure Act, without going to court.

Mr. WILLIAMS. On what kinds of cases?

Mr. HARTKE. Any type of discharge or arbitrating action, denying the employee his pension rights, being laid off, fired, discriminatory actions, improper discharge, discipline—things of that nature.

Mr. WILLIAMS. We do provide that the Secretary of Labor would have authority to bring suit to obtain relief in many of the areas to which the Senator refers. That is in the proposed legislation.

Mr. HARTKE. The difference is that the Secretary of Labor is authorized in the bill to bring suit. The procedures with respect to union employees would be handled by arbitration.

Mr. WILLIAMS. The bill also provides for arbitration within every pension plan.

Mr. HARTKE. That is correct, but that is not affected by this amendment.

Mr. WILLIAMS. And these are the kinds of situations that the Senator presented that need a decision. The question is whether to go this route with a new and very large bureaucracy within the Department of Labor or whether we should provide exclusively in this area, as the bill does, for arbitration within the pension plan itself.

Mr. HARTKE. No, that is not exactly correct.

Mr. WILLIAMS. This would require a great number of hearing officers, and the whole business.

Mr. HARTKE. There is no question about that. This is a common complaint. In the legal profession there is no lawyer who will accept most of these cases because the lawyer is going to represent the union, the company, or the pension fund. But when this man is laid off and is a nonunion employee, he will have trouble finding a lawyer. There is no one who will be pleading his case for him. My amendment would place the responsibility on the Department of Labor to look out for that nonunion employee.

Mr. WILLIAMS. I feel that the situation the Senator described can be met by both the Secretary of Labor and in other areas by the arbitration provisions in the bill. It seems to me to be a new layer of duplication, which is vastly expensive and complex, and it would create a great new bureau within the Department of Labor.

Mr. HARTKE. I hear what the Senator is saying.

Mr. WILLIAMS. The rights of the workers are fully protected under this bill.

Mr. HARTKE. I hear what the Senator is saying, but I hope that after this proposal is rejected and this reform law has gone into effect that the Committee on Labor and Public Welfare would make a study of the abuses of these people who work for 7, 10, 11, 12 years and who are not ready for pension plans and find themselves on the streets. Find a Secretary of Labor who is going to take that case to court. The Senator will not be able to find him.

Mr. President, I am ready to yield back my time.

Mr. WILLIAMS. I yield back my time.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment as modified.

The amendment was rejected.

Mr. HARTKE. Mr. President, I send to the desk a modification of my amendment No. 483.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. HARTKE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment ordered to be printed in the RECORD is as follows:

On page 19, beginning with line 13, strike all through and including page 20, line 19, and insert in lieu thereof the following:

"(B) YEARS OF SERVICE.—The Secretary shall prescribe standards, consistent with the purposes of this Act, governing the number of working hours, days, weeks, or months, which shall constitute a year or part of a year of covered service, or a break in service for purposes of this Act. In no case shall a participant's time worked in any period in which he is credited for a period of service for the purposes of this section, be credited to any other period of time unless the plan so provides."

Mr. HARTKE. Mr. President, this amendment provides pension credit for part-time employees.

In many industries, employees typically work only a part of a year, either because business regularly is seasonal or workers are laid off for a substantial period because of occasional slumps in demand, or because—in the case of women—family obligations or work opportunities dictate part-time and part-year employment. Nonetheless, the earnings generated by part-year or part-time work contribute to the family standard of living and require replacement in retirement. In addition, layoffs, illness, and withdrawal from the labor market all cause breaks in service that often are fatal to pension eligibility.

This amendment requires the Secretary to issue rules as to what amount of work will constitute a full year's pension credit and what amounts of part-time and part-year work will earn proportional part-year credits that can be accumulated toward eligibility for vesting.

Mr. President, this does not deal with the problem that the Senator from Nebraska (Mr. CURTIS) presented before dealing with participation.

Mr. JAVITS. Mr. President, I yield myself 5 minutes on this question.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, we do have provisions in the bill which give a full year of service for 5 months within the year worked, based on 80 hours of work a month. That would start in 1982. That provides a very fair measure of part-time work. It is only 20 hours a week. Before that time, the matter will be subject to regulation by the Secretary of Labor. We think this is an adequate provision to take care of part-time work that should be recognized under pension plans. I believe the amendment should be rejected.

Mr. HARTKE. Will the Senator from New York answer this question?

Mr. JAVITS. Yes.

Mr. HARTKE. Will the Senator refer, please, to page 19?

Mr. JAVITS. Of the bill?

Mr. HARTKE. Yes; page 19, subparagraph (i). The year will be whatever the Secretary decides.

Mr. JAVITS. Before 1982. That is correct.

Mr. HARTKE. On page 20, subparagraph (ii), after December 31, 1981, the year will be 5 months, if the employee is employed at least 80 hours in each of such 5 months.

Mr. JAVITS. That is correct.

Mr. HARTKE. Should these things be reversed, much more flexibility is offered. Why should they not be?

Mr. JAVITS. The reason why they should not be reversed is, as we do in so many other things, that we are entering into a new program with cost consequences. We had to allow for experience. That is why we believe we should have this approach. That is why I oppose the amendment.

Mr. HARTKE. In other words, there should be a difference of criterion.

Mr. JAVITS. It is simply like the criteria in so many other things. We had to defer title to vesting for 2 years. It is simply a pragmatic program. We are going ahead with a new program; we are going ahead with a new system.

Mr. HARTKE. Mr. President, I am ready to yield back the remainder of my time.

Mr. JAVITS. I yield back my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment of the Senator from Indiana (Mr. HARTKE). (Putting the question.)

The amendment was rejected.

AMENDMENT NO. 508

Mr. HARTKE. Mr. President, the last amendment I offer is No. 508. I ask unanimous consent that its reading be dispensed with.

The PRESIDING OFFICER. Without objection, the reading of the amendment will be dispensed with, and without objection, the amendment will be printed in the RECORD.

The amendment ordered to be printed in the RECORD is as follows:

On page 71, beginning with line 8, it is proposed to strike out through line 23 on page 87, and insert in lieu thereof the following:

TITLE III—PORTABILITY

SEC. 301. FINDINGS.

The Congress finds that it is necessary, in order to provide for the public welfare through the protection of the pension rights of American workers, to establish a program under which an individual's vested right to a deferred benefit under a pension plan may be transferred, upon his separation from employment, to a national program in which it will be held in trust for him payable upon death, disability, or his attaining normal retirement age, and to provide a limited national pension program of which certain small businesses may avail themselves.

SEC. 302. DEFINITIONS.

(a) For purposes of this title—

(1) "pension plan" means—

(A) a pension plan described in section 401(a) of the Internal Revenue Code of 1954;

(B) an annuity plan described in section 403 (a) or (b) of such Code;

(C) a bond purchase plan described in section 405(a) of such Code;

(2) "participant" means an employee who is covered by a pension plan;

(3) "administrator" means the person or persons described in section 3(15) of the Welfare and Pension Plans Disclosure Act; and

(4) "State" means any of the States of the United States or the District of Columbia.

SEC. 303. PROPOSALS FROM PRIVATE INDUSTRY.

The Secretary of Labor is authorized to receive proposals during the first 9 months after the date of enactment of this Act for the establishment of a program meeting the requirements of section 301. Not later than the end of the 10th calendar month ending after the date of enactment of this Act the Secretary of Labor shall transmit an analysis of all proposals received under this section together with his comments on them and any recommendations, including recommendations for legislation, with respect to such proposals he may have to the Congress. The Secretary of Labor shall furnish copies of any such proposals to the Secretary of the Treasury whenever he receives them and the Secretary of the Treasury shall submit his analysis and comments with respect to such proposals to the Congress not later than the end of such 10th month.

SEC. 304. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—If, within 60 days after the date on which the Secretary of Labor furnishes such proposals to the Congress, there is not reported from any committee of the Congress a measure for the establishment of such a program or, if within 90 days after such proposals are submitted the Congress has not passed and sent to the President a measure to establish such a program, the Secretary of Labor is authorized to establish and operate a program which meets the requirements of section 301.

(b) ELEMENTS OF PROGRAM.—Under any program established by the Secretary under this section—

(1) any employer engaged in a trade or business in or affecting interstate commerce who maintains a pension plan shall register the plan with the program;

(2) an employee who has a vested right to a deferred benefit under a registered pension plan may request that the administrator of that plan transfer an amount equal to the value of that right to the program upon his separation from service with the employer who maintains the plan;

(3) the administrator of a registered pension plan shall transfer the entire amount described in paragraph (2) to the program upon request made by such an employee in not less than equal installments over a period of not more than 5 years together with interest thereon; and

(4) the amount of an employee's interest transferred to the program, together with any income thereon shall be payable to him or his beneficiaries only in the event of his attaining the age of 60 years, upon his death, or upon his becoming disabled (as determined by the Secretary of Labor).

(c) NATIONAL PENSION PLAN FOR SMALL BUSINESSES.—The Secretary of Labor is authorized to establish a pension plan, which shall meet the requirements of section 401(a) of the Internal Revenue Code of 1954, with such terms and conditions as he may determine to be appropriate, under which employers of not more than 300 employees may make contributions on behalf of their employees and under which such employees may make contributions.

(d)(1) ACCOUNT ESTABLISHED.—The Secretary shall establish and maintain a separate account for each separate payment received by the program on behalf of each participant.

(2) ITEMS SHOWN IN ACCOUNT.—An account established under paragraph (1) shall identify the participant for whom it is established and shall show—

(A) the name and address of each registered plan which makes a payment under this title on behalf of the participant in whose name such account is established;

(B) the portion of each such payment which constitutes the amount treated under sections 72, 402(a), and 403 of the Internal Revenue Code of 1954 as the net amount contributed by the participant;

(C) any remaining portion of each such payment; and

(D) the amount which constitutes the income attributable to such account while in the custody of the program.

(e) APPROVAL BY CONGRESS.—

(1) IN GENERAL.—A program established by the Secretary of Labor under subsection (a) shall not be put into effect unless neither House of the Congress object to its being put into effect under this subsection within 60 days after its proposal. The Secretary shall notify the Congress of the establishment of such program and the 60-day period referred to in the preceding sentence shall begin on the first day in which both Houses of Congress are in recess occurring after the Secretary has so notified each House of the Congress.

(2) EXERCISE OF RULEMAKING POWER OF THE SENATE AND THE HOUSE OF REPRESENTATIVES.—The succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3); and they shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(3) RESOLUTION.—For the purpose of the succeeding paragraphs of this subsection, "resolution" means a resolution of Congress, the matter after the resolving clause of which is as follows: "That the_____ does not favor the proposed pension portability program transmitted to Congress by the Secretary of Labor on _____.", the first blank space therein being filled with the name of the House in which the resolution is offered and the second blank space therein being filled with the date on which the Secretary's message proposing the program was delivered.

(4) REFERRAL OF RESOLUTION.—A resolution shall be referred to the Committees on Education and Labor and on Ways and Means of the House of Representatives of the Committees on Labor and Public Welfare and on Finance of the Senate.

(5) DISCHARGE OF COMMITTEE.—If the committee to which has been referred a resolution has not reported it before the expiration of 10 calendar days after its introduction, it shall then (but not before) be in order to move to discharge the committee from further consideration of that resolution, or to discharge the committee from further consideration of any other resolution with respect to the proposed adjustment which has been referred to the committee. The motion to discharge may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same proposed rate), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same proposed rate.

(6) CONSIDERATION OF RESOLUTION.—When the committee has reported, or has been discharged from further consideration of a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(7) DEBATABILITY OF MOTIONS.—Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution and motions to proceed to the consideration of other business shall be decided without debate. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate.

SEC. 305. TAXABILITY OF TRANSFERS TO OR FROM PORTABILITY PROGRAMS

(a) AMENDMENTS TO SECTIONS 402 OF THE INTERNAL REVENUE CODE OF 1954.—Section 402 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subsections:

"(f) TAXABILITY OF TRANSFERS TO PENSION PORTABILITY PROGRAM.—A payment to a portability program established under section 304 of the Retirement Income Security for Employees Act by a pension plan of an amount representing not less a full discharge liability by that plan with respect to a participant shall not be includable in the gross income of such participant for the taxable year of such participant in which such payment is made.

"(g) TAXABILITY OF PAYMENTS FROM THE PENSION PORTABILITY PROGRAM.—Any amount paid on behalf of a participant from a pension portability program to or with respect to a participant shall be includable in his gross income for the taxable year in which paid to the extent that such amount exceeds the aggregate amount of the related payment to the pension portability program credited to the amount of such participant which is treated as contributed by such participant under subsection (a), section 72, or section 403.

"(h) TAXABILITY OF MANDATORY WITHDRAWAL FROM THE PENSION BENEFIT PORTABILITY FUND.—Any amount paid to a participant under the provisions of section 305(b) of the Retirement Income Security for Employees Act shall be includible in the gross income of such participant to the extent such amount constitutes the amount described in section 304(d)(2)(D) of such Act.".

(b) MANDATORY WITHDRAWALS.—The balance of any account of a participant shall be paid by the program to such participant within 30 days after notification to the Secretary, by the Secretary of the Treasury that the trust or plan (which made a payment credited to such account) has been determined not to be a qualified trust under section 401(a) of the Internal Revenue Code of 1954 or not to be a plan which satisfied the requirements of section 404(a)(2) of such Code at the time such trust or plan made such payment.

SEC. 306. INVESTMENT AUTHORITY.

The Secretary of Labor shall enter into contracts with appropriate persons for the management of funds held in trust by the program for participants, and such persons shall invest such funds in securities of corporations organized within the United States

and such other securities as those persons shall determine to be appropriate for the purpose of conserving such funds and producing reasonable amounts of income from their investment. Any income or losses produced from such investments shall be credited to or deducted from the accounts of participants in the program in appropriate amounts. Any voting rights derived from securities in which such funds are invested shall be exercised by a board of trustees elected annually, under the supervision of the Secretary of Labor, by participants in the program.

SEC. 307. ENFORCEMENT.

(a) IN GENERAL.—The Secretary of Labor is authorized to bring actions for equitable relief to prevent or restrain violations of duties imposed under this title and under any program established by him under this title.

(b) CIVIL PENALTY.—Any person who fails to perform any such duty shall be liable for the payment of a civil penalty of $500 for each act or omission constituting such a failure, and each day of continued failure shall constitute a separate offense.

(c) APPEARANCE OF COUNSEL.—In any action brought by him under this title the Secretary of Labor may be represented by counsel appointed by him.

SEC. 308. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Labor such sums as may be necessary to carry out the provisions of this title.

THE NEED FOR PORTABILITY

Mr. HARTKE. Mr. President, this amendment deals with the need for portability. The question is very simple. It concerns one of the very difficult problems we have in the whole field of pensions.

Vesting and portability are not the same. Vesting without portability will often prove inadequate because, first, employees will not feel the vested benefit alone is dependable and so may withdraw from the plan, thereby losing valuable credits and more importantly, second, without portability the value of vested credits can be seriously eroded by inflation, and third, a benefit that is vested but not portable is not available in the case of disablement.

THE LIMITS OF VESTING

Vesting means a claim to a future benefit conditioned upon living to normal retirement age, and adequate funds in the plan. The uncertainties introduced by these conditions may persuade an employee in a contributory plan to withdraw his contributions thereby losing the larger value of the employer's contribution—the cash in hand is worth two in the employer's plan syndrome.

More importantly, without portability the value of a vested benefit can be wiped out by inflation When an employee separates from a job and is eligible for a vested benefit, the benefit is determined by the plan formula at the time of separation. This means that these years of credited service do not participate in the plan improvements that constantly take place in response to inflation, improved productivity, higher living standards and the difference between the usually conservative earnings rate on reserves assumed as compared with actual experience. As a result, existing employees may be separated involuntarily and receive less for the very same years of service than do employees who stay with the company.

Assume an employee separated with a vested benefit at age 45 payable at age 65—20 years later. Assume a modest annual rate of inflation of 3 percent—modest indeed by current experience. After 20 years, the vested benefit would suffer a 60-percent reduction in value. Put another way, the plan would pay out in dollars worth 60 percent less than when the credits vested.

THE FUNCTION OF PORTABILITY

However, with portability, the plan would pay out the discounted value of the benefit at or soon after the employee separated. The usual low-interest assumption used by actuaries would favor the existing employee—the lower the interest rate assumption, the higher is the discounted sum necessary to produce any given level of benefits. When deposited to the employee's individual account in a clearinghouse, that sum would work to the employee's benefit. It would participate in the actual experience of the economy. Earnings rates would reflect inflation and help the benefit keep up with inflation. These better prospects, plus the account in the name of the employee, would encourage employees to opt for the several dollars of vesting versus the fewer dollars in hand at separation. Moreover, such benefits directly and currently credited to the employee would be available in the event of disability.

HOW PORTABILITY WOULD WORK

Pension portability requires a national pension clearinghouse or regional clearinghouses which coordinate their activities. Its structure is described below.

EMPLOYEE CREDITS

When an employee separates from a job with a vested right, the plan would inform the clearinghouse of that fact and pay over to the clearinghouse the present value of the vested benefit under rules and regulation governing such valuation promulgated by the clearinghouse. The rules should provide that large amounts would be payable in installments over a period of 5 years. In this way, the funding of vested benefits would not be unduly favorable to separating employees as compared with continuing employees. In the case of an unfunded plan, the clearinghouse could compel immediate or phased funding of the vested benefit.

The funds thus provided would be deposited to the account of the employee with the vested right and would work for him. The funds would be trust funds invested in common with other such funds with all earnings and improvements in value creditable to the individual. The highly successful Teachers Insurance and Annuity Association does just this for tens of thousands of professors and employees in higher educational institutions.

The employee's credits would be payable to him should he become disabled—an advantage not available with conventional vesting. Should the employee die, the credits would be payable as an annuity to his or her spouse or, if there is none, to his/her estate—an advantage not available with conventional vesting.

In most cases, the credits would provide annuity payments to the employee upon retirement and to the employee's survivor after his/her death. Unlike conventional vested benefit, the benefit would have increased in value and earnings by actively working as an investment for the employee. The erosion of benefits by inflation is becoming one of the most critical problems of pensions. And pensioners are the group in society hardest hit by inflation. Portability through the clearinghouse is the major means of offsetting the evaporation of value of vested benefits.

THE CLEARINGHOUSE—PREFERABLY A PRIVATE UNDERTAKING

The proposed amendment would provide private groups the first opportunity to organize the clearinghouse contemplated. The amendment provides an 18-month period during which private groups would develop proposals. The Secretary of Labor is authorized to provide technical assistance in these efforts. The idea is to have a competition in which private enterprises, such as insurance companies, banks, pension and investment consultants, unions, and consumer groups, would seek to develop proposals that best protect retiree and survivor interests, best protect against conflicts of interest between the clearinghouse and the other enterprises conducted by the other institutions in which the clearinghouse stockholders have interests and—of great importance—provide for the dispersal of investment and the avoidance of undue concentration of investment power.

On the one hand, the enormous potential profits of the clearinghouse would attract the ingenuity, skill, and attention of the private sector. On the other hand, the need to persuade Congress that its proposal serves employee, retiree, and survivor interests best would tend to stimulate protective elements in the plans. The final protection for such interests is that if no plan is acceptable to Congress, the Secretary would be authorized to institute a federally operated plan. The Federal clearinghouse would be a last resort to be used only if the private sector fails to come up with a fair and workable plan. S. 4 and S. 1179, however, provide no opportunity for a private clearinghouse and, instead, propose clearinghouses that would not do the job.

After the private proposals are submitted to Congress, with the assessments of the Secretary of Labor and the Secretary of Treasury, the Senate Labor and Finance Committees and the House Labor and Ways and Means Committees would be required to hold hearings and to report a bill approving one of the proposals, or rejecting them all. As with the reorganization act, the reports would be required in 90 days and a floor vote would have to take place within 30 days thereafter. In this way, Congress would have to act. Of course, these periods might result in modifications of proposals provided some private group desired to make them, thus the competitive factor would continue to work.

THE ADVANTAGES OF A PRIVATE CLEARINGHOUSE

A private clearinghouse would mobilize much of the varied talent of the private sector to promoting employee pension interests. A few years ago, a White House task force called upon private industry to devise an effective clearinghouse

mechanism. This proposal not only echoes that sentiment, but provides the concrete occasion and incentive for that to be done.

It would permit flexible investment of reserves in all sectors of the economy—debt, equities, directly, in new enterprises, and wherever sound investment policy and the intersts of retirees lead. In contracts, the clearinghouses of S. 4 and S. 1179 are restricted to Government guaranteed obligations, savings bank, and savings and loan accounts. Such limitations hark back to the long outmoded and long discredited limitation upon trustee and insurance company investments. The sponsors apparently were so afraid of public body investment in the private sector that they hog-tied the clearinghouses in S. 4 and S. 1179—and the Dent bill has the same limitation. Such limitations upon investment would insure that the clearinghouse could not do its basic job—help the value of the vested credits keep pace with inflation and the growth of the economy.

SPREADING PENSION PLAN COVERAGE

Spotty coverage constitutes the greatest weakness of the private pension system. According to the early 1973 "Interim Report—Study of Pension Plan Terminations, 1972" (page 18, note 1) private pension plans—not including profit-sharing plans—cover only 23 million active employees rather than the 30 or 33 million so frequently talked of. Material from the Social Security Administration points in the same direction—"Employee Benefit Plans, 1972" 36 Social Security Bulletins Nos. 1, 27, 28 (April 1973).

This means that decidedly less than one-half the private work force has pension coverage at any one time. It also means that when employees lose pension-covered jobs, as they constantly do, their chances of finding another pension-covered job are not good.

This is especially true of blue-collar workers who, studies show, frequently end up in poorly paid jobs which also tend to be nonpension-covered jobs. The same thing has been happening to engineers, physicists and executives in the recent past as hearings I held in South Bend, Ind., show.

Given the limitations of social security, almost all employees need a private or government pension supplement when they retire. Hence, real pension reform means spreading coverage. Hearings held by the Special Committee on Aging indicate that the largest gap in coverage comes in the area of small business. That is understandable. Small company officials have their hands full. They have neither the time nor the resources to deal with lawyers, accountants, pension consultants, banks or insurance company salesmen and officials—all of them now necessary to the "installation" of a private pension plan. Nor is he assured of a quality product and disinterested guidance. In addition, small companies tend to have short lives and so provide inadequate bases for private pension plans which assume corporate life of 30 or 40 years—as do the funding proposals of S. 4 and S. 1179.

If millions of employees working for thousands of small companies are to obtain dependable, low-cost coverage, they must have available some simple choices that are designed for their purposes and problems, meet their limited time and money budgets, and are dependable because promulgated by an institution of unquestioned probity—the clearinghouse provided for in my amendment.

The proposal would apply to any employer with 300 or fewer employees—which is, in pension terms, a small company. The amendment provides that once covered, a company could remain covered with the national—or regional—plan, so that successful companies that grow would not have to disrupt the established relationship but could do so if that seemed desirable.

The employer, on its own or pursuant to a collective bargaining agreement, would be able to pay over to the plan whatever amounts were to be devoted to pension purposes. The plan would credit them to each individual employee's account. The plan would give credits in proportion to the amounts deposited—just as TIAA does for different salary range groups in higher education.

The plan—whether private or public—could provide for immediate, 100 percent vesting as TIAA does, or condition vesting upon specified service within the requirements of law applicable to all plans.

When an employee separates from a participating company, his credits would already be in the clearinghouse and remain to his account—thereby avoiding the costs and difficulties and possible abuses associated with transferring the values to another employer's plan—as provided in S. 4 and S. 1179.

Simplicity, low cost, dependability, and growth make this proposal a promising means of extending coverage on a voluntary basis.

Mr. President, I really feel that I have discussed most of this subject previouly in connection with the different divisions of the bill.

I think I understand that there is unified opposition from the Finance Committee, the Labor and Public Welfare Committee, organized management, and possibly organized labor. Basically, this amendment helps nonunion labor.

Mr. WILLIAMS. Is this an amendment of the portability program?

Mr. HARTKE. Yes, it is.

Mr. WILLIAMS. I have not seen the amendment.

Mr. HARTKE. The difference between the amendment and the bill is that the bill has none of the provisions for voluntary portability.

Everyone who understands anything about pensions—and even the Senator from Ohio (Mr. TAFT) agreed to this fact—knows that the amount of money going into a pension plan is really the employee's money. But under the bill the employer makes the decision as to whether he is going to have or allow any portability.

Mr. WILLIAMS. What does the amendment say? That the Secretary of Labor will look over a lot of proposals and send them back to Congress?

Mr. HARTKE. This amendment provides for the private sector to submit to the Secretary of Labor an opportunity to create a portability fund. Then the Secretary would refer those back to Congress within a year's period. The bill provides for a year even under voluntary portability. If the Congress adopts what the Secretary recommends, that would be the plan. Otherwise there would be a mandatory portability fund.

Mr. WILLIAMS. We recognize the need for portability in the bill, and provide a mechanism for it to work. It is voluntary.

Again, this is an area where we are making a beginning, and it is a very complex area. I strongly suggest that the bill's provisions are very sound, and I stand with the provisions of the legislation before us.

Mr. President, I have no requests for time.

Mr. HARTKE. Mr. President, let me say one thing in answer to what the Senator from New Jersey has talked about. Voluntary portability is probably going to attract nothing. I do not think anyone is going to join it voluntarily. So I think what we have here is the nearest thing to nothing, if not nothing at all. Here is a situation where an employer would put himself in a position of assuming a responsibility which under the law he would not have to. So there would not be any incentive. After all, it is the employee's money, but the bill would give the employer the right to determine it. If we are going to protect anybody against inflation, portability is a must.

I yield back my time.

Mr. WILLIAMS. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time on the amendment having been yielded back, the question is on agreeing to the amendment of the Senator from Indiana (Mr. HARTKE). (Putting the question.)

The amendment was rejected.

Mr. TAFT. Mr. President, I call up my amendment No. 480 as modified by the provisions at the desk.

The PRESIDING OFFICER. The clerk will read the amendment, as modified.

The legislative clerk proceeded to read the amendment, as modified.

Mr. TAFT. Mr. President, I ask unanimous consent that reading of the amendment, as modified, be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment, as modified, is as follows:

On page 176, line 10, strike "5" and insert in lieu thereof "7".

On page 176, line 12, strike "5" and insert in lieu thereof "7".

On page 176, line 25, strike "5" and insert in lieu thereof "7".

On page 177, line 12, strike "5" and insert in lieu thereof "7".

On page 178, line 9, strike "5" and insert in lieu thereof "7".

Mr. TAFT. Mr. President, this amendment can be very easily understood.

On page 175 of the amendment by the Senator from Wisconsin, now S. 4, the trustees of a pension plan are prohibited from engaging in certain transactions. There are exceptions from the prohibited

transactions with a limitation on investments in securities of the employer, or employer-group, and lease and real property transactions of the employer or employer-group up to an amount of 5 percent of the assets of the pension trust.

When this matter was considered in the Committee on Labor and Public Welfare, the figure which was included in S. 4 was a 10-percent figure. The compromise that was struck with the Finance Committee was 5 percent.

Since that time I have had a chance to consider and discuss the 5-percent figure with quite a number of people. The effect of my amendment would be to change the figure from 5 percent back to 10 percent. I believe the 10-percent figure would provide an adequate safeguard against self-dealing. My amendment would also permit some pension trusts which have already invested in lease-back arrangements with the company, the opportunity of retaining such profitable investments.

Mr. LONG. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. LONG. Mr. President, I have been talking to some of my colleagues about this matter. I would feel that I would have to oppose a 10-percent amendment. I would be willing to suggest a compromise to the Senate and make it 7 percent.

Would the Senator be willing to compromise the figure to 7 percent? The committee was willing to go to 5 percent. They started out with zero. If the Senator would compromise it at 7 percent, I would like to support his amendment.

Mr. TAFT. Mr. President, appreciate the flexibility of the Senator. It is a Louisiana compromise of 7 percent—between 5 and 10—and I would suggest to the Senator that perhaps his 7 percent figure could go to 7.5 percent.

Mr. LONG. I may say to the Senator that we are moving a long way from the Finance Committee bill's position. Our position was zero.

Mr. TAFT. I would be glad to discuss that with the Senator. I think that the Finance Committee position is an unnecessary restriction on the powers of a trustee. They are already under fiduciary restrictions contained in S. 4. There are many companies which already have holdings of sizable amounts in employer stock and reality. I think a 10 percent limitation is a proper limitation. I see no reason to go below that 10-percent figure.

At the same time, I want to move ahead. I understood the Senator was going to be agreeable to the 10-percent figure. I appreciate that he has had a chance to talk with some members involved in this matter.

Mr. LONG. Mr. President, will the Senator yield, on the time in opposition?

Mr. TAFT. I yield.

Mr. LONG. The Finance Committee's attitude was that we do not object to having people putting their profits in the corporation's stock in a profit-sharing plan. If the corporation does well, the stock would do well, but if it is a pension plan, we are talking about and the corporation should fall on hard times, the proposed beneficiaries might lose out completely under existing law because the company went broke, and not only was the company not able to continue the plan, but the pension plan would go broke along with it.

Mr. TAFT. I appreciate that, but the Senator is talking only about a 10-percent factor.

Mr. LONG. Ten percent of the pension fund would be lost.

Mr. TAFT. Without taking some risk, the pension is going to be subject to the serious problems of inflation which have been in effect in recent years, and there is a prospect that it will be a factor in the future. Further S. 4 would establish termination insurance to protect the pension trust. Also there is no guarantee on the absolute safety of outside investments.

Mr. LONG. Diversifying the risk is the idea of a pension plan. When people are looking to a corporation both to put money into a pension plan and to keep it solvent and also relying on that corporation for employment, it more or less amounts to putting all one's eggs in one's basket, or moving in that direction, when the pension money is invested in corporation stock.

It would be better for the pension to have diversified investments rather than have the money invested in corporation stock. We understand some people have invested pension plan money in their stock.

I thought we could compromise and have a 7-percent figure. From the Finance Committee's position, that is 7 percent more than zero. From the point of view of the Labor Committee, it is a reduction from what the committee advocated; but the Finance Committee thought it should be zero.

Mr. TAFT. Perhaps I should not take the entire burden of this compromise. I wonder if the distinguished Senator from New Jersey or the distinguished Senator from New York would care to back the 10-percent figure. Since they were in the discussions, would they care to make their views known?

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. TAFT. I yield.

Mr. JAVITS. We are sympathetic to the Senator. He is a member of our committee. We had a 10-percent figure, but we have already compromised on splitting the figure. The Finance Committee had nothing. We therefore compromised with them half way.

The Senator from Ohio is offering a proposition which, considering the Senator's view, is probably about the best that can be done. If the Senator wants a rollcall, in all honesty we are going to stand by our bill. So I hope very much the Senator can find a way to work it out.

Mr. TAFT. Mr. President, is the Senator from New Jersey willing to express an opinion as to whether he is of the same opinion?

Mr. WILLIAMS. Yes.

Mr. President, the figure to which the Labor Committee was committed was 10 percent. The figure of the Finance Committee was zero. We would require that plans holding in excess of that amount would have to divest themselves of a period of years down to the permitted amount.

The Finance Committee did not require a sell-off. We thought 5 percent on the whole question made sense.

The Senator from Louisiana is making it 7 percent. I think that we are getting a lot closer to the Labor Committee position than we otherwise would.

Mr. LONG. Mr. President, since we reached an agreement with the Labor Committee, we have looked into this matter to see to what extent this would affect people across the country. Very few corporations would be adversely affected, and even those who would be would not be required to sell off much of their stock, even at the 5-percent figure. And they would have 10 years to make that adjustment.

Mr. TAFT. Mr. President, I understand. However, this situation is not as simple as the Senator puts it. There are some specific instances with which I am familiar, especially with real estate investment that would be hurt by a 5-percent limit. They are good investments. However, they are subject to evaluation. There is a continuing evaluation by the Internal Revenue Department. Some of these investments are very good investments. Even if we enact the 10 percent figure on investments, we will call for a termination of some of those investments.

However, in view of the expression of opinion by the Labor Committee on the subject and the background as outlined by the distinguished chairman, I ask unanimous consent to modify my amendment from 10 to 7 percent.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Ohio? The Chair hears none, and it is so ordered. The amendment is so modified.

The question is on agreeing to the amendment, as modified, of the Senator from Ohio (putting the question).

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. HUDDLESTON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

On page 46, line 3, after "lesser," insert "the alternative limitation for proprietary employees described in paragrah (4),".

On page 46, line 4, strike out "(4)" and insert "(5)".

On page 48, line 22, strike out the closing quotation marks.

On page 48, between lines 22 and 23, insert the following:

"(5) Minimum deductible amount.—For purposes of this subsection, the minimum deductible amount for any employee is the lesser of—

"(A) $750, or

"(B) 100 percent of his earned income derived by him from the trade of business with respect to which the plan is established.".

Mr. HUDDLESTON. Mr. President, this amendment would permit a self-employed individual to contribute at least $750 per year to a qualified plan, regardless of his earned income.

Many self-employed individuals—athletes, entertainers, and others—never know in advance whether they will have a bad year or a good year. Under such circumstances, there is great potential for contributions and the administrative costs of determining at the end of the year whether or not there have been excess contributions to a master H.R. 10 plan can become prohibitive. Of course, the administrative cost of making this determination is particularly significant for plans which cover relatively low-income individuals since the administrative cost is substantial in relation to the amount left to fund pension benefits. In fact, because of this administrative cost, insurance companies and other such trustees of master plans have, on occasion, refused to establish a master plan for certain groups of individuals.

It is the purpose of my amendment to lower this obstacle to establishing master H.R. 10 plans for low-income self-employed individuals. It allows an individual to annually contribute the lesser of $750 or 100 percent of earned income. In other words, an individual can contribute up to $750 per year without having to worry about making an excess contribution, provided that that person has earned at least $750.

It seems to me that if an individual is contributing as little as $750 annually, we should do everything possible to keep administrative costs of the plan at a bare minimum. My amendment is directed toward that goal. Even under the individual retirement plan, which is a new plan, an individual can contribute up to $1,000 or 100 percent of earned income. The amendment I propose merely makes limitations on contributions to an H.R. 10 plan more like those under an individual retirement plan.

Mr. CURTIS. Mr. President, I think the amendment of the Senator from Kentucky has merit. I am perfectly willing to accept the amendment.

Mr. NELSON. Mr. President, we dealt with this question in the Finance Committee and adopted the principle contained in the amendment of the distinguished Senator from Kentucky, although in a different amount.

Our side has no objection to the amendment of the Senator from Kentucky.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kentucky (putting the question).

The amendment was agreed to.

Mr. STEVENSON. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

On page 168, line 25, change the period to a comma and insert the following immediately thereafter: "three of whom shall be persons receiving benefits from a private pension plan.".

Mr. STEVENSON. Mr. President, in order to advise and assist the Secretary of Labor in the performance of his duties under the Welfare and Pension Plan Disclosure Act of 1962, that act establishes a 13-member Advisory Council. The act allocates 10 of the 13 seats to various groups interested in the administration of the act, including labor, management, the insurance industry, and the corporate trust field.

This bill expands the membership of the Council to 21 and provides for the representation of actuaries, accountants, and investment counselors, as well as the groups already represented under the 1962 act.

In short, everyone is guaranteed representation except the pensioners themselves. Throughout the 11-year history of the Advisory Council, the pensioners have been denied the opportunity to speak for themselves on issues which vitally affect their economic well-being; not one pensioner has ever been appointed to the Advisory Council.

This amendment gives pensioners the voice they want and need by allocating the remaining three seats on the Council to persons receiving benefits under a private pension plan.

I urge the adoption of this amendment and yield back the balance of my time.

Mr. President, I would hope that the managers of the bill might see the justice of the amendment and agree to accept it.

Mr. JAVITS. Will the Senator yield?

Mr. STEVENSON. I yield to the Senator from New York.

Mr. JAVITS. Mr. President, it would make it very difficult as far as I am concerned for me to accept the amendment. The Senator provides that they should be pensioners themselves instead of representatives of those receiving benefits.

That is a very tough matter. We had the same experience in poverty.

If the Senator would revise his amendment so that it would provide that they should be representative of those receiving pensions, we would be happy to take it.

Mr. STEVENSON. Mr. President, I have no objection.

I modify my amendment.

Mr. JAVITS. Mr. President, may I suggest that it would then read:

Three of whom shall be persons representing those receiving benefits . . .

Mr. STEVENSON. That is satisfactory.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

On page 168, line 25, change the period to a comma and insert the following immediately thereafter: "three of whom shall be persons representing those receiving benefits from a private pension plan."

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Illinois as modified.

The amendment as modified was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. NELSON. Mr. President, I send to the desk a technical amendment, correcting clerical errors in amendment 496, and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the amendment will be printed in the RECORD.

The amendment reads as follows:

On page 1, beginning with line 3, strike out through line 5 on page 3, and insert in lieu thereof the following:

(b) Table of Contents.—

TITLE I—ADMINISTRATION

PART A—INTERNAL REVENUE SERVICE

Sec. 101. Establishment of office.
Sec. 102. Authorization of appropriations.

PART B—REGISTRATION

Sec. 151. Duties of plans.
Sec. 152. Duties of the Secretary of Health, Education, and Welfare.
Sec. 153. Effective date.
Sec. 154. Authorization of appropriations for Department of Labor.

TITLE II—PARTICIPATION; VESTING; FUNDING; CERTAIN BENEFITS

PART A—PARTICIPATION

Sec. 201. Minimum standards relating to participation.

PART B—VESTING

Sec. 221. Minimum standards relating to vesting.

PART C—FUNDING

Sec. 241. Minimum standards relating to funding.

PART D—OPTIONAL FORM OF BENEFIT; SPECIAL RULES

Sec. 261. Amendment of section 401.
Sec. 262. Prohibition against maintaining non-qualified plans.

PART E—PROTECTION OF PENSION RIGHTS UNDER GOVERNMENT PLANS AND CONTRACTS

Sec. 281. Duties of the Secretary of the Treasury.
Sec. 282. Duties of Secretary of Labor.

TITLE III—PORTABILITY

Sec. 301. Definitions.
Sec. 302. Program established.
Sec. 303. Establishment of fund.
Sec. 304. Registration.
Sec. 305. Acceptance of deposits.
Sec. 306. Individual accounts.
Sec. 307. Payments from individual accounts.
Sec. 308. Assistance to plan administrators.
Sec. 309. Amendment of Internal Revenue Code of 1954.
Sec. 310. Authorization of appropriations.

TITLE IV—PLAN TERMINATION INSURANCE

PART A—PENSION BENEFIT GUARANTY CORPORATION

Sec. 401. Definitions: Special rules.
Sec. 402. Pension Benefit Guaranty Corporation.
Sec. 403. Establishment of Pension Benefit Guaranty Fund.

PART B—COVERAGE

Sec. 421. Plans covered.
Sec. 422. Benefits covered.
Sec. 423. Contingent liability coverage.
Sec. 424. Other risks.

PART C—TERMINATIONS

Sec. 441. Termination by plan administrator.
Sec. 442. Termination by Pension Benefit Guaranty Corporation.
Sec. 443. Reportable events.
Sec. 444. Allocation of assets.
Sec. 445. Recapture of certain payments.
Sec. 446. Report by corporation.

PART D—LIABILITY

Sec. 461. Corporation liability.
Sec. 462. Liability of employer.
Sec. 463. Liability of substantial employer for withdrawal.
Sec. 464. Liability of employers on termination of multi-employer plan.
Sec. 465. Annual report of plan administrator.
Sec. 466. Annual notification to substantial employers.
Sec. 467. Recovery of employer liability for plan termination.

PART E—AMENDMENTS TO INTERNAL REVENUE CODE OF 1954; EFFECTIVE DATES
Sec. 481. Amendments to Internal Revenue Code of 1954.
Sec. 482. Effective dates.
PART F—ALLOCATION OF ASSETS WHERE SECTION 444 DOES NOT APPLY
Sec. 491. Allocation of assets for plan terminations not covered.
TITLE V—DISCLOSURE AND FIDUCIARY STANDARDS
PART A—DISCLOSURE
Sec. 501. Authority to issue regulations.
Sec. 502. Amendment to Welfare and Pension Plans Disclosure Act.
Sec. 503. Annual reports.
Sec. 504. Investigations.
Sec. 505. Public information.
Sec. 506. Establishment of Advisory Council.
Sec. 507. Administration.
PART B—FIDUCIARY STANDARDS
SUBPART I—FIDUCIARY STANDARDS UNDER THE WELFARE AND PENSION PLANS DISCLOSE ACT
Sec. 511. Amendment to the Welfare and Pension Plans Disclosure Act.
Sec. 512. Effective Dates.
SUBPART II—FIDUCIARY STANDARDS UNDER THE INTERNAL REVENUE CODE OF 1954
Sec. 521. Qualifications and responsibilities of individuals.
Sec. 522. Prohibited transactions.
TITLE VI—ENFORCEMENT
PART A—DISPUTES RELATING TO THE QUALIFICATION OF CERTAIN EMPLOYEE PLANS
Sec. 601. Tax Court procedure.
Sec. 602. Determination of pension rights.
PART B—AUDITING, ETC.
Sec. 641. Excise tax for auditing; etc.
PART C—ACTUARIES
Sec. 671. Enrollment and reports of actuaries.
PART D—RESOLUTION OF DISPUTES GENERALLY
TITLE VII—RETIREMENT SAVINGS; LIMITATION ON PROPRIETARY EMPLOYEE CONTRIBUTIONS; TAXATION OF CERTAIN LUMP-SUM DISTRIBUTIONS
Sec. 701. Deduction for retirement savings.
Sec. 702. Certain plans.
Sec. 703. Taxation of certain lump-sum distributions.
Sec. 704. Contributions on behalf of self-employed individuals and proprietary employees.
Sec. 705. Collectively bargained plans.
Sec. 706. Miscellaneous provisions.

(c) Amendment of 1954 Code.—Except at otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference is to a section or other provision of the Internal Revenue Code of 1954.

On page 7, line 10, after "thereof" insert a comma.

On page 9, line 6, strike out "501(g)(11) of this Act", and insert in lieu thereof the following: "3(15) of the Welfare and Pension Plans Disclosure Act".

On page 11, beginning with line 9, strike out through line 22 on page 12 and insert in lieu thereof the following:

SEC. 154. AUTHORIZATION OF APPROPRIATIONS FOR DEPARTMENT OF LABOR.

On page 21, line 3 after "Act" insert "and".

On page 21, line 9, after the period insert "A plan described in this subparagraph meets the requirements of this paragraph.".

On page 30, lines 11 and 12, strike "section 501(g)(11) of the Retirement Income Security for Employees Act" and insert "section 3(15) of the Welfare and Pension Plans Disclosure Act".

On page 15, line 22, strike out "have been" and insert "were".

On page 15, line 24, before the comma insert "during the most recently concluded contract negotiations which were the subject of bargaining between such representatives and the employer or employers".

On page 66, line 18, after "persons" insert "engaged in a trade or business which is in or affects interstate commerce".

On page 66, line 19, strike "in commerce".

On page 68, line 18, strike "; and" and insert a period.

On page 68, strike lines 19 and 20.

On page 72, line 10, strike "section 412(c)(1)" and insert "section 412(b)(1)".

On page 72, line 12, strike "section 501(g)(11) of this Act" and insert "section 3(15) of the Welfare and Pension Plans Disclosure Act".

On page 83, line 22, strike "section 412(c)(1)" and insert "section 412(b)(1)".

On page 87, line 4, strike "section 412(c)(1)" and insert "section 412(b)(1)".

On page 105, lines 21 and 22, strike "section 412(c)(1)" and insert "section 412(b)(1)".

On page 96, line 4, after "any" insert "one".

On page 120, lines 4 and 5, strike "section 412(c)(1)" and insert "section 412(b)(1)".

On page 139, lines 6 and 7, strike out "section 501(g)(11) of the Retirement Income Security for Employees Act", and insert in lieu thereof the following: "section 3(15) of the Welfare and Pension Plans Disclosure Act".

On page 215, lines 5 and 6, strike out "section 501(g)(11) of the Retirement Income Security for Employees Act", and insert in lieu thereof the following: "section 3(15) of the Welfare and Pension Plans Disclosure Act".

On page 216, lines 18, 19, and 20, strike out "section 501(g)(11) of the Retirement Income Security for Employees Act", and insert in lieu thereof the following: "section 3(15) of the Welfare and Pension Plans Disclosure Act".

Beginning on page 11, line 9, strike through line 21 on page 12.

On page 64, line 20, insert before the period the following: "and that such election may be made only after such participant receives a written explanation of the terms and conditions of such joint and survivor annuity and the effect of such election".

On page 142, insert between lines 11 and 12 the following:

AUTHORITY TO ISSUE REGULATIONS

SEC. 501. (a) The Secretary of Labor shall have authority to issue such rules and regulations as are necessary to implement the provisions of this Act and the Welfare and Pension Plans Disclosure Act.

(b) In order to avoid unnecessary expenses and duplication of functions among government agencies the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this Act and the Welfare Plans Disclosure Act and the functions of any agency, Federal or State, 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 including services of any of its employees with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and to the extent permitted by law to provide such information and facilities as the Secretary may request for his assistance in the performance of his functions under this Act.

On page 142, line 14, strike out "501" and insert in lieu thereof "502".

On page 149, strike lines 10 through 15 and insert in lieu thereof the following:

(i) Section 4(b)(4) of such Act is repealed.

On page 150, line 23, insert immediately before the quotation marks the following: "The Secretary shall prescribe by general rule simplified reports for plans which cover less than 100 participants and which maintain an employee benefit fund with less than $100,000 in assets, except that nothing contained herein shall preclude the Secretary from requiring any information or data from such plans where he finds such data or information necessary to carry out the purposes of this Act nor shall the Secretary be precluded from revoking provisions for simplified forms for any such plan if he finds it necessary to do so in order to carry out the objectives of this Act.".

On page 153, line 6, after the word "conducted" insert the words "subject to regulations of the Secretary and".

On page 165, line 12, add the following new sentence: "For the purposes of any investigation described in this subsection, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, records, and documents,) of the Federal Trade Commission Act of September 16, 1914 (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officer designated by him. To the extent he considers appropriate the Secretary shall delegate his auditing and investigative functions under this section with respect to insured banks acting as fiduciaries of employee benefit plans to the 'appropriate Federal banking agency' as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (q)).

On page 165, insert between lines 15 and 16, "PUBLIC INFORMATION".

On page 170, insert between lines 18 and 19 the following:

"ADMINISTRATION

SEC. 507. 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 subsection to place a total of 20 positions in the Department of Labor in GS–16 and 17.".

On page 172, insert between lines 13 and 14, the following:

"(2) A fiduciary is prohibited from engaging in the following transactions:

"(A) holding or purchasing on behalf of the fund any security which has been issued by an employer or employer-group whose employees are participants in the plan, under which the fund was established or a corporation controlling, controlled by, or under common control with such employer, or employee-group, if such investment, which when added to such securities already held, exceeds 7 per centum of the fair market value of the assets of the fund. Notwithstanding the foregoing, such 7 per centum limitation shall not apply to profit sharing, stock bonus, thrift and savings or other similar plans which explicitly provide that some or all of the plan funds may be invested in securities of such employer or a corporation controlling, controlled by, or under common control with such employer, nor shall said plans be deemed to be limited by any diversification rule as to plan funds which may be invested in such securities. Profit sharing, stock bonus, thrift, or other similar plans, which are in existence on the date of enactment and which allow investment in such securities without explicit provision in the plan, shall remain exempt from the 7 per centum limitation until the expiration of one year from the date of enactment of this section. Nothing contained in this subpara-

graph shall be construed to relieve profit-sharing, stock bonus, thrift and savings or other similar plans from any other applicable requirements of this section. For the purposes of this subparagraph the leasing (or a purchase in connection with such lease) of real property and personal property related to such real property to an employer or employer-group by a plan shall be deemed to be a security of such employer or employer-group;

"(B) any fund other than a profit-sharing, stock bonus, thrift savings plan, etc., holding securities of an employer or employer group which employs participants in such plan, in excess of 7 percent of the fair market value of such fund on the effective date of this section shall, within 5 years after the effective date of this section, divest not less than 50 per centum of such excess and shall, not later than 10 years after the effective date of this section divest not less than 100 per centum of such excess.

On page 172, line 14, strike "(2)" and insert in lieu thereof "(3)".

On page 173, line 2, strike out the word "or".

On page 173, line 5, strike out the period and insert in lieu thereof "; or" and insert between lines 5 and 6 the following:

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

On page 173, line 6, strike "(3)" and insert in lieu thereof "(4)".

On page 173, line 10, strike "(2)" and insert in lieu thereof "(3)".

On page 173, line 18, add the following new sentence: "Prior to the granting of an exemption under this paragraph, the Secretaries shall give adequate notice which shall include publication in the Federal Register, to interested persons, of the pendency of such exemptions."

On page 173, line 19, strike "(2)" and insert in lieu thereof "(3)".

On page 174, strike lines 10 through 17.

On page 174, line 18, strike "(3)" and insert in lieu thereof "(2)".

On page 175, line 7, strike "(4)" and insert in lieu thereof "(3)".

Beginning on line 10, page 175, strike through line 15 on page 178.

On page 178, line 16, strike "(7)" and insert in lieu thereof "(4)".

On page 178, line 20, strike "(8)" and insert "(5)".

On page 178, line 23, strike "(2)" and insert in lieu thereof "(3)".

On page 178, line 24, strike "(9)" and insert "(6)".

On page 179, line 2, insert after the word "subsection" "(a) or".

On page 179, line 24, insert before the word "agreement" the words "by any".

On page 180, line 3, strike the words "unless specifically disapproved" and insert in lieu thereof "subject to regulations promulgated".

On page 180, insert between lines 7 and 8 the following:

"(h) no fiduciary shall permit any assets of the fund to be held, deposited, or invested outside the United States unless the indicia of ownership remain within the jurisdiction of a United States District Court, except as authorized by the Secretary by rules or regulations.

On page 184, beginning with line 8, strike through line 13 on page 186 and insert in lieu thereof "SEC. 521 FIDUCIARY STANDARDS.

On page 186, line 14, strike "(c)" and insert in lieu thereof "(a)".

On page 186, line 18, strike "the" and insert a period after the word "assistance" and strike the words "in the performance of the functions of the Secretary of the Treasury under this section.".

On page 186, beginning on line 26, strike through line 6 on page 188.

On page 188, line 7, strike "(3)" and insert in lieu thereof "(b) COOPERATION WITH REGARD TO INVESTIGATIONS.—".

On page 188, line 11, strike "(e)" and insert in lieu thereof "(c)".

On page 188, line 17, insert after the word "transactions" the words "under section 522 (d) (1)".

On page 191, line 1, strike the word "fiduciary" and insert in lieu thereof the words "party in interest".

On page 191, line 2, strike the words "income or".

On page 191, line 5, strike the word "from" and insert the word "by".

On page 191, insert between lines 8 and 9, the following:

"(A) Exemption.—The Secretary, in conjunction with the Secretary of Labor shall by rule or regulation provide for the conditional or unconditional exemption of any fiduciary or class of fiduciaries or transactions or class of transactions from all or part of the restrictions imposed by paragraph (1) of this subsection. An exemption granted under this section shall not relieve a fiduciary from any other applicable provisions of this Act. In granting an exemption under this paragraph, the Secretaries shall assure that such exemption is (i) administratively feasible, (ii) in the interests of the fund, (iii) protective of the rights, both contingent and vested, of participants and beneficiaries of such plan. Prior to the granting of an exemption under this paragraph, the Secretaries shall give adequate notice to interested persons, which shall include publication in the Federal Register, of the pendency of such exemptions.

On page 191, line 9, strike "(A)" and insert in lieu thereof "(B)".

On page 191, line 17, strike "(B)" and insert in lieu thereof "(C)".

On page 192, strike lines 7 through 15.

On page 193, line 8, after the word "the" insert the words "purchase and".

On page 194, line 15, strike the words "It is not a" and lines 16 through 21.

On page 197, line 21, insert after "(A)," a "(B),".

On page 198, line 9, insert after "(A)," a "(B),".

On page 203 strike lines 13 through 18 and on line 19 strike "(3)" and insert "(2)".

On page 210, beginning with line 14, strike through line 8 on page 212.

On page 218, line 9, insert the word "ENFORCEMENT:" immediately before the word "RESOLUTION".

On page 218, line 11, insert the word "pension" before the word "benefit".

On page 219, between lines 21 and 22 insert the following:

"(g) The Secretary shall prescribe rules and regulations necessary to carry out this section.".

On page 219, line 25, after the word "Act" insert "and the Retirement Income Security for Employees Act".

On page 220, line 9, after the word "Act" insert "and the Retirement Income Security for Employees Act".

On page 220, line 16, after the word "Act" insert "and the Retirement Income Security for Employees Act".

On page 220, line 15, strike "15" and insert in line thereof "16".

On page 222 strike line 17 through line 20 and insert in lieu thereof:

Sec. 695 (a) The jurisdiction of any court competent to hear an action brought by a participant or beneficiary under sections 693 or 694 shall be conditioned upon the service of a copy of the complaint upon the Secretary by certified mail, who shall have the right in his discretion to intervene in the action.

On page 226, line 2, strike the word "registered" and insert in lieu thereof the word "certified".

Mr. NELSON. Mr. President, I yield back my time.

Mr. JAVITS. Mr. President, I yield back the time on our side.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wisconsin (putting the question).

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on the engrossment and third reading of the bill.

Mr. HRUSKA. Mr. President, the pending bill in its presently amended form provides long-needed progress in private pension plan reform. On balance, the improvements over the present law make it deserving of enactment.

The changes it contains are numerous, comprehensive, and intricate. They bring added benefits and coverage to many taxpayers, both those not covered now as well as those who are. They provide a large measure of equalizing treatment for different taxpayers, groups and classes. In addition to the increased coverage, many additional advantages and protections to the beneficiaries and their survivors are being provided.

While these changes are many, there is one in particular that I want to point out. It relates to provisions adding beneficial coverage for the millions of taxpayers who are not covered by any pension plan under the present law, and who would not otherwise be covered under the law as they would be following enactment of this bill. This aspect has been of special and persistent concern to my colleague from Nebraska, Senator CURTIS. He has urged action upon it through many Congresses, so it is gratifying that his loyalty and dedication to this idea are now being rewarded.

The problem comes about in this way: In spite of the rapid growth in pension plan coverage, only about one-half of all employees in private, nonagricultural employment in America are still without consideration or coverage. This is due to a number of reasons. Small business firms and agriculture rarely have pension plans now. Requirements for establishing plans and participating in them are often overly exacting. Age and duration of employment service requirements are often unrealistically limiting and restrictive. All of this has had a tendency to exclude many employees and individuals from advantages of a tax-benefit advantaged retirement fund for their later years.

The bill before us recognizes the need to grant to such individuals some of the tax advantages enjoyed by those who are covered by pension plans. It does so by providing a limited tax deduction—up to $1,500 per year—for such payments as they may make to a properly qualified retirement savings plan.

Such a plan could be one of a variety of plans. Some examples are: Annuity contracts sold by insurance companies, mutual funds, corporate securities, savings accounts, and special government retirement bonds which would be issued for this purpose. A choice of one of these methods would be at the option of the taxpayer. Contributions or payments to that end would not be taxable if they did not exceed the specified limit.

This arrangement is equitable. Heretofore that taxpayer has been called upon to pay income taxes first, before he could devote a portion of his earnings to retirement savings from the remainder of his paycheck; that is, from his paycheck after taxes.

It has been this inequity to which my Nebraska colleague has long addressed his energies and attention. He has fought repeatedly for some form or method whereby the 50 percent of the population not covered by pension plans would also receive some tax-relief advantage in the building up of a retirement base; an equivalent of the tax-relief consideration received by those taxpayers who are covered by pension plans. He had pursued this in his long years of service on the Ways and Means Committee of the other body where he had served for 16 years. He resumed the efforts in his long years of service on the Finance Committee. It should be recalled that his efforts on behalf of the Keogh plan H.R. 10, when it was being formulated and enacted for self-employed people, had as its basis the idea that similar tax relief grant should be extended beyond only those under pension plans. But of course as fine as H.R. 10 was, it did not go far enough, so Senator CURTIS persisted in his battle whenever occasion afforded. The pending bill contains provisions which see the happy and satisfactory conclusion to those efforts.

Of course there are many others in the Congress who are of similar mind, and the approval of the bill will bear this out; full credit should go to each. But the fact remains that the pioneering, early efforts and sustained force of my colleague from Congress to Congress to the present time were heavy factors for final achievement. His firm purpose, pursuit, and dedication have borne fruit.

It is for these reasons I note the event and express this salute.

But the entire bill is comprehensive in scope and detail. It required and received the wisdom, experience and energies of many Members to produce and process it. Commendations are due to each of them, and especially those serving on pertinent committees and their respective staffs, all of whom contributed much.

President Nixon in his message to the Congress on this subject of pension plan reform last April stated:

> The achievements of our private welfare and retirement plans have contributed much to the economic security of the Nation's workers. They are a tribute to the co-operation and activity of American labor and management. We can be proud of the system that provides them—but we must also be alert to the Government's responsibility for fostering conditions which will permit that system's further development.

Mr. President, I submit that the Congress will have shown well that alertness and discharged its responsibility to which President Nixon alluded in his message, upon approving, perfecting, and enacting the "Retirement Income Security for Employees Act."

FAIRNESS TO SMALL BUSINESS IN THE PENSION BILL

Mr. McINTYRE. Mr. President, the pension bills the Senate considers today (S. 4 and S. 1179) will result in very important legislation.

Retirement security, which is important to every working man and his family, has increased in importance in proportion to longer life expectancy.

From the business side, deferred compensation is a significant management instrument. It enables companies to attract and retain key personnel, and their loyalties, so that an organization can be built and a higher quality job can be done for the ultimate consumer—whether this user is a Federal, State, or city government, a business or an individual buyer.

This far-ranging law with its economic and tax aspects thus deeply affects the terms of the social compact in our country between capital, management, labor, and the consumer.

Another aspect of these bills, which could easily escape notice, is their impact over 9 million individual businessmen, 900,000 partnerships, and the small stockholders of 1.7 million corporations. Small business constitutes 97½ percent of the total number of businesses in the United States and accounts for over half the employment and around 40 percent of the gross national product. They are the well-spring of enterprise, risk-taking and innovation in this country.

Accordingly, I wish to commend the Committees on Finance, Labor, and the Joint Committee on Internal Revenue Taxation, as well as the individual Senators who have worked so hard on this bill and their recognition of the needs of small business enterprise.

S. 1179 proposes to raise the limitations on deductions for self-employed persons, such as individual proprietors, to a maximum of $7,500 or 50 percent of income—from $2,500 or 10 percent. This is a much more realistic level, particularly in view of inflation. It will allow many more smaller firms to consider establishing pension plans. In turn, this should open up wider opportunities to financial institutions and consultants to develop this profitable business among a much larger clientele.

In the initial stages, the question also rose about the extent to which similar limits should apply to corporations. Many Senators and staff members had a part in the difficult work of trying to arrive at a fair resolution of this issue. The Select Committee on Small Business, on which I serve, under the leadership of the Senator from Nevada (Mr. BIBLE) played a role by collecting data on the effect which certain of the proposals would have on the existing plans of typical smaller corporations such as machine shops, general contractors and printers. This was made available to the Committees on Finance and Labor which bear the heavy responsibilities of presenting the bills which they believe will assure equitable treatment to all.

As a result of the work that was done and the conscientious consideration which was given these questions, particularly at an additional executive session of the Committee on Finance on September 14, I believe that most of the wrinkles have been worked out of the present legislation.

However, certain members of the committee feel that the permissible level of annual benefits could be better adjusted. The Senator from Wisconsin (Mr. NELSON) who held the public hearings on S. 1179 has such an amendment which I plan to support.

There also remains a concern over whether the equivalency formula will provide true equality of consideration for profit sharing, money purchase, and other plans, as well as insurance plans. The memorandum points out that:

> Many businesses typically take several years to achieve the financial stability required to undertake a commitment to a fixed cost plan and thus probably enter the retirement-deferred-compensation field with a profit-sharing plan as to which contributions are voluntary from year to year. It would therefore seem that any rules in this area be uniform as between the various types of retirement plans.

I believe we should make our congressional intention very clear, that no discrimination is intended against any sort of deferred compensation plan, and especially the plans which are most amenable to adoption by newer and smaller businesses.

We hope there is sufficient flexibility under the statute and the regulations so that the necessary adjustments can be made in behalf of unique small business problems such as integration with social security and the wide variations in earnings year to year which characterize many newer and smaller firms.

NONDISCRIMINATION

Mr. MONDALE. Mr. President, for some months I have been deeply concerned with the need to insure that pension benefits are made available on a nondiscriminatory basis to all those who have earned them regardless of race, color, national origin, religion, or sex.

The chance to achieve economic security—based on merit—is the heart of the American dream; and where pension benefits are unfairly reduced or denied, the results are tragic for those who have earned a dignified retirement.

I had intended at this time to raise my amendment incorporating nondiscrimination based on race, color, national origin, religion, or sex into the basic requirements of the pending bill.

However, I understand that the distinguished Senator from New Jersey (Mr. WILLIAMS) is concerned that this approach runs counter to our actions last year in further consolidating equal employment jurisdiction in the Equal Employment Opportunity Commission.

Mr. WILLIAMS. The Senator is correct. Although I fully share your concern for full enforcement of nondiscrimination requirements affecting pension and profit-sharing plans, I believe that the thrust toward centralized administration of nondiscrimination in employment must be maintained. And I believe this can be done by the Equal Employment Opportunity Commission under terms of existing law.

Mr. MONDALE. Does the Senator agree that discrimination based on race, color, national origin, religion, or sex affecting participation in pension or profit-sharing plans, is presently prohibited under section 703(a) of the Equal

Employment Opportunity Act? That section provides, in part:

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religions, sex, or national origin—

Mr. WILLIAMS. I agree with the Senator's reading of the statute and I understand that the courts are following this view. The leading cases are: *Rosen* v. *Public Service Commission*, 477 F. 2d 90 (3 Cir. 1973); *Bartmess* v. *Drewrys*, 444 1186 (7th Cir. 1971) Cert. Denied 404 U.S. 939; *Fillinger* v. *East Ohio Gas*, 4 FEP 73 (E.D. Ohio 1971).

Again, I share the concerns of the distinguished Senator from Minnesota that the EEOC must view discrimination in pension plans as among the most serious forms of employment discrimination. And I will be glad to join the Senator from Minnesota in impressing this view on the new chairman-designate of the Commission, Mr. POWELL, when he appears before the Committee on Labor and Public Welfare for confirmation.

Mr. MONDALE. Mr. President, the distinguished Senator from New Jersey, the chairman of the Committee on Labor and Public Welfare and of the Labor Subcommittee, is the principal architect of the Equal Employment Opportunity Act and of the pending bill. I deeply appreciate his judgment and his assistance.

In light of the Senator's views, and with the understanding that nondiscrimination in pension and profit-sharing plans is fully required under the Equal Employment Opportunity Act, I will not propose my amendment at this time.

Mr. HANSEN. Mr. President, the Senate has been considering a very important piece of pension reform legislation which will have far-reaching effects on every employed person in this country. The Senate Committee on Labor and Public Welfare and the Senate Finance Committee have actively coordinated their efforts in order to produce this timely piece of legislation. I would like to take this opportunity to commend the chairmen of these two committees for the degree of cooperation they have achieved.

I certainly agree that minimal standards are necessary in this area of private pension plans in order to insure employee security upon retirement. However, a few aspects of this bill still concern me because I think we might have gone a little too far for this first effort. I only hope that we have not created an administrative monster which could be counterproductive to our goal of encouraging the establishment of private pension plans.

I am primarily concerned about the type of termination insurance that has been adopted. A joint study by the Treasury Department and the Department of Labor indicates that very few employees are affected by plan terminations. In fact, this Treasury study showed that in a 7-month-period of 1972, only .04 of 1 percent of all pension plan participants suffered any losses—both vested and unvested. I am certainly concerned about employees who lose their rights to pension benefits after working many years for one company. I am not trying to minimize the tragedy or extent of their losses. However, the present legislation is calling for a massive and far-reaching program to help eliminate the losses of these few individuals. We have taken important steps in the pending legislation to insure adequate funding and early vesting. These two measures alone should help to substantially minimize any losses incurred by employees whose plans are terminated. Would not it be better to wait and see how effective these funding and vesting requirements are in eliminating termination losses before establishing a totally new bureaucracy which could dramatically increase government control of private pension plans.

The administration's pension reform proposal (S. 1631) of which I was a cosponsor, more closely represented the pension reform I thought was necessary at this point in time. It would have set minimum standards without stifling the growth of present plans or the establishment of new ones.

I would particularly like to mention one section of S. 1631, incorporated into the Finance Committee legislation, which will permit individuals not covered by qualified private pension plans to make tax deductible contributions of up to $1,500 per year for their own retirement. Employers who do not have established pension plans for their employees are also encouraged to contribute to these personal savings plans so long as the combined contribution does not exceed the $1,500 limitation. The employer is allowed a tax deduction for his share of the contribution.

This provision gives an employee not covered by another type of pension plan, the opportunity to put some of his money away for his own retirement and, at the same time, to receive some of the same tax benefits for doing so which are available to members of qualified pension plans. The people for whom this provision is intended are the ones presently discriminated against under the present tax law. They are taxed on income they put away for retirement as well as the interest on that income. This provision will eliminate the present disadvantage and encourage more people to save for their own retirement. Planning ahead for later years is essential, and this section of the bill certainly encourages an individual to do just that.

Other sections of this legislation dealing with vesting, funding, and fiduciary responsibilities have been carefully structured and should be of real benefit to all employee participants in qualified private pension plans. Although I do have some reservations about this legislation, I hope that the provisions adopted will encourage the establishment of additional private pension plans and will not unnecessarily restrict their growth. The number of private plans has been increasing rapidly, and employees contributing to these plans deserve some degrees of security regarding their future benefits.

SURVIVORSHIP BENEFITS

Mr. MONDALE. Mr. President, I wish to congratulate the managers of the pending bill—Mr. WILLIAMS, Mr. JAVITS, Mr. NELSON, Mr. LONG, Mr. BENTSEN, and Mr. BENNETT—for incorporating within the terms of the compromise proposal the essence of my amendment—adopted by the Committee on Finance—and the essence of the amendment of the Senator from New York (Mr. JAVITS)—adopted by the Committee on Labor and Public Welfare—regarding survivorship benefits to the spouses of pension plan participants.

Information about the extent and magnitude of survivorship benefits under existing pension plans is woefully inadequate. But we know that many plans do not provide any benefits to the surviving spouse of a deceased participant. This means that the death of a participant totally deprives a spouse of all pension support. Yet many pension participants strongly believe that they are building for the future security of their families.

Under section 221 of the compromise amendment, pension plans subject to the jurisdiction of this act must provide continuing benefits to the surviving spouse unless a specific, written election is made rejecting these continuing benefits within 2 years of retirement. These survivorship benefits are to be an actuarial reduction of the primary benefit which the plan participant would receive during his lifetime—and in no case is this benefit to be less than half the primary benefit which the participant would receive during his lifetime.

This action is crucially important. Although half our working force is covered by pension and profit-sharing plans, fewer than 2 percent of elderly widows receive any benefits at all. The Treasury Department estimates that 88 percent of the 23 million participants in fixed-pension benefit plans will have a dependent spouse as they approach retirement age. Section 221 of the compromise bill will go a long way toward assuring financial security and a dignified retirement for these persons.

Mr. KENNEDY. Mr. President, I rise to speak in support of the bill now before the Senate which seeks to establish fundamental reforms in the private pension system that now encompasses more than 30 million Americans.

Despite the sharp rise in pension plan participants from the 4 million covered in 1940, the 30 million participants now enrolled unfortunately still cannot look to their retirement with a sense of confidence or assurance.

Too often, we have seen the guarantees they thought were contained in their pension plan disappear with the closing of a plant and the discovery that the plan did not have enough funds to provide anyone the pension he or she had expected.

I was pleased to join with Senators WILLIAMS and JAVITS—who have led the fight to reform the pension system—in cosponsoring S. 4, the Pension Reform Act, last session and again this year. Building on the record of the Senate Labor Subcommittee's extensive inquiry

into the private pension system during the 92d Congress, S. 4 was a fundamental attempt to address the evils of the system. At the same time, the excellent work done by Senator BENTSEN, Senator NELSON, and the Senate Finance Committee has now been melded into the legislation before us to produce a major step forward in pension reform.

These steps cannot be put off any longer. Too many men and women who worked in the factories and businesses of this Nation throughout their adult lives have found old age tarnished by the sudden discovery that they had no pension for retirement or a totally inadequate pension.

The witnesses testifying both before the Senate Labor Subcommittee and before the Senate Finance Committee brought unending tales of tragedy. For most of them, the time already had passed when their grievances could be redressed. But for millions of other Americans what we do this afternoon in passing this legislation may mean the difference between living in dignity and living in poverty.

The classic example remains that of Studebaker where 9,000 workers whose average age was 55 were declared surplus in December 1963 when the plant shut its doors. For those workers, the pension fund was their one remaining hope after absorbing the shocking news of Studebaker's demise.

But within a a few days, it was apparent that the pension fund had been short changed. The result was that all workers under 40 received nothing. For these workers, the pension plan that they had been paying into throughout their working life turned out to be an illusion.

Mr. President, I ask unanimous consent that some of these cases collected by the UAW be printed in the RECORD at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

THIRTY-TWO YEAR SERVICE PENSION REDUCED TO $37.75

Mike Daly and Ed Daniel know well the fear of losing pension rights for which they have worked all their lives.

Both are victims of the pension plan termination at Gar Wood Division of Sargent Industries Inc. in Wayne, Mich.—Daly a retiree whose pension benefits were cut to a pittance, and Daniel, one of the firm's few remaining active workers, who will have no pension check at all to show for his 30 years on the job.

Daly, 71, chairman of the UAW Local 250 Retirees Chapter, remembers vividly the scene at a meeting in 1972 when the Gar Wood retirees were told that the firm was moving virtually all of its operations to other locations and was halting the pension plan.

"I saw heartbreak and fear in the people's eyes, and many broke down and were unable to speak," says Daly. "There were wives of retirees who came to voice their husband's despair, many who had never spoken in public before.

"Their lips moved and made no sound," he recalls. "The world dropped from under them.

"Where do they go? To the scrap heap? On welfare? To a mental institution? Sponge from relatives?"

Gar Wood's 231 retired workers suffered 60 per cent cuts in their pension payments. For Daly, who worked at Gar Wood for 32½ years as an arc welder, this meant that "my pension was reduced from $93 a month to $37.75.

"Our life insurance was cut from $1,000 to $403 in death benefits," he added. "Our hospital insurance will be discontinued Dec. 1."

At age 57, Daniel worries about the future, asking, "Who is going to hire me, even though I can do good work?"

An arc welder in the skeleton work force of about 40 remaining at Gar Wood, Daniel points out that some 500 Gar Wood active workers, like himself, had worked long enough to earn vested pension rights.

"They all thought that at the end of their working days—at age 60 or 62 or 65—that the money was there. Today they have no hope," Daniel says.

Gar Wood terminated the pension plan on July 31, 1972 and Daniel recalls that some of the retirees "didn't know anything about it until they got a check."

That check reflected the 60% pension cut.

"We pleaded with the company," says Daniel, president of Local 250. "We tried to get them to stay. But they wouldn't listen; they moved anyway.

"I think it's a shame when the old people by the thousands across this country, who have worked to build a great country, today have no pension—and our government will let this happen," he said. "If the congressmen and the senators of the United States could have been at Gar Wood and seen the faces of those people when they were told that no longer did they have pensions, I'm sure we would have better legislation than we have today. We'd have had something to protect these people."

Daniel is bitter about the contradictions in government policy and programs that, on one hand, allow firms to get tax breaks for putting workers' money into pension plans and, on the other, to terminate retirement plans at the expense of workers.

"I got not a dime after investing approximately 39 cents an hour into what I thought would be my pension," Daniel says. "We were never able to get Gar Wood to contribute one dime to our plan, not even one nickel.

"But under our governmental system, they got credit for putting the money into the plan: they got a tax rebate on it—out of our own money."

Daly points out that Gar Wood is "part of one of the new conglomerates that thrive on liquidation of small companies, with huge tax write-offs.

"These tax write-offs are made possible by act of Congress," he notes, adding: "I say to the members of Congress that it is time you gave protection to the people whose lives are destroyed by these write-offs."

Daly and Daniel agree emphatically that "pension should be guaranteed the same as bank deposits."

GAR WOOD DIVISION: SARGENT INDUSTRIES—PENSION SLASHED BY 60 PERCENT

Gar Wood is one of the oldest and best-known names in the manufacture of refuse truck bodies in the entire nation.

Located in the city of Wayne, a west side Detroit suburb, the Gar Wood plant employed somewhere near 500 workers for the better part of three decades.

In 1969, Sargent Industries, a giant American conglomerate, purchased Gar Wood outright. As in many instances when corporate interests switch hands, workers at Gar Wood wondered how the change would affect them. It didn't take long to find out.

In January 1972 UAW was notified by Sargent that the Wayne plant would close. Since operations were to be phased out, contributions to the pension fund would, of course continue—at least until the work force dipped to under 100. Then, the corporation could—and did—terminate the plan.

The plant was never really large but it had an old workforce and most had long service. As a result, pension benefits were smaller than workers received at nearby Big Three auto plants. But if benefits were small before the plan was terminated, they became anemic after the ax fell.

Those who had the right combination of years of service and age were allowed to apply for benefits amounting to only 40% of what the plan had originally called for. Those already retired had their pensions slashed by 60%.

Workers with a third of a century on the job, but still too young to retire under the plan, received nothing. The entire fund had been used up in the purchase of annuities for those already retired or eligible to retire.

The tragedy of Gar Wood workers is another sickening example of long-term corporate promises which have not been kept. The pension plan, financed with capital which workers could have otherwise had included in paychecks, is gone.

DORSEY DAY: AFTER 32 YEARS, AN UNCERTAIN FUTURE

Dorsey Day was barely old enough to vote when he first went to work as a clerk in Kensington Steel's pattern department in 1941. He grew up with the fledgling casting company, and knew just about everybody who ever worked there.

He was always a cautious man, and considered the security of his family in almost everything he did. It was more than ten years after he went to work at Kensington before Day and his wife began a family. With his family's security in mind, he became a key person in the organizing drive that gave birth to UAW Local 162.

He was likewise concerned about the security and well-being of his coworkers, and in recognition of this they elected him local president 12 years ago and have returned him to office in each succeeding election.

Classified now as an inspector, Day was floored when he was notified that Portec, a conglomerate which acquired Kensington about five years ago, had decided to discontinue operations and close the plant.

Now 51 and supporting two children who are away at college in addition to a 6-year-old daughter and his wife, Day is representative of what has happened to the average worker at the plant.

The typical Portec worker has 25 years of seniority and is 44 years old, which means that most were teenagers when they were first employed. Even if they are fortunate enough to land new jobs, their future is blurry.

The pensions they once thought they were building are gone, and they must now start from scratch. That is, if it is possible.

THIRTY YEARS OF PENSION CREDITS DOWN THE DRAIN

When Vivienne Hampson went to work for Macoid Industries in Detroit during the booming war production period of 1942, little did she know what that job eventually would cost her.

The cost: 27 years of loyal service that led to 27 empty years for her retirement and pension hopes.

The tragic loss of her pension rights occurred when Macoid closed its doors in June 1969 and moved to Pennsylvania. A leader in Macoid's fabricating department, Mrs. Hampson, who is a widow, was stunned to learn that the pension plan was being terminated and her "vested rights" were worthless.

The average age of Macoid's workers was 44. Mrs. Hampson was 54 when the firm moved.

"We had 200 employes covered by what we thought was an adequate pension plan," she recalls. Of the 200, 30 were retired. And after allocating the money in the pension plan to those who were retired, there was nothing left for Mrs. Hampson and her coworkers.

A month after Macoid closed, the sprightly, determined Mrs. Hampson hired on with Procon Pump in Detroit, "and in 1971 that one moved to Franklin, Tenn.

"So I was then 57 years of age, and another three years down the line," she said. In March 1972, she began working as a welder at the Walway Corp.

To Mrs. Hampson "adequate protection will have to come through Congress" on guaranteeing that workers get the pension benefits they work for, expect and are entitled to.

Pointing to the immensity of the problem, Mrs. Hampson says that amalgamated UAW Local 985, which she has served as financial secretary since 1952, "lost 75 plants through closings and relocation from 1952 to 1972."

She told congressmen at a pension reform hearing in Detroit that "the lyrics of the tune have always been the same.

"The song is "Promises, Promises," she explained.

"We are tired of promises from all of you," she told the congressmen. "When you reach that age—54, 57, 58—you cannot get Medicare, and it becomes a toss-up then on whether you will eat or buy your hospitalization insurance. And with semi-private hospital rooms at $77 a day, gentlemen, let me assure you that the cost of individual hospitalization is terrific."

Too Young for Pension Benefits

When still another conglomerate bought, then closed a plant

For over half the 19 years, Guadalupe Luna worked at a Los Angeles fixture manufacturing plant, he was building up the pension he and his wife, Mary, "knew" they'd get when he retired.

They'll never receive it. His pension went down the drain in 1970. That was when the conglomerate that had taken over the firm terminated the plan and shut down the plant.

"I was out of everything," Luna recalls. "No job. No health insurance; that stopped after 30 days. Nothing else. And I was too young for retirement benefits, even though I had over 10 years of credited service.

"It was like getting hit by a truck. You look on building up pension credits as a sort of payroll deduction. It's something you believe you'll have coming when you retire and need it. Then somebody decides no more plan, no more plant, and you're left with nothing."

Of the one-time peak employment of over 1,000 workers at the plant, Weber Showcase and Fixture Co., some 60 already had retired and were drawing benefits when the "parent" firm, Walter Kidde and Co., decided to shut it permanently.

Another 40 or so workers were added to the retirement list. But that was all. And Luna isn't among them. He was No. 60 on a final seniority list of about 260 workers, some with seniority dating back to 1940.

Luna had gone to work at Weber in 1951 as a punch press operator and later a structural assembler. As unit chairman of UAW Local 509, a post he held for some 10 years he helped negotiate the pension program which went into effect at Weber in 1960. He was a quality control inspector when the plant was closed ten years later.

Luna was fortunate. After being out of work for three months, he obtained a job at a small battery assembly plant about 30 miles from his home, But his new employer doesn't provide a retirement plan. Instead, there's only a profit-sharing program for long-time workers.

"But many of the others who lost everything at Weber still don't have work and are on welfare," he reported.

"For better than 90% of those thousand people and more who worked at Weber when it was at its peak, it looks like that pension plan just ceased to exist."

Three Jobs, 36 Years and No Pension

It was July of 1964, and in another two months Leo Brocki would have attained vested rights to a pension with North American Rockwell in Los Angeles.

But Brocki abruptly was laid off from his job as a senior model builder. His pension hopes were dashed and Brocki's first priority quickly turned into the search for immediate employment to meet his family's needs.

Now, after more than 30 years of work in the aerospace industry, the 58-year old Brocki still is without a secured right to a private pension.

"Even the smallest pension would mean a great deal to me as I only have a few years to work," he says. "I know several persons who are going to receive nothing but Social Security after 30 years of service. I ask you, is this living?"

Brocki, who lives in Buena Park, Calif. with his wife, Anna, 52, began his aerospace career back in 1937 on the East Coast. He hired in as a trainee with the Glenn L. Martin Co. at Baltimore, Md., advancing to positions as a supervisor, planner and toolmaker. With massive drops in employment taking place at Martin in the 50s, Brocki took his wife and three sons to California where he began working as a model builder for North American Aviation in Los Angeles in 1954.

Less than 10 years later, hit by layoff, he hired in as a display model builder at the Douglas aircraft plant of McDonnell Douglas in Long Beach. This job lasted eight years until, in March of 1972, he was laid off because of a lack of work.

Since then, Brocki has found sporadic work again at North American Rockwell. For two months, he did antenna mock-ups on the B–1 Air Force bomber project until he was laid off. He was rehired for a month and a half, was laid off again, and was rehired once more in January of this year as a B–1 structures mechanic. Brocki is a member of UAW Local 887.

"We helped our country and industry to forge ahead while we were able," Brocki has told a congressman in a letter explaining his plight.

"Now let industry and our government help us when we need it, and not with welfare," he says.

No Pension After Nearly 35 Years of Work

Various Moorman, 17 years old when he went to work at National Tool in 1939, is now 52, suffering from asthma but otherwise in good health. A member of Local 408, he's been a shipping and receiving leader at the plant.

With nearly 35 years of seniority, how much will he receive in pension benefits now that Lear-Siegler has swallowed National Tool Salvage?

Not one cent.

Someone suggests he'll draw Social Security, won't he?

Of course he will—starting ten years from now. That's a long time away.

Maybe he'll be lucky in landing another job, even though he's 52. He hasn't given up, not by a long shot.

But he had expected to receive some pension benefits, supposedly his, after putting in so many years at National Tool. You can feel the bitter pain in his gut when he says:

"Thirty-five years is a long time to build up for nothing."

Joe Mansor

$34.65 monthly pension after 32 years on job

Joe Mansor was a teenager in 1929 when he took a job at an Electric Autolite (Eltra) plant in Toledo.

For many years, Mansor would take a pencil and scrap of paper and compute his eventual pension entitlement by multiplying the base benefit by his total years of service.

It looked pretty good. After all, when a person spends his whole life with the same employer, the pension just has to be good. Right?

Wrong.

Eltra's Champlain Ave. plant in Toledo—with little advance warning—closed its doors and ended production in 1962. Twenty-five hundred Eltra workers were thrown out of work.

Since the pension plan was not sufficiently funded to provide full benefits to all employes, Mansor was entitled to only a fraction of what he thought he had earned.

So, after 32 years on the job, Mansor's total Eltra pension amounted to only $34.65 a month.

At the time of Eltra's closure, Mansor was only 50, which meant that he had to look for work until he became old enough to retire.

Unlike hundreds of less fortunate Eltra workers, Mansor landed another job, at the American Motors "Jeep" plant, also in Toledo, where he stayed until his recent retirement. His total pension from both jobs: $100 a month—with more than two-thirds of that coming from his relatively short-term job with American Motors.

If Mansor had been insured against loss of pension through federal legislation he would now be receiving a retirement benefit of about $400 a month.

No Pension After 44 Years

Every time Walter Baldridge gets into his car, he is reminded of how 44 years of work have led to a day-by-day existence where there's rarely enough money to meet the needs.

The car is a 14-year-old Studebaker station wagon, made by the company that employed Baldridge from 1926 to 1970. It also is the firm that terminated its pension plan in 1964, when Studebaker stopped producing autos, leaving Baldridge without any hopes for a private retirement income.

Baldridge's next-door neighbors in South Bend, Ind., are retirees, too, but they had been employed by companies which are still flourishing. One drives a new Oldsmobile and winters in Florida on a retirement income of more than $600 a month from Social Security and the UAW Bendix pension plan. The other has a similar pension income from Uniroyal.

"They bug me when they ask me how long I am going to drive the old '59 Studebaker wagon," says Baldridge, a former Studebaker plant guard, "and I tell them until I have enough money to buy a new one.

"And I know I can't do that," he adds. "How would I ever pay for it?"

Baldridge notes that, "Both of those guys had less seniority in their plants than I had in mine. The difference is that their employers are still operating the plants they retired from."

Life today for the 68-year-old Baldridge and his wife, Berneice 64, means sacrifices. Their combined income from Social Security is a meager $331 a month.

"It's for sure that we can't go out to eat, of if we do it's for hot dogs or hamburgers—and we can't go to the matinees when the prices are reduced," he says. "We just couldn't afford to pay the full price."

Baldridge was six months short of the 60-year age requirement set for a pension entitlement when Studebaker quit making autos and suspended the pension plan.

He received only a lump-sum settlement. But even though this was a long-term gain, the U.S. government taxed it as regular, annual income and Baldridge received little more than $500.

He stayed as a Studebaker employee, work-

ing in the parts department until he retired in 1970. Then, the only income was a $40 weekly compensation for unemployment, and a $90 monthly Social Security check.

Baldridge and his wife began withdrawing their bank savings to exist. Mrs. Baldridge, four years younger than he, was not then eligible for Social Security payments which would have helped alleviate the financial crisis.

"The bank savings were a one-way street," he says. "When everything comes out and nothing goes in, they don't last long." Mrs. Baldridge also was hospitalized and there was no health insurance to cover the costs. Later, the couple obtained Blue Cross insurance, but this cost a whopping $32 a month from their income.

Baldridge supplements his income by working as a handyman carpenter. Sometimes he finds work with Indiana University, remodeling old houses for use as offices on the South Bend campus. He also repairs old cars and is glad to get extra work around the UAW Local 5 union hall on election days and other special events.

His experiences had led Baldridge to believe that "fully protected pensions are the best insurance anyone can have. The main thing is being protected."

Mr. KENNEDY. Mr. President, Studebaker is the classic case. But it is far from the only case. At Studebaker, it was Walter Baldridge, who had worked at the plant for 44 years and was just a few months shy of retirement. He received a lump settlement of slightly more than $500. When he retired, there was only social security.

At the Eltra Corp., in Toledo, Ohio, it was Joe Mansor who had worked at the plant for 32 years. When it folded, he found out that the pension plan was not sufficiently funded. So instead of an expected $400 a month, he wound up with $34.65 a month.

In my own State of Massachusetts, the history of the past decade has demonstrated the need for far-reaching reforms. The factories and textile mills closed their doors and time after time, the workers were left with either no pension or only a pittance of the pension they had expected.

For those workers who were shy of the retirement age of 60, 62, or in some cases 65, there was no pension—not a single dime—because the plan was not adequately funded.

In Lynn, the J. S. Barnet Co., closed its doors in the mid-1960's and the men who were not yet at retirement age but who had worked for 10 years or more had nothing to fall back on.

In New Bedford, the same story was told over and over as textile plants closed down. Berkshire Hathaway plants in Fall River-New Bedford alone employed some 4,000 workers. For every worker who had not yet reached age 62, the shutdown left them without benefits.

What is more tragic and more of an indictment, is that these incidents continue today. In a Senate Labor Subcommittee study of 469 pension plans in 1970, one-third had assets covering only 50 percent of their liabilities. The assets in the plan barely covered 25 percent of their liabilities in 7 percent of the plans.

When those plants close, another million workers will find themselves shortchanged. Not only is there individual suffering that is the inevitable result but it is unnecessary suffering. Relatively little extra cost would be required on the part of employers to see that these funds are adequately funded.

The overall statistics have been all too well documented. In 1972 alone more than 15,000 pension plan participants lost all or a portion of their benefits because the plans terminated without sufficient funds to cover the plan's obligations. In several thousand cases, the workers lost evey dime of the pension they were rightfully entitled to.

Perhaps the most egregious violation of trust involves those funds where trustees act irresponsibly to siphon money off for their own purposes or invest funds in questionable ventures. In each case, it is the long-time worker who suffers.

There is yet another problem that we discovered during the lengthy hearings into this subject. Many of the plans established long years of service before the worker is entitled to any pension benefits. Then, all too often when the worker is approaching the time when his pension rights will be secured, he finds himself the victim of an abrupt termination.

Thus, the major problems with existing plans, beyond the obvious failure of more than half of all nonagricultural employees to be covered at all by any pension plan, are the following: Inadequate funding, loss of pension benefits due to plan terminations, inadequate vesting, and misuse of pension funds.

The bill before us treats each of these problems in a major way.

First, it demands that plans for which employers are entitled to tax deductions must meet minimum standards of funding to assure that the workers will find enough money in the plan at their retirement.

Second, it provides for required insurance to cover the situation where a firm closes its doors and has insufficient funds to meet its pension obligations. The insurance will provide the same kind of guarantee that a bank depositor has in the Federal Deposit Insurance Corporation.

Third, it provides for earlier vesting to provide that a worker will accrue guaranteed pension benefits of 25 percent after 5 years and 100 percent after 15 years.

Fourth, it includes tough disclosure requirements and adds a means by which an employee can demand the same arbitration procedure that most union-management contracts now contain.

Finally, it includes additional protections against the misuse of trust funds, limiting the kinds of investments that can be made and designed to eliminate the conflicts of interest that have arisen in the past.

Mr. President, I believe the legislation now before us carries us forward toward the protection of the pension rights of American workers and I strongly urge its adoption.

Mr. GRIFFIN. Mr. President, the Senate is on the verge of passing milestone legislation to protect the pension rights of working men and women.

Although different in some respects than a pension reform bill I have introduced in the last two sessions of Congress, the compromise legislation now before the Senate is similar thereto in many respects. And, certainly enactment of this compromise will represent a great step forward; it will be a significant victory for the American worker.

The need for such legislation has been well documented. As just one example, back in 1964, when the Studebaker Co. closed its doors, about 4,000 workers were left without pensions after they had worked many years to earn entitlement.

Of course, it will not be possible to go back and remedy all the tragedies of past years. But any further delay in correcting obvious defects and inequities that exist now would be inexcusable.

Ironically, there are laws on the books to insure and safeguard bank deposits and to protect lenders who loan money to such borrowers as Penn Central and Lockheed. But at present there is no law to insure payment of the hard-earned pension benefits to which American workers are entitled.

A recently completed study conducted by the Departments of Treasury and Labor reveals that no less than 1,227 pension plans were terminated in 1972, resulting in losses of pension benefits to over 19,000 workers. The average loss suffered by each worker exceeded $4,000.

These are grim statistics, but they do not tell the full story. In too many cases, a worker covered by a pension plan has worked 20 years or more for the same company, only to find that he still has no vested right to a pension. In fact, two out of every three covered workers today have no vested rights. Enactment of the pending compromise legislation will operate not only to insure payment of pension benefits once vested but it would also double the number of workers whose rights will be vested.

We are fortunate that a bill reported by the Committee on Labor and Public Welfare and a bill reported by the Committee on Finance are similar in many respects, and that a reasonable compromise has been worked out. While the compromise legislation is not perfect, I am pleased that it is stronger than either of the reported committee bills in a number of respects.

Much credit for the progress made so far should go to the distinguished senior Senator from New York (Mr. JAVITS) who has persistently and effectively fought for pension reform legislation over the years. In addition to supporting the efforts of the Senator from New York, I have long had my own version of comprehensive pension reform legislation before the Congress.

The bill I have introduced and reintroduced over the years has proposed—

Insurance protection for losses of vested pension benefits;

Vested pension rights for a worker after 10 years of employment under a pension plan;

Full disclosure of a worker's pension rights; and

Sanctions against mismanagement of pension funds.

I am pleased that the compromise legislation which is now nearing passage in the Senate does incorporate key features of my proposal, including provisions to give credit for past service.

This is particularly encouraging when one recalls that a bill reported last year by the Labor and Public Welfare Committee would have allowed credit toward vesting for past service only for those workers age 45 and older on date of enactment. In a speech delivered October 4, 1972, on the Senate floor, I emphasized the importance of recognizing past service for all covered workers in any bill to be enacted.

Unless credit for past service is recognized by the legislation to become law, any vesting provision would be only a cruel sham for millions of older workers who are nearing retirement at the present time. As a matter of fact, the Treasury Department estimates that 54 percent of the workers covered by pension plans who are over the age of 60 do not have vested rights to a pension.

Accordingly, I wish to commend the Labor and Public Welfare Committee for its action this year which has eliminated age distinction in the application of retroactive vesting.

Another important feature in the pending legislation is the requirement that employers who terminate a pension plan shall be liable for at least part of the losses which result from inadequate funding. Such liability will encourage more adequate funding and very careful consideration by management of the effects of terminating a plan.

Of course, there are areas of the pending legislation which could be improved. Of particular concern to me are the built-in delays in implementing the vesting and insurance requirements. As the compromise stands now vesting standards would not be effective until January 1, 1976, and pension benefits would not be guaranteed until January 1, 1977.

Under the proposal I have advocated both the vesting and insurance requirements would have been effective 1 year after enactment.

A 2-year delay in making the vesting standards effective could mean that thousands of workers will forfeit their hard-earned benefits during the waiting period.

A delay of 3 years before insurance is available means that 60,000 workers could lose a substantial portion, if not all, of their benefits. I am pleased, however, that the effective dates have been shortened considerably under the compromise amendment.

Although the compromise legislation provides partial vesting for less than 10 years of service, it provides for only 50 percent vesting after 10 years of employment under a pension plan. Full vesting is not required until 15 years of service, as compared with 10 years under my proposal. The 100 percent, 10-year vesting standard which I have proposed is already included in plans covering more than 21 percent of all pension plan participants.

Mr. President, while improvements could always be made, it is of utmost importance for Congress to pass this compromise because it appears to strike the best balance possible at the present time.

It has been 14 years since Congress approved any type of pension protection legislation. That action followed closely on the heels of the Landrum-Griffin Act in 1959. Additional reforms are urgently needed now.

I strongly urge the Senate to pass this legislation by an overwhelming vote.

Mr. PELL. Mr. President, I would strongly urge the Senate to pass S. 4, the private pension reform bill of 1973. This bill and some of its proposed amendments are the result of months of consideration and research, on the part of the Labor Subcommittee of the Labor and Public Welfare Committee of which I am a member, and also reflects the discussions I have had and letters I have received from hundreds of my fellow Rhode Islanders.

This bill will take a long and much needed first step in guaranteeing pension rights to tens of thousands of Rhode Island workingmen and women.

It will assure workers who retire, or who change jobs or employers, or whose employers go out of business, of a fair and equitable return on the pension contributions they and their employers have been making. Additionally, this bill will protect workers whose employers mismanage pension funds or go out of business without pension assets to meet their commitments.

Since I have been in the Senate, I have heard what I can only describe as horrible stories of private pension failure or mismanagement. I believe that today we have the opportunity to make pension systems more responsive to the needs and expectations of all of the workers of our Nation.

Mr. DOLE. Mr. President, private pension plans are an extremely important feature of the economic and social fabric of our country today.

Nearly 100 years ago, in 1875, the first formal private pension plan in the United States was established by the American Express Co. We have taken giant strides since that first plan was established. Today, more than 35 million Americans are participating in private pension plans. This number represents a sevenfold increase since 1940, and over the same period, the assets held by these plans have grown from $12.1 billion to more than $150 billion. More than 6 million retired persons now draw benefits from these plans. The outlook for the future indicates that private pension plans will continue to expand in importance as their participants increase and as they serve still more of the rapidly expanding retirement age group.

GROWTH OF THE PRIVATE PENSION SYSTEM

The greatest period of sustained growth in the number of persons covered by private plans has occurred in the post-1942 period. A number of factors can be underscored as significantly stimulating this growth. However, the Revenue Act of 1942, which granted tax deductibility for contributions to fund past service credits for the first time, must be viewed as a key factor in the growth of our private pension system. As a result of this expansion in coverage of private pension plans, approximately 50 percent of our civilian, nonagricultural work force is now covered by such plans.

Expansion of our private pension system has been encouraged as an effective means of providing individuals from all walks of life with an adequate source of income after retirement. Putting aside a portion of earnings during a person's most productive years, is in keeping with the most basic American traditions of thrift, self-sufficiency, and concern for the future. It was recognized at an early date that many individuals' funds could be combined, managed, and administered effectively with the result that the whole is greater than the sum of its parts. And with the cooperation and participation of employers, a significant system of retirement security has been created by the private sector of the economy.

LEGISLATION REPORTED

In favorably reporting S. 1179 to the Senate, the committee has proposed legislation which should continue to encourage the expansion of the private pension system as well as assure each participant of those benefits to which he is legally and equitably entitled.

KEY PROVISIONS ADOPTED

The committee has adopted certain minimum standards which will apply to all qualified pension plans. To obtain increased participation, qualified plans will have to cover all employees who have completed 1 year of service or who have attained age 30—whichever occurs later. In addition, a system of graded vesting has been adopted to provide all employees with limited nonforfeitable rights to pension benefits funded by employer contributions after a minimum work period. Every employee covered under a qualified pension plan will accrue a vested right to 25 percent of employer pension contributions after 5 years of employment, a 5 percent per year additional interest in such contributions for the next 5 years, and a 10 percent per year additional interest in these contributions for the next 5 years. Thus, after 5 years an employee will have a 25-percent interest, after 10 years, a 50-percent interest, and after 15 years, a 100-percent interest in these contributions.

This provision will eliminate any recurrence of a situation possible under present law where an individual's employment can be terminated prior to his normal retirement date and such early termination disqualifies him from receiving any pension benefits from a qualified plan under which he may have been covered for some extended working period. This provision also recognizes the need for greater job mobility brought about by the shifting requirements of a high-technology economy.

The committee bill includes new funding requirements which are designed to afford greater protection for the rights of covered employees as well as to provide an orderly and systematic method for employers to meet their pension plan costs. These new provisions require an employer to fund the costs attributable to current plan operations—as under present law—and to amortize all unfunded past service liabilities in level payments over no more than a 30-year period.

Consistent with the provisions already explained, the committee has also adopted tighter fiduciary and reporting standards to insure proper management of pension funds required to be set aside.

OTHER PROVISIONS

To my view, the vesting and funding provisions of S. 1179 are the heart of the bill. From the testimony of the many witnesses heard by the committee, numerous studies which have been conducted, and discussion during executive session consideration, I am persuaded that by strengthening and safeguarding the standards and requirements for the management and operation of private penson funds, the committee has taken important and wise steps toward reform of the private pension system. As far as further measures—particularly in terms of portability and plan termination insurance—are concerned, there is some question whether they are of the same order of importance or necessity. The private pension field is extremely complex and intricate. Congress should be cautious, lest it attempt to do too much to fast, for we do not want to risk defeating our basic objective which is to provide incentives for expanding and strengthening the entire system.

As I indicated, the vesting and funding provisions of the finance committee's bill are valuable and constructive initiatives which are overdue for enactment.

The vesting and funding provisions we have agreed upon may very likely—and it is our sincere hope—make pension plans so safe and secure that the risk of failure will become negligible and insurance against it unnecessary.

The concept of voluntary portability has been included in the bill, but I believe we must not lose sight of the fact that the private pension system is private. It has been established through agreements between employers and employees. It is not social security and as long as an individual has protection for his rights to benefits with any employer, I do not know whether portability adds much from the employee's point of view, and its administration certainly has many negative aspects for employers and in the creation of another bureaucracy to oversee it. In any event it should be noted that portability is voluntary and there is no intention of making it mandatory.

GREATER EQUITY OF PENSION PLANS

The committee has also adopted a series of provisions designed to improve and bring greater comparability to the pension benefits available to individuals not covered by any qualified pension plan; to self-employed individuals covered by H.R. 10 type retirement plans; and to proprietary employees of closely held corporations covered by qualified retirement plans. These provisions basically provide:

First. An individual not participating in any pension plan will be permitted to set aside up to $1,000 per year of earned income in his own individual retirement fund and deduct the amount set aside in computing his Federal income tax liability each year.

I would emphasize that this portion of the bill—major credit for which should go to the Senator from Nebraska (Mr. CURTIS)—goes a long way toward eliminating a major instance of discrimination in our laws. Millions of Americans currently are not covered by any private retirement system which offers the tax benefits of corporate or H.R. 10 plans. By allowing these people to set up their own plans we will do a great deal to make their futures more secure and provide greater tax equity for all our citizens.

Second. A self-employed individual covered under an H.R. 10 type plan will be able to increase his tax deductible pension contribution from 10 percent of earned income, up to a maximum of $2,500 per year—current law—to 15 percent of earned income or a maximum of $7,500 per year—or $500 of earned income, if greater.

Third. Proprietary employees of closely held corporations are now made subject to pension plan limitations so as to treat them more similarly to self-employed individuals. This limitation, although originally identical to that imposed on a self-employed individual, has been modified by the committee because it was believed to be too restrictive.

However, the limitations were placed on the total amounts of benefits which could be funded, rather than on the contributions which could be made to provide those benefits.

The enforcement of these new pension plan requirements will be handled through the Internal Revenue Service. To insure that adequate enforcement activity is possible, a new Assistant Commissioner of Internal Revenue to deal with pension plans and other exempt organization is created under the bill. Employees are also provided with a statutory right to submit pension plan grievances to the Secretary of Labor for administrative decision.

Lastly, the committee bill revises the taxation of lump-sum distributions for qualified pension plans to simplify the computation of tax liability on account of such distributions. Under this provision all pre-1974 value is taxed as capital gain. The balance of such distributions are taxed as ordinary income under a separate tax schedule based upon 15-year averaging for such income.

In sum, this bill makes landmark changes in our private pension system which improve and insure the rights of all covered employees. This has been accomplished without increasing employer costs beyond manageable levels. The chairman and the other members of the Committee on Finance who have devoted so much time and effort to this bill are to be congratulated on their efforts and deserve the thanks of millions of Americans who will be favorably affected by this bill.

I also wish to indicate my support for several amendments offered on the Senate floor in addition to the amendment adopted by the Finance Committee on September 14.

Two, offered by the Senator from South Carolina (Mr. THURMOND) and which I sponsored, would provide greater equality between the pension benefits of proprietary employees and regular corporate employees. They would extend to proprietary employees the 15-year averaging for lump-sum distributions; as well as the $5,000 death benefits provision; and make the portability provision available, just as it is to regular corporate employees.

Another amendment, No. 506, offered by the Senator from Wisconsin (Mr. NELSON), extends the rule on limitations on maximum pension benefits to executives of all corporations, not just proprietary employees. This rule limiting benefits, rather than contributions, was adopted by the Finance Committee on Friday. And if it is a sound rule in the proprietary corporation setting, I believe it should also apply to the executives of any corporation.

I ask unanimous consent that the committee press release explaining the amendments adopted in executive session on September 14, be printed in the RECORD.

There being no objection, the release was ordered to be printed in the RECORD, as follows:

PRESS RELEASE: FINANCE COMMITTEE APPROVES AMENDMENT TO S. 1179, PENSION REFORM BILL

The Honorable Russell B. Long (D., La.), Chairman of the Committee on Finance, today announced that the Committee on Finance had reconsidered, and approved amendments to, certain provisions of S. 1179 (Pension Reform Act of 1973). The principal amendments relate to the limitations on pension plan contributions for the benefit of corporate owner-managers, i.e., employees having a more than two percent ownership interest in the stock of a corporation, when all such persons in a particular corporation in the aggregate have more than a 25 percent interest in the benefit of the corporate pension plan.

1. *Limitation on contributions for owner-managers.*—S. 1179 provides that retirement plan contributions on behalf of such owner-managers, referred to in the bill as proprietary employees, are to be subject to the same limitations as apply to the self-employed plans. Under S. 1179, deductible contributions to a self-employed plan are permitted equal to 15 percent of earned income up to $100,000, but not in excess of $7,500. The Committee agreed to an amendment which would delete the contribution limitations on proprietary employees in S. 1179 and substitute therefor a rule expressed as a limitation on the stated pension benefit which may be provided a proprietary employee. The limitation is that the pension of a proprietary employee under a plan shall not exceed 75 percent of the average of the employee's highest three years of compensation, with a limitation that average compensation in excess of $100,000 will be disregarded. Hence, the maximum pension benefit permitted a proprietary employee is $75,000. This maximum benefit is to be funded over the remaining working life of the employee, but may not be funded over a period of less than 10 years. In the case of a profit-sharing or money-purchase plan, the amount contributed on behalf of a proprietary employee would be subject to limitations corresponding in substance to the limitations on contributions on behalf of proprietary employees under a stated benefit plan.

2. *Integration rules for plans keyed with Social Security.*—Under the provisions of S. 1179, as initially reported by the Committee, certain restrictions were imposed upon plans benefitting proprietary employees, including a limitation on the use of a formula which would integrate such plans with social security benefits. Upon further reflection, the Committee has determined that such a restriction would be counter productive and have the effect of dampening interest in the establishment of qualified pension plans by some corporations. Therefore, the Committee has decided to retain the provisions of present law which permit such cor-

porations to integrate their plans with Social Security.

3. *Special rule for partnerships.*—The Committee also agreed to a modification of the provisions governing contributions to qualified plans for self-employed individuals. In an effort to provide an additional inducement to partnerships to establish qualified pension plans covering individual partners and their employees, it was decided to permit the maximum pension plan contribution for each of the partners to be aggregated and allocated among the partners pursuant to an agreed upon formula. This provision will permit a contribution in excess of $7,500 to be made on behalf of an older partner to enable funding of a larger pension benefit than he would otherwise be able to fund were he limited to the maximum amount of $7,500 for any one individual. At the same time, this provision will not increase the total deduction for qualified pension plan contributions by the members of the partnership.

4. *Investments by profit sharing funds.*—The Committee also agreed to an amendment to the fiduciary provisions of S. 1179 which would permit a profit sharing fund to invest its assets in property of the employer under a sale and leaseback arrangement.

Mr. LONG. Mr. President, in a moment I will make a motion concerning further procedure on pension legislation. But first I would like to explain to the Senate what it is I intend to do.

In its action on S. 4, the Senate has approved major changes in our tax laws. If we were now to proceed to pass S. 4 under that number, the House would refuse to consider the bill on the constitutional grounds that revenue bills must originate in the House of Representatives.

The Senate may not originate revenue bills, but it may amend them. The Finance Committee has favorably reported H.R. 4200, a House-passed bill designed to continue the same tax treatment for survivors of servicemen and former servicemen under the recently enacted survivor benefit plan as formerly was available under the prior law.

I will move that everything the Senate has approved in its action on S. 4 be added as an amendment to H.R. 4200. In this way, we will meet any constitutional objections to House consideration of what we have done.

AMENDMENT OF INTERNAL REVENUE CODE

Mr. LONG. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 4200, Calendar No. 370.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk as follows:

A bill (H.R. 4200) to amend section 122 of the Internal Revenue Code of 1954.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. LONG. Mr. President, I now offer the language of S. 4 as amended as an amendment to be added at the end of the pending bill (H.R. 4200).

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Louisiana.

The amendment was agreed to.

Mr. LONG. Mr. President, I wish to state, for the benefit of the Senator from Texas (Mr. TOWER), since he is interested in offering an amendment to H.R. 4200, that I will assure him he will have the opportunity to offer his amendment and have it considered in connection with another revenue measure which we will report to the Senate as early as we possibly can, so that he will have an opportuity to have consideration of his amendment, which is not essential to H.R. 4200.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 4200) was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

Mr. MANSFIELD. Mr. President, if the Senate will bear with me, some of our colleagues are down at the White House at this moment. I would suggest, with the approval of the Senate, that we turn to the consideration of Calendar No. 373, S. 2410, and then have back-to-back votes on the two measures.

Mr. JAVITS. Mr. President, I thoroughly agree with the Senator, except that I should like to ask him, could he set a time to vote, so that we would not have further debate on the bill that has had third reading, but could still be debated?

Mr. MANSFIELD. No, no; it was my understanding that we were ready to vote on the other measure.

Mr. LONG. Would the Senator permit us to have third reading on H.R. 4200?

The PRESIDING OFFICER. The bill has been read the third time.

Mr. JAVITS. Mr. President, with the majority leader's consent, I ask unanimous consent that after the vote has been taken on the emergency medical services bill tonight, we will immediately proceed to vote on the bill now before the Senate.

The PRESIDING OFFICER. And that rule XII be waived?

Mr. JAVITS. And that rule XII be waived.

Mr. MANSFIELD. Yes, the regular procedure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that it be in order at this time to ask for the yeas and nays on S. 2410.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, do we have the yeas and nays on S. 4200?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. MANSFIELD. I ask for the yeas and nays.

The yeas and nays were ordered.

EMERGENCY MEDICAL SERVICE SYSTEMS ACT OF 1973

The PRESIDING OFFICER (Mr. JOHNSTON). Under the previous order, the clerk will proceed to the consideration of S. 2410, which the clerk will state.

The assistant legislative clerk read as follows:

A bill (S. 2410) to amend the Public Health Service Act to provide assistance and encouragement for the development of comprehensive area medical services systems.

The Senate proceeded to consider the bill, which had been reported from the Committee on Labor and Public Welfare with amendments, on page 1, line 6, after the word "Services", to strike out "System" and insert "Systems"; on page 14, line 11, after the word "in", to strike "such"; and, on page 15, line 6, after the word "in", to strike "personnel facilities, and equipment of each public safety agency"; so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Emergency Medical Services Systems Act of 1973".

EMERGENCY MEDICAL SERVICES SYSTEMS

SEC. 2. (a) The Public Health Service Act is amended by adding at the end thereof the following new title:

"TITLE XII—EMERGENCY MEDICAL SERVICES SYSTEMS

"DEFINITIONS

"SEC. 1201. For purposes of this title:

"(1) The term 'emergency medical services system' means a system which provides for the arrangement of personnel, facilities, and equipment for the effective and coordinated delivery in an appropriate geographical area of health care services under emergency conditions (occurring either as a result of the patient's condition or of natural disasters or similar situations) and which is administered by a public or nonprofit private entity which has the authority and the resources to provide effective administration of the system.

"(2) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"(3) The term 'modernization' means the alteration, major repair (to the extent permitted by regulations), remodeling, and renovation of existing buildings (including initial equipment thereof), and replacement of obsolete, built-in (as determined in accordance with regulations) equipment of existing buildings.

"(4) The term 'section 314(a) State health planning agency' means the agency of a State which administers or supervises the administration of a State's health planning functions under a State plan approved under section 314(a).

"(5) The term 'section 314(b) areawide planning agency' means a public or nonprofit private agency or organization which has developed a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b), and the term 'section 314(b) plan' means a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b).

"GRANTS AND CONTRACTS FOR FEASIBILITY STUDIES AND PLANNING

"SEC. 1202. (a) The Secretary may make grants to and enter into contracts with eligible entities (as defined in section 1206(a))

for projects which include both (1) studying the feasibility of establishing (through expansion or improvement of existing services or otherwise) and operating an emergency medical services system and (2) planning the establishment and operation of such a system.

"(b) If the Secretary makes a grant or enters into a contract under this section for a study and planning project respecting an emergency medical services system for a particular geographical area, the Secretary may not make any other grant or enter into any other contract under this section for such project and he may not make a grant or enter into a contract under this section for any other study and planning project respecting an emergency medical services system for the same area or for an area which includes (in whole or substantial part) such area.

"(c) Reports of the results of any study and planning project assisted under this section shall be submitted to the Secretary and the Interagency Committee on Emergency Medical Services at such intervals as the Secretary may prescribe, and a final report of such results shall be submitted to the Secretary and such Committee not later than one year from the date the grant was made or the contract entered into, as the case may be.

"(d) An application for a grant or contract under this section shall—

"(1) demonstrate to the satisfaction of the Secretary the need of the area for which the study and planning will be done for an emergency medical services system;

"(2) contain assurances satisfactory to the Secretary that the applicant is qualified to plan an emergency medical services system for such area; and

"(3) contain assurances satisfactory to the Secretary that the planning will be conducted in cooperation (A) with each section 314(b) areawide health planning agency whose section 314(b) plan covers (in whole or in part) such area, and (B) with any emergency medical services council or other entity responsible for review and evaluation of the provision of emergency medical services in such area.

"(e) The amount of any grant under this section shall be determined by the Secretary.

"GRANTS AND CONTRACTS FOR ESTABLISHMENT AND INITIAL OPERATION

"SEC. 1203. (a) The Secretary may make grants to and enter into contracts with eligible entities (as defined in section 1206(a)) for the establishment and initial operation of emergency medical services systems.

"(b) Special consideration shall be given to applications for grants and contracts for systems which will coordinate with statewide emergency medical services systems.

"(c)(1) Grants and contracts under this section may be used for the modernization of facilities for emergency medical services systems and other costs of establishment and initial operation.

"(2) Each grant or contract under this section shall be made for costs of establishment and operation in the year for which the grant or contract is made. If a grant or contract is made under this section for a system, the Secretary may make one additional grant or contract for that system if he determines, after a review of the first nine months' activities of the applicant carried out under the first grant or contract, that the applicant is satisfactorily progressing in the establishment and operation of the system in accordance with the plan contained in his application (pursuant to section 1206(b)(4)) for the first grant or contract.

"(3) No grant or contract may be made under this section for the fiscal year ending June 30, 1976, to an entity which did not receive a grant or contract under this section for the preceding fiscal year.

"(4) Subject to section 1206(f)—

"(A) the amount of the first grant or contract under this section for an emergency medical services system may not exceed (i) 50 per centum of the establishment and operation costs (as determined pursuant to regulations of the Secretary) of the system for the year for which the grant or contract is made, or (ii) in the case of applications which demonstrate an exceptional need for financial assistance, 75 per centum of such costs for such year; and

"(B) the amount of the second grant or contract under this section for a system may not exceed (i) 25 per centum of the establishment and operation costs (as determined pursuant to regulations of the Secretary) of the system for the year for which the grant or contract is made, or (ii) in the case of applications which demonstrate an exceptional need for financial assistance, 50 per centum of such costs for such year.

"(5) In considering applications which demonstrate exceptional need for financial assistance, the Secretary shall give special consideration to applications submitted for emergency medical services systems for rural areas (as defined in regulations of the Secretary).

"GRANTS AND CONTRACTS FOR EXPANSION AND IMPROVEMENT

"SEC. 1204. (a) The Secretary may make grants to and enter into contracts with eligible entities (as defined in section 1206(a)) for projects for the expansion and improvement of emergency medical services systems, including the acquisition of equipment and facilities, the modernization of facilities, and other projects to expand and improve such systems.

"(b) Subject to section 1206(f), the amount of any grant or contract under this section for a project shall not exceed 50 per centum of the cost of that project (as determined pursuant to regulations of the Secretary).

"GRANTS AND CONTRACTS FOR RESEARCH

"SEC. 1205. (a) The Secretary may make grants to public or private nonprofit entities, and enter into contracts with private entities and individuals, for the support of research in emergency medical techniques, methods, devices, and delivery.

"(b) No grant may be made or contract entered into under this section for amounts in excess of $35,000 unless the application therefor has been recommended for approval by an appropriate peer review panel designated or established by the Secretary. Any application for a grant or contract under this section shall be submitted in such form and manner, and contain such information, as the Secretary shall prescribe in regulations.

"(c) The recipient of a grant or contract under this section shall make such reports to the Secretary as the Secretary may require.

"GENERAL PROVISIONS RESPECTING GRANTS AND CONTRACTS

"SEC. 1206. (a) For purposes of sections 1202, 1203, and 1204, the term 'eligible entity' means—

"(1) a State,

"(2) a unit of general local government,

"(3) a public entity administering a compact or other regional arrangement or consortium, or

"(4) any other public entity and any nonprofit private entity.

"(b)(1) No grant or contract may be made under this title unless an application therefor has been submitted to, and approved by, the Secretary.

"(2) In considering applications submitted under this title, the Secretary shall give priority to applications submitted by the entities described in clauses (1), (2), and (3) of subsection (a).

"(3) No application for a grant or contract under section 1202 may be approved unless—

"(A) the application meets the application requirements of such section;

"(B) in the case of an application submitted by a public entity administering a compact or other regional arrangement or consortium, the compact or other regional arrangement or consortium includes each unit of general local government of each standard metropolitan statistical area (as determined by the Office of Management and Budget) located (in whole or in part) in the service area of the emergency medical services system for which the application is submitted;

"(C) in the case of an application submitted by an entity described in clause (4) of subsection (a), such entity has provided a copy of its application to each entity described in clauses (1), (2), and (3) of such subsection which is located (in whole or in part) in the service area of the emergency medical services system for which the application is submitted and has provided each such entity a reasonable opportunity to submit to the Secretary comments on the application;

"(D) the—

"(i) section 314(a) State health planning agency of each State in which the service area of the emergency medical services system for which the application is submitted will be located, and

"(ii) section 314(b) areawide health planning agency (if any) whose section 314(b) plan covers (in whole or in part) the service area of such system,

have had not less than thirty days (measured from the date a copy of the application was submitted to the agency by the applicant) in which to comment on the application;

"(E) the applicant agrees to maintain such records and make such reports to the Secretary as the Secretary determines are necessary to carry out the provisions of this title; and

"(F) the application is submitted in such form and such manner and contains such information (including specification of applicable provisions of law or regulations which restrict the full utilization of the training and skills of health professions and allied and other health personnel in the provision of health care services in such a system) as the Secretary shall prescribe in regulations.

"(4)(A) An application for a grant or contract under section 1203 or 1204 may not be approved by the Secretary unless (i) the application meets the requirements of subparagraphs (B) through (F) of paragraph (3), and (ii) except as provided in subparagraph (B)(ii), the applicant (I) demonstrates to the satisfaction of the Secretary that the emergency medical services system for which the application is submitted will, within the period specified in subparagraph (B)(i), meet each of the emergency medical services system requirements specified in subparagraph (C), and (II) provides in the application a plan satisfactory to the Secretary for the system to meet each such requirement within such period.

"(B)(i) The period within which an emergency medical services system must meet each of the requirements specified in subparagraph (A) is the period of the grant or contract for which application is made; except that if the applicant demonstrates to the satisfaction of the Secretary the inability of the applicant's emergency medical services system to meet one or more of such requirements within such period, the period (or periods) within which the system must meet such requirement (or requirements) is such period (or periods) as the Secretary may require.

"(ii) If an applicant submits an application for a grant or contract under section 1203 or 1204 and demonstrates to the satisfaction of the Secretary the inability of the system for which the application is submitted to meet one or more of the requirements specified in subparagraph (C) within any specific period of time, the demonstration

and plan prerequisites prescribed by clause (ii) of subparagraph (A) shall not apply with respect to such requirement (or requirements).

"(C) An emergency medical services system shall—

"(i) include an adequate number of health professions, allied health professions, and other health personnel with appropriate training and experience;

"(ii) provide for its personnel appropriate training (including clinical training) and continuing education programs which (I) are coordinated with other programs in the system's service area which provide similar training and education, and (II) emphasize recruitment and necessary training of veterans of the Armed Forces with military training and experience in health care fields and of appropriate public safety personnel in such area;

"(iii) joint the personnel, facilities, and equipment of the system by a central communications system so that requests for emergency health care services will be handled by a communications facility which (I) utilizes emergency medical telephone screening, (II) utilizes, or, within such period as the Secretary prescribes, will utilize, the universal emergency telephone number 911, and (III) will have direct communication connections and interconnections with the personnel, facilities, and equipment of the system and with other appropriate emergency medical services systems;

"(iv) include an adequate number of necessary ground, air, and water vehicles and other transportation facilities to meet the individual characteristics of the system's service area—

"(I) which vehicles and facilities meet appropriate standards relating to location, design, performance, and equipment, and

"(II) the operators and other personnel for which vehicles and facilities meet appropriate training and experience requirements;

"(v) include an adequate number of easily accessible emergency medical services facilities which are collectively capable of providing services on a continuous basis, which have appropriate nonduplicative and categorized capabilities, which meet appropriate standards relating to capacity, location, personnel, and equipment, and which are coordinated with other health care facilities of the system;

"(vi) provide access (including appropriate transportation) to specialized critical medical care units in the system's service area, or, if there are no such units or an inadequate number of them in such area, provide access to such units in neighboring areas if access to such units is feasible in terms of time and distance;

"(vii) provide for the effective utilization of the appropriate personnel, facilities, and equipment of each public safety agency providing emergency services in the system's service area;

"(viii) be organized in a manner that provides persons who reside in the system's service area and who have no professional training or financial interest in the provision of health care with an adequate opportunity to participate in the making of policy for the system;

"(ix) provide, without prior inquiry as to ability to pay, necessary emergency medical services to all patients requiring such services;

"(x) provide for transfer of patients to facilities and programs which offer such followup care and rehabilitation as is necessary to effect the maximum recovery of the patient;

"(xi) provide for a standardized patient recordkeeping system meeting appropriate standards established by the Secretary, which records shall cover the treatment of the patient from initial entry into the system through his discharge from it, and shall be consistent with ensuing patient records used in followup care and rehabilitation of the patient;

"(xii) provide programs of public education and information in the system's service area (taking into account the needs of visitors to, as well as residents of, that area to know or be able to learn immediately the means of obtaining emergency medical services) which programs stress the general dissemination of information regarding appropriate methods of medical self-help and first aid and regarding the availability of first aid training programs in the area;

"(xiii) provide for (I) periodic, comprehensive, and independent review and evaluation of the extent and quality of the emergency health care services provided in the system's service area, and (II) submission to the Secretary of the reports of each such review and evaluation;

"(xiv) have a plan to assure that the system will be capable of providing emergency medical services in the system's service area during mass casualties, natural disasters, or national emergencies; and

"(xv) provide for the establishment of appropriate arrangements with emergency medical services systems or similar entities serving neighboring areas for the provision of emergency medical services on a reciprocal basis where access to such services would be more appropriate and effective in terms of the services available, time, and distance.

The Secretary shall by regulations prescribe standards and criteria for the requirements prescibed by this subparagraph. In prescribing such standards and criteria, the Secretary shall consider relevant standards and criteria prescribed by other public agencies and by private organizations.

"(c) Payments under grants and contracts under this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the Secretary determines will most effectively carry out this title.

"(d) Contracts may be entered into under this title without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

"(e) No funds appropriated under any provision of this Act other than section 1207 or title VII may be used to make a new grant or contract in any fiscal year for a purpose for which a grant or contract is authorized by this title unless (1) all the funds authorized to be appropriated by section 1207 for such fiscal year have been appropriated and made available for obligation in such fiscal year, and (2) such new grant or contract is made in accordance with the requirements of this title that would be applicable to such grant or contract if it was made under this title. For purposes of this subsection, the term 'new grant or contract' means a grant or contract for a program or project for which an application was first submitted after the date of the enactment of the Act which makes the first appropriations under the authorizations contained in section 1207.

(f) (1) In determining the amount of any grant or contract under section 1203 or 1204, the Secretary shall take into consideration the amount of funds available to the applicant from Federal grant or contract programs under laws other than this Act for any activity which the applicant proposes to undertake in connection with the establishment and operation or expansion and improvement of an emergency medical services system and for which the Secretary may authorize the use of funds under a grant or contract under section 1203 and 1204.

"(2) The Secretary may not authorize the recipient of a grant or contract under section 1203 or 1204 to use funds under such grant or contract for any training program in connection with an emergency medical services system unless the applicant filed an application (as appropriate) under title VII or VIII for a grant or contract for such program and such application was not approved or was approved but for which no or inadequate funds were made available under such title.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1207. (a) (1) For the purpose of making payments pursuant to grants and contracts under sections 1202, 1203, and 1204, there are authorized to be appropriated $30,000,000 for the fiscal year ending June 30, 1974, and $60,000,000 for the fiscal year ending June 30, 1975; and for the purpose of making payments pursuant to grants and contracts under sections 1203 and 1204 for the fiscal year ending June 30, 1976, there is authorized to be appropriated $70,000,000.

"(2) Of the sums appropriated under paragraph (1) for any fiscal year, not less than 15 per centum shall be made available for grants and contracts under this title for such fiscal year for emergency medical services systems which serve or will serve rural areas (as defined in regulations of the Secretary under section 1203(c)(5)).

"(3) Of the sums appropriated under paragraph (1) for the fiscal year ending June 30, 1974, or the succeeding fiscal year—

"(A) 15 per centum of such sums for each such fiscal year shall be made available only for grants and contracts under section 1202 (relating to feasibility studies and planning) for such fiscal year.

"(B) 60 per centum of such sums for each such fiscal year shall be made available only for grants and contracts under section 1203 (relating to establishment and initial operation) for such fiscal year, and

"(C) 25 per centum of such sums for each such fiscal year shall be made available only for grants and contracts under section 1204 (relating to expansion and improvement) for such fiscal year.

"(4) Of the sums appropriated under paragraph (1) for the fiscal year ending June 30, 1976—

"(A) 75 per centum of such sums shall be made available only for grants and contracts under section 1203 for such fiscal year, and

"(B) 25 per centum of such sums shall be made available only for grants and contracts under section 1204 for such fiscal year.

"(b) For the purpose of making payments pursuant to grants and contracts under section 1205 (relating to research), there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1974, and for each of the next two fiscal years.

"ADMINISTRATION

"SEC. 1208. The Secretary shall administer the program of grants and contracts authorized by this title through an identifiable administrative unit within the Department of Health, Education, and Welfare. Such unit shall also be responsible for collecting, analyzing, cataloging, and disseminating all data useful in the development and operation of emergency medical services systems, including data derived from reviews and evaluations of emergency medical services systems assisted under section 1203 or 1204.

"INTERAGENCY COMMITTEE ON EMERGENCY MEDICAL SERVICES

"SEC. 1209. (a) The Secretary shall establish an Interagency Committee on Emergency Medical Services. The Committee shall evaluate the adequacy and technical soundness of all Federal programs and activities which relate to emergency medical services and provide for the communication and exchange of information necessary to maintain the coordination and effectiveness of such programs and activities, and shall make recommendations to the Secretary respecting the administration of the program of grants and contracts under this title (including the making of regulations for such program).

"(b) The Secretary or his designee shall serve as Chairman of the Committee, the

membership of which shall incude (1) appropriate scientific, medical, or technical representation from the Department of Transportation, the Department of Justice, the Department of Defense, the Veterans' Administration, the National Science Foundation, the Federal Communications Commission, the National Academy of Sciences, and such other Federal agencies and offices (including appropriate agencies and offices of the Department of Health, Education, and Welfare) as the Secretary determines administer programs directly affecting the functions or responsibilities of emergency medical services systems, and (2) five individuals from the general public appointed by the President from individuals who by virtue of their training or experience are particularly qualified to participate in the performance of the Committee's functions. The Committee shall meet at the call of the Chairman, but not less often than four times a year.

"(c) Each appointed member of the Committee shall be appointed for a term of four years, except that—

"(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

"(2) of the members first appointed, two shall be appointed for a term of four years, two shall be appointed for a term of three years, and one shall be appointed for a term of one year, as designated by the President at the time of appointment.

Appointed members may serve after the expiration of their terms until their successors have taken office.

"(d) Appointed members of the Committee shall receive for each day they are engaged in the performance of the functions of the Committee compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule, including traveltime; and all members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(e) The Secretary shall make available to the Committee such staff, information (including copies of reports of reviews and evaluations of emergency medical services systems assisted under section 1203 or 1204), and other assistance as it may require to carry out its activities effectively

"ANNUAL REPORT

"SEC. 1210. The Secretary shall prepare and submit annually to the Congress a report on the administration of this title. Each report shall include an evaluation of the adequacy of the provision of emergency medical services in the United States during the period covered by the report, an evaluation of the extent to which the needs for such services are being adequately met through assistance provided under this title, and his recommendations for such legislation as he determines is required to provide emergency medical services at a level adequate to meet such needs. The first report under this section shall be submitted not later than September 30, 1974, and shall cover the fiscal year ending June 30, 1974."

(b) (1) Section 1 of the Public Health Service Act is amended by striking out "Titles I to XI" and inserting in lieu thereof "Titles I to XII".

(2) The Act of July 1, 1944 (58 Stat. 682), as amended, is further amended by renumbering XII (as in effect prior to the date of enactment of this Act) as title XIII, and by renumbering sections 1201 through 1214 (as in effect prior to such date), and references thereto, as sections 1301 through 1314, respectively.

TRAINING ASSISTANCE

SEC. 3. (a) Part E of title VII of the Public Health Service Act is amended by inserting after section 775 the following new section:

"TRAINING IN EMERGENCY MEDICAL SERVICES

"SEC. 776. (a) The Secretary may make grants to and enter into contracts with schools of medicine, dentistry, osteopathy, and nursing, training centers for allied health professions, and other appropriate educational entities to assist in meeting the cost of training programs in the techniques and methods of providing emergency medical services (including the skills required in connection with the provision of ambulance service), especially training programs affording clinical experience in emergency medical services systems receiving assistance under title XII of this Act.

"(b) No grant or contract may be made or entered into under this section unless (1) the applicant is a public or nonprofit private entity, and (2) an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

"(c) The amount of any grant or contract under this section shall be determined by the Secretary. Payments under grants and contracts under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretary finds necessary. Grantees and contractees under this section shall make such reports at such intervals, and containing such information, as the Secertary may require.

"(d) Contracts may be entered into under this section without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

"(e) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1974."

(b) Section 772(a) of such Act (42 U.S.C. 295f–2(a)) is amended—

(1) by striking out "or" at the end of paragraph (12),

(2) by striking out the period at the end of paragraph (13) and inserting in lieu thereof "; or", and

(3) by inserting after paragraph (13) the following new paragraph:

"(14) establish and operate programs in the interdisciplinary training of health personnel for the provision of emergency medical services, with particular emphasis on the establishment and operation of training programs affording clinical experience in emergency medical services systems receiving assistance under title XII of this Act."

(c) Section 774(a)(1)(D) of such Act (42 U.S.C. 295f–4(a)(1)(D)) is amended by inserting "(including emergency medical services)" after "services" each time it appears.

STUDY

SEC. 4. The Secretary of Health, Education, and Welfare shall conduct a study to determine the legal barriers to the effective delivery of medical care under emergency conditions. The study shall include consideration of the need for a uniform conflict of laws rule prescribing the law applicable to the provision of emergency medical services to persons in the course of travels on interstate common carriers. Within twelve months of the date of the enactment of this Act, the Secretary shall report to the Congress the results of such study and recommendations for such legislation as may be necessary to overcome such barriers and provide such rule.

The PRESIDING OFFICER. Who yields time?

Mr. MANSFIELD. Mr. President, if the Senator will yield me 1 minute——

Mr. JAVITS. I yield to the majority leader.

Mr. MANSFIELD. I suggest the absence of a quorum and ask unanimous consent that the time not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. JOHNSTON). Without objection, it is so ordered.

S. 2410: THE EMERGENCY MEDICAL SERVICES SYSTEMS ACT OF 1973

Mr. CRANSTON. Mr. President, once again the Senate is considering legislation to support our communities in their efforts to establish comprehensive and integrated emergency medical services systems for their residents and visitors.

This is the fifth time this legislation has been before the Senate.

The Committee on Labor and Public Welfare has reported this legislation to the floor three times—in S. 3716 in the 92d Congress; as S. 504, earlier this session, and today as S. 2410.

The Senate voted to adopt the conference report on S. 504 on July 19 this year by a vote of 97 to 0. Then on the second of August, the Senate voted to override the President's veto of S. 504 by a vote of 77 to 16.

The full Committee on Labor and Public Welfare, under the leadership of the distinguished Senator from New Jersey (Mr. WILLIAMS) and the distinguished Senator from Massachusetts (Mr. KENNEDY), chairman of the Subcommittee on Health, moved with great speed to consider S. 2410 in executive session and last Thursday unanimously ordered it reported to the Senate by a 16-to-0 vote last Thursday, September 13, the day after I introduced it.

Mr. President, this bill is truly a matter of life and death—a matter of life and death for as many as 200 persons who die needlessly each day in emergency situations and whose lives could be saved in this Nation if we had area emergency medical services systems of the kind which would be supported under this legislation.

It is also a matter of pain and suffering. The pain and suffering and deep mental anguish of the 400,000 permanently disabled each year whose degree of disability could be significantly reduced by such EMS systems. It is also a matter of commonsense and dollars and cents, because persons whose lives are saved and persons whose disabilities are reduced will be able to earn, pay taxes, and contribute to the gross national product.

This is no pie-in-the-sky hope or conjecture, Mr. President. These are the facts. We have the science and technology, the transportation and communications know-how, and the medical sophis-

tication to save these lives and prevent these disabilities.

What we do not have is a Federal program designed to pull together all of the divergent capabilities in local communities, regions, and States throughout the Nation so that they can develop and implement plans for EMS systems to make a comprehensive and coordinated approach to providing emergency medical care.

Mr. President, recent studies show that area EMS systems of the type to be assisted under this legislation could have a total of 67,000 lives each year in the following categories:

About 11,000 who would have died in traffic accidents;

About 16,000 children who would otherwise perish in accidents, many of them around the home;

A minimum of 35,000 who die needlessly from heart attacks; and

About 5,000 persons killed by other accidental deaths due to poisonings, drownings, and drug overdose.

DELETION OF PHS HOSPITAL PROVISION

Mr. President, S. 2410 contains provisions relating to the encouragement and support of the development of emergency medical services systems identical to those contained in S. 504 as passed by the Congress on July 19 of this year, but does not contain the provisions relating to the continued operation of the Public Health Service hospitals.

During the debate in the House on September 12 on the President's veto message on S. 504, virtually all Members of that body participating in the discussion voiced their full support for the emergency medical services systems provisions in S. 504, but a sufficient number held reservations about the provisions regarding the PHS hospitals to sustain, by a scant five votes, the veto of the President on that ground only. Indeed, 67 of those who voted to sustain the President have cosponsored legislation during the last week identical to S. 2410.

Because of the urgency of the need in the Nation of developing systems to cope with medical emergencies and the substantial support in Congress for the emergency medical services provisions of the vetoed S. 504, I introduced S. 2410 as a means of providing support for the development of emergency medical services systems as soon as possible.

BASIC PURPOSE OF THE BILL

Mr. President, the basic purpose of S. 2410 as reported is to authorize the Secretary of Health, Education, and Welfare to provide support to States, units of local government, combinations of local governments, or a public or nonprofit private entity under certain circumstances, to plan, improve, and expand comprehensive and integrated systems for providing emergency medical services. Such support would be premised on the development of a comprehensive plan for the establishment of a comprehensive and integrated emergency medical services system in the applicant community. The application would have to demonstrate how the applicant would meet, within a prescribed time period, specified requirements.

These requirements include opportunity for participation by all elements in the community—including consumers—having a relationship to emergency medical services in the development of the plan, and provision for certain essential components, including the training of necessary health care personnel—particularly paramedics—optimum utilization of existing facilities and other resources involved in the rendering of emergency care, both public and private, adequate provision for transportation of patients, and a communication network providing the necessary linkage from the point of the emergency through dispatch to a medical facility having the necessary specialized personnel and equipment. Other requirements of the plan to assure a comprehensive and integrated EMS system include assurances that anyone in need of emergency medical care will be provided such care without prior inquiry as to ability to pay for care; a program for coordinated and comprehensive public education and information; a plan for mobilization of resources to meet mass casualties arising from natural disasters; and provision for immediate access in terms of admission and transportation to specialized critical medical care units either within the community or in a neighboring community, as well as for a system to provide such followup care and rehabilitation—with consistent recordkeeping—as is necessary to bring about the patient's recovery.

Mr. President, the reported bill also establishes an interagency committee on emergency medical services at the Federal level to coordinate Federal programs and activities relating to emergency medical services. This committee is to advise, consult with, review, and make recommendations—in the same way as peer review panels operate for the National Institutes of Health to the Secretary on the administration of programs authorized by the reported bill.

The reported bill further provides for grants and contracts for the support of research in emergency medicine techniques, methods, devices, and delivery, and provides that such grants or contracts in excess of $35,000 must be subjected to an appropriate peer review panel modeled upon peer review panel operation within the National Institutes of Health.

Finally, Mr. President, the reported bill provides for grants and contracts to support training programs in the techniques and methods of providing emergency medical services, and especially training programs affording clinical experience in emergency medical services systems receiving assistance under the provisions of the reported bill.

It should be stressed that, although assistance is authorized to be provided under a grant or contract as necessary to support the carrying out of any requisite component of a plan, the basic thrust of the bill is to provide incentive payments for the development of a comprehensive and integrated system with maximum reliance for funding placed on acquisition of funds and resources under other Federal programs—especially for facilities, health manpower training, and transportation and equipment—through the Division of Emergency Medical Programs, Department of Transportation, and MAST, and on the generation of local funds. Provisions in the reported bill—subsections 1206 (e) and (f) make this explicit.

SPECIAL PROBLEMS OF RURAL COMMUNITIES

Mr. President, I would like to emphasize the recognition the reported bill gives to the critical needs of rural areas for assistance in providing emergency medical services.

Testimony received at hearings in Washington and California described the particularly acute problems rural communities have in providing adequate emergency medical care and in making successful applications for grant support. Since statistics on deaths and disabilities demonstrate that the ratio of such tragedies is much higher in rural isolated areas in proportion to the number of emergency incidents, I felt special emphasis and support should be provided to the development of systems for rural areas. The bill as reported included a provision that not less than 15 percent of the sums appropriated each year for feasibility studies, and the planning, establishment, and initial operation, and expansion and improvement, of emergency medical services systems shall be available only for grants and contracts for such activities in rural areas. Today, I am pleased to cosponsor and accept Mr. DOLE's amendment to increase this percentage to 17½ percent.

I am well aware, Mr. President, that some communities, particularly in rural areas, may not be able to provide the assurance that all components of the emergency medical services system can meet within the time prescribed, the standards prescribed by the Secretary to qualify for assistance under the new title XII. To avoid disqualifying such communities from consideration, the committee has provided that where an applicant demonstrates clearly that a particular component cannot meet standards within the period prescribed, a grant can be awarded on the assurance that such standards will be met within a period specifically prescribed by the Secretary for that community. In addition, the committee recognizes that some communities may not be able to meet a particular requirement within any specific period of time. In such event, where there is clear and convincing evidence that the requirement in question cannot be met, the community must provide the Secretary with a plan for achieving alternatives to the requirement in question, which plan must be acceptable to the Secretary.

In addition, the reported bill provides for a higher Federal ratio in matching grants of up to 75 percent for the first year, and 50 percent for a second year, for establishment and initial operation of an emergency medical services system in the case of applications which demonstrate an exceptional need for financial assistance.

In considering applications for this higher rate of Federal matching, the Secretary is directed to give special con-

sideration to applications submitted for rural areas.

Again, today, I am pleased to cosponsor with the distinguished Senator from Kansas (Mr. DOLE) an amendment that would permit Federal matching of up to 75 percent for grants for expansion and improvement of emergency medical services systems in the case of applications which demonstrate an exceptional need for financial assistance. This provision will be of benefit to rural communities as well as to urban areas where financial needs are great.

I am also pleased to cosponsor the amendment with Mr. DOLE which would specify that, where appropriate, technical assistance shall be provided communities where it is necessary in the preparation of grant applications, with special consideration for the needs of rural areas.

Testimony presented before hearings I chaired, at the request of the distinguished Senator from Massachusetts, in California, demonstrated the difficulties rural communities have in competing for Federal grant support. The provision of technical assistance should enable eligible rural areas to be represented more equitably among successful EMS applicants.

The needs of rural communities have been recognized again in an amendment I am cosponsoring with Mr. DOLE, which would state that in awarding research grants in the delivery of emergency medical services, special consideration shall be given to proposals for research on the delivery of such services in rural areas.

Mr. President, I would like to summarize briefly the provisions of S. 2410.

SUMMARY OF PROVISIONS

Mr. President, the bill as reported does the following:

First, Mr. President, S. 2410 authorizes the appropriation of a total of $160 million over a 3-year period for grants and contracts to, one, States; two, political subdivisions; three, regional arrangements, compacts, or consortiums—including at least a standardized metropolitan statistical area—SMSA—if any; or four, under certain circumstances, public or nonprofit private entities, for feasibility studies and planning, establishment and initial operation, and expansion and improvement of area emergency medical services systems, and requires that no less than 15 percent of the sums appropriated each year shall be made available for grants and contracts for rural areas. Makes clear that in determining the amount of funds to be provided for any component of a system under any such grant or contract, the Secretary shall insure that such assistance is provided only to the extent that alternative sources of financial support under other provisions of law for such a component are inadequate to enable it to meet standards and criteria prescribed in regulations the Secretary is required to promulgate.

Mr. President the total amount authorized, include research and training grants and contracts (see discussion under items 11 and 12 below), is $185 million over 3 fiscal years.

Second, Mr. President, S. 2410 provides that 15 percent of the amounts appropriated in fiscal years 1974 and 1975 shall be made available for grants and contracts for projects which will include both studying the feasibility of establishing, through the expansion or improvement of existing services or otherwise, and operating an emergency medical services system and planning the establishment and operation of such a system.

Third, Mr. President, S. 2410 provides that 60 percent of the amounts appropriated in fiscal years 1974 and 1975, and 75 percent in fiscal year 1976, shall be made available for grants and contracts for establishment and initial operation of emergency medical services systems to an eligible applicant submitting an application demonstrating how it will establish a comprehensive and coordinated areawide emergency medical services system meeting requirements which section 1206 requires the Secretary to establish.

Fourth. Mr. President, S. 2410 provides that 25 percent of the amounts appropriated for each fiscal year shall be made available for grants and contracts for projects for the expansion and improvement of emergency medical services systems, including the acquisition of equipment and facilities, the modernization of facilities, and other projects to expand and improve such systems.

Fifth. Mr. President, S. 2410 provides for Secretarial review and evaluation of the applicant's performance and prohibits renewal of assistance whenever the Secretary determines, in accordance with prescribed standards, that performance is not substantially in compliance with the plan included in the application.

Sixth. Mr. President, S. 2410 requires that the plan submitted with each application include evidence of appropriate community participation, and demonstrate how the system will include provision for coordinated training programs, communications systems, transportation systems, categorized and nonduplicative facilities, access to specialized medical care units; assurance that services will be available to all patients without prior inquiry as to ability to pay; provision for adoption of a plan for coping with mass disasters; provision for transfer to facilities and programs for followup care; provision for a comprehensive public information program; provision for continuing review and evaluation of the emergency medical services system; and provision for a standardized patient recordkeeping system. Specifies that standards and criteria for the plan requirements shall be prescribed by the Secretary in regulations.

Seventh. Mr. President, S. 2410 requires the Secretary to administer the program of grants and contracts authorized in the new title XII through an identifiable administrative unit within the Department of Health, Education, and Welfare, and makes such unit responsible for collecting, analyzing, cataloging, and disseminating all data useful in the development and operation of emergency medical services systems.

Eighth. Mr. President, S. 2410 establishes the Interagency Committee on Emergency Medical Services composed of representatives of all Federal agencies having a relationship to emergency medical services, which committee is given responsibility for coordinating all Federal programs and activities for emergency medical services, and providing for the communication and exchange of information necessary to maintain such coordination and the effectiveness of such programs. Directs the Interagency Committee to make recommendations to the Secretary of Health, Education, and Welfare respecting the administration of programs authorized by the reported bill, including the making of all regulations to carry out programs under the new title XII.

Ninth. Mr. President, S. 2410 requires review of the grant application by 314 (a) and (b) agencies and an opportunity to submit nonbinding comments on such application to the Secretary, and the maintenance and submission of such records and reports as the Secretary determines are necessary.

Tenth. Mr. President, S. 2410 provides that a grant or contract for establishment and initial operation or expansion and improvement of an emergency medical services system may not be approved unless, among other things, the applicant demonstrates that the system will meet each of the specified component requirements within a specified period of time and provides a plan for meeting such requirements within such period; except that this demonstration and plan prerequisite will not apply in the case of any component requirement which an applicant has shown cannot be met by the applicant's emergency medical services system within any specific period of time. Specifies with respect to any such requirement that the applicant shall provide in his application a plan for undertaking activities in connection with the system to deal with the matters with which such requirement is concerned.

Eleventh. Mr. President, S. 2410 authorizes grants in the case of public or private nonprofit entities, and contracts in the case of private entities, for the support of research in emergency medicine techniques, methods, devices and delivery, authorizing the appropriation of a total of $15 million over a 3-year period for such research.

Twelfth. Mr. President, S. 2410 authorizes an appropriation of $10 million for fiscal year 1974 for grants and contracts for training programs in the techniques and methods of providing emergency medical services—including the skills required in connection with the provision of ambulance service—especially training programs affording clinical experience in emergency medical services systems receiving assistance under the provisions of the new title.

Thirteenth. Mr. President, S. 2410 amends title VII of the Public Health Service Act to include, in the sections for special project grants and health manpower education initiative awards, specific authorizations for grants for the interdisciplinary training of health personnel in the provision of emergency medical services.

Fourteenth. Mr. President, S. 2410 pro-

vides that where the sums authorized by S. 2410 are not appropriated and obligated at the full level of authorizations in any fiscal year, funds available under any other provision of the Public Health Service Act, except new section 1207 or title VII, may be expended only for new grants or contracts—grantees or contractees not previously receiving assistance—for the development or expansion of, or research in, emergency medical services systems or components of such systems in accordance with the requirements of the new title.

Fifteenth. Mr. President, S. 2410 requires an annual report to Congress on the administration of programs authorized by the new title, including an evaluation of the adequacy of the provision of emergency medical services throughout the Nation, and recommendations for legislation necessary to provide services adequate to meet such needs.

Sixteenth. Mr. President, S. 2410 directs the Secretary to conduct a study to determine legal barriers to the effective delivery of medical care under emergency conditions including consideration of the need for a uniform conflict of laws rule prescribing the law applicable to the provision of emergency medical services to persons in the course of travels on interstate common carriers.

Mr. President, I think there is no need to belabor this issue. I believe that all Members are familiar with the great need for this bill and the great support for its provisions throughout the country. The bill is cosponsored by the following Senators:

Mr. KENNEDY, Mr. SCHWEIKER, Mr. WILLIAMS, Mr. JAVITS, Mr. BEALL, Mr. DOMINICK, Mr. EAGLETON, Mr. HATHAWAY, Mr. HUGHES, Mr. MONDALE, Mr. NELSON, Mr. PELL, Mr. RANDOLPH, Mr. STAFFORD, Mr. TAFT, Mr. MAGNUSON, Mr. MCINTYRE, Mr. STEVENSON, and Mr. DOLE.

I urge my colleagues to approve S. 2410 by an overwhelming vote, and I am hopeful that the President will direct his advisors to review and reconsider the EMS provisions so that when this bill reaches him a second time, without the Public Health Service hospital provision, he will elect to sign it.

Mr. President, I understand that the distinguished Senator from New York (Mr. JAVITS), the ranking minority member of the full committee, would like to make a statement at this time, and I yield to him for that purpose.

Mr. JAVITS. Mr. President, this is an extremely desirable bill. We are all indebted to the distinguished Senator from California (Mr. CRANSTON) for the enormous struggle he has waged to get this matter into law notwithstanding the veto. I am completely for it.

Mr. President, I urge my colleagues to support the emergency medical services bill, S. 2410. This legislation is identical to the emergency medical services bill (S. 504) vetoed by the President on August 2, 1973, and overridden by the Senate, but does not contain the provisions relating to the continued operation of the Public Health Service hospitals.

The program authorized by this bill is not a large one, $185 million over 3 years. It is designed to allow communities to receive a start in EMS. First, seed money is authorized for planning of a proper program. Second, 1-year grant money is made available for a portion of the costs of establishment and initial operation of the EMS system. A second year's grant, at a lesser Federal contribution, is authorized if the EMS system is progressing satisfactorily. After that, the system is on its own. This is not a massive infusion of Federal money into local EMS systems, but rather represents a Federal commitment to allow deserving communities to plan and get started with effective emergency transportation and care.

Although the House did not override the veto, it was clear from the debate that the issue for the Members was not the necessity for the emergency medical services provisions of the bill. The issue was the unrelated PHS hospital provision in the bill. The evidence was overwhelming about the need for EMS legislation but there was a difference of opinion about the PHS hospitals.

The commitment on a bipartisan basis by the House to the EMS provisions of this bill is reflected in the words of Congressman NELSEN. Although he voted to sustain the President's veto, Congressman NELSEN said:

> Mr. Speaker, getting to the emergency medical bill, 50 of us have introduced the bill in its exact language. We have not changed a single period or a single word in that bill, because we believe it would not require a hearing. It could be brought back to the floor and passed.

We must accept political reality. Although I believe in the continued operation of the PHS hospitals—and am gratified by Secretary Weinberger's decision that—

> Accordingly, we have decided that the Staten Island hospital is to continue its operation unchanged, and the Department presently has no plan either completed or under development to transfer to community hospitals the care now provided there on an inpatient or outpatient basis.

I support the decision to accommodate the President and delete the PHS hospital provision from the bill. At the same time, since this was the only issue debated by the House in its decision to sustain the veto, I would urge the President—whatever his original reservations about the bill—in the spirit of compromise which he has urged the Congress and Executive to adopt, that this bill be enacted into law.

One of our Members has some amendments which, hopefully, we can agree to, and the bill should then move to passage within the next few minutes.

I would hope very much that the distinguished Senator from Kansas (Mr. DOLE) could now propose his amendments.

The PRESIDING OFFICER (Mr. HATHAWAY). Does the Senator from California move that the committee amendments considered and agreed to en bloc at this time?

Mr. CRANSTON. Yes, Mr. President, I so move.

The motion was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. DOLE. Mr. President, I send to the desk a series of amendments for myself and the senior Senator from California, Senator CRANSTON, as primary cosponsors, and also in behalf of Senators DOMINICK, BEALL, and TOWER. I ask that the amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered, and the amendments will be considered en bloc.

The clerk will state the amendments.

The assistant legislative clerk read the amendments as follows:

> In subsection (b) of section 1204 in section 2 of the bill, insert "(i)" after "exceed", and insert before the period at the end thereof the following: ", or (ii) in the case of applications which demonstrate an exceptional need for financial assistance, 75 per centum of such costs."
>
> At the end of paragraph (4) of subsection (b) of section 1206 in section 2 of the bill, insert the following new paragraph:
>
> "(5) The Secretary shall provide technical assistance as appropriate to eligible entities as necessary for the purpose of their preparing applications or otherwise qualifying for or carrying out grants or contracts under section 1202, 1203, or 1204, with special consideration for applicants in rural area.
>
> On page 18, line 14, insert the following: strike out "15 per centum" and insert in lieu thereof "17½ per centum".

Mr. DOLE. Mr. President, the amendments proposed several minor changes in the bill and are intended to make the emergency medical service program more readily available to rural communities and increase the level of assistance available to these communities. I wish to emphasize, however, that I support the bill in its present form and fully agree with the basic thrust of the legislation. The amendment is not intended to disturb the basic structure of the bill but rather is designed in the simplest way possible to add special provisions for rural communities and strengthen the existing provisions of the bill which relate to emergency medical services in rural areas. A similar amendment is being considered in the House and hopefully similar action on this issue in both Houses of Congress will remove the necessity of a conference on the bill and insure prompt passage.

Mr. President, I am sure my colleagues agree that there is great need for better emergency medical services in rural communities. The rural health problem is becoming more acute every day, not only in the area of emergency care but also in the other areas of general health care delivery. Smaller communities are having a difficult time attracting an adequate number of physicians and health care professionals. The health care facilities are struggling for economic survival.

It is the basic nature of these rural communities—the fact that a small population is scattered over large areas—which makes the delivery of primary health care so difficult. It is this basic nature which makes adequate emergency medical services systems in these communities so essential. Great distances often separate the citizens of these communities and the professional care and health facilities they might need to utilize in an emergency situation. A system which assures prompt communication of the medical need and provides

immediate transportation of the patient under trained supervision to the closest emergency care facility is an essential element of the health care system of any rural community. The planning and development of a comprehensive EMS system is what this legislation is intended to encourage and assist. I can think of no situation in which a greater need exists and in which such a system would accomplish more good than it would in many of the rural communities of Kansas. The amendments I am now offering are intended to insure that these Kansas communities and communities like them across the country will receive a proportionate share of the assistance made available under this legislation.

I would now like to briefly discuss individually the changes I have proposed to the bill and offer a brief explanation as to why I feel they should be added to this legislation.

The first amendment when added to section 1206 of the bill would require that the Secretary of Health, Education, and Welfare provide technical assistance to eligible entities in rural areas to assist in preparing applications, qualifying the entities for grants and contracts, and in the development of the project itself.

I am aware of the provisions in the bill which require that an applicant under the EMS program to demonstrate to the satisfaction of the Secretary that it is qualified to plan an emergency medical services system. I do not disagree with this provision, but only ask that the technical assistance be provided through HEW to insure that a larger number of rural applications are prepared and qualify for assistance. We cannot afford as a nation to throw dollars at a problem hoping that in some magical way they will by their very presence provide a solution. But at the same time I feel it is incumbent upon the Federal Government to assist those most in need of Federal assistance so that they might have an opportunity to qualify and participate in the Federal programs. The qualifications which are a prerequisite to participation in this program need not be lowered, but by providing the technical assistance mandated in this amendment. HEW would be helping raise the technical ability of rural areas most in need of assistance and give them a better opportunity to qualify as participants in the program.

The manner in which the bill is drafted and the 3-year program as outlined makes it even more important that an applicant be able to gain approval of its contract during the first years of the program if it wishes to obtain any development and initial operational assistance in the following years. This formula may work a hardship on certain rural communities who do not possess the experience, expertise, manpower or resources required to submit an application as technical and comprehensive as will be required under this program. The technical assistance provided under this amendment is intended to help compensate for the handicap many rural communities will be operating under hurriedly developing an application during the first years of the program.

The second change requested by the amendment would alter section 1204, the expansion and improvement grant provision, so that the Federal share of grants for emergency medical services systems in areas of extreme need could go as high as 75 percent of the expansion and improvement cost for programs during the fiscal year. This change merely brings the legislative guidelines for the expansion and improvement program in line with those legislated under the 1203 establishment and initial operation program. In fact, the language of the amendment was extracted from section 1204 of the bill.

The amendment takes into consideration the limited financial capabilities of many rural and sparsely populated areas. It does not mandate that the EMS systems receive Federal assistance at a 75 percent rate, but merely permits such a level of funding should the Secretary determine the need exists.

The third amendment would add rural emphasis to section 1205 by requiring that special consideration be given applications for grants or contracts for research relating to the delivery of emergency medical services in rural areas. Research on emergency medical techniques, methods, and devices will produce discoveries which can be utilized in both urban and rural settings. However, in the area of delivery, which is a research topic listed in the bill, the rural systems have a unique and separate problem. They must provide services over a much broader area and develop communication links into many areas which do not already have a sophisticated communication system. They must meet these requirements with less personnel, professional manpower, expertise, and financial resources. The development of a comprehensive system which is mandated under this law given these limiting factors creates a unique problem in rural areas and deserves special consideration as a topic of research. New and more efficient and effective methods of delivery are essential to the success of rural emergency medical systems.

Mr. President, I would, perhaps at this point, ask the distinguished Senator from California (Mr. CRANSTON), does he have the bill before him?

Mr. CRANSTON. Yes.

Mr. DOLE. The fourth amendment would require that not less than 17.5 percent of the funds authorized under this bill be made available for grants and contracts for emergency medical services which serve or will serve rural areas.

Mr. President, I ask unanimous consent to modify the last of the series of my amendments to read: "Not less than 17½ percent."

The PRESIDING OFFICER. Without objection, the amendment is so modified.

Mr. DOLE. Mr. President, I would ask the Senator from California if he would agree that the amendment establishes only the minimum amounts which are to be set aside for expenditure in rural areas. The amendment has no bearing on what might be expended if the rural applications are made and properly processed, and if the need is there.

I would say, in that regard, that there is a need in rural America. About 26 percent of the population resides in rural America and I understand that, about twice the number of serious accidents occur in rural areas that need emergency medical services. In addition, the people are more scattered in rural America which makes the delivery of emergency medical care more difficult. A combination of these factors justify the conclusion that there is a need for better emergency services.

So, therefore, I would ask the Senator from California if he concurs in the point, that the 17.5 percent is not a limitation, but a floor provision which insures that no less than that amount will be spent in rural areas.

Mr. CRANSTON. Mr. President, the Senator from California does concur with the Senator from Kansas. The set-aside is a minimum. If there is demonstrated need, more than that can be spent. We had hearings in California which showed clearly the great need in the rural communities. We are aware of other evidence to support that proposition. The Senator from California offered the original language to the bill which provided the 15 percent minimum for rural areas.

Mr. DOLE. Mr. President, I have no further comment on the amendments.

Mr. JAVITS. Mr. President, the Senator from Kansas has, I think, produced excellent amendments with regard to the world situation. I join in the legislative intent of the bill as explained by the Senator from California and I hope that the Senate will accept these amendments.

Mr. DOMINICK. Mr. President, will the Senator from Kansas yiled?

Mr. DOLE. I yield.

Mr. DOMINICK. I also want to congratulate the distinguished Senator from Kansas. I think these amendments are good. The figure of 17½ percent probably originated in my debate with the Senator from Massachusetts over the HMO bills. It seems to me to have been pretty successful so maybe we had better stick with it. But I want to say that I am grateful to the Senator from California for bringing this bill up so fast. I cosponsored the bill, and I am happy to be able to support this proposal.

Mr. CRANSTON. I thank the Senator from Colorado for his generous words and for his marvelously effective work on this bill. His contributions have been invaluable throughout the development of this legislation.

Mr. BEALL. Mr. President, will the Senator yield?

Mr. DOLE. I yield.

Mr. BEALL. Mr. President, I congratulate the Senator from Kansas for producing these amendments, which would provide technical assistance to rural areas.

I had occasion last Friday to be in Baltimore, at the University of Maryland Hospital, and participated in a ceremony in which a plaque was dedicated to the memory of two Maryland State policemen who lost their lives in a helicopter while providing emergency medical service a couple of months ago. Unfortunately, two other policemen were lost yesterday.

As a result of the initiative taken by the University of Maryland in our State, we are now working on a statewide communications network, preliminary to establishing a full medical service network throughout the State. The kind of amendment offered by the Senator from Kansas will go a long way in assisting our State to realize the dream of having a full, statewide network to provide emergency service. I am happy that the Senator offered these amendments, and I am happy to join in supporting them.

Mr. CRANSTON. Mr. President, before there are further comments from this side of the aisle on the amendment of the Senator from Kansas, I think the distinguished chairman of the subcommittee, Mr. KENNEDY, who has done such effective work on this bill and whose leadership in the health field has been so great generally, should be heard on the amendment.

I yield to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank the Senator from California. I, too, join in urging the Senate to accept these amendments.

During the course of our hearings, we determined that one of the most important and crucial need areas in the emergency medical service was in the rural communities. These amendments certainly comply with the intention of the Health Committee in insuring that the kinds of assistance that will come with this legislation—are going to be equally applicable on an equitable basis to the rural communities, which are in dire need of this type of assistance.

So I, too, commend the Senator from Kansas for these amendments. I think they strengthen the bill, and I urge their acceptance.

Mr. President, I am delighted, as chairman of the Senate Health Subcommittee, to support S. 2410, which was unanimously reported from my committee, to improve emergency medical services throughout the United States. I believe the passage of this bill is essential if we are to enable our health delivery system to meet the demands placed upon it by accidental injury and sudden death.

Accidental death is one of the great neglected diseases in our society today. In fact, the lack of adequate emergency medical service is the major cause of avoidable premature death today. It is the leading cause of death among all people between the ages of 1 and 38. Each year more than 52 million Americans are injured and of those, more than 110,000 die. Eleven million persons require hospitalization, and of them, 400,000 suffer lasting disability.

Of the more than 700,000 deaths each year from heart disease, the majority are due to acute heart attack and more than half of these deaths occur before the victim reaches a hospital.

The emergency rooms of this Nation's hospitals are terribly overcrowded. As a matter of fact, there has been a 600 percent increase in emergency room visits in the last 25 years.

There is a critical shortage, Mr. President, in adequately trained emergency health manpower. For example, 25 percent of the Nation's ambulance drivers have not had Red Cross training. And 10 percent of them have had no training at all.

Mr. President, the cost of emergency medical services is already exorbitant, and is still increasing. The use of an ambulance costs more than $75. And most health insurance policies do not cover such services.

The bill we are considering today has been designed to improve this deplorable situation. The bill will make assistance available to States and localities to enable them to design and implement emergency medical programs tailored to their own local needs. This is a 3-year bill which authorizes a total of $185 million. The original version of this bill, S. 504, passed the Senate by a vote of 79 to 13. The conference report on S. 504 was adopted in the Senate by a vote of 97 to 0. And the Senate voted to override President Nixon's veto of S. 504 by a vote of 77 to 16.

As we know, the other body did not override the President's veto.

As I understand it, the President's principal objection to the bill was the inclusion of a provision which would require the continued operation of the U.S. Public Health Service hospitals until such time as a plan had been made for their closure or transfer which had community and congressional sanction. I continue to support that particular provision. I believe that the administration's actions in attempting to abruptly terminate the operation of these hospitals has been outrageous. And I believe that the litigation which is now in progress which is intended to enjoin the administration from closing the hospitals will be successful.

Mr. President, S. 2410 is identical to the conference report on S. 504 except that it deletes the provisions respecting the Public Health Service hospitals.

I am hopeful that with this change the President will find it possible to sign this bill into law. It is, after all, consistent with the statement he made about the need for better emergency medical services in his 1972 health message to the Congress.

I urge my colleagues to support the bill.

Mr. CRANSTON. Mr. President, I join the distinguished Senator from Massachusetts in supporting the amendments. They are perfectly agreeable so far as we are concerned.

The PRESIDING OFFICER. Is all time yielded back on the amendments?

Mr. DOLE. I yield back the remainder of my time.

Mr. CRANSTON. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendments of the Senator from Kansas.

The amendments were agreed to.

Mr. CRANSTON. Mr. President, I yield back the remainder of my time on the bill.

Mr. JAVITS. I yield back the remainder of my time.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, briefly.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill having been read the third time, the question is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Michigan (Mr. HART), and the Senator from Montana (Mr. METCALF), are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), is absent on official business.

I also announce that the Senator from Oklahoma (Mr. BELLMON) and the Senator from Kansas (Mr. PEARSON), are absent because of illness.

I further announce that the Senator from Arizona (Mr. GOLDWATER), and the Senator from Ohio (Mr. SAXBE), are necessarily absent.

The result was announced—yeas 93, nays 0, as follows:

[No. 399 Leg.]

YEAS—93

Abourezk	Fannin	Montoya
Aiken	Fong	Moss
Allen	Fulbright	Muskie
Baker	Gravel	Nelson
Bartlett	Griffin	Nunn
Bayh	Gurney	Packwood
Beall	Hansen	Pastore
Bentsen	Hartke	Pell
Bible	Haskell	Percy
Biden	Hatfield	Proxmire
Brock	Hathaway	Randolph
Brooke	Helms	Ribicoff
Buckley	Hollings	Roth
Burdick	Hruska	Schweiker
Byrd, Harry F., Jr.	Huddleston	Scott, Pa.
Byrd, Robert C.	Hughes	Scott, Va.
Cannon	Humphrey	Sparkman
Case	Inouye	Stafford
Chiles	Jackson	Stennis
Church	Javits	Stevens
Clark	Johnston	Stevenson
Cook	Kennedy	Symington
Cotton	Long	Taft
Cranston	Magnuson	Talmadge
Curtis	Mansfield	Thurmond
Dole	Mathias	Tower
Domenici	McClellan	Tunney
Dominick	McClure	Weicker
Eagleton	McGee	Williams
Eastland	McGovern	Young
Ervin	McIntyre	
	Mondale	

NAYS—0

NOT VOTING—7

Bellmon	Hart	Saxbe
Bennett	Metcalf	
Goldwater	Pearson	

So the bill (S. 2410) was passed, as follows:

S. 2410

A bill to amend the Public Health Service Act to provide assistance and encouragement for the development of comprehensive area emergency services systems

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Emergency Medical Services System Act of 1973".

EMERGENCY MEDICAL SERVICES SYSTEMS

SEC. 2. (a) The Public Health Service Act is amended by adding at the end thereof the following new title:

"TITLE XII—EMERGENCY MEDICAL SERVICES SYSTEMS

"DEFINITIONS

"SEC. 1201. For purposes of this title:

"(1) The term 'emergency medical services system' means a system which provides for the arrangement of personnel, facilities, and equipment for the effective and coordinated delivery in an appropriate geographical area of health care services under emergency conditions (occurring either as a result of the patient's condition or of natural disasters or similar situations) and which is administered by a public or nonprofit private entity which has the authority and the resources to provide effective administration of the system.

"(2) The term State includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"(3) The term 'modernization' means the alteration, major repair (to the extent permitted by regulations), remodeling, and renovation of existing buildings (including initial equipment thereof), and replacement of obsolete, built-in (as determined in accordance with regulations) equipment of existing buildings.

"(4) The term 'section 314(a) State health planning agency' means the agency of a State which administers or supervises the administration of a State's health planning functions under a State plan approved under section 314(a).

"(5) The term 'section 314(b) areawide health planning agency' means a public or nonprofit private agency or organization which has developed a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b), and the term 'section 314(b) plan' means a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b).

"GRANTS AND CONTRACTS FOR FEASIBILITY STUDIES AND PLANNING

"SEC. 1202. (a) The Secretary may make grants to and enter into contracts with eligible entities (as defined in section 1206(a)) for projects which include both (1) studying the feasibility of establishing (through expansion or improvement of existing services or otherwise) and operating an emergency medical services system (and) (2) planning the establishment and operation of such a system.

"(b) If the Secretary makes a grant or enters into a contract under this section for a study and planning project respecting an emergency medical services system for a particular geographical area, the Secretary may not make any other grant or enter into any other contract under this section for such project, and he may not make a grant or enter into a contract under this section for any other study and planning project respecting an emergency medical services system for the same area or for an area which includes (in whole or substantial part) such area.

"(c) Reports of the results of any study and planning project assisted under this section shall be submitted to the Secretary and the Interagency Committee on Emergency Medical Services at such intervals as the Secretary may prescribe, and a final report of such results shall be submitted to the Secretary and such Committee not later than one year from the date the grant was made or the contract entered into, as the case may be.

"(d) An application for a grant or contract under this section shall—

"(1) demonstrate to the satisfaction of the Secretary the need of the area for which the study and planning will be done for an emergency medical services system;

"(2) contain assurances satisfactory to the Secretary that the applicant is qualified to plan an emergency medical services system for such area; and

"(3) contain assurances satisfactory to the Secretary that the planning will be conducted in cooperation (A) with each section 314(b) areawide health planning agency whose section 314(b) plan covers (in whole or in part) such area, and (B) with any emergency medical services council or other entity responsible for review and evaluation of the provision of emergency medical services in such area.

"(e) The amount of any grant under this section shall be determined by the Secretary.

"GRANTS AND CONTRACTS FOR ESTABLISHMENT AND INITIAL OPERATION

"SEC. 1203. (a) The Secretary may make grants to and enter into contracts with eligible entities (as defined in section 1206(a)) for the establishment and initial operation of emergency medical services systems.

"(b) Special consideration shall be given to applications for grants and contracts for systems which will coordinate with statewide emergency medical services systems.

"(c)(1) Grants and contracts under this section may be used for the modernization of facilities for emergency medical services systems and other costs of establishment and initial operation.

"(2) Each grant or contract under this section shall be made for costs of establishment and operation in the year for which the grant or contract is made. If a grant or contract is made under this section for a system, the Secretary may make one additional grant or contract for that system if he determines, after a review of the first nine months' activities of the applicant carried out under the first grant or contract, that the applicant is satisfactorily progressing in the establishment and operation of the system in accordance with the plan contained in his application (pursuant to section 1206(b)(4) for the first grant or contract.

"(3) No grant or contract may be made under this section for the fiscal year ending June 30, 1976, to an entity which did not receive a grant or contract under this section for the preceding fiscal year.

"(4) Subject to section 1206(f)—

"(A) the amount of the first grant or contract under this section for an emergency medical services system may not exceed (i) 50 per centum of the establishment and operation costs (as determined pursuant to regulations of the Secretary) of the system for the year for which the grant or contract is made, or (ii) in the case of applications which demonstrate an exceptional need for financial assistance, 75 per centum of such costs for such year; and

"(B) the amount of the second grant or contract under this section for a system may not exceed (i) 25 per centum of the establishment and operation costs (as determined pursuant to regulations of the Secretary) of the system for the year for which the grant or contract is made, or (ii) in the case of applications which demonstrate an exceptional need for financial assistance, 50 per centum of such costs for such year.

"(5) In considering applications which demonstrate exceptional need for financial assistance, the Secretary shall give special consideration to applications submitted for emergency medical services systems for rural areas (as defined in regulations of the Secretary).

"GRANTS AND CONTRACTS FOR EXPANSION AND IMPROVEMENT

"SEC. 1204. (a) The Secretary may make grants to and enter into contracts with eligible entities (as defined in section 1206(a)) for projects for the expansion and improvement of emergency medical services systems, including the acquisition of equipment and facilities, the modernization of facilities, and other projects to expand and improve such systems.

"(b) Subject to section 1206(f), the amount of any grant or contract under this section for a project shall not exceed (i) 50 per centum of the cost of that project (as determined pursuant to regulations of the Secretary), or (ii) in the case of applications which demonstrate an exceptional need for financial assistance, 75 per centum of such costs".

"GRANTS AND CONTRACTS FOR RESEARCH

"SEC. 1205. (a) The Secretary may make grants to public or private nonprofit entities, and enter into contracts with private entities and individuals, for the support of research in emergency medical techniques, methods, devices, and delivery. In making grants or contracts for research relating to the delivery of emergency medical services, the Secretary shall give special consideration to applications for such grants or contracts relating to such delivery in rural areas.

"(b) No grant may be made or contract entered into under this section for amounts in excess of $35,000 unless the application therefor has been recommended for approval by an appropriate peer review panel designated or established by the Secretary. Any application for a grant or contract under this section shall be submitted in such form and manner, and contain such information, as the Secretary shall prescribe in regulations.

"(c) The recipient of a grant or contract under this section shall make such reports to the Secretary as the Secretary may require.

"GENERAL PROVISIONS RESPECTING GRANTS AND CONTRACTS

"SEC. 1206. (a) For purposes of sections 1202, 1203, and 1204, the term 'eligible entity' means—

"(1) a State,

"(2) a unit of general local government,

"(3) a public entity administering a compact or other regional arrangement or consortium, or

"(4) any other public entity and any nonprofit private entity.

"(5) The Secretary shall provide technical assistance as appropriate to eligible entities as necessary for the purpose of their preparing applications or otherwise qualifying for or carrying out grants or contracts under section 1202, 1203, or 1204, with special consideration for applicants in rural areas.

"(b) (1) No grant or contract may be made under this title unless an application therefor has been submitted to, and approved by, the Secretary.

"(2) In considering applications submitted under this title, the Secretary shall give priority to applications submitted by the entities described in clauses (1), (2), and (3) of subsection (a).

"(3) No application for a grant or contract under section 1202 may be approved unless—

"(A) the application meets the application requirements of such section;

"(B) in the case of an application submitted by a public entity administering a compact or other regional arrangement or consortium, the compact or other regional arrangement or consortium includes each unit of general local government of each standard metropolitan statistical area (as

determined by the Office of Management and Budget) located (in whole or in part) in the service area of the emergency medical services system for which the application is submitted;

"(C) in the case of an application submitted by an entity described in clause (4) of subsection (a), such entity has provided a copy of its application to each entity described in clauses (1), (2), and (3) of such subsection which is located (in whole or in part) in the service area of the emergency medical services system for which the application is submitted and has provided each such entity a reasonable opportunity to submit to the Secretary comments on the application;

"(D) the—

"(i) section 314(a) State health planning agency of each State in which the service area of the emergency medical services system for which the application is submitted will be located, and

"(ii) section 314(b) areawide health planning agency (if any) whose section 314(b) plan covers (in whole or in part) the service area of such system,

have had not less than thirty days (measured from the date a copy of the application was submitted to the agency by the applicant) in which to comment on the application;

"(E) the applicant agrees to maintain such records and make such reports to the Secretary as the Secretary determines are necessary to carry out the provisions of this title; and

"(F) the application is submitted in such form and such manner and contains such information (including specification of applicable provisions of law or regulations which restrict the full utilization of the training and skills of health professions and allied and other health personnel in the provision of health care services in such a system) as the Secretary shall prescribe in regulations.

"(4)(A) An application for a grant or contract under section 1203 or 1204 may not be approved by the Secretary unless (i) the application meets the requirements of subparagraphs (B) through (F) of paragraph (3), and (ii) except as provided in subparagraph (B)(ii), the applicant (I) demonstrates to the satisfaction of the Secretary that the emergency medical services system for which the application is submitted will, within the period specified in subparagraph (B)(i), meet each of the emergency medical services system requirements specified in subparagraph (C), and (II) provides in the application a plan satisfactory to the Secretary for the system to meet each such requirement within such period.

"(B)(i) The period within which an emergency medical services system must meet each of the requirements specified in subparagraph (A) is the period of the grant or contract for which application is made; except that if the applicant demonstrates to the satisfaction of the Secretary the inability of the applicant's emergency medical services system to meet one or more of such requirements within such period, the period (or periods) within which the system must meet such requirement (or requirements) is such period (or periods) as the Secretary may require.

"(ii) If an applicant submits an application for a grant or contract under section 1203 or 1204 and demonstrates to the satisfaction of the Secretary the inability of the system for which the application is submitted to meet one or more of the requirements specified in subparagraph (C) within any specific period of time, the demonstration and plan prerequisites prescribed by clause (ii) of subparagraph (A) shall not apply with respect to such requirement (or requirements) and the applicant shall provide in his application a plan, satisfactory to the Secretary, for achieving appropriate alternatives to such requirement (or requirements).

"(C) An emergency medical services system shall—

"(i) include an adequate number of health professions, allied health professions, and other health personnel with appropriate training and experience;

"(ii) provide for its personnel appropriate training (including clinical training) and continuing education programs which (I) are coordinated with other programs in the system's service area which provide similar training and education, and (II) emphasize recruitment and necessary training of veterans of the Armed Forces with military training and experience in health care fields and of appropriate public safety personnel in such area;

"(iii) join the personnel, facilities, and equipment of the system by a central communications system so that requests for emergency health care services will be handled by a communications facility which (I) utilizes emergency medical telephone screening, (II) utilities or, within such period as the Secretary prescribes, will utilize, the universal emergency telephone number 911, and (III) will have direct communication connections and interconnections with the personnel, facilities, and equipment of the system and with other appropriate emergency medical services systems;

"(iv) include an adequate number of necessary ground, air, and water vehicles and other transportation facilities to meet the individual characteristics of the system's service area—

"(I) which vehicles and facilities meet appropriate standards relating to location, design, performance, and equipment, and

"(II) the operators and other personnel for which vehicles and facilities meet appropriate training and experience requirements;

"(v) include an adequate number of easily accessible emergency medical services facilities which are collectively capable of providing services on a continuous basis, which have appropriate nonduplicative and categorized capabilities, which meet appropriate standards relating to capacity, location, personnel, and equipment, and which are coordinated with other health care facilities of the system;

"(vi) provide access (including appropriate transportation) to specialized critical medical care units in the system's service area, or, if there are no such units or an inadequate number of them in such area, provide access to such units in neighboring areas if access to such units is feasible in terms of time and distance;

"(vii) provide for the effective utilization of the appropriate personnel, facilities, and equipment of each public safety agency providing emergency services in the system's service area;

"(viii) be organized in such a manner that provides persons who reside in the system's service area and who have no professional training or financial interest in the provision of health care with an adequate opportunity to participate in the making of policy for the system;

"(ix) provide, without prior inquiry as to ability to pay, necessary emergency medical services to all patients requiring such services;

"(x) provide for transfer of patients to facilities and programs which offer such followup care and rehabilitation as is necessary to effect the maximum recovery of the patient;

"(xi) provide for a standardized patient record-keeping system meeting appropriate standards established by the Secretary, which records shall cover the treatment of the patient from initial entry into the system through his discharge from it, and shall be consistent with ensuing patient records used in followup care and rehabilitation of the patient;

"(xii) provide programs of public education and information in the system's service area (taking into account the needs of visitors to, as well as residents of, that area to know or be able to learn immediately the means of obtaining emergency medical services) which programs stress the general dissemination of information regarding appropriate methods of medical self-help and first aid and regarding the availability of first aid training programs in the area;

"(xiii) provide for (I) periodic, comprehensive, and independent review and evaluation of the extent and quality of the emergency health care services provided in the system's service area, and (II) submission to the Secretary of the reports of each such review and evaluation;

"(xiv) have a plan to assure that the system will be capable of providing emergency medical services in the system's service area during mass casualties, natural disasters, or national emergencies; and

"(xv) provide for the establishment of appropriate arrangements with emergency medical services systems or similar entities serving neighboring areas for the provision of emergency medical services on a reciprocal basis where access to such services would be more appropriate and effective in terms of the services available, time, and distance.

The Secretary shall by regulations prescribe standards and criteria for the requirements prescribed by this subparagraph. In prescribing such standards and criteria, the Secretary shall consider relevant standards and criteria prescribed by other public agencies and by private organizations.

"(c) Payments under grants and contracts under this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the Secretary determines will most effectively carry out this title.

"(d) Contracts may be entered into under this title without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

"(e) No funds appropriated under any provision of this Act other than section 1207 or title VII may be used to make a new grant or contract in any fiscal year for a purpose for which a grant or contract is authorized by this title unless (1) all the funds authorized to be appropriated by section 1207 for such fiscal year have been appropriated and made available for obligation in such fiscal year, and (2) such new grant or contract is made in accordance with the requirements of this title that would be applicable to such grant or contract if it was made under this title. For purposes of this subsection, the term 'new grant or contract' means a grant or contract for a program or project for which an application was first submitted after the date of the enactment of the Act which makes the first appropriations under the authorizations contained in section 1207.

"(f)(1) In determining the amount of any grant or contract under section 1203 or 1204, the Secretary shall take into consideration the amount of funds available to the applicant from Federal grant or contract programs under laws other than this Act for any activity which the applicant proposes to undertake in connection with the establishment and operation or expansion and improvement of an emergency medical services system and for which the Secretary may authorize the use of funds under a grant or contract under sections 1203 and 1204.

"(2) The Secretary may not authorize the recipient of a grant or contract under section 1203 and 1204 to use funds under such grant or contract for any training program in connection with an emergency medical services system unless the applicant filed an

application (as appropriate) under title VII or VIII for a grant or contract for such program and such application was not approved or was approved but for which no or inadequate funds were made available under such title.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1207. (a) (1) For the purpose of making payments pursuant to grants and contracts under sections 1202, 1203, and 1204, there are authorized to be appropriated $30,000,000 for the fiscal year ending June 30, 1974, and $60,000,000 for the fiscal year ending June 30, 1975; and for the purpose of making payments pursuant to grants and contracts under sections 1203 and 1204 for the fiscal year ending June 30, 1976, there is authorized to be appropriated $70,000,000.

"(2) Of the sums appropriated under paragraph (1) for any fiscal year, not less than 17½ per centum shall be made available for grants and contracts under this title for such fiscal year for emergency medical services systems which serve or will serve rural areas (as defined in regulations of the Secretary under section 1203(c)(5)).

"(3) Of the sums appropriated under paragraph (1) for the fiscal year ending June 30, 1974, or the succeeding fiscal year—

"(A) 15 per centum of such sums for each such fiscal year shall be made available only for grants and contracts under section 1202 (relating to feasibility studies and planning) for such fiscal year.

"(B) 60 per centum of such sums for each such fiscal year shall be made available only for grants and contracts under section 1203 (relating to establishment and initial operation) for such fiscal year, and

"(C) 25 per centum of such sums for each such fiscal year shall be made available only for grants and contracts under section 1204 (relating to expansion and improvement) for such fiscal year.

"(4) Of the sums appropriated under paragraph (1) for the fiscal year ending June 30, 1976—

"(A) 75 per centum of such sums shall be made available only for grants and contracts under section 1203 for such fiscal year, and

"(B) 25 per centum of such sums shall be made available only for grants and contracts under such section 1204 for such fiscal year.

"(b) For the purpose of making payments pursuant to grants and contracts under section 1205 (relating to research), there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1974, and for each of the next two fiscal years.

"ADMINISTRATION

"SEC. 1208. The Secretary shall administer the program of grants and contracts authorized by this title through an identifiable administrative unit within the Department of Health, Education, and Welfare. Such unit shall also be responsible for collecting, analyzing, cataloging, and disseminating all data useful in the development and operation of emergency medical services systems, including data derived from reviews and evaluations of emergency medical services systems assisted under section 1203 or 1204.

"INTERAGENCY COMMITTEE ON EMERGENCY MEDICAL SERVICES

"SEC. 1209. (a) The Secretary shall establish an Interagency Committee on Emergency Medical Services. The Committee shall evaluate the adequacy and technical soundness of all Federal programs and activities which relate to emergency medical services and provide for the communication and exchange of information necessary to maintain the coordination and effectiveness of such programs and activities, and shall make recommendations to the Secretary respecting the administration of the program of grants and contracts under this title (including the making of regulations for such program).

"(b) The Secretary or his designee shall serve as Chairman of the Committee, the membership of which shall include (1) appropriate scientific, medical, or technical representation from the Department of Transportation, the Department of Justice, the Department of Defense, the Veterans' Administration, the National Science Foundation, the Federal Communications Commission, the National Academy of Sciences, and such other Federal agencies and offices (including appropriate agencies and offices of the Department of Health, Education, and Welfare) as the Secretary determines administer programs directly affecting the functions or responsibilities of emergency medical services systems, and (2) five individuals from the general public appointed by the President from individuals who by virtue of their training or experience are particularly qualified to participate in the performance of the Committee's functions. The Committee shall meet at the call of the Chairman, but not less often than four times a year.

"(c) Each appointed member of the Committee shall be appointed for a term of four years, except that—

"(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

"(2) of the members first appointed, two shall be appointed for a term of four years, two shall be appointed for a term of three years, and one shall be appointed for a term of one year, as designated by the President at the time of appointment.

Appointed members may serve after the expiration of their terms until their successors have taken office.

"(d) Appointed members of the Committee shall receive for each day they are engaged in the performance of the functions of the Committee compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule, including traveltime; and all members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(e) The Secretary shall make available to the Committee such staff, information (including copies of reports of reviews and evaluations of emergency medical services systems assisted under section 1203 or 1204), and other assistance as it may require to carry out its activities effectively.

"ANNUAL REPORT

"SEC. 1210. The Secretary shall prepare and submit annually to the Congress a report on the administration of this title. Each report shall include an evaluation of the adequacy of the provision of emergency medical services in the United States during the period covered by the report, an evaluation of the extent to which the needs for such services are being adequately met through assistance provided under this title, and his recommendations for such legislation as he determines is required to provide emergency medical services at a level adequate to meet such needs. The first report under this section shall be submitted not later than September 30, 1974, and shall cover the fiscal year ending June 30, 1974."

(b)(1) Section 1 of the Public Health Service Act is amended by striking out "Titles I to XI" and inserting in lieu thereof "Titles I to XII".

(2) The Act of July 1, 1944 (58 Stat. 682), as amended, is further amended by renumbering title XII (as in effect prior to the date of enactment of this Act) as title XIII, and by renumbering sections 1201 through 1214 (as in effect prior to such date), and references thereto, as sections 1301 through 1314, respectively.

TRAINING ASSISTANCE

SEC. 3. (a) Part E of title VII of the Public Health Service Act is amended by inserting after section 775 the following new section:

"TRAINING IN EMERGENCY MEDICAL SERVICES

"SEC. 776. (a) The Secretary may make grants to and enter into contracts with schools of medicine, dentistry, osteopathy, and nursing, training centers for allied health professions, and other appropriate educational entities to assist in meeting the cost of training programs in the techniques and methods of providing emergency medical services (including the skills required in connection with the provision of ambulance service), especially training programs affording clinical experience in emergency medical services systems receiving assistance under title XII of this Act.

"(b) No grant or contract may be made or entered into under this section unless (1) the applicant is a public or nonprofit private entity, and (2) an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

"(c) The amount of any grant or contract under this section shall be determined by the Secretary. Payments under grants and contracts under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretary finds necessary. Grantees and contractees under this section shall make such reports at such intervals, and containing such information, as the Secretary may require.

"(d) Contracts may be entered into under this section without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

"(e) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1974."

(b) Section 772(a) of such Act (42 U.S.C. 295f–2(a)) is amended—

(1) by striking out "or" at the end of paragraph (12),

(2) by striking out the period at the end of paragraph (13) and inserting in lieu thereof "; or", and

(3) by inserting after paragraph (13) the following new paragraph:

"(14) establish and operate programs in the interdisciplinary training of health personnel for the provision of emergency medical services, with particular emphasis on the establishment and operation of training programs affording clinical experience in emergency medical services systems receiving assistance under title XII of this Act."

(c) Section 774(a)(1)(D) of such Act (42 U.S.C. 295f–4(a)(1)(D)) is amended by inserting "(including emergency medical services)" after "services" each time it appears.

STUDY

SEC. 4. The Secretary of Health, Education, and Welfare shall conduct a study to determine the legal barriers to the effective delivery of medical care under emergency conditions. The study shall include consideration of the need for a uniform conflict of laws rule prescribing the law applicable to the provision of emergency medical services to persons in the course of travels on interstate common carriers. Within twelve months of the date of the enactment of this Act, the Secretary shall report to the Congress the results of such study and recommendations for such legislation as may be necessary to overcome such barriers and provide such rule.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. PASTORE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT OF INTERNAL REVENUE CODE

The Senate continued with the consideration of the bill (H.R. 4200) to amend section 122 of the Internal Revenue Code of 1954.

The PRESIDING OFFICER. Pursuant to the previous order, the Senate will proceed to the consideration of H.R. 4200. The yeas and nays have been ordered.

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Mr. President, as I understand it, the bill now being voted on——

The PRESIDING OFFICER. The Senator will suspend. The Chair cannot hear the Senator. The Senate will be in order.

The Senator may proceed.

Mr. JAVITS. Mr. President, the bill being voted on contains the amendments which were before us for the last 2 days as S. 4, the retirement security bill. Is that correct?

The PRESIDING OFFICER. The bill contains S. 4 as amended by the Senate.

Mr. JAVITS. I thank the Chair.

The PRESIDING OFFICER. The question is, Shall the bill pass? The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the role.

Mr. ROBERT C. BYRD. I announce that the Senator from Michigan (Mr. HART), and the Senator from Montana (Mr. METCALF) are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT) is absent on official business.

I also announce that the Senator from Oklahoma (Mr. BELLMON), and the Senator from Kansas (Mr. PEARSON) are absent because of illness.

I further announce that the Senator from Arizona (Mr. GOLDWATER), and the Senator from Ohio (Mr. SAXBE) are necessarily absent.

The result was announced—yeas 93, nays 0, as follows:

[No. 400 Leg.]

YEAS—93

Abourezk	Byrd, Robert C.	Fannin
Aiken	Cannon	Fong
Allen	Case	Fulbright
Baker	Chiles	Gravel
Bartlett	Church	Griffin
Bayh	Clark	Gurney
Beall	Cook	Hansen
Bentsen	Cotton	Hartke
Bible	Cranston	Haskell
Biden	Curtis	Hatfield
Brock	Dole	Hathaway
Brooke	Domenici	Helms
Buckley	Dominick	Hollings
Burdick	Eagleton	Hruska
Byrd, Harry F., Jr.	Eastland	Huddleston
	Ervin	Hughes
Humphrey	Montoya	Sparkman
Inouye	Moss	Stafford
Jackson	Muskie	Stennis
Javits	Nelson	Stevens
Johnston	Nunn	Stevenson
Kennedy	Packwood	Symington
Long	Pastore	Taft
Magnuson	Pell	Talmadge
Mansfield	Percy	Thurmond
Mathias	Proxmire	Tower
McClellan	Randolph	Tunney
McClure	Ribicoff	Weicker
McGee	Roth	Williams
McGovern	Schweiker	Young
McIntyre	Scott, Pa.	
Mondale	Scott, Va.	

NAYS—0

NOT VOTING—7

Bellmon	Hart	Saxbe
Bennett	Metcalf	
Goldwater	Pearson	

So the bill (H.R. 4200) was passed.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. WILLIAMS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LONG. Mr. President, I ask unanimous consent that S. 4 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LONG. Mr. President, I ask unanimous consent that the bill (H.R. 4200) be printed with the amendment of the Senate; and that in the engrossment of the amendment of the Senate to the bill the Secretary of the Senate be authorized to make all appropriate technical, clerical, and conforming changes and corrections, including corrections in section, subsection, and so forth, designations, and cross-references thereto, with appropriate changes in the table of contents.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LONG. Mr. President, I move that the Senate insist upon its amendments and request a conference with the House, and that the Chair be authorized to appoint the conferees on the part of the Senate.

Mr. President, I withhold that motion at this time because I wish to discuss the matter with members of the Committee on Labor and Public Welfare, and I will send the motion to the desk at a later time.

The PRESIDING OFFICER. Without objection, action on the motion will be vacated.

Mr. LONG subsequently said: Mr. President, I move that the Senate insist on its amendments to H.R. 4200 and ask for a conference with the House of Representatives thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. LONG, Mr. WILLIAMS, Mr. RANDOLPH, Mr. NELSON, Mr. BENTSEN, Mr. JAVITS, Mr. SCHWEIKER, Mr. BENNETT, and Mr. CURTIS conferees on the part of the Senate.

Mr. LONG. Mr. President, I ask unanimous consent that S. 1179, the bill that was used for procedural purposes in the course of the consideration of H.R. 4200, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

EMERGENCY MEDICAL SERVICE SYSTEMS ACT OF 1973—MOTION TO RECONSIDER ENTERED

Mr. MAGNUSON. Mr. President, the vote prior to this last vote was on the emergency medical services bill. When that bill passed the Senate previously by an overwhelming vote, I think by a vote of 80 to 2 or something like that, there was in the bill a provision to keep open eight public service hospitals.

It so happened that I presented the amendment that carried the Senate and carried the conference. We overrode the President's veto in the Senate by a tremendous vote. The bill went to the House and the vote on the measure lacked five votes of overriding the veto. In other words, the difference was three votes.

That provision should have been in the bill.

Mr. ROBERT C. BYRD. Mr. President, could we have order in the Senate while the Senator is speaking?

The PRESIDING OFFICER. The Senate will be in order. Senators will retire to the cloakroom to hold their conversations.

Mr. MAGNUSON. Mr. President, if we are to attempt to go back on the veto of that bill, that provision was one of the main parts of the emergency health services. Someone was very anxious to cut that out. Apparently they have no concern over the eight hospitals staying open or not.

Mr. President, I am going to ask unanimous consent that the motion to reconsider the vote, which was tabled, be vacated at this time so that I might present my amendment later on to the major part of the bill.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2410) to amend the Public Health Service Act to provide assistance and encouragement for the development of comprehensive area medical services systems.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Washington? The Chair hears none, and it is so ordered.

The motion to reconsider is entered.

Mr. ROBERT C. BYRD. Mr. President, could we have an agreement as to time on the Senator's amendment when offered?

Mr. MAGNUSON. Yes; I think everyone knows what it is.

Mr. ROBERT C. BYRD. Mr. President, what would the Senator suggest—30 minutes?

Mr. MAGNUSON. I could present my amendment in 10 or 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at such time as the bill to which the distinguished Senator has reference is called back up by the leadership, there be a time limitation on the Magnuson amendment of 10 minutes, to be equally divided in accordance with the usual form.

Mr. MAGNUSON. Mr. President, I was

talking about my presentation. I suppose there could be some opposition. I would suggest that we have a limitation of a half-hour on both sides.

Mr. ROBERT C. BYRD. I ask unanimous consent that there be a half-hour, the time to be equally divided. The Senator has already said that the subject matter was well known and it has been discussed.

I make this request with the understanding that no other amendments will be offered.

Mr. GRIFFIN. Mr. President, I regretfully would have to object at this time. I have not had any opportunity to discuss this matter with those who would be interested on my side of the aisle. It has already been explained that that was a controversial part of the bill and was the main reason for the President's veto.

I just could not agree to any particular time limitation without some opportunity to discuss it with others on my side who had some interest in it.

Mr. MAGNUSON. Mr. President, I merely want to present the amendment.

Mr. GRIFFIN. I understand.

Mr. MAGNUSON. We all understand what it is about. It needs no discussion. In the meantime, the Senate Appropriations Committee is considering the money that is to be put in the HEW bill to keep open these hospitals.

I do not know what the subcommittee or the full committee will do, but I suspect they will approve the request. I merely want to present the amendment. I do not want to delay the Senate 5 minutes.

Mr. GRIFFIN. Mr. President, the agreement we had before was understood by everyone to be in relation to the bill, which did not include this feature. There was no indication that an amendment would be offered. So the agreement that was entered into before, was entered into with every Senator more or less understanding that this matter was out of the bill. Now that it is expected to be reoffered and reconsidered, I think we should have an opportunity to discuss it with Senators who are interested.

Mr. MAGNUSON. It was not out of the Senate bill. The vote was for it. It was not out of the bill in the vote to override the President. I forget what the vote was, but the veto message in the House was sustained by 5 votes.

I just want to keep going, so that we can get the hospitals open. I simply want to present the amendment. The Senate may turn it down. I am not sure what the vote will be. The same is true in the House, if the bill goes there. Three Members might change their votes. There might be more. I simply want to present our case.

Mr. ROBERT C. BYRD. Mr. President, would the distinguished acting Republican leader agree to taking this measure up tomorrow, immediately following the disposition of the conference report, which has already been scheduled?

Mr. GRIFFIN. I really do not think I am in a position, by unanimous consent, to waive the rights of any Senator in this situation. This is the controversial part of the bill. It is the main reason why the bill was vetoed. There is no point in our agreeing to a time for a discussion of the bill. It would seem to me that we would be going around the circle again, knowing that there has been a veto.

Mr. MAGNUSON. When we lose by a nose, it may be that in the next day or so we are in better shape. I merely want to present my case. If the Senate turns it down, I will have to take action separately. Apparently those who handled the bill divorced this provision by their vote in the House. Three votes might change the situation.

Mr. ROBERT C. BYRD. I can certainly understand the position that the distinguished acting Republican leader takes. I hope that overnight all of us can think the matter over and perhaps get together and work out a time limitation.

The PRESIDING OFFICER. Does the Senator from West Virginia withdraw his request?

Mr. ROBERT C. BYRD. Mr. President, I withdraw my request.

TRANSACTION OF ROUTINE BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine business, with no limitation on statements.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. It was my understanding that some Senators wished to deliver eulogies at this time. I would hope that they would be informed.

DOMESTIC VOLUNTEER SERVICE ACT OF 1973

Mr. MANSFIELD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1148.

The PRESIDING OFFICER (Mr. HATHAWAY) laid before the Senate the amendments of the House of Representatives to the bill (S. 1148) to provide for operation of all domestic volunteer service programs by the ACTION Agency, to establish certain new such programs, and for other purposes, which were to strike out all after the enacting clause, and insert:

That this Act, with the following table of contents, may be cited as the "Domestic Volunteer Service Act of 1973":

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TITLE I—NATIONAL VOLUNTEER ANTIPOVERTY PROGRAMS

PART A—VOLUNTEERS IN SERVICE TO AMERICA

STATEMENT OF PURPOSE

SEC. 101. This part provides for the Volunteers in Service to America (VISTA) program of full-time volunteer service, together with appropriate powers and responsibilities designed to assist in the development and coordination of such program. The purpose of this part is to strengthen and supplement efforts to eliminate poverty and related human, social, and environmental problems in the United States by encouraging and enabling persons from all walks of life and all age groups, including elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems.

AUTHORITY TO OPERATE VISTA

SEC. 102. The Director may recruit, select, and train persons to serve in full-time volunteer programs consistent with the provisions and to carry out the purposes of this part.

ASSIGNMENT OF VOLUNTEERS

SEC. 103. (a) The Director, upon request of Federal, State, or local agencies, or private nonprofit organizations, may assign such volunteers to work in appropriate projects and programs—

(1) in meeting the health, education, welfare, or related needs of Indians living on Federal trust lands, of migratory and seasonal farmworkers and their families, and of residents of the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) in the care and rehabilitation of mentally ill, developmentally disabled, and other handicapped individuals, especially those with severe handicaps, under the supervision of nonprofit institutions or facilities; and

(3) in connection with programs or activities authorized, supported, or of a character eligible for assistance under this Act and the Economic Opportunity Act of 1964, as amended.

(b) The Director, wherever feasible and appropriate, shall assign low-income community volunteers to serve in their home communities in teams with nationally recruited specialist volunteers. Prior to the assignment of any such community volunteer, the Director shall insure that each such volunteer is provided an individual plan designed to provide an opportunity for job advancement or for transition to a situation leading to gainful employment. One hundred and twenty days prior to the completion of such community volunteer's term of service, the Director shall insure that such plan is updated and reviewed with the volunteer.

(c) Except as provided in subsection (d) the assignment of volunteers under this section shall be on such terms and conditions (including restrictions on political activities that appropriately recognize the special status of volunteers living among the persons or groups served by programs to which they have been assigned) as the Director may determine, including work assignments in their own or nearby communities.

(d) Volunteers under this part shall not be assigned to duties or work in any State unless such program has been submitted to the Governor or other chief executive officer of the State concerned, and has not been disapproved by him within forty-five days of such submission. The assignment of a volunteer shall be terminated by the Director when so requested by the Governor or chief executive officer of the State concerned not later than thirty days after such request has been made, or at a time after such request has been made as agreed upon by such Governor or chief executive officer of the State concerned and the Director.

TERMS OF SERVICE

SEC. 104. (a) Volunteers serving under this part shall be required to make a full-time personal commitment to combating poverty and related human, social, and environmental problems. To the maximum extent practicable, this shall include a commitment to live among and at the economic level of the people served, and to remain available for service without regard to regular working hours, at all times during their term of service, except for authorized periods of leave.

(b) Volunteers serving under this part may be enrolled for periods not exceeding two years. Volunteers may reenroll for such periods, not exceeding two years, as the Director may determine. No volunteers shall serve for more than five years under this part.

(c) Volunteers under this part shall, upon enrollment, take the oath of office as prescribed in section 5(j) of the Peace Corps Act, as amended (22 U.S.C. 2504(j)): *Provided*, That persons legally residing within a State but who are not citizens or nationals of the United States may serve under this part without taking or subscribing to such oath, if the Director determines that the service of such persons will further the interests of the United States. Such persons shall take such alternative oath or affirmation as the Director shall deem appropriate.

(d) The Director shall establish a procedure, including notice and opportunity to be heard, for volunteers under this part to present and obtain resolution of grievances and to present their views in connection with the terms and conditions of their service. The Director shall promptly provide to each volunteer in service on the date of enactment of this Act, and to each such volunteer beginning service thereafter information regarding such procedure and the terms and conditions of their service.

SUPPORT SERVICES

SEC. 105. (a)(1) The Director may provide a stipend to volunteers under this part while they are in training and during their assignment. Such stipend shall not exceed $50 per month during the volunteer's service, except that the Director may provide a stipend not to exceed $75 per month in the case of persons who have served for at least one year and who, in accordance with standards established in regulations which the Director shall prescribe, have been designated volunteer leaders on the basis of experience and special skills and a demonstrated leadership among volunteers.

(2) Stipends shall be payable only upon completion of a term of service; except that in extraordinary circumstances the Director may from time to time advance all or a portion of the accrued stipend to or on behalf of a volunteer. In the event of the death of a volunteer during service, the amount of any unpaid stipend shall be paid in accordance with the provisions of section 5582 of title 5, United States Code.

(b) The Director shall also provide volunteers such living, travel (including travel to and from places of training), and leave allowances, and such housing, supplies, equipment, subsistence, clothing, health and dental care, transportation, supervision, technical assistance, and such other support as he deems necessary and appropriate to carry out the purpose and provisions of this part, and shall insure that each such volunteer has available such allowances and support as will enable the volunteer to carry out the purpose and provisions of this part and to effectively perform the work to which such volunteer is assigned.

PARTICIPATION OF BENEFICIARIES

SEC. 106. To the maximum extent practicable, the people of the communities to be served by volunteers under this title, shall participate in planning, developing, and implementing programs thereunder, and the Director, after consultation with sponsoring agencies (including volunteers assigned to them) and the people served by such agencies shall take all necessary steps to establish, in regulations he shall prescribe, a continuing mechanism for the meaningful participation of such program beneficiaries.

PARTICIPATION OF OLDER PERSONS

SEC. 107. In carrying out this part and part C of this title, the Director shall take necessary steps, including the development of special projects, where appropriate, to encourage the fullest participation of older persons and older persons' membership groups as volunteers and participant agencies in the various programs and activities authorized under such parts and, because of the high proportion of older persons within the poverty group, shall encourage the development of a variety of volunteer services to older persons, including special projects, to assure that such persons are served in proportion to their need.

PART B—SERVICE-LEARNING PROGRAMS

STATEMENT OF PURPOSE

SEC. 111. This part provides for the University Year for Action (UYA) program of full-time volunteer service by students enrolled in institutions of higher learning, together with appropriate powers and responsibilities designed to assist in the development and coordination of such programs. The purpose of this part is to strengthen and supplement efforts to eliminate poverty and related human, social and environmental problems by enabling students at such cooperating institutions to perform meaningful and constructive volunteer service in connection with the satisfaction of such students' course work during their term of service while attending such institutions, in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. Its purpose further is to encourage other students and faculty members to engage, on a part-time, self-supporting basis, in such volunteer service and work along with volunteers serving under this part; and to promote participation by such institutions in meeting the needs of the poor in the surrounding community through expansion of service-learning programs and otherwise. Its purpose further is to provide for a program of part-time or short term service learning by secondary and post secondary school students to strengthen and supplement efforts to eliminate poverty and related human, social, and environmental problems.

AUTHORITY TO OPERATE UNIVERSITY YEAR FOR ACTION

SEC. 112. Except as otherwise provided in this part, the Director may conduct or make grants and contracts for, or both, programs to carry out the purposes of this part in accordance with the authorities and subject to the restrictions in the provisions of part A of this title, except for the provisions of subsections (d) of sections 103 and 104, and except that the Director may, in accordance with regulations he shall prescribe, determine to reduce or eliminate the stipend for volunteers serving under this part on the basis of the value of benefits provided such volunteers by the institution in question (including the reduction or waiver of tuition).

SPECIAL CONDITIONS

SEC. 113. (a) Volunteers serving under this program shall be enrolled for one-year periods of service and may receive academic credit for such service in accordance with the regulations of the sponsoring institution.

(b) Grants to and contracts with institutions to administer programs under this part shall provide that prospective student volunteers shall participate substantially in the planning of such programs and that such institutions shall make available to the poor in the surrounding community all available facilities, including human resources, of such institution in order to assist in meeting the needs of such poor persons.

(c)(1) In making grants or contracts for the administration of this program, the Director shall insure that financial assistance under this Act to programs carried out pursuant to section 112 of this part shall not exceed 90 per centum of the total cost (including planning costs) of such program during the first year and such amounts less than 90 per centum as the Director in consultation with the institution may determine for no more than four additional years. Each such grant or contract shall stipulate that the institution will make every effort to assume an increasing proportion of the cost of continuing a program carrying out the purposes of this part while the institution receives support under this part or title VIII of the Economic Opportunity Act of 1964, as amended, or both.

(2) The Director shall take necessary steps to monitor the extent of compliance by such institutions with commitments entered into under paragraph (1) of this subsection and shall advise the Secretary of Health, Education, and Welfare of the extent of each such institution's compliance.

SPECIAL SERVICE-LEARNING PROGRAMS

SEC. 114. (a) Of the funds appropriated for the operation of programs under this part, up to 10 per centum may be used, notwithstanding any other provision of this part, to encourage and enable students in secondary, secondary vocational, and post-secondary schools to participate in service-learning programs on an in- or out-of-school basis in assignments of a character and on such terms and conditions as described in subsections (a) and (c) of section 103.

(b) Persons serving as volunteers under this section shall not be deemed to be Federal employees for any purpose.

(c) Persons serving as volunteers under this section may receive a living allowance or stipend and such other support or allowances as the Director determines, pursuant to regulations which he shall prescribe, are required because of unusual or special circumstances affecting the program.

PART C—SPECIAL VOLUNTEER PROGRAMS

STATEMENT OF PURPOSE

SEC. 121. This part provides for special emphasis and demonstration volunteer programs, together with appropriate powers and responsibilities designed to assist in the development and coordination of projects such as but not limited to—

(1) a program to provide alternatives to the incarceration of youthful offenders;

(2) a program to promote educational opportunities for veterans;

(3) a program to provide community-based peer group outreach and counseling for drug abusers. The purpose of this part is to strengthen and supplement efforts to meet a broad range of human, social, and environmental needs, particularly those related to poverty, by encouraging and enabling persons from all walks of life and from all age groups to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may help to meet such needs.

AUTHORITY TO ESTABLISH PROGRAMS

SEC. 122. (a) The Director is authorized to conduct or make grants or contracts for special volunteer programs or demonstration programs designed to stimulate and initiate improved methods of providing volunteer services and to encourage wider volunteer participation on a full-time, part-time, or short-term basis to further the purpose of this part or to identify particular segments of the poverty community which could benefit from volunteer and other antipoverty efforts.

(b) Except as provided in subsection (c) of this section, assignment of volunteers under this section shall be on such terms and conditions as the Director shall determine, pursuant to regulations which he shall prescribe.

(c) The Director, in accordance with regulations he shall prescribe, may provide to persons serving as full-time volunteers in a program of at least one year's duration under this part such allowances and stipends, to the extent and in amounts not in excess of those authorized to be provided under part A of this title, as he determines are necessary to carry out the purpose of this part.

TITLE II—NATIONAL OLDER AMERICAN VOLUNTEER PROGRAMS

PART A—RETIRED SENIOR VOLUNTEER PROGRAM

GRANTS AND CONTRACTS FOR VOLUNTEER SERVICE PROJECTS

SEC. 201. (a) In order to help retired persons to avail themselves of opportunities for voluntary service in their community, the Director is authorized to make grants to State agencies (established or designated pursuant to section 304(a)(1) of the Older Americans Act of 1965, as amended) or grants to or contracts with other public and nonprofit private agencies and organizations to pay part or all of the costs for the development or operation, or both, of volunteer service programs under this section, if he determines, in accordance with such regulations as he may prescribe, that—

(1) volunteers shall not be compensated for other than transportation, meals, and other out-of-pocket expenses incident to their services;

(2) only individuals aged sixty or over will provide services in the program (except for administrative purposes), and such services will be performed in the community where such individuals reside or in nearby communities either (A) on publicly owned and operated facilities or projects, or (B) on local projects sponsored by private nonprofit organizations (other than political parties), other than projects involving the construction, operation, or maintenance of so much of any facility used or to be used for sectarian instruction or as a place for religious worship;

(3) the program includes such short-term training as may be necessary to make the most effective use of the skills and talents of those individuals who are participating; and provides for the payment of the reasonable expenses of trainees; and

(4) the program is being established and will be carried out with the advice of persons competent in the field of service being staffed, and of persons with interest in and knowledge of the needs of older persons.

(b) Payments under this part pursuant to a grant or contract may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, in such installments and on such conditions, as the Director may determine.

(c) The Director shall not award any grant or contract under this part for a project in any State to any agency or organization unless, if such State has a State agency established or designated pursuant to section 304(a)(1) of the Older Americans Act of 1965, as amended, such agency itself is the recipient of the award or such agency has been afforded not less than sixty days in which to review the project application and make recommendations thereon.

(d) Notwithstanding any other provision of law, no compensation provided to individual volunteers under this part shall be considered income for any purpose whatsoever.

PART B—FOSTER GRANDPARENT PROGRAM AND OLDER AMERICAN COMMUNITY SERVICE PROGRAMS

GRANTS AND CONTRACTS FOR VOLUNTEER PROJECTS

SEC. 211. (a) The Director is authorized to make grants to or contracts with public and nonprofit private agencies and organizations to pay part or all of the cost of development and operation of projects designed to provide opportunities for low-income persons aged sixty or over to render supportive person-to-person services in health, education, welfare, and related settings to children having exceptional needs, including services as "foster grandparents" to children receiving care in hospitals, homes for dependent and neglected children, or other establishments providing care for children with special needs.

(b) The Director is also authorized to make grants or contracts to carry out the purposes described in subsection (a) in the case of persons (other than children) having exceptional needs, including services as "senior health aides" to work with persons receiving home health care and nursing care, and as "senior companions" to persons having developmental disabilities.

(c) Payments under this part pursuant to a grant or contract may be made (after necessary adjustment on account of previously made overpayments or underpayments) in advance or by way of reimbursement, in such installments and on such conditions as the Director may determine.

(d) Notwithstanding any other provision of law, no compensation provided to individual volunteers under this part shall be considered income for any purpose whatsoever.

CONDITIONS OF GRANTS AND CONTRACTS

SEC. 212. (a)(1) In administering this part, the Director shall assure that volunteers receiving assistance in any project are older persons of low income who are no longer in the regular work force.

(2) The Director shall not award a grant or contract under this part which involves a project proposed to be carried out throughout the State or over an area more comprehensive than one community unless—

(A) the State agency established or designated under section 304(a)(1) of the Older Americans Act of 1965, as amended, is the applicant for such grant or contract or, if not, such agency has been afforded a reasonable opportunity to apply for and receive such award and to administer or supervise the administration of the project; and

(B) in cases in which such agency is not the grantee or contractor (including cases to which clause (A) applies but in which such agency has not availed itself of the opportunity to apply for and receive such award), the application contains or is supported by satisfactory assurance that the project has been developed, and will to the extent appropriate be conducted in consultation with, or with the participation of, such agency.

(3) The Director shall not award a grant or contract under this part which involves a project proposed to be undertaken entirely in a community served by a community action agency unless—

(A) such agency is the applicant for such grant or contract or, if not, such agency has been afforded a reasonable opportunity to apply for and receive such award and to ad-

minister or supervise the administration of the project;

(B) in cases in which such agency is not the grantee or contractor (including cases to which subparagraph (A) applies but in which such agency has not availed itself of the opportunity to apply for and receive such award), the application contains or is supported by satisfactory assurance that the project has been developed, and will to the extent appropriate be conducted in consultation with, or with the participation of, such agency; and

(C) if such State has a State agency established or designated pursuant to section 304(a)(1) of the Older Americans Act of 1965, as amended, such agency has had not less than 45 days in which to review the project application and make recommendations thereon.

(b) The term "community action agency" as used in this section means a community action agency established under title II of the Economic Opportunity Act of 1964, as amended.

PART C—GENERAL PROVISIONS

COORDINATION WITH OTHER FEDERAL PROGRAMS

SEC. 221. In administering this title, the Director shall consult with the Office of Economic Opportunity, the Departments of Labor and Health, Education, and Welfare, and any other Federal agencies administering relevant programs with a view to achieving optimal coordination with such other programs and shall promote the coordination of projects under this part with other public or private programs or projects carried out at State and local levels. Such Federal agencies shall cooperate with the Director in disseminating information about the availability of assistance under this title and in promoting the identification and interest of low-income and other older persons whose services may be utilized in projects under this title.

MINORITY GROUP PARTICIPATION

SEC. 222. The Director shall take appropriate steps to insure that special efforts are made to recruit, select, and assign qualified individuals sixty years and older from minority groups to serve as volunteers under this title.

TITLE III—NATIONAL VOLUNTEER PROGRAMS TO ASSIST SMALL BUSINESSES AND PROMOTE VOLUNTARY SERVICE BY BUSINESS PROPRIETORS

STATEMENT OF PURPOSE

SEC. 301. This title provides for programs in which businessmen volunteer to assist persons, especially the economically disadvantaged, who are engaged in, or seek to engage in, small business enterprises, and make available their expertise, as volunteers to agencies carrying out programs authorized by, or of a character eligible for assistance under, this Act or the Economic Opportunity Act of 1964 (particularly title VIII thereof).

AUTHORITY TO ESTABLISH AND OPERATE PROGRAMS

SEC. 302. (a) The Director is authorized to establish and conduct, and to make grants or enter into contracts for the conduct of volunteer programs to carry out the purposes of this title, including a Service Corps of Retired Executives (SCORE) and an Active Corps of Executives (ACE): *Provided, however,* That the services of volunteers who are assisting persons or enterprises seeking to obtain, or receiving financial assistance from the Small Business Administration shall be performed under the supervision of the Administrator of the Small Business Administration (hereinafter referred to in this title as the "Administrator").

(b) The assignment of volunteers enrolled in programs under this title shall be on such terms and conditions as the Director may determine. The Director shall consult with the Administrator before establishing the terms and conditions of service of volunteers who assist persons or enterprises seeking to obtain, or receiving financial assistance from the Small Business Administration.

(c) Volunteers under this title, while engaged in authorized activities shall be considered Federal employees for the purpose of the Federal tort claims provisions of title 28, United States Code.

(d) The Director is authorized to reimburse volunteers under this title only for such necessary out-of-pocket expenses incident to their provision of services under this Act as he shall by regulation determine, and, while they are away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for individuals serving without pay.

(e) Volunteers authorized by this title shall in no event provide services to a client of the Small Business Administration with a delinquent loan outstanding, except upon the written request for such assistance signed by the client.

AUTHORITY TO USE SMALL BUSINESS ADMINISTRATION FACILITIES

SEC. 303. The Small Business Administration shall permit volunteers under this title, or volunteer groups, such use of the office facilities and related materials and services of the Small Business Administration as he, after consultation with the Director, deems appropriate to carry out their tasks, including authorized meetings of groups of volunteers.

RELATIONSHIP TO SMALL BUSINESS ACT

SEC. 304. To the extent that programs authorized by this title are also authorized by section 8(b) of the Small Business Act (15 U.S.C. 637(b)(1)), they shall be carried out under this title.

TITLE IV—ADMINISTRATION AND COORDINATION

ESTABLISHMENT OF AGENCY

SEC. 401. There is hereby established in the executive branch of the Government an agency to be known as the ACTION Agency. Such Agency shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code. There shall also be in such Agency a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Deputy Director shall perform such functions as the Director shall from time to time prescribe, and shall act as Director of the ACTION Agency during the absence or disability of the Director. There shall also be in such Agency four Associate Directors who shall be appointed by the President by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code. Each such Associate Director shall perform such functions as the Director shall from time to time prescribe. There shall also be in such agency one Deputy Associate Director primarily responsible for programs carried out under title II of this Act, who shall be appointed by the Director.

AUTHORITY OF THE DIRECTOR

SEC. 402. In addition to the authority conferred upon him by other sections of this Act, the Director is authorized to—

(1) appoint in accordance with the civil service laws such personnel as may be necessary to enable the ACTION Agency to carry out its functions, and, except as otherwise provided herein, fix the compensation of such personnel in accordance with the provisions of title 5, United States Code;

(2)(A) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that no individual may be employed under the authority of this subsection for more than 100 days in any fiscal year; (B) compensate individuals so employed at rates not in excess of the daily equivalent of the rate payable to a GS–18 employee under section 5332 of such title, including traveltime; (C) allow such individuals, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of such title for persons in the Government service employed intermittently while so employed; and (D) contracts for such employment under this clause may be renewed annually;

(3) with the approval of the President, arrange with and reimburse the heads of other Federal agencies for the performance of any of the provisions of this Act and, as necessary or appropriate, delegate any of his powers under this Act and authorize the redelegation thereof subject to provisions to assure the maximum possible liaison between the ACTION Agency and such other agencies at all operating levels, which shall include the furnishing of complete operational information by such other agencies to the ACTION Agency and the furnishing of such information by the ACTION Agency to such other agencies;

(4) with their consent, utilize the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or a political subdivision of a State, accept and utilize the services and facilities of the agencies of such State or subdivision without reimbursement;

(5) accept in the name of the ACTION Agency, and employ or dispose of in furtherance of the purposes of this Act, or of any title thereof, any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise;

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b));

(7) allocate and expend, or transfer to other Federal agencies for expenditure, funds made available under this Act as he deems necessary to carry out the provisions hereof, including (without regard to the provisions of section 4774(d) of title 10, United States Code), expenditure for construction, repairs, and capital improvements.

(8) disseminate, without regard to the provisions of section 4154 of title 39, United States Code, data and information, in such forms as he shall deem appropriate, to public agencies, private organizations, and the general public;

(9) adopt an official seal, which shall be judicially noticed;

(10) collect or compromise all obligations to or held by him and all legal or equitable rights accruing to him in connection with the payment of obligations until such time as such obligations may be referred to the Attorney General for suit or collection;

(11) expend funds made available for purposes of this Act as follows: (A) for printing and binding, in accordance with applicable law and regulation; and (B) without regard to any other law or regulation, for rent of buildings and space in buildings and for repair, alteration, and improvement of buildings and space in buildings rented by him; but the Director shall not utilize the authority contained in this subclause (B)—

(i) except when necessary to obtain an item, service, or facility, which is required in the proper administration of this Act, and

which otherwise could not be obtained, or could not be obtained in the quantity or quality needed, or at the time, in the form, or under the conditions in which, it is needed, and

(ii) prior to having given written notification to the Administrator of General Services (if the exercise of such authority would affect an activity which otherwise would be under the jurisdiction of the General Services Administration) of his intention to exercise such authority, the item, service, or facility with respect to which such authority is proposed to be exercised, and the reasons and justifications for the exercise of such authority;

(12) notwithstanding any other provision of law, make grants or contracts with Federal or other public departments or agencies and private nonprofit organizations for the assignment or referral of volunteers under this Act (except for volunteers serving under part A of title I thereof), which may provide that the agency or organization shall pay all or a part of the costs of the program;

(13) provide or arrange for educational and vocational counseling of volunteers and recent former volunteers under this Act to (A) encourage them to use in the national interest the skills and experience which they have derived from their training and service, particularly working in combating poverty as members of the helping professions, and (B) promote the development, and the placement therein, of such volunteers, of appropriate opportunities for the use of such skills and experience;

(14) establish such policies, standards, criteria, and procedures, prescribe such rules and regulations, enter into such contracts and agreements with public agencies and private organizations and persons, make such payments (in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants otherwise authorized under this Act, with necessary adjustments on account of overpayments and underpayments); and

(15) generally perform such functions and take such steps, consistent with the purposes and provisions of this Act, as he deems necessary or appropriate to carry out the provisions of this Act.

POLITICAL ACTIVITIES

SEC. 403. (a) No part of any funds appropriated to carry out this Act, or any program administered by the ACTION Agency, shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or any voter registration activity, or to pay the salary of any officer or employee of the ACTION Agency, who, in his official capacity, as such an officer or employee, engages in any such activity. As used in this section, the term "election" has the same meaning given such term by section 301(a) of the Federal Election Campaign Act of 1971 (Public Law 92–225), and the term "Federal office" has the same meaning given such term by section 301(c) of such Act.

(b) Programs assisted under this Act shall not be carried on in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (3) any voter registration activity. The Director, after consultation with the Civil Service Commission, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance for no more than 30 days until notice and an opportunity to be heard can be provided or other action necessary to permit enforcement on an emergency basis.

SPECIAL LIMITATIONS

SEC. 404. (a) The Director shall prescribe regulations and shall carry out the provisions of this Act so as to assure that the service of volunteers assigned, referred, or serving pursuant to grants, contracts, or agreements made under this Act is limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(b) All support, including transportation provided to volunteers under this Act, shall be furnished at the lowest possible cost consistent with the effective operations of volunteer programs.

(c) No agency or organization to which volunteers are assigned hereunder, or which operates or supervises any volunteer program hereunder, shall request or receive any compensation for services of volunteers supervised by such agency or organization.

(d) No funds authorized to be appropriated herein shall be directly or indirectly utilized to finance labor or antilabor organization or related activity.

(e) Persons serving as volunteers under this Act shall provide such information concerning their qualifications, including their ability to perform their assigned tasks and their integrity, as the Director shall prescribe and shall be subject to such procedures for selection and approval as the Director determines are necessary to carry out the purposes of this Act. The Director may establish such special procedures for the recruitment, selection, training, and assignment of low-income residents of the area to be served by a program under this Act who wish to become volunteers as he determines will further the purposes of this Act

(f) Notwithstanding any other provision of law and except as provided in the second sentence of this subsection, the Director shall assign or delegate any substantial responsibility for carrying out programs under this Act only to persons appointed or employed pursuant to clause (1) of section 402, and persons assigned or delegated such substantial responsibilities on the effective date of this Act and who are receiving compensation in accordance with provisions of law other than the applicable provisions of title 5, United States Code, on such date shall, by operation of law on such date, be assigned a grade level pursuant to such provisions so as to fix the compensation of such persons under such authority at no less than their compensation rate on the day preceding such date. The Director may personally make exceptions to the requirement set forth in the first sentence of this subsection for persons whom he finds will be assigned to carrying out functions under the Peace Corps Act (22 U.S.C. 2501 et seq.) within six months after the effective date of this Act.

(g) Notwithstanding any other provisions of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this Act shall not in any way reduce or eliminate the level of or eligibility for assistance or services any such volunteers may be receiving under any other governmental program.

NATIONAL VOLUNTARY SERVICE ADVISORY COUNCIL

SEC. 405. (a) There is hereby established in the ACTION Agency a National Voluntary Service Advisory Council (hereinafter referred to as the "Council") to be composed of not more than 25 members appointed by and serving at the pleasure of the President. Such members shall be representative of public and private organizations, groups, and individuals interested in serving and benefited by programs carried out under this Act and the Peace Corps Act (22 U.S.C. 2501 et seq.). The President shall designate a temporary chairperson from such members and shall call the initial meeting of the Council within thirty days after establishment of such Council. Members of the Council shall designate a permanent chairperson from such members and shall meet at the call of such chairperson, but not less than four times in each year. Members of the Council, other than those regularly employed by the Federal Government, while attending meetings of such Council, shall be entitled to receive compensation and travel expenses as provided in section 402(2) of this Act with respect to experts and consultants. The Director and Deputy Director of the ACTION Agency shall be ex officio members of the Council.

(b) The Council shall—

(1) advise the Director with respect to policy matters arising in the administration of this Act and the Peace Corps Act (22 U.S.C. 2501 et seq.); and

(2) upon the request of the Director, review the effectiveness and the operation of programs under this Act and the Peace Corps Act and make recommendations (including such proposals for changes in such Act as the Council deems appropriate) concerning (A) the improvement of such programs, (B) the elimination of duplication of effort, and (C) the coordination of such programs with other Federal programs designed to assist the beneficiaries of such Acts.

(c) Not later than the date of enactment of this Act of each calendar year beginning with the calendar year 1974, the Council shall make an annual report of its findings and recommendations to the President for transmittal by the President of the Congress together with his comments and recommendations.

LABOR STANDARDS

SEC. 406. All laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including painting and decorating of projects, buildings, and works which are federally assisted under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5). The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 1, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276c).

REPORTS

SEC. 407. Not later than one hundred and twenty days after the end of each fiscal year, the Director shall prepare and submit to the President for transmittal to the Congress a full and complete report of the activities of the ACTION Agency during such year.

JOINT FUNDING

SEC. 408. Pursuant to regulations prescribed by the President, and to the extent consistent with the other provisions of this Act, where funds are provided for a single project by more than one Federal agency to an agency or organization assisted under this Act, the Federal agency principally involved may be designated to act for all in administering the funds provided, and, notwithstanding any other provision of law, in such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each agency. When the principal agency involved is the ACTION Agency, it may waive any grant or contract requirement (as defined by such regulations) under or pursuant to any law other than this Act, which requirement is inconsistent with the similar requirements under or pursuant to this Act.

PROHIBITION OF FEDERAL CONTROL

SEC. 409. Nothing contained in this Act shall be construed to authorize any depart-

ment, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution or school system.

COORDINATION WITH OTHER PROGRAMS

SEC. 410. The director shall take necessary steps to coordinate volunteer programs authorized under this Act with one another, with community action programs and with other related Federal, State, and local programs. The Director shall also consult with the heads of other Federal, State, and local agencies responsible for programs related to the purposes of this Act with a view to encouraging greater use of volunteer services in those programs and establishing in connection with them systematic procedures for the recruitment, referral, or necessary preservice orientation or training of volunteers serving pursuant to this Act.

PROHIBITION

SEC. 411. In order to assure that existing Federal agencies are used to the fullest extent possible in carrying out the purposes of this Act, no funds appropriated to carry out this Act shall be used to establish any new department or office when the intended function is being performed by an existing department or office.

APPEALS, NOTICE, AND HEARING PROCEDURES

SEC. 412. The Director shall prescribe procedures to insure that—

(1) assistance under this Act shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days, nor shall an application for refunding under this Act be denied, unless the recipient has been given reasonable notice and opportunity to show cause why such action should not be taken; and

(2) assistance under this Act shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

DURATION OF PROGRAM

SEC. 413. The Director shall carry out the programs provided for in this Act during the fiscal year ending June 30, 1974, and the three succeeding fiscal years. For each such fiscal year, only such sums may be appropriated as the Congress may authorize by law.

DISTRIBUTION OF BENEFITS BETWEEN RURAL AND URBAN AREAS

SEC. 414. The Director shall adopt appropriate administrative measures to assure that the benefits of this Act will be distributed equitably between residents of rural and urban areas.

APPLICATION OF FEDERAL LAW

SEC. 415. (a) Except as provided in subsections (b), (c), (d), and (e) of this section, volunteers under this Act shall not be deemed Federal employees and shall not be subject to the provisions of laws relating to Federal offices and employees and Federal employment.

(b) Individuals serving in programs authorized by parts A and B of title I of this Act, and individuals enrolled for a period of at least one year and serving as full-time volunteers in programs authorized by part C of title I of this Act shall, with respect to such service, including training, (1) be deemed, for the purposes of subchapter III of chapter 73 of title 5, United States Code, persons employed in the executive branch of the Federal Government, (2) for the purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.) be deemed employees of the United States, and any service performed by an individual as a volunteer (including training) shall be deemed to be performed in the employ of the United States, (3) for the purposes of the Federal Tort Claims provisions of title 28, United States Code, be considered employees of the United States, and (4) for purposes of subchapter I of chapter 81 of title 5 of the United States Code (relative to compensation to Federal employees for work injuries), shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply except as follows: (A) in computing compensation benefits for disability or death, the monthly pay of an enrollee shall be deemed that received under the entrance salary for a grade GS–7 employee, and sections 8113 (a) and (b) of title 5, United States Code, shall apply, and (B) compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee is terminated.

(c) Any period of service of a volunteer under part A of title I of this Act, and any period of full-time service of a volunteer enrolled in a program of at least one year's duration established under part B or C of title I of this Act, shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government—

(1) for the purposes of section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1)), and every other Act establishing a retirement system for civilian employees of any United States Government agency; and

(2) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement, and other rights and privileges based upon length of service under the laws administered by the Civil Service Commission, the Foreign Service Act of 1946, and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government: *Provided*, That service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirement for career appointment.

(d) Volunteers serving pursuant to part A of title I of this Act, and volunteers serving pursuant to title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 299–2994d), including those whose service was completed under such Act, who the Director determines, in accordance with regulations he shall prescribe, have successfully completed their term of service, shall be eligible for appointment in the competitive service in the same manner as Peace Corps volunteers as prescribed in Executive Order Numbered 11103 (April 10, 1963).

(e) Notwithstanding any other provision of law, all references in any other law to persons serving as volunteers under title VIII of the Economic Opportunity Act of 1964, as amended, shall be deemed to be references to persons serving as full-time volunteers in a program of at least one year's duration under part A, B, or C of title I of this Act.

EVALUATION

SEC. 416. (a) The Director shall measure and evaluate the impact of all programs authorized by this Act, their effectiveness in achieving stated goals in general, and in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services. Evaluations shall be conducted by persons not immediately involved in the administration of the program or project evaluated.

(b) The Director shall develop and publish general standards for evaluation of the program and project effectiveness in achieving the objectives of this Act. Reports submitted pursuant to section 407 shall describe the actions taken as a result of evaluations carried out under this section.

(c) in carrying out evaluations under this title, the Director shall, whenever possible, arrange to obtain the opinions of program and project participants about the strengths and weaknesses of the programs and projects.

(d) The Director shall publish summaries of the results of evaluations of program and project impact and effectiveness no later than sixty days after the completion thereof.

(e) The Director shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with Federal funds shall become the property of the United States.

(f) The Director is authorized to use such sums as are required, but not to exceed 1 per centum of the funds appropriated under this Act, to conduct program and project evaluations (directly, or by grants or contracts) as required by this Act. In the case of allotments from such an appropriation, the amount available for such allotments (and the amount deemed appropriated therefor) shall be reduced accordingly.

NONDISCRIMINATION

SEC. 417. (a) The Director shall not provide financial assistance for any program under this Act unless the grant, contract, or agreement with respect to such program specifically provides that no person with responsibilities in the operation of such program will discriminate with respect to any such program because of race, creed, color, national origin, sex, age, physical disability, or political affiliation.

(b) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subject to discrimination under, or be denied employment in connection with, any program or activity receiving assistance under this Act. The Director shall enforce the provisions of the preceding sentence in accordance with section 602 of the Civil Rights Act of 1964. Section 603 of such Act shall apply with respect to any action taken by the Director to enforce such sentence. This section shall not be construed as affecting any other legal remedy that a person may have if that person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any program or activity receiving assistance under this Act.

LEGAL EXPENSES

SEC. 418. Notwithstanding any other provision of law and pursuant to regulations which the Director shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings to which full-time volunteers serving under this Act have been made parties.

GUIDELINES

SEC. 419. All rules, regulations, guidelines, instructions, and application forms published or promulgated pursuant to this Act shall be published in the Federal Register at least thirty days prior to their effective date.

DEFINITIONS

SEC. 420. For the purposes of this Act—

(1) the term "Director" means the Director of the ACTION Agency;

(2) the terms "United States" and "States" mean the several States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, and American Samoa;

(3) the term "nonprofit" as applied to any agency, institution, or organization means an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; and

(4) the term "poor" or "low-income" persons, individuals, or volunteers means such individuals whose incomes fall at or below the poverty line as set forth in section 625 of the Economic Opportunity Act of 1964, as amended by Public Law 92-424 (42 U.S.C. —): Provided, That in determining who is "poor" or "low-income" the Director shall take into consideration existing poverty guidelines as appropriate to local situations.

TITLE V—AUTHORIZATION OF APPROPRIATIONS

NATIONAL VOLUNTEER ANTIPOVERTY PROGRAMS

SEC. 501. There are authorized to be appropriated $37,600,000 for the fiscal year ending June 30, 1974, and such sums as may be necessary for the fiscal years ending June 30, 1975, and June 30, 1976, for the purpose of carrying out title I of this Act: Provided, That not less than $22,300,000 be expended on programs authorized under part A of title I in each such fiscal year.

Any sums authorized to be appropriated for title I of this Act in excess of $37,600,000 shall be reflected in a commensurate increase in the sums to be made available for part A of that title.

NATIONAL OLDER AMERICAN VOLUNTEER PROGRAMS

SEC. 502. (a) There are authorized to be appropriated, for grants or contracts under section 201 of this Act, $17,500,000 for the fiscal year ending June 30, 1974, and $20,000,000 for the fiscal years ending June 30, 1975, and June 30, 1976, respectively.

(b)(1) There are authorized to be appropriated for grants or contracts under subsections (a) and (b) of section 211, $32,500,000 for the fiscal year ending June 30, 1974, and $40,000,000 for the fiscal years ending June 30, 1975, and June 30, 1976, respectively, of which—

(A) $26,500,000 for the fiscal year ending June 30, 1974, and $32,000,000 for the fiscal years ending June 30, 1975, and June 30, 1976, respectively, shall be available for such years for grants or contracts under subsection (a) of section 211, and

(B) $6,000,000 for the fiscal year ending June 30, 1974, and $8,000,000 for the fiscal years ending June 30, 1975, and June 30, 1976, respectively, shall be available for such years for grants or contracts under subsection (b) of such section.

(2) If the sums authorized to be appropriated under paragraph (1) of this subsection for fiscal years beginning after June 30, 1974, are not appropriated and made available in full for each such fiscal year, then such sums as are so appropriated and made available for each such fiscal year shall be allocated so that—

(A) any amounts appropriated not in excess of a sum which when added to carryover balances otherwise available for obligation under subsection (a) of section 211 equals $25,000,000 shall be used for grants or contracts under such subsection; and

(B) any amounts appropriated in excess of a sum which when added to carryover balances otherwise available for obligation under subsection (a) of section 211 equals $31,000,000 for the fiscal year ending June 30, 1974, and $33,000,000 for the fiscal years ending June 30, 1975 and 1976, respectively, shall be used for grants or contracts for such fiscal years under subsection (a) of such section.

NATIONAL VOLUNTEER PROGRAMS TO ASSIST SMALL BUSINESSES AND PROMOTE VOLUNTARY SERVICE BY BUSINESS PROPRIETORS

SEC. 503. There are authorized to be appropriated $208,000 for the fiscal year ending June 30, 1974, and such sums as may be necessary for the fiscal years ending June 30, 1975 and June 30, 1976, respectively, for the purpose of carrying out programs under title III of this Act.

ADMINISTRATION

SEC. 504. (a) There are authorized to be appropriated such sums as shall be necessary for the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976, for the administration of this Act as authorized in title IV of such Act.

AVAILABILITY OF APPROPRIATIONS

SEC. 505. (a) Notwithstanding any other provision of law, unless enacted in express and specific limitation of the provisions of this section, funds appropriated for any fiscal year to carry out any program under this Act or any predecessor authority shall remain available, in accordance with the provisions of this Act, for obligation and expenditure until expended.

TITLE VI—AMENDMENTS TO OTHER LAWS AND REPEALERS

SUPPRESSION OF REORGANIZATION PLAN NUMBER 1 OF JULY 1, 1971

SEC. 601. (a) Sections 1, 2(a), and 4 of Reorganization Plan Number 1 of 1971 (July 1, 1971) are hereby superseded.

(b) The personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Director of the ACTION Agency by sections 2(a) and 4 of such reorganization plan are hereby transferred to the ACTION Agency established by section 401. All grants, contracts, and other agreements awarded or entered into under the authority of such reorganization plan will be recognized under comparable provisions of this Act so that there is no disruption of ongoing activities for which there is continuing authority.

(c) All official actions taken by the Director of the ACTION Agency, his designee, or any other person under the authority of such reorganization plan which are in force on the effective date of this Act and for which there is continuing authority under the provisions of this Act, and the length of the period of service of volunteers serving or undergoing training under title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991-2994d) on the effective date of this Act, shall continue in full force and effect until modified, superseded, or revoked by the Director.

(d) All references to ACTION, or the Director of ACTION in any statute, reorganization plan, Executive order, regulation, or other official document or proceeding shall on and after the effective date of this Act, be deemed to refer to the ACTION Agency established by section 401 and the Director thereof.

(e) No suit, action, or other proceeding, and no cause of action, by or against the agency known as ACTION created by such reorganization plan, or any action by any officer thereof acting in his official capacity, shall abate by reason of enactment of this Act.

(f) Persons appointed by the President, by and with the advice and consent of the Senate, to positions requiring such advice and consent under such reorganization plan may continue to serve in the same capacity in the ACTION Agency without the necessity of an additional appointment by the President or further such advice and consent by the Senate.

CREDITABLE SERVICE FOR CIVIL SERVICE RETIREMENT

SEC. 602. Section 8332(b)(7) of title 5, United States Code (relating to creditable service to civil service retirement), is amended by inserting a comma and "or a period of service of a full-time volunteer enrolled in a program of at least one year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 (— U.S.C. —)" after "Economic Opportunity Act of 1964."

REPEAL OF TITLE VIII OF THE ECONOMIC OPPORTUNITY ACT

SEC. 603. Title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991-2994d), is hereby repealed.

REPEAL OF TITLE VI OF THE OLDER AMERICANS ACT

SEC. 604. Title VI of the Older Americans Act of 1965, as amended (42 U.S.C. 3044-3044e), is hereby repealed.

And amend the title so as to read: "An Act to provide for the operation of programs by the ACTION Agency, to establish certain new such programs, and for other purposes."

Mr. MANSFIELD. Mr. President, I move that the Senate agree to the amendments of the House of Representatives to the bill (S. 1148) entitled "An Act to provide for operation of all domestic volunteers service programs by the ACTION Agency, to establish certain new such programs, and for other purposes," with an amendment, which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

That this Act, with the following table of contents, may be cited as the "Domestic Volunteer Service Act of 1973":

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TITLE I—NATIONAL VOLUNTEER ANTIPOVERTY PROGRAMS

PART A—VOLUNTEERS IN SERVICE TO AMERICA

STATEMENT OF PURPOSES

SEC. 101. This part provides for the Volunteers in Service to America (VISTA) program of full-time volunteer service, together with appropriate powers and responsibilities designed to assist in the development and coordination of such program. The purpose of this part is to strengthen and supplement efforts to eliminate poverty and poverty-related human, social, and environmental problems in the United States by encouraging and enabling persons from all walks of life and all age groups, including elderly and retired Americans, to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted wth such problems.

AUTHORITY TO OPERATE VISTA PROGRAM

SEC. 102. The Director may recruit, select, and train persons to serve in full-time volunteer programs consistent with the provisions and to carry out the purpose of this part.

ASSIGNMENT OF VOLUNTEERS

SEC. 103. (a) The Director, upon request of Federal, State, or local agencies, or private nonprofit organizations, may assign such volunteers to work in the several States in appropriate projects and programs—

(1) in meeting the health, education, welfare, or related needs of Indians living on reservations or Federal trust lands, of migratory and seasonal farmworkers and their families, and of residents of the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(2) in the care and rehabilitation of mentally ill, developmentally disabled, and other handicapped individuals, especially those with severe handicaps, under the supervision of nonprofit institutions or facilities; and

(4) in connection with programs or activities authorized, supported, or of a character eligible for assistance under this Act or the Economic Opportunity Act of 1964, as amended (42 U.S.C. chapter 34) in furtherance of the purpose of this title.

(b) The Director, wherever feasible and appropriate, shall assign low-income community volunteers to serve in their home communities in teams with nationally recruited specialist volunteers. Prior to the assignment of any such community volunteer, the Director shall insure that each such volunteer is provided an individual plan designed to provide an opportunity for job advancement or for transition to a situation leading to gainful employment. One hundred and twenty days prior to the completion of such community volunteer's term of service, the Director shall insure that such plan is updated and reviewed with the volunteer.

(c) Except as provided in subsection (d), the assignment of volunteers under this section shall be on such terms and conditions (including restrictions on political activities that appropriately recognize the special status of volunteers living among the persons or group served by programs to which they have been assigned) as the Director may determine, including work assignments in their own or nearby communities.

(d) Volunteers under this part shall not be assigned to duties or work in any State unless such program has been submitted to the Governor or other chief executive officer of the State concerned, and has not been disapproved by him within forty-five days of such submission. The assignment of a volunteer shall be terminated by the Director when so requested by the Governor or chief executive officer of the State concerned not later than thirty days after such request has been made, or at a time after such request has been made as agreed upon by such Governor or chief executive officer of the State concerned and the Director.

TERMS AND PERIODS OF SERVICE

SEC. 104. (a) Volunteers serving under this part shall be required to make a full-time personal commitment to combating poverty and poverty-related human, social, and environmental problems. To the maximum extent practicable, this shall include a commitment to live among and at the economic level of the people served, and to remain available for service without regard to regular working hours, at all times during their periods of service, except for authorized periods of leave.

(b) Volunteers serving under this part may be enrolled for periods of service not exceeding two years, but for not less than one-year periods of service, except that volunteers serving under this part may be enrolled for periods of service of less than one year when the Director determines, on an individual basis, that a period of service of less than one year is necessary to meet a critical scarce-skill need. Volunteers serving under this part may be reenrolled for periods of service totaling not more than two years. No volunteer shall serve for more than a total of five years under this part.

(c) Volunteers under this part shall, upon enrollment, take the oath of office as prescribed in section 5(j) of the Peace Corps Act, as amended (22 U.S.C. 2504(j)), except that persons legally residing within a State but who are not citizens or nationals of the United States, may serve under this part without taking or subscribing to such oath, if the Director determines that the service of such persons will further the interests of the United States. Such persons shall take such alternative oath or affirmation as the Director shall deem appropriate.

(d) The Director shall establish a procedure, including notice and opportunity to be heard, for volunteers under this part to present and obtain resolution of grievances and to present their views in connection with the terms and conditions of their service. The Director shall promptly provide to each volunteer in service on the date of enactment of this Act, and to each such volunteer beginning service thereafter, information regarding such procedure and the terms and conditions of their service.

SUPPORT SERVICES

SEC. 105. (a) (1) The Director may provide a stipend to volunteers, while they are in training and during their assignments, enrolled for periods of service of not less than one year under this part, except that the Director may, on an individual basis, make an exception to provide a stipend to a volunteer enrolled under this part for an extended period of service not totaling one year. Such stipend shall not exceed $50 per month during the volunteer's service, except that the Director may provide a stipend not to exceed $75 per month in the case of persons who have served for at least one year and who, in accordance with standards established in regulations which the Director shall prescribe, have been designated volunteer leaders on the basis of experience and special skills and a demonstrated leadership among volunteers.

(2) Stipends shall be payable only upon completion of a period of service, except that in extraordinary circumstances the Director may from time to time advance all or a portion of the accrued stipend to or on behalf of a volunteer. In the event of the death of a volunteer during service, the amount of any unpaid stipend shall be paid in accordance with the provisions of section 5582 of title 5, United States Code.

(b) The Director shall also provide volunteers such living, travel (including travel to and from places of training), and leave allowances, and such housing, supplies, equipment, subsistence, clothing, health and dental care, transportation. supervision, technical assistance, and such other support as he deems necessary and appropriate to carry out the purpose and provisions of this part, and shall insure that each such volunteer has available such allowances and support as will enable the volunteer to carry out the purpose and provisions of this part and to effectively perform the work of which such volunteer is assigned.

PARTICIPATION OF BENEFICIARIES

SEC. 106. To the maximum extent practicable, the people of the communities to be served by volunteers under this title shall participate in planning, developing, and implementing programs thereunder, and the Director, after consultation with sponsoring agencies (including volunteers assigned to them) and the people served by such agencies, shall take all necessary steps to establish, in regulations he shall prescribe, a continuing mechanism for the meaningful participation of such program beneficiaries.

PARTICIPATION OF OLDER PERSONS

SEC. 107. In carrying out this part and part C of this title, the Director shall take necessary steps, including the development of special projects, where appropriate, to encourage the fullest participation of older persons and older persons membership groups as vol-

unteers and participant agencies in the various programs and activities authorized under such parts and, because of the high proportion of older persons within the poverty group, shall encourage the development of a variety of volunteer services to older persons, including special projects, to assure that such persons are served in proportion to their need.

PART B—SERVICE-LEARNING PROGRAMS

STATEMENT OF PURPOSE

SEC. 111. This part provides for the University Year for ACTION (UYA) program of full-time volunteer service by students enrolled in institutions of higher education, together with appropriate powers and responsibilities designed to assist in the development and coordination of such programs. The purpose of this part is to strengthen and supplement efforts to eliminate poverty and poverty-related human, social, and environmental problems by enabling students at such cooperating institutions to perform meaningful and constructive volunteer service in connection with the satisfaction of such students' course work during their periods of service while attending such institutions, in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by persons afflicted with such problems. Its purpose further is to encourage other students and faculty members to engage, on a part-time, self-supporting basis, in such volunteer service and work along with volunteers serving under this part; and to promote participation by such institutions in meeting the needs of the poor in the surrounding community through expansion of service-learning programs and otherwise. Its purpose further is to provide for a program of part-time or short-term service-learning by secondary and post-secondary school students to strengthen and supplement efforts to eliminate poverty and poverty-related human, social, and environmental problems.

AUTHORITY TO OPERATE UNIVERSITY YEAR FOR ACTION PROGRAM

SEC. 112. Except as otherwise provided in this part, the Director is authorized to conduct or make grants and contracts for, or both, programs to carry out the purposes of this part in accordance with the authorities and subject to the restrictions in the provisions of part A of this title, except for the provisions of sections 103(d) and 104(d), and except that the Director may, in accordance with regulations he shall prescribe, determine to reduce or eliminate the stipend for volunteers serving under this part on the basis of the value of benefits provided such volunteers by the institution in question (including the reduction or waiver of tuition).

SPECIAL CONDITIONS

SEC. 113. (a) Volunteers serving under this part shall be enrolled for periods of service as provided for in subsection (b) of section 104, and may receive academic credit for such service in accordance with the regulations of the sponsoring institution of higher education.

(b) Grants to and contracts with institutions to administer programs under this part shall provide that prospective student volunteers shall participate substantially in the planning of such programs and that such institutions shall make available to the poor in the surrounding community all available facilities, including human resources, of such institutions in order to assist in meeting the needs of such poor persons.

(c)(1) In making grants or contracts for the administration of UYA programs under this part, the Director shall insure that financial assistance under this Act to programs carried out pursuant to section 112 of this part shall not exceed 90 per centum of the total cost (including planning costs) of such program during the first year and such amounts less than 90 per centum as the Director, in consultation with the institution, may determine for not more than four additional years, including years in which support was received under title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991–2994d). Each such grant or contract shall stipulate that the institution will make every effort to (A) assume an increasing proportion of the cost of continuing a program carrying out the purpose of this part while the institution receives support under this part; (B) waive or otherwise reduce tuition for participants in such program, where such waiver is not prohibited by law; (C) utilize students and faculty at such institution to carry out, on a self-supporting basis, appropriate planning for such programs; and (D) maintain similar service-learning programs after such institution no longer receives support under this part.

(2) The Director shall take necessary steps to monitor the extent of compliance by such institutions with commitments entered into under paragraph (1) of this subsection and shall advise the Secretary of Health, Education, and Welfare of the extent of each such institution's compliance.

SPECIAL SERVICE-LEARNING PROGRAMS

SEC. 114. (a) Of the funds appropriated for the operation of programs under this part, up to 10 per centum may be used, notwithstanding any other provisions of this part, to encourage and enable students in secondary, secondary vocational, and post-secondary schools to participate in service-learning programs on an in- or out-of-school basis in assignments of a character and on such terms and conditions as described in subsections (a) and (c) of section 103.

(b) Persons serving as volunteers under this section shall not be deemed to be Federal employees for any purpose.

(c) The Director may provide volunteers serving under this section a living allowance and only such other support or allowances as he determines, pursuant to regulations which he shall prescribe, are required because of unusual or special circumstances affecting the program.

PART C—SPECIAL VOLUNTEER PROGRAMS

STATEMENT OF PURPOSE

SEC. 121. This part provides for special emphasis and demonstration volunteer programs, together with appropriate powers and responsibilities designed to assist in the development and coordination of such programs. The purpose of this part is to strengthen and supplement efforts to meet a broad range of human, social, and environmental needs, particularly those related to poverty, by encouraging and enabling persons from all walks of life and from all age groups to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may help to meet such needs.

AUTHORITY TO ESTABLISH AND OPERATE PROGRAMS

SEC. 122. (a) The Director is authorized to conduct or make grants or contracts, or both, for special volunteer programs or demonstration programs (such as but not limited to a program to provide alternatives to the incarceration of youthful offenders; a program to promote educational opportunities for veterans; and a program to provide community-based peer group outreach and counseling for drug abusers) designed to stimulate and initiate improved methods of providing volunteer services, to encourage wider volunteer participation on a full-time, part-time, or short-term basis to further the purpose of this part, and to identify particular segments of the poverty community which could benefit from volunteer and other antipoverty efforts.

(b) Except as provided in subsection (c) of this section, assignment of volunteers under this section shall be on such terms and conditions as the Director shall determine, pursuant to regulations which he shall prescribe.

(c) The Director, in accordance with regulations he shall prescribe, may provide to persons serving as full-time volunteers in a program of at least one year's duration under this part such allowances and stipends, to the extent and in amounts not in excess of those authorized to be provided under part A of this title, as he determines are necessary to carry out the purpose of this part.

TITLE II—NATIONAL OLDER AMERICAN VOLUNTEER PROGRAMS

PART A—RETIRED SENIOR VOLUNTEER PROGRAM

GRANTS AND CONTRACTS FOR VOLUNTEER SERVICE PROJECTS

SEC. 201. (a) In order to help retired persons to avail themselves of opportunities for volunteer service in their community, the Director is authorized to make grants to State agencies (established or designated pursuant to section 304(a)(1) of the Older Americans Act of 1965, as amended (42 U.S.C. 3024(a)(1)) or grants to or contracts with other public and nonprofit private agencies and organizations to pay part or all of the costs for the development or operation, or both, of volunteer service programs under this section, if he determines, in accordance with regulations he shall prescribe, that—

(1) volunteers will not be reimbursed for other than transportation, meals, and other out-of-pocket expenses incident to the provision of services under this part;

(2) only individuals aged sixty or over will be enrolled as volunteers to provide services under this part (except for administrative purposes), and such services will be performed in the community where such individuals reside or in nearby communities either (A) on publicly owned and operated facilities or projects, or (B) on local projects sponsored by private nonprofit organizations (other than political parties), other than projects involving the construction, operation, or maintenance of so much of any facility used or to be used for sectarian instruction or as a place for religious worship;

(3) the program includes such short-term training as may be necessary to make the most effective use of the skills and talents of participating volunteers and individuals, and provide for the payment of the reasonable expenses of such volunteers while undergoing such training; and

(4) the program is being established and will be carried out with the advice of persons competent in the field of service involved, and of persons with interest in and knowledge of the needs of older persons.

(b) The Director shall not award any grant or contract under this part for a project in any State to any agency or organization unless, if such State has a State agency established or designated pursuant to section 304(a)(1) of the Older Americans Act of 1965, as amended (42 U.S.C. 3024(a)(1)), such agency itself is the recipient of the award or such agency has been afforded at least sixty days in which to review the project application and make recommendations thereon.

PART B—FOSTER GRANDPARENT PROGRAM AND OLDER AMERICAN COMMUNITY SERVICE PROGRAMS

GRANTS AND CONTRACTS FOR VOLUNTEERS SERVICE PROJECTS

SEC. 211. (a) The Director is authorized to make grants to or contracts with public and nonprofit private agencies and organizations to pay part or all of the cost of development and operation of projects (including direct payments to volunteers serving under this

part) designed for the purpose of providing opportunities for low-income persons aged sixty or over to serve as volunteers to provide supportive person-to-person services in health, education, welfare, and related settings to children having exceptional needs, including services by volunteers serving as "foster grandparents" to children receiving care in hospitals, homes for dependent and neglected children, or other establishments providing care for children with special needs. The Director may approve assistance in excess of 90 per centum of the costs of the development and operation of such projects only if he determines, in accordance with regulations he shall prescribe establishing objective criteria, that such action is required in furtherance of the purpose of this section. Provision for such assistance shall be effective as of September 19, 1972. In the case of any project with respect to which, prior to such date, a grant or contract has been made under section 611 (a) of the Older Americans Act of 1965, as amended (42 U.S.C. 3044b) or with respect to any project under the Foster Grandparent program in effect prior to September 17, 1969, contributions in cash or in kind from the Bureau of Indian Affairs, Department of the Interior, toward the cost of the project may be counted as part of the cost thereof which is met from non-Federal sources.

(b) The Director is also authorized to make grants or contracts to carry out the purpose described in subsection (a) of this section in the case of persons (other than children) having exceptional needs, including services by volunteers serving as "senior health aides" to work with persons receiving home health care, nursing care, or meals on wheels or other nutritional services, and as "senior companions" to persons having developmental disabilities or other special needs for companionship.

CONDITIONS OF GRANTS AND CONTRACTS

SEC. 212. (a)(1) In carrying out this part, the Director shall insure that volunteers receiving assistance in any project are older persons of low income who are no longer in the regular work force.

(2) The Director shall not award a grant or contract under this part which involves a project proposed to be carried out throughout the State or over an area more comprehensive than one community unless—

(A) the State agency established or designated under section 304(a)(1) of the Older Americans Act of 1965, as amended (42 U.S.C. 3024 (a)(1)) is the applicant for such grant or contract or, if not, such agency has been afforded a reasonable opportunity to apply for and receive such award and to administer or supervise the administration of the project; and

(B) in cases in which such agency is not the grantee or contractor (including cases to which clause (A) applies but in which such agency has not availed itself of the opportunity to apply for and receive such award), the application contains or is supported by satisfactory assurances that the project has been developed, and will to the extent appropriate be conducted, in consultation with, or with the participation of, such agency.

(3) The Director shall not award a grant or contract under this part which involves a project proposed to be undertaken entirely in a community served by a community action agency unless—

(A) such agency is the applicant for such grant or contract or, if not, such agency has been afforded a reasonable opportunity to apply for and receive such award and to administer or supervise the administration of the project;

(B) in cases in which such agency is not the grantee or contractor (including cases to which clause (A) applies but in which such agency has not availed itself of the opportunity to apply for and receive such award), the application contains or is supported by satisfactory assurances that the project has been developed, and will to the extent appropriate be conducted in consultation with, or with the participation of, such agency; and

(C) if such State has a State agency established or designated pursuant to section 304(a)(1) of the Older Americans Act of 1965, as amended (42 U.S.C. 32024(a)(1)), such agency has been afforded at least forty-five days in which to review the project application and make recommendations thereon.

(b) The term "community action agency" as used in this section means a community action agency as defined in title II of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2781–2837).

PART C—GENERAL PROVISIONS

COORDINATION WITH OTHER FEDERAL PROGRAMS

SEC. 221. In carrying on this title, the Director shall consult with the Office of Economic Opportunity, the Departments of Labor and Health, Education, and Welfare, and any other Federal agencies administering relevant programs with a view to achieving optimal coordination with such other programs, and shall promote the coordination of projects under this title with other public or private programs or projects carried out at State and local levels. Such Federal agencies shall cooperate with the Director in disseminating information about the availability of assistance under this title and in promoting the identification and interest of low-income and other older persons whose services may be utilized in projects under this title.

PAYMENTS

SEC. 222. Payments under this title pursuant to a grant or contract may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, in such installments and on such conditions, as the Director may determine.

MINORITY GROUP PARTICIPATION

SEC. 223. The Director shall take appropriate steps to insure that special efforts are made to recruit, select, and assign qualified individuals sixty years and older from minority groups to serve as volunteers under this title.

TITLE III—NATIONAL VOLUNTEER PROGRAMS TO ASSIST SMALL BUSINESS AND PROMOTE VOLUNTEER SERVICE BY PERSONS WITH BUSINESS EXPERIENCE

STATEMENT OF PURPOSE

SEC. 301. This title provides for programs in which persons with business experience volunteer to assist persons, especially those who are economically disadvantaged, engaged in, or who seek to engage in, small business enterprises, and to make available their expertise as volunteers in programs authorized by, or of a character eligible for assistance under, this Act, the Economic Opportunity Act of 1964, as amended (42 U.S.C. chap. 34) (particularly title VII thereof), or the Small Business Act (15 U.S.C. chap. 14A). The purpose of this title is to utilize the skills and expertise of persons with business experience to assist persons in, or seeking to enter, business enterprises, or to carry out management and financial counseling activities in furtherance of the purposes of this Act.

AUTHORITY TO ESTABLISH, COORDINATE, AND OPERATE PROGRAMS

SEC. 302. (a) The Director is authorized to establish and conduct, and to recruit, select, and train volunteers for (and to make grants or enter into contracts therefor), volunteer programs, including a Service Corps of Retired Executives (SCORE) and an Active Corps of Executives (ACE) and programs in which SCORE and ACE volunteers expand the application of their expertise beyond Small Business Administration clients, to carry out the purpose of this title: *Provided, however,* That the services of volunteers who are assisting persons or enterprises seeking to obtain, or receiving, financial or management counseling assistance from the Small Business Administration shall be performed under the direction of the Administrator of the Small Business Administration (hereinafter referred to in this title as the "Administrator") pursuant to section 8(b)(1) of the Small Business Act (15 U.S.C. 637(b)(1)).

(b) The assignment of volunteers engaged in programs under this title shall be on such terms and conditions as the Director may determine, except that he shall prescribe such terms and conditions in agreement with the Administrator with respect to the service of volunteers described in the proviso in subsection (a) of this section.

(c)(1) Such volunteers, while carrying out activities under this title and section 8(b)(1) of the Small Business Act (15 U.S.C. 637(b)(1)), shall be deemed Federal employees for the purpose of the Federal tort claims provisions in title 28, United States Code.

(2) The Director is authorized to reimburse such volunteers only for such necessary out-of-pocket expenses incident to their provision of services under this Act as he shall determine, in accordance with regulations which he shall prescribe, and, while they are carrying out such activities away from their homes or regular place of business, for travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for individuals serving without pay.

(3) Such volunteers shall in no way (A) participate for the benefit of the Small Business Administration (rather than on behalf of their clients) in any screening or evaluation activities in connection with applications for loans from such Administraton, or (B) provide services to a client of such Administration with a delinquent loan outstanding, except upon a specific request signed by such client for assistance in connection with such matter.

(d) The Director and the Administrator shall cooperate in order to make available to such volunteers, or groups thereof, such use of the office facilities and related supplies, materials, and services of the Small Business Administration and the ACTION Agency as they deem appropriate to assist such volunteers to carry out such activities, including authorized meetings of groups of volunteers.

(e) Except as otherwise provided in this Act, activities authorized to be carried out both by this title and by section 8(b)(1) of the Small Business Act (15 U.S.C. 637(b)(1)) shall be carried out under this title to the maximum extent feasible.

TITLE IV—ADMINISTRATION AND COORDINATION

ESTABLISHMENT OF AGENCY

SEC. 401. There is hereby established in the executive branch of the Government an agency to be known as the ACTION Agency. Such Agency shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code. There shall also be in such agency a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code. The Deputy Director shall perform such functions as the Director shall from time to time prescribe, and shall act as Director of the ACTION Agency during the absence or disability of the Director. There shall also be in such agency two Assoicate Directors who shall be appointed by the President by and

with the advice and consent of the Senate, and shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code. One such Associate Director shall be designated "Associate Director for Domestic and Anti-Poverty Operations" and shall carry out operational responsibility for all programs authorized under this Act, and the other such Associate Director shall be designated "Associate Director for International Operations" and shall carry out operational responsibility for all programs authorized under the Peace Corps Act (22 U.S.C. 2501 et seq.). There shall also be in such agency no more than two Assistant Directors appointed by the President by and with the advice and consent of the Senate, who shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code. Each such Assistant Director shall perform such staff and support functions for such Associate Directors as the Director shall from time to time prescribe. There shall also be in such agency one Deputy Associate Director, under the Associate Director for Domestic and Anti-Poverty Operations, primarily responsible for programs carried out under parts A and B of title I of this Act and one Deputy Associate Director, under the Associate Director for Domestic and Anti-Poverty Operations, primarily responsible for programs carried out under title II of this Act, each of whom shall be appointed by the Director.

AUTHORITY OF THE DIRECTOR

SEC. 402. In addition to the authority conferred upon him by other sections of this Act, the Director is authorized to—

(1) appoint in accordance with the Civil Service laws such personnel as may be necessary to enable the ACTION Agency to carry out its functions, and, except as otherwise provided herein, fix the compensation of such personnel in accordance with chapter 51 of title 5, United States Code;

(2)(A) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that no individual may be employed under the authority of this subsection for more than one hundred days in any fiscal year; (B) compensate individuals so employed at rates not in excess of the daily equivalent of the rate payable to a GS–18 employee under section 5332 of such title, including traveltime; (C) allow such individuals, while away from their homes or regular places of business, travel expense (including per diem in lieu of subsistence) as authorized by section 5703 of such title for persons in the Government service employed intermittently, while so employed; and (D) annually renew contracts for such employment under this clause;

(3) with the approval of the President, arrange with and reimburse the heads of other Federal agencies for the performance of any of the provisions of this Act and, as necessary or appropriate, delegate any of his functions under this Act and authorize the redelegation thereof subject to provisions to assure the maximum possible liaison between the ACTION Agency and such other agencies at all operating levels, which shall include the furnishing of complete operational information by such other agencies to the ACTION Agency and the furnishing of such information by the ACTION Agency to such other agencies;

(4) with their consent, utilize the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or a political subdivision of a State, accept and utilize the services and facilities of the agencies of such State or subdivision without reimbursement;

(5) accept in the name of the ACTION Agency, and employ or dispose of in furtherance of the purposes of this Act, or of any title thereof, any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise;

(6) accept voluntary and uncompensated services;

(7) allocate and expand, or transfer to other Federal agencies for expenditure, funds made available under this Act as he deems necessary to carry out the provisions hereof, including (without regard to the provisions of section 4774(d) of title 10, United States Code), expenditure for construction, repairs, and capital improvements;

(8) disseminate, without regard to the provisions of section 3204 of title 39, United States Code, data and information, in such form as he shall deem appropriate, to public agencies, private organizations, and the general public;

(9) adopt an official seal, which shall be judicially noticed;

(10) collect or compromise all obligations to or held by him and all legal or equitable rights accruing to him in connection with the payment of obligations in accordance with Federal Claims Collection Act of 1966 (31 U.S.C. 951–53);

(11) expend funds made available for purposes of this Act as follows: (A) for printing and binding, in accordance with applicable law and regulations; and (B) without regard to any other law or regulation, for rent of buildings and space in buildings and for repair, alteration, and improvement of buildings and space in buildings rented by him; but the Director shall not utilize the authority contained in this subclause (B)—

(i) except when necessary to obtain an item, service, or facility, which is required in the proper administration of this Act, and which otherwise could not be obtained, or could not be obtained in the quantity or quality needed, or at the time, in the form, or under the conditions in which, it is needed, and

(ii) prior to having given written notification to the Administrator of General Services (if the exercise of such authority would affect an activity which otherwise would be under the jurisdiction of the General Services Administration) of his intention to exercise such authority, the item, service, or facility with respect to which such authority is proposed to be exercised, and the reasons and justifications for the exercise of such authority;

(12) notwithstanding any other provision of law, make grants or contracts with Federal or other public departments or agencies and private nonprofit organizations for the assignment or referral of volunteers under this Act (except for volunteers serving under part A of title I thereof), which may provide that the agency or organization shall pay all or a part of the costs of the program;

(13) provide or arrange for educational and vocational counseling of volunteers and recent former volunteers under this Act to (A) encourage them to use in the national interest the skills and experience which they have derived from their training and service, particularly working in combating poverty as members of the helping professions, and (B) promote the development, and the placement therein of such volunteers, of appropriate opportunities for the use of such skills and experience;

(14) establish such policies, standards, criteria, and procedures, prescribe such rules and regulations, enter into such contracts and agreements with public agencies and private organizations and persons, and make such payments (in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants otherwise authorized under this Act, with necessary adjustments on account of overpayments and underpayments) as are necessary or appropriate to carry out the provisions of this Act; and

(15) generally perform such functions and take such steps, consistent with the purposes and provisions of this Act, as he deems necessary or appropriate to carry out the provisions of this Act.

POLITICAL ACTIVITIES

SEC. 403. (a) No part of any funds appropriated to carry out this Act, or any program administered by the ACTION Agency, shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or any voter registration activity, or to pay the salary of any officer or employee of the ACTION Agency, who, in his official capacity as such an officer or employee, engages in any such activity. As used in this section, the term "election" has the same meaning given such term by section 301(a) of the Federal Election Campaign Act of 1971 (Public Law 92–225), and the term "Federal office" has the same meaning given such term by section 301(c) of such Act.

(b) Programs assisted under this Act shall not be carried on in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (1) any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (3) any voter registration activity. The Director, after consultation with the Civil Service Commission, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance for no more than thirty days until notice and an opportunity to be heard can be provided or other action necessary to permit enforcement on an emergency basis.

SPECIAL LIMITATIONS

SEC. 404. (a) The Director shall prescribe regulations and shall carry out the provisions of this Act so as to assure that the service of volunteers assigned, referred, or serving pursuant to grants, contracts, or agreements made under this Act is limited to activities which would not otherwise be performed by employed workers and which will not supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(b) All support, including transportation provided to volunteers under this Act, shall be furnished at the lowest possible cost consistent with the effective operation of volunteer programs.

(c) No agency or organization to which volunteers are assigned hereunder, or which operates or supervises any volunteer program hereunder, shall request or receive any compensation for services of volunteers supervised by such agency or organization.

(d) No funds authorized to be appropriated herein shall be directly or indirectly utilized to finance labor or antilabor organization or related activity.

(e) Persons serving as volunteers under this Act shall provide such information concerning their qualifications, including their ability to perform their assigned tasks, and their integrity, as the Director shall prescribe and shall be subject to such procedures for selection and approval as the Director determines are necessary to carry out the purposes of this Act. The Director may establish such special procedures for the recruitment, selection, training, and assignment of low-income residents of the area to be served by a program under this Act who wish to become volunteers as he determines will further the purposes of this Act.

(f) Notwithstanding any other provision of law and except as provided in the second

sentence of this subsection, the Director shall assign or delegate any substantial responsibility for carrying out programs under this Act only to persons appointed or employed pursuant to clauses (1) and (2) of section 402, and persons assigned or delegated such substantial responsibilities on the effective date of this Act and who are receiving compensation in accordance with provisions of law other than the applicable provisions of title 5, United States Code, on such date shall, by operation of law on such date, be assigned a grade level pursuant to such latter provisions so as to fix the compensation of such persons under such authority at no less than their compensation rate on the day preceding such date. The Director may personally make exceptions to the requirement set forth in the first sentence of this subsection for persons he finds will be assigned to carrying out functions under the Peace Corps Act (22 U.S.C. 2501 et seq.) within six months after the effective date of this Act.

(g) Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this Act shall not in any way reduce or eliminate the level of or eligibility for assistance or services any such volunteers may be receiving under any governmental program.

NATIONAL VOLUNTARY SERVICE ADVISORY COUNCIL

SEC. 405. (a) There is hereby established in the ACTION Agency a National Voluntary Service Advisory Council (hereinafter referred to as the "Council") to be composed of not more than twenty-five members appointed, not later than ninety days after the date of the enactment of this Act, by and serving at the pleasure of the President. Such members shall be representative of public and private organizations, groups, and individuals interested in serving and benefited by programs carried out under this Act and the Peace Corps Act (22 U.S.C. 2501 et seq.). The President shall designate a temporary chairperson from such members and shall call the initial meeting of the Council within thirty days after appointment of such Council. Members of the Council shall designate a permanent chairperson from such members and shall meet at the call of such chairperson, but not less than four times in each year. Members of the Council other than those regularly employed by the Federal Government, while attending meetings of such Council shall receive compensation and travel expenses as provided in section 402(2) of this Act with respect to experts and consultants. The Director and Deputy Director of the ACTION Agency shall be ex officio members of the Council.

(b) The Council shall—

(1) advise the Director with respect to policy matters arising in the administration of this Act and the Peace Corps Act (22 U.S.C. 2501 et seq.); and

(2) upon the request of the Director, review the effectiveness and the operation of programs under this Act and the Peace Corps Act and make recommendations (including such proposals for changes in such Acts as the Council deems appropriate) concerning (A) the improvement of such programs, (B) the elimination of duplication of effort, and (C) the coordination of such programs with other Federal programs designed to assist the beneficiaries of such Acts.

(c) Not later than January 1 of each calendar year beginning with the calendar year 1975, the Council shall make an annual report of its findings and recommendations to the President for transmittal by the President to the Congress together with his comments and recommendations.

LABOR STANDARDS

SEC. 406. All laborers and mechanics employed by contractors or subcontractors in the construction, alteration or repair, including painting and decorating of projects, buildings and works which are federally assisted under this Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5). The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Number 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and in section 2 of the Act of June 1, 1934, as amended (48 Stat. 948, ch. 492, as amended; 40 U.S.C. 276c).

REPORTS

SEC. 407. Not later than one hundred and twenty days after the end of each fiscal year, the Director shall prepare and submit to the President for transmittal by the President to the Congress a full and complete report on the activities of the ACTION Agency during such year.

JOINT FUNDING

SEC. 408. Pursuant to regulations prescribed by the President, and to the extent consistent with the other provisions of this Act, where funds are provided for a single project by more than one Federal agency to an agency or organization assisted under this Act, the Federal agency principally involved may be designated to act for all in administering the funds provided, and, notwithstanding any other provision of law, in such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each agency. When the principal agency involved is the ACTION Agency, it may waive any grant or contract requirement (as defined by such regulations) under or pursuant to any law other than this Act, which requirement is inconsistent with the similar requirements under or pursuant to this Act.

PROHIBITION OF FEDERAL CONTROL

SEC. 409. Nothing contained in this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any education institution or school system.

COORDINATION WITH OTHER PROGRAMS

SEC. 410. The Director shall take necessary steps to coordinate volunteer programs authorized under this Act with one another, with community action programs, and with other related Federal, State, and local programs. The Director shall also consult with the heads of other Federal, State, and local agencies responsible for programs related to the purposes of this Act with a view to encouraging greater use of volunteer services in those programs and establishing in connection with them systematic procedures for the recruitment, referral, or necessary preservice orientation or training of volunteers serving pursuant to this Act.

PROHIBITION

SEC. 411. In order to assure that existing Federal agencies are used to the fullest extent possible in carrying out the purposes of this Act, no funds appropriated to carry out this Act shall be used to establish any new department or office when the intended function is being performed by an existing department or office.

NOTICE AND HEARING PROCEDURES FOR SUSPENSION AND TERMINATION OF FINANCIAL ASSISTANCE

SEC. 412. The Director is authorized, in accordance with the provisions of this section, to suspend further payments or to terminate payments under any contract or grant providing assistance under this Act, whenever he determines there is a material failure to comply with the applicable terms and conditions of any such grant or contract. The Director shall prescribe procedures to insure that—

(1) assistance under this Act shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days, nor shall an application for refunding under this Act be denied, unless the recipient has been given reasonable notice and opportunity to show cause why such action should not be taken; and

(2) assistance under this Act shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

DURATION OF PROGRAM

SEC. 413. The Director shall carry out the programs provided for in this Act during the fiscal year ending June 30, 1974, and the three succeeding fiscal years. For each such fiscal year, only such sums may be appropriated as the Congress may authorize by law.

DISTRIBUTION OF BENEFITS BETWEEN RURAL AND URBAN AREAS

SEC. 414. The Director shall adopt appropriate administrative measures to assure that the benefits of and services under this Act will be distributed equitably between residents of rural and urban areas.

APPLICATION OF FEDERAL LAW

SEC. 415. (a) Except as provided in subsections (b), (c), (d), and (e) of this section, volunteers under this Act shall not be deemed Federal employees and shall not be subject to the provisions of laws relating to Federal officers and employees and Federal employment.

(b) Individuals enrolled in programs under title I of this Act for periods of service of at least one year shall, with respect to such service or training, (1) for the purposes of subchapter III of chapter 73 of title 5, United States Code, be deemed persons employed in the executive branch of the Federal Government, (2) for the purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.), be deemed employees of the United States, and any service performed by an individual as a volunteer (including training) shall be deemed to be performed in the employ of the United States, (3) for the purposes of the Federal Tort Claims provisions of title 28, United States Code, be deemed employees of the United States, and (4) for the purposes of subchapter I of chapter 81 of title 5, United States Code (relative to compensation to Federal employees for work injuries), shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply except as follows: (A) in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS–7 employee, and subsections (a) and (b) of section 8113 of title 5, United States Code, shall apply, and (B) compensation for disability shall not begin to accrue until the day following the date on which the injured volunteer is terminated.

(c) Any period of service of a volunteer enrolled in a program for a period of service of at least one year under part A of title I of this Act, and any period of full-time service of a volunteer enrolled in a program for a period of service of at least one year under part B or C of title I of this Act, shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government—

(1) for the purposes of section 852 (a) (1)

of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1)), and every other Act establishing a retirement system for civilian employees of any United States Government agency; and

(2) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement, and other rights and privileges based upon length of service under the laws administered by the Civil Service Commission, the Foreign Service Act of 1946, and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government: *Provided,* That service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirements for career appointment.

(d) Volunteers serving in programs for periods of service of at least one year under part A of title I of this Act, and volunteers serving for such periods under title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991–2994d), including those whose service was completed under such Act, who the Director determines, in accordance with regulations he shall prescribe, have successfully completed their periods of service, shall be eligible for appointment in the competitive service in the same manner as Peace Corps volunteers as prescribed in Executive Order Number 11103 (April 10, 1963).

(e) Notwithstanding any other provision of law, all references in any other law to persons serving as volunteers under title VIII of the Economic Opportunity Act of 1964, as amended, shall be deemed to be references to persons serving as full-time volunteers in a program of at least one year's duration under part A, B, or C of title I of this Act.

EVALUATION

SEC. 416. (a) The Director shall periodically measure and evaluate the impact of all programs authorized by this Act, their effectiveness in achieving stated goals in general, and in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services. Evaluations shall be conducted by persons not immediately involved in the administration of the program or project evaluated.

(d) The Director shall develop and publish general standards for evaluation of program and project effectiveness in achieving the objectives of this Act. Reports submitted pursuant to section 407 shall describe the actions taken as a result of evaluations carried out under this section.

(c) In carrying out evaluations under this title, the Director shall, whenever possible, arrange to obtain the opinions of program and project participants about the strengths and weaknesses of such programs and projects.

(d) The Director shall publish summaries of the results of evaluations of program and project impact and effectiveness no later than sixty days after the completion thereof.

(e) The Director shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with Federal funds shall become the property of the United States.

(f) The Director is authorized to use such sums as are required, but not to exceed 1 per centum of the funds appropriated under this Act, to conduct program and project evaluations (directly, or by grants or contracts) as required by this Act. In the case of allotments from such an appropriation, the amount available for such allotments (and the amount deemed appropriate therefor) shall be reduced accordingly.

NONDISCRIMINATION

SEC. 417. (a) The Director shall not provide financial assistance for any program under this Act unless the grant, contract, or agreement with respect to such program specifically provides that no person with responsibilities in the operation of such program will discriminate with respect to any such program because of race, creed, belief, color, national origin, sex, age, or political affiliation.

(b) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with, any program or activity receiving assistance under this Act. The Director shall enforce the provisions of the preceding sentence in accordance with section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1). Section 603 of such Act shall apply with respect to any action taken by the Director to enforce such sentence. This section shall not be construed as affecting any other legal remedy that a person may have if that person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any program or activity receiving assistance under this Act.

ELIGIBILITY FOR OTHER BENEFITS

SEC. 418. Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to titles II and III of this Act shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, temporary disability, retirement, public assistance, or similar benefit payments, or minimum wage laws. This section shall become effective with respect to all payments made after the effective date of this Act.

LEGAL EXPENSES

SEC. 419. Notwithstanding any other provision of law and pursuant to regulations which the Director shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings to which full-time volunteers (or part-time volunteers when such proceeding arises directly out of the performance of activities pursuant to this Act or section 8(b)(1) of the Small Business Act, as amended (15 U.S.C. 637(b)(1)) serving under this Act have been made parties.

GUIDELINES

SEC. 420. All rules, regulations, guidelines, instructions, and application forms published or promulgated pursuant to this Act shall be published in the Federal Register at least thirty days prior to their effective date.

DEFINITIONS

SEC. 421. For the purposes of this Act—

(1) the term "Director" means the Director of the ACTION agency;

(2) the terms "United States" and "States" mean the several States, the District of Columbia, the Virgin Islands, Puerto Rico, Guam, and American Samoa and, for the purposes of title II of this Act, the Trust Territory of the Pacific Islands;

(3) the term "nonprofit" as applied to any agency, institution, or organization means an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures or may lawfully inure, to the benefit of any private shareholder or individual; and

(4) the term "poor" or "low-income" persons, individuals, or volunteers means such individuals whose incomes fall at or below the poverty line as set forth in section 625 of the Economic Opportunity Act of 1964, as amended by Public Law 92–424 (42 U.S.C. 2971d): *Provided,* That in determining who is "poor" or "low-income", the Director shall take into consideration existing poverty guidelines as appropriate to local situations.

AUDIT

SEC. 422. (a) Each recipient of Federal grants, subgrants, contracts, subcontracts, or loans entered into under this Act other, than by formal advertising, and which are otherwise authorized by this Act, shall keep such records as the Director shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Director and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Director or the Comptroller General may be related or pertinent to the grants, contacts, subcontacts, subgrants, or loans referred to in subsection (a).

TITLE V—AUTHORIZATION OF APPROPRIATIONS

NATIONAL VOLUNTEER ANTIPOVERTY PROGRAMS

SEC. 501. (a) There are authorized to be appropriated $37,600,000 for the fiscal year ending June 30, 1974, and such sums as may be necessary each for the fiscal years ending June 30, 1975, and June 30, 1976, for the purpose of carrying out title I of this Act. In each such year, of the sums appropriated pursuant to this title not less than $29,600,000 shall be expended on programs designed to eliminate poverty and poverty-related human, social, and environmental problems. Of this amount not less than $22,300,000 shall be expended on programs authorized under part A of title I in each such fiscal year.

(b) Any sums authorized to be appropriated for title I of this Act in excess of $37,600,000 shall be reflected in a commensurate increase in the sums to be made available for part A of such title.

NATIONAL OLDER AMERICANS VOLUNTEER PROGRAMS

SEC. 502. (a) There are authorized to be appropriated $17,500,000 for the fiscal year ending June 30, 1974, and $20,000,000 each for the fiscal year ending June 30, 1975, and for the fiscal year ending June 30, 1976, respectively, to be used for the purpose of carrying out programs under part A of title II of this Act.

(b)(1) There are authorized to be appropriated $32,500,000 for the fiscal year ending June 30, 1974, and $40,000,000 each for the fiscal years ending June 30, 1975, and June 30, 1976, respectively, for the purpose of carrying out programs under part B of such title of which (A) $26,500,000 for the fiscal year ending June 30, 1974, and $32,000,000 each for the fiscal years ending June 30, 1975, and June 30, 1976, respectively, shall be available for such years for grants or contracts under subsection (a) of section 211, and (B) $6,000,000 for the fiscal year ending June 30, 1974, and $8,000,000 each for the fiscal years ending June 30, 1975, and June 30, 1976, respectively, shall be available for such years for grants or contracts under subsection (b) of such section.

(2) If the sums authorized to be appropriated under paragraph (1) of this subsection are not appropriated and made available in full for each such fiscal year, then such sums as are appropriated and made available for each such fiscal year shall be allocated so that—

(A) any amounts appropriated not in excess of a sum which when added to carryover balances otherwise available for obligation under subsection (a) of section 211 equals

$25,000,000 shall be used for grants or contracts under such subsection; and

(B) any amounts appropriated in excess of a sum which when added to carryover balances otherwise available for obligation under subsection (a) of section 211 equals $31,000,000 for the fiscal year ending June 30, 1974, and $33,000,000 each for the fiscal years ending June 30, 1975, and June 30, 1976, respectively, shall be used for grants or contracts for such fiscal years under such subsection.

NATIONAL VOLUNTEER PROGRAMS TO ASSIST SMALL BUSINESSES AND PROMOTE VOLUNTEER SERVICE BY PERSONS WITH BUSINESS EXPERIENCE

SEC. 503. There are authorized to be appropriated $208,000 for the fiscal year ending June 30, 1974, and such sums as may be necessary each for the fiscal years ending June 30, 1975, and June 30, 1976, respectively, for the purpose of carrying out programs under title III of this Act.

ADMINISTRATION AND COORDINATION

SEC. 504. There are authorized to be appropriated each for the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976, respectively, such sums as may be necessary for the administration of this Act as authorized in title IV of such Act.

AVAILABILITY OF APPROPRIATIONS

SEC. 505. Notwithstanding any other provision of law, unless enacted in express and specific limitation of the provisions of this section, funds appropriated for any fiscal year to carry out any program under this Act or any predecessor authority shall remain available, in accordance with the provisions of this Act, for obligation and expenditure until expended.

TITLE VI—AMENDMENTS TO OTHER LAWS AND REPEALERS

SUPERSEDENCE OF REORGANIZATION PLAN NUMBER 1 OF JULY 1, 1971

SEC. 601. (a) Sections 1, 2(a), 3, and 4 of Reorganization Plan Number 1 of 1971 (July 1, 1971) are hereby superseded.

(b) The personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Director of the ACTION Agency by sections 2(a) and 4 of such reorganization plan are hereby transferred to the ACTION Agency established by section 401. All grants, contracts, and other agreements awarded or entered into under the authority of such reorganization plan will be recognized under comparable provisions of this Act so that there is no disruption of ongoing activities for which there is continuing authority.

(c) All official actions taken by the Director of the ACTION Agency, his designee, or any other person under the authority of such reorganization plan which are in force on the effective date of this Act and for which there is continuing authority under the provisions of this Act, and the length of the period of service of volunteers serving or undergoing training under title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991–2994d) on the effective date of this Act, shall continue in full force and effect until modified, superseded, or revoked by the Director.

(d) All references to ACTION, or the Director of ACTION in any statute, reorganization plan, Executive order, regulation, or other official document or proceeding shall, on and after the effective date of this Act, be deemed to refer to the ACTION Agency established by section 401 and the Director thereof.

(e) No suit, action, or other proceeding, and no cause of action, by or against the agency known as ACTION created by such reorganization plan, or any action by any officer thereof acting in his official capacity, shall abate by reason of enactment of this Act.

(f) Persons appointed by the President, by and with the advice and consent of the Senate, to positions requiring such advice and consent under such reorganization plan may continue to serve in the same capacity in the ACTION Agency without the necessity of an additional appointment by the President or further such advice and consent by the Senate.

CREDITABLE SERVICE FOR CIVIL SERVICE RETIREMENT

SEC. 602. Section 8332(b)(7) of title 5, United States Code (relating to creditable service to civil service retirement), is amended by inserting a comma and "or a period of service of a full-time volunteer enrolled in a program of at least one year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 (— U.S.C. —)" after "Economic Opportunity Act of 1964".

REPEAL OF TITLE VIII OF THE ECONOMIC OPPORTUNITY ACT

SEC. 603. Title VIII of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2991–2994d), is hereby repealed.

REPEAL OF TITLE VI OF THE OLDER AMERICANS ACT

SEC. 604. (a) Title VI of the Older Americans Act of 1965, as amended (42 U.S.C. 3044–3044e), is hereby repealed.

(b) Section 908 of the Older Americans Comprehensive Services Amendments Act of 1973 (Public Law 93–29) is amended by striking out "1973," and "1974," and inserting in lieu thereof" "1974," and "1975," respectively.

Mr. CRANSTON. I am delighted to be moving S. 1148 back to the House for its concurrence in the compromise version we have worked out between the two bodies and with the administration. I am able to assure the distinguished majority leader and the Members of this body that this is a good measure and that it has the support of the administration, as communicated to me yesterday by Presidential Assistant Melvin Laird.

I thank the leadership for scheduling Senate action so promptly after the House acted on its committee-reported version on Monday.

In accordance with prior arrangements between the House and Senate sponsors under this compromise, I will not speak at this time to describe the provisions of the compromise.

Instead, Mr. President, I ask unanimous consent that there be printed in the RECORD at this point a joint explanatory statement on the S. 1148 compromise, which statement has been agreed to between the two committees.

The PRESIDING OFFICER. Without objection, it is so ordered.

JOINT EXPLANATORY STATEMENT REGARDING HOUSE/SENATE COMPROMISE ON S. 1148/H.R. 7265

1. With respect to section 104(b) regarding periods of service of VISTA volunteers enrolled under part A of title I, the Committees in both Houses wish to make clear that the language in the Senate bill "including or excluding periods of time devoted to training as the Director may determine", although not included in the compromise, is considered to be implicit therein and in section 113(a) which cross references section 104(b) as to the periods of service for UYA part B volunteers. Also, with respect to this subsection, the Committees wish to stress, and the agency concurs, that it is imperative that VISTA volunteer applicants be advised, at the time they receive invitations to training, of the length of service for which they are being invited. This will constitute a change in Agency procedures. It is necessary because of the varying periods of service authorized for VISTA volunteers under the subsection in the compromise.

2. With respect to the language in section 105(a)(1) in the compromise permitting the Director, as an exception, to provide stipends to VISTA volunteers under part A of title I for extended periods of service not totalling one year in individual cases, the Committees intend that such extended periods of service not be less than ten months (including or excluding training as the Director may determine).

3. With respect to section 112 in the compromise permitting payment of stipends to University Year for ACTION (UYA) volunteers serving under part B of title I in accordance with the provisions of section 105 in part A, the discussion in item 2 above also applies with respect to their "extended periods of service not totalling one year".

4. With respect to section 114(c) in the compromise regarding the payment of living allowances and the provision of other support and allowances as the Director may determine to short-term or part-time volunteers in special service-learning programs, the Committees have deliberately excluded the authority to pay stipends to any such volunteers. It is further intended by the Committees that the periods of service for volunteers in special service-learning programs under section 114 in the compromise may be of such length as the Director may determine without regard to any provisions of part A or B, and that the discussion in items 2 and 3 above with respect to payment of stipends, in individual cases, to VISTA and UYA volunteers serving extended periods of service has no application to section 114 volunteers whatsoever.

5. With respect to title III—National Volunteer Programs To Assist Small Businesses and Promote Volunteer Service by Persons With Business Experience—which represents technical improvements in the provisions of the Senate bill and the House amendment, the Committees wish to stress the following: (a) that the "assignment of volunteers" under such title refers to a work situation which has been explained to and accepted by the volunteer in question; (b) that the compromise in section 302(b) expressly requires the agreement of the Small Business Administration (SBA) Administrator to the terms and conditions of service prescribed by the ACTION Agency Director for SCORE/ACE volunteers with respect to their provision of assistance to persons or enterprises seeking to obtain, or receiving, financial or management counselling assistance from the SBA (which assistance is performed under the SBA's direction); (c) that the authority in section 302(c)(1) in the compromise to reimburse title III volunteers for necessary out-of-pocket expenses (which shall include, as under the Senate bill, parking and mileage in the event of appropriate uses of automobiles, meals, telephone calls, and the cost of necessary temporary secretarial services not available from either the ACTION Agency or the SBA) incident to their provision of services and the payment to them of travel expenses (including per diem in lieu of subsistence) while providing such services, includes the payment of such travel expenses for any necessary travel in connection with the performance of any such services, and that this authority is available without regard to the number of miles of such travel by such volunteers, in contrast to the limited authority in section 8(b)(1) of the Small Business Act which imposes a 50-mile minimum on the exercise of the SBA Administrator's travel-expenses payment authority; (d) that it is the intention and understanding of the Committees that SCORE/ACE and

other title III volunteers, while carrying out official activities pursuant to such title, are covered under the Federal Employees' Compensation Act (subchapter I of chapter 81 of title 5, U.S.C.) for work-related injuries as individuals providing services to the U.S. Government without compensation such as if they were on invitational travel orders, and further, that this same coverage logically extends to volunteers serving under title II—National Older American Volunteer Programs—while they are carrying out official activities pursuant to such title; (e) that a very appropriate application of the expertise of SCORE/ACE and other title III volunteers beyond the counselling of SBA clients would be for such volunteers, either separately or working in conjunction with title II (especially in the new Senior Companions program) and title I volunteers, to provide financial and investment counselling to senior citizens and others living on fixed incomes in order to enable them to make the maximum use of their limited resources.

The Committee also expect that the Agencies will consult with appropriate SCORE/ACE volunteers in carrying out the provisions of title III.

6. With respect to section 404 (f) in the compromise regarding the assignment or delegation of substantial responsibility for carrying out ACTION Agency domestic programs under the Act, the Committees do not intend the reference to clause (2) of section 402 in any way to authorize the delegation of authorities which may be otherwise prohibited to experts or consultants employed by the Agency under such clause. Further, the Committee stress that the substitution of the word "programs" for the word "functions" in the first sentence of subsection (f) and the deletion of the last sentence of the subsection, as contained in the Senate bill is intended to simplify and clarify the subsection and to carry out the same purpose intended by such language in the Senate bill—namely, that the provisions of the subsection have no application to persons carrying out administrative functions in support of other than program-related activities in the Agency, that is, no application to persons in the category characterized by the Agency as "Agency-wide support" (generally those persons who are carrying out staff and volunteer recruitment, selection, personnel, budget and finance, legislative, legal, and public information activities in support of both the domestic and international operations of the Agency).

7. With respect to section 405(a) in the compromise regarding the membership on the National Voluntary Service Advisory Council, the language "individuals interested in serving and benefited by programs" carried out by the Agency includes former Peace Corps, VISTA, and other former, volunteers under Agency programs, and also the persons served by such programs. Further, it is the expectation of the Committees that a full 25-member Council will be appointed and that in addition to appropriate representation on the Council of such international and domestic program beneficiaries, the Council will include at least one former Peace Corps volunteer and one former volunteer from each of the major domestic programs authorized under this Act.

8. With respect to section 419 in the compromise regarding the status of title II and title III volunteers with respect to eligibility for certain benefits, the Committees note that the inclusion of this section in the compromise in the form included in the Senate bill makes unnecessary the inclusion of subsections (d) in both sections 201 and 211, as included in the House amendment—these subsections are identical to subsections (d) of both section 601 and 611 of the Older Americans Act of 1965, as added by P.L. 93–29, included in title VI which would be repealed by section 604 of this Act—and that the subsections were thus not included in the compromise.

9. With respect to section 417(a) in the compromise regarding nondiscrimination in programs carried out under the Act, the reference to disability was not included in the compromise because of the difficulty of defining that term with precision and because it was believed to be inappropriate to legislate a distinction between physical and mental handicap or disability. The Committees expect and understand that there will be no discrimination based on physical or mental handicap in ACTION Agency programs when all eligibility and program criteria are met. Moreover, the Committees note that the subject of discrimination based upon physical or mental handicap in connection with Federal contracts or subcontracts and with Federal grants is fully dealt with in both House and Senate (S. 1875) versions of H.R. 8070, the proposed Rehabilitation Act of 1973, now pending in House/Senate conference.

10. With respect to the language of the compromise in section 501 regarding authorizations of appropriations for title I provisions, it is the understanding of the Committees in both Houses that the $29.6 million earmarked for poverty and poverty-related programs in subsection (a) will be expended in full and that the programs for which it will be expended will be full-time volunteer programs. The Committee also understand the Administration's view that these authorization provisions should not be considered as a precedent for other legislation.

Further, with respect to the language in subsection (b) requiring that if amounts are appropriated in excess of $37.6 million under title I, a "commensurate" increase be made in the sums made available for part A of title I, the Committee adopt as the meaning of the word "commensurate" as that term is used therein, the definition in *Webster's New International Dictionary Second Edition, Unabridged* (1955), on page 537 as follows: "1. equal in measure or extent; also proportionate; corresponding;".

11. With respect to section 504 in the compromise regarding authorizations of appropriations for the administration of the Act, the Committees note that the two administrative expenses limitations contained in subsections (a) and (b) of this section in the Senate bill were not included in the compromise in order to permit the General Accounting Office to complete its study, requested by the Senate Foreign Relations Committee and the Senate Special Subcommittee on Human Resources, regarding appropriate methods of allocating costs for Agency-wide support activities as between international and domestic program appropriations items. This treatment in the compromise is in line with actions of the Congress in deleting from H.R. 5293, the Peace Corps FY 1974 authorization Act (now P.L. 93–49), certain similar restrictive provisions regarding administrative expenses and personnel appointments. It is the intention of the Committees, after having received and reviewed this report of the General Accounting Office and after taking into consideration any comments thereon submitted by the Agency, to work together with the Foreign Relations and Foreign Affairs Committees in the respective bodies to develop and enact legislation providing for one administrative expenses funding mechanism (management fund) to support the Agency-wide administrative "support" functions. Moreover, the Committees urge that the General Accounting Office complete its report at the earliest possible date in order that this troublesome matter can be expeditiously resolved in the best interests of the programs administered by the Agency. The Committees further note that the Agency's operations under the figures included in the President's FY 1974 budget request will satisfy both of the administrative expenses limitations included in the Senate bill, and that they expect Agency-wide administrative support costs thereafter to continue to be less than 10 per cent of the total amount appropriated for domestic programs.

Mr. CRANSTON. Mr. President, I do wish, however, Mr. President, to make note of and express my deep gratitude for the great efforts to work out the differences between the two versions of the bill by the House principal sponsors, by the distinguished chairman of the Equal Opportunities Subcommittee of the Education and Labor Committee (Mr. HAWKINS), by the ranking minority member (Mr. STEIGER), and by the bill's distinguished sponsor (Mrs. MINK). We are also truly indebted to the great chairman of the Education and Labor Committee (Mr. PERKINS) and its ranking minority member (Mr. QUIE) for their indispensable assistance on this legislation on the House side.

It has been a great privilege to work with them all.

They were most ably assisted by Bill Beckham and Patsy Fleming for Mr. HAWKINS and the subcommittee majority, by Marty LaVor for the minority, by Dean Hewitt for Mr. STEIGER, and by Don Baker and Bill Cable for the chairman. They have provided the finest type of staff assistance to achieve this compromise and facilitate its passage.

On our side, Mr. President, I must again pay tribute to the truly bipartisan efforts and contributions of the ranking minority member of the Special Subcommittee on Human Resources, the Senator from Maryland (Mr. BEALL) and his very hard-working legislative assistant David Rust, as well as John Scales for the minority. Senator BEALL has been a great ally and partner throughout this venture.

I also want to thank the chairman of the full Labor and Public Welfare Committee and principal majority sponsor of S. 1148 (Mr. WILLIAMS) for his special assistance, and the ranking minority member of the committee (Mr. JAVITS). In addition, I want to express my appreciation for the support of the other sponsors of the bill—the Senator from West Virginia (Mr. RANDOLPH), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Minnesota (Mr. MONDALE), the Senator from Rhode Island (Mr. PELL), and my colleague from California (Mr. TUNNEY). They and their staff have also been of great help.

For myself, I want again to thank for a job very well done Fran Butler and Jon Steinberg of the subcommittee who have been at work on this legislation for well over a year.

Finally, Mr. President, this has been a tripartite effort: Senate, House, and administration. The willingness of the administration to work with us to accommodate our differences on this measure has been a great example of the bipartisan and really nonpartisan nature of the volunteer programs under the ACTION Agency. That is the way these programs and that Agency should function. Thus, I want to pay tribute to Michael Balzano, Director of the ACTION Agency, Mel Laird at the White House, Paul O'Neill at OMB, and particularly to Eric Silberstein, the Agency's congressional liaison, for his very effec-

tive representation of the interests and position of the Agency and the administration and his knowledge of the legislative process.

Mr. President, the compromise amendment before us is essentially the same, as the provisions of S. 2364, which I introduced on August 3, when it became clear that the Congress would be unable to approve the compromise version prior to the August recess. A few technical and clarifying changes have been made with the concurrence of all parties involved.

Also, a new section—section 422—with respect to GAO and internal action agency audit of grantee and contractor operations and their recordkeeping, has been added as a result of a strong request submitted by the Comptroller General of the United States in an August 17, 1973, letter sent to both Houses of the Congress. This provision had not originally been included in the House version of the bill—H.R. 7265—as introduced.

I am grateful for the very gracious agreement on the part of the administration and all those involved in adding this technical provision to the compromise version. This section is virtually identical to section 423 in S. 1143 as passed by the Senate on July 18, 1972, except for clarifying changes to make clear that the recordkeeping and audit requirements would not apply to the activities of individual volunteers serving under the new act, but rather only to grantees, subgrantees, contractors, and subcontractors receiving assistance thereunder.

Mr. President, it is a very hopeful sign that this bill has been worked out without the need for a Presidential veto first. I wish we could do that more often. If the administration will only talk with us about the bills we are developing, I feel confident we can accomplish the kind of cooperation that has characterized our work on these bills. After vetoes, we have recently been able to work out acceptable compromises on a number of bills with which I have been closely involved: On S. 50, the Older Americans Comprehensive Services Amendments of 1973 (Public Law 93–29), on S. 59, the Veterans Health Care Expansion Act of 1973, a bill I authored which was signed by the President on August 2, on S. 49, the Veterans Cemeteries Act of 1973 (Public Law 93–43), and on S. 1875/H.R. 8070, the Rehabilitation Act of 1973, the vocational rehabilitation bill now on the President's desk. Senate and House leaders also successfully negotiated with the administration the August 15 Cambodia and Indochina bombing cutoff date.

In other areas, an accord was reached on the highway trust fund bill; the President signed two compromise health bills in June; and similar progress seems possible on other pending measures.

In contrast, although the President vetoed S. 504, the Emergency Medical Services Systems Act of 1973, which I authored, and which the Senate yesterday overrode 77–16, the House failed by only five votes to follow suit—273 to 144. But even on that bill, although, despite repeated invitations by me and my staff, the administration made no efforts whatsoever to work with us. There now are clear signs that the President will sign the bill without the Public Health Service Hospital provision, S. 2410 as I have introduced it and as the Labor and Public Welfare voted to report it last Thursday.

Coming up in committee this month are two measures I am deeply involved with, S. 1708, the Family Planning Services and Population Research Amendments of 1973, and the Legal Services Corporation legislation. Also, two very important manpower training and employment measures, S. 1559 and S. 1560, passed the Senate in July and should be in conference this fall; they are compromise measures already and should be signed by the President.

I fervently hope, Mr. President, that the administration will approach all these measures with the same reasonableness that has characterized their dealings on S. 1148 and recently at least, on S. 59, S. 49, S. 1875, and S. 50.

Saying "no" is the easiest way out of any difference of opinion.

I cannot believe any President likes to veto legislation, especially a President who has spent long years in the Congress.

What too often seems to have happened is that because of intractable staff and advisers, the President has been backed into a corner when confronted with a bill into which his administration has attempted to make little or no input. He has perceived no alternative other than to exercise the veto power.

There is another way, of course, and our responsibilities—here and downtown—are to do everything possible to avoid such impasses.

We have certainly done just that on this bill.

The President called for congressional cooperation in his second State of the Union submitted last week. In fact, he expressly called for prompt action to approve the compromise in the ACTION Agency legislation—the bill now before us.

We are responding with speed, and I expect the House to do its part tomorrow to accept the Senate amendment to the House amendment to the bill.

Compromise is democracy at work, and I stand ready to do everything I can to continue and facilitate the spirit of accord and accommodation.

The American people deserve no less.

Mr. JAVITS. Mr. President, as ranking minority member of the Senate Committee on Labor and Public Welfare, I support the amendment offered by the distinguished Senator from California (Mr. CRANSTON) to S. 1148, the "Domestic Volunteer Service Act of 1973," as amended by the House yesterday.

The amendment proposed by Senator CRANSTON follows the text of S. 2364, of the same title, introduced by Senator CRANSTON on August 3, with my cosponsorship, and represents a compromise worked out between the administration and Members of the Senate and the House just before the August recess.

After action here, the House is expected to concur in the Senate amendment to the House amendment.

The Senate passed S. 1148 on July 18, 1973.

Mr. President, this is an opportunity to implement one of the first instances of a "workable compromise" along the lines generally called for by the President in his "Second State of the Union" address of September 5, 1973. In that message he made specific reference to this legislation as follows:

> More than two years ago, in order to advance our tradition of voluntary action, I created a new Federal agency called ACTION. That agency is now responsible for directing federally funded domestic volunteer programs as well as the Peace Corps. ACTION has now proved to be an effective way of encouraging greater voluntary action here and abroad, and I am now anxious to place it on a more permanent footing. Accordingly, I ask that the Congress act this fall to provide legislative authority for this agency. Appropriate language for this legislation was agreed to prior to the August recess by a bipartisan group of sponsors in the House and Senate and by the Administration. I hope that this legislation will soon be sent to me for signature.

I hope that this method of proceeding will soon be followed in a number of other areas pending before the Congress, such as manpower training reform, the establishment of a legal services corporation, minimum wage legislation and other areas of importance.

With respect to this legislation, I commend Senator BEALL, the ranking minority member of the Subcommittee on Human Resources, and Senator CRANSTON, the chairman of that subcommittee, as well as the administration, for their great leadership in working out the compromise.

Mr. President, this amendment, like S. 1148 as passed by the Senate, would consolidate under one authority the domestic volunteer programs conducted by the ACTION agency under Reorganization Plan No. 1 of 1971; it consists of the following basic titles: title I—VISTA part A; University Year in ACTION, part B; special volunteer programs, part C; title II—retired service volunteer programs, part A and foster grandparent programs, part B; title III—SCORE/ACE programs; title IV—administrative provisions; title V—authorizations, by title and earmarks; title VI—repealer.

The principal distinction between this amendment and S. 1148 as passed by the Senate lies in the authorizations and ear-marking provisions for these programs, which have been reduced or changed to "such sums" in order to meet the concerns of the administration.

I am satisfied that these authorizations, while meeting the administration's concerns, are still adequate to carry on a very vital domestic volunteer program.

I ask unanimous consent that there be printed in the RECORD at this point a chart prepared by my office showing authorization and earmarking levels as compared to the levels of the last three fiscal years and the levels authorized under S. 1148, as originally passed by the Senate.

Mr. President, it is time that ACTION

be given a full authorization to conduct these vital domestic volunteer programs and I urge that the Senate pass this compromise proposal not only to give these efforts the legislative mandate they deserve, but to indicate to the President that we, too, are willing to seek a workable compromise on legislation in areas of crucial concern.

Mr. President, I ask unanimous consent that there be printed at this point in the RECORD an excerpt from the CONGRESSIONAL RECORD of July 18 including my remarks on S. 1148 as it passed the Senate.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[Figures are in millions of dollars]

Program	Appropriation[1] 1972	1973	1974	Authorization[2] (under S. 1148, the "Domestic Volunteer Service Act of 1973") 1974	1975	1976	Authorization[3] (under S. 2364, the "Domestic Volunteer Services Act of 1973") 1974	1975	1976
Title I							$37.6	Such sums	Such sums.
Pt. A—VISTA	22.889	25.249	22.3	30 (22.3)	35 (25)	45 (26)	Not less than $29.6 for poverty, poverty-related, social and environmental problems of which not less than $22.3 to be spent on title I, pt. A in each year ACTION.[4]		
Pt. B—UYA	4.281	8.498	7.3	12 (7.3)	15 (8.5)	20 (8.5)			
Pt. C—Special programs	(*)	(*)	(*)	8 (8)	11 (10)	11 (10)			
Title II:									
Pt. A—RSVP	14.25	15.0	15.0	30	40	50	17.5	20.0	20.0.
Pt. B—FGP	24.081	25.0	25.0	45 (25)	55 (25)	65 (25)	32.5	40.0	40.0.
Pt. C—OACSP	(**)	(**)	(**)	7	8	9	211A (26.5),	(32), (8)	(32), (8).
Title III: SCORE/ACE	***.117	***.132	.208	1.0	1.5	2.0	0.208	Such sums	Such sums.
Title IV: Administration	13.067	15.009	14.591	15	16	17	Such sums	Such sums	Such sums.

[1] ACTION fiscal year 1974 budget submission to the Congress.
[2] Report of the Senate Committee on Labor and Public Welfare on the "Domestic Volunteer Service Act of 1973" (No. 93-311).
[3] S. 2364, the "Domestic Volunteer Services Act of 1973", title V.
[4] Any sums appropriated in excess of $37,600,000 shall be reflected in commensurate increases in sums for Pt. A of the title.

Note: Figures in ( ) are earmarks.

*Breakdowns not available, however Action advises that the total demonstration effort for fiscal 1973 was $3,500,000 and its request for fiscal 1974 is $6,750,000.
**Figures not available.
***Funds were appropriated to the Small Business Administration.

Mr. JAVITS. Mr. President, I am pleased to support S. 1148, the Domestic Volunteer Services Act of 1973, a bill to provide for operation of all domestic volunteer service programs by the ACTION Agency.

This bill would consolidate under one authority the domestic volunteer programs conducted by the agency under Reorganization Plan No. 1 of 1971; it consists of the following basic titles: Title I—VISTA, part A; University Year in ACTION, part B; special volunteer programs, part C; title II—retired service volunteer program, part A and foster grandparent programs, part B; title III—SCORE/ACE programs; title IV—administrative provisions; title V—authorizations, by title and earmarks; title VI—repealer.

TITLE I

Mr. President, when Reorganization Plan No. 1 was considered in 1971 by the Committee on Government Operations, I, as a member of that committee and as the ranking minority member of the Committee on Labor and Public Welfare, sought to insure that in the transfer of VISTA and other domestic programs to the new ACTION agency the basic antipoverty thrust of the effort would be maintained. With that purpose in mind, and as a condition to my support of the reorganization plan, I elicited and received written commitments from George Shultz, then Director of the Office of Management and Budget, relating to the charter of new organization, its organizational structure and its disposition toward the continued participation of volunteers and beneficiaries in its programs; these commitments were set in a letter to me dated May 20, 1971, from Director Shultz.

I am very pleased that this bill by virtue of provisions that I and other members of the committee have supported, very closely reflects these same commitments.

First, the statement of purpose for parts A and B of title I—which deal with VISTA and the university year in ACTION programs—make clear that focus while recognizing that volunteer efforts in related problem areas such as lead base paint poisoning and rehabilitation of criminal offenders are also legitimate activities to be carried out by VISTA and university year in ACTION volunteers.

The committee quite properly resisted any diversion of volunteers to other efforts, which while important in themselves, do not maintain an antipoverty focus; these are covered under part C of title I.

Second, to further insure this focus the committee bill would ear-mark for part A of title I under which the VISTA program is operated, a minimum of $22.3 million in fiscal year 1974 and proportional amounts in the two subsequent years; the amount of $22.3 million is exactly the administration's own request for fiscal year 1974.

In his letter Director Shultz cited as the basic goal of the domestic and antipoverty component as one—

"To extend opportunities for volunteer services and to bring a wide range of volunteer groups to bear in a concerted attack on poverty-related problems."

These provisions I have noted will help to implement that commitment.

Fourth, the bill also includes provisions to insure the participation of beneficiaries of antipoverty programs, requiring the Director to take all necessary steps to establish a continuing mechanism for the meaningful participation of program beneficiaries. These provisions are also consistent with the commitment made by former Director Shultz in stating in the letter to which I referred:

"I wish also to affirm that as we implement the plan, we intend to ascertain and take into account the views of the people served and the volunteers themselves as to shaping the programs, providing the appropriate organizational structure, and their ideas about key personnel."

Fifth, under an amendment which I shall offer to this bill, the Associate Director for Domestic and Antipoverty Operations will have equal status with the Associate Director for International Operations and both will clearly have "line" authority vis-a-vis the Assistant Directors will serve a staff function in areas such as recruitment, placement, and other essentially supportive functions.

As I shall explain in offering that amendment, this stems too from a specific commitment by the administration.

Mr. President, in addition to these aspects I have mentioned, the committee bill includes an amendment which I offered to authorize the Director to establish special programs designed to stimulate and initiate improved methods of providing volunteer services for identification of particular segments of the poverty community which could benefit from volunteer and other antipoverty efforts; these provisions will enable the Director to deal with problems of particular ethnic groups such as the Jewish poor in New York City who have heretofore been neglected under many of the antipoverty programs.

Also the bill includes a provision to which I contributed to insure that volunteer programs for youthful offenders apply both to youth under sentence and those awaiting trial. This authority will be a very meaningful authority to supplement other efforts such as the provision of manpower training services for this group which I have included in S. 1559, the "Job Training and Community Services Act of 1973," which Senator NELSON and I have coauthored.

TITLE II

In addition, I strongly support the improvements to the foster grandparent and RSVP programs which are made by title II of the reported bill. While this ground was covered previously in the enactment of the Older Americans Comprehensive Services Amendments of 1973, the codification of these improvements within the ACTION framework is needed to reinforce the intent of Congress to make the ACTION Agency serve as the principal vehicle for domestic volunteer efforts in the aging area. I hope that any questions arising from any House-passed measure in this connection, and specifically with respect to the earmarking of funds, will be resolved expeditiously so that the overall pattern of authority for the ACTION Agency is clear and susceptible of effective implementation.

TITLE III

Mr. President, title III of the bill concerns itself with two significant national volunteer programs which provide managerial and other assistance, at no cost, to small business proprietors, that is the Service Corps of Retired Executives—SCORE—and the Active Corps of Executives—ACE.

In addition to codifying the present division of authority between the SBA and ACTION, pursuant to the Reorganization Plan No. 1 of 1971, the bill requires the Director of ACTION to cooperate with the SBA Administrator in carrying out the various SCORE/ACE programs and authorizes the Director to utilize SCORE/ACE volunteers in non-SBA related activities. Title III also provides that SCORE/ACE volunteers be considered Federal employees for purposes of Federal tort claims, authorizes a reimbursement procedure for certain expenses and under certain circumstances, prohibits SCORE/ACE volunteers from participating in any screening or evaluation activities on behalf of the SBA in connection with loan applications and delinquent loans.

In effect this title clarifies the management and financial line of authority between

the SBA Administrator and ACTION directors and allows for the expansion of the SCORE/ACE programs by locating new clients projects and programs, authorized under the OEO Act of 1964.

Mr. President, at this time I wish to note the leadership taken in respect to these matters by Senator CRANSTON, the author of this bill and by Senator BEALL, the ranking minority member of the Subcommittee on Human Resources as well as the efforts of the ACTION Agency itself, which I believe has been very diligent in carrying out its charter under the reorganization plan, which this authority would replace.

I ask unanimous consent that a copy of the letter from Director Shultz, dated May 20, 1971, be printed at this point in the RECORD as well as a chart prepared by my office comparing the authorizations under this bill with appropriations requests and allowances for each of the fiscal years 1972–74.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEAR SENATOR JAVITS. I am pleased to have your views on ways to improve and clarify the organization and program direction of ACTION, the volunteer service agency proposed by Reorganization Plan No. 1 of 1971.

Your discussions with Arnold Weber have been most helpful in identifying a number of improvements which I agree should be made. These changes involve significant points of emphasis in the organizational structure of the new agency and other changes, in the level of executive positions which will be incorporated in legislation to be submitted by the Administration.

1. The Associate Director for Domestic Operations will be redesignated as Associate Director for Domestic and Anti-Poverty Programs to emphasize more visibly and forcefully the commitment of all of the elements of this organization to anti-poverty efforts.

2. The Associate Directors for Program Development, Administration, and Recruitment-Selection-Placement will be redesignated as Assistant Directors to indicate their staff role as supportive to the line Associate Directors who have primary program responsibility.

3. The formal organizational structure will be modified to underscore the fact that the two Associate Directors will be line operators of ACTION's programs and will be supported in a staff capacity by the Assistant Directors. The net result of these changes will be to show that the two Associate Directors will be the ACTION program operators. In that capacity, and in full recognition of their substantial responsibilities, I agree that they should be upgraded from Level V, as indicated in the Reorganization Plan, to Level IV. Because the Reorganization Plan as submitted cannot be modified, this change will be sought through legislation which we will submit shortly.

I also recognize the concern of you and others that the Associate Director for Domestic and Anti-Poverty Programs is committed to the importance of anti-poverty activity in ACTION's Program. I believe the organizational changes we have agreed to, give much stronger institutional recognition to this commitment. I wish also to affirm that as we implement the plan, we intend to ascertain and take into account the views of the people served and the volunteers themselves as to shaping the programs, providing the appropriate organizational structure, and their ideas about key personnel, including the Associate Director for the domestic and anti-poverty component. The Associate Director, of course, will have the special experience and insight necessary to carry out the basic goal of this component which is to extend opportunities for volunteer service and to bring a wide range of volunteer groups to bear in a concerted attack on poverty-related problems.

I appreciate your assistance in providing us with an opportunity to sharpen the Administration's commitment to the domestic program of ACTION, and to clarify our intent to support fully the use of volunteer resources in attacking the problems of poverty in local communities.

Sincerely,

GEORGE P. SHULTZ, *Director*.

Mr. BEALL. Mr. President, it is a pleasure to join in supporting this legislation. During the past several months, the subcommittee has diligently worked to bring before the Senate a bill that would codify the existence of the ACTION Agency—which was created by the President's Executive Reorganization Plan No. 1 in 1971—as well as authorize and expand the domestic volunteer program. On July 28, 1973, the Senate approved S. 1148 and forwarded it to the House of Representatives for their consideration. The Committee on Education and Labor of the House reported H.R. 7265 which was passed by the full House on September 17, 1973.

In recent weeks, Mr. President, I, as the ranking minority member on the Subcommittee on Human Resources, have worked closely with the subcommittee chairman (Mr. CRANSTON) and our counterparts from the other body—Subcommittee Chairman HAWKINS of California and the ranking minority member—Mr. STEIGER of Wisconsin. Our efforts to reach a reasonable compromise have been assisted at every step by the Honorable Melvin Laird, Counselor to the President; Dr. Michael Balzano, Director of the ACTION Agency; and Mr. Eric Silberstein, Assistant Director of the ACTION Agency for Congressional Affairs. The compromise, which we are offering today in the form of a Senate amendment to the House-passed bill, has the enthusiastic support of the appropriate committees of both Houses of the Congress, the ACTION Agency, and the White House. The President's strong support for this legislation was reflected in his September 10, 1973, state of the Union address to the Congress in which he said:

> More than two years ago, in order to advance our tradition of voluntary action, I created a new Federal agency called ACTION. That agency is now responsible for directing federally funded domestic volunteer programs as well as the Peace Corps. ACTION has now proved to be an effective way of encouraging greater voluntary action here and abroad, and I am now anxious to place it on a more permanent footing. Accordingly, I ask that the Congress act this fall to provide legislative authority for this agency. Appropriate language for this legislation was agreed to prior to the August recess by a bipartisan group of sponsors in the House and Senate and by the Administration. I hope that this legislation will soon be sent to me for signature.

In closing, Mr. President, I would like to observe that this compromise legislation represents the collective wisdom of both Houses of the Congress, the agency itself, and the White House. I think the working relationship reflected in this compromise represents our democratic institutions at their best. We have succeeded in shaping an excellent piece of legislation which will, when fully implemented, significantly further the cause of volunteerism in the United States. I am especially pleased that this objective will have been achieved without an unnecessary confrontation between the legislative and executive branches of our Government.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur in the House amendments with an amendment.

The motion was agreed to.

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, while we are waiting, I move that the Senate go into executive session to consider nominations on the Executive Calendar beginning with Calendar Order No. 308 and continuing through the remainder of the nominations following No. 308.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

UNITED NATIONS

The assistant legislative clerk proceeded to read sundry nominations of representatives to the General Assembly of the United Nations, beginning with the nomination of John A. Scali of the District of Columbia.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

Mr. ROBERT C. BYRD. Mr. President, I am informed that there is no objection to asking that the President be immediately notified of the confirmation of these nominations, and, inasmuch as it is important that they be reported to the President as quickly as possible, I ask unanimous consent to that effect.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

The routine morning business transacted during the day is printed at this point by unanimous consent.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. CLARK) laid before the Senate the following letters, which were referred as indicated:

PROPOSED LEGISLATION FROM DEPARTMENT OF DEFENSE

A letter from the Acting General Counsel, Department of Defense, transmitting a draft of proposed legislation to amend title 10, United States Code, to authorize the selective continuation of certain regular commissioned officers on the active lists of the Army, Navy, Marine Corps, and Air Force upon recommendation of a selection board, and for

other purposes (with an accompanying paper). Referred to the Committee on Armed Services.

A letter from the Acting General Counsel, Department of Defense, transmitting a draft of proposed legislation to amend sections 3202 and 8202 of title 10, United States Code, to exclude certain reserve officers from the authorized strengths of the Army and Air Force in officers on active duty in certain commissioned grades, and for other purposes (with an accompanying paper). Referred to the Committee on Armed Services.

REPORT OF HEALTH INSURANCE BENEFITS ADVISORY COUNCIL

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report of the Health Insurance Benefits Advisory Council on the results of its study of the methods of reimbursement for physicians' service under the Medicare program (with an accompanying report). Referred to the Committee on Finance.

REPORT OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Ways for the Department of Defense to Reduce its Administrative Costs of Awarding Negotiated Contracts", dated September 17, 1973 (with an accompanying report). Referred to the Committee on Government Operations.

LISTS OF REPORTS OF GENERAL ACCOUNTING OFFICE

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a list of reports of the General Accounting Office, for the month of August 1973 (with an accompanying list). Referred to the Committee on Government Operations.

PROPOSED LEGISLATION OF DEPARTMENT OF AGRICULTURE

A letter from the Under Secretary of Agriculture, transmitting a draft of proposed legislation to provide for the addition of certain eastern national forest lands to the National Wilderness Preservation System, to amend section 3(b) of the Wilderness Act, and for other purposes (with accompanying papers). Referred to the Committee on Interior and Insular Affairs.

FINANCIAL AUDIT OF MILITARY ORDER OF THE PURPLE HEART

A letter from the Adjutant General, Military Order of the Purple Heart, transmitting ing, pursuant to law, a financial audit report of that organization, for fiscal year 1973 (with an accompanying report). Referred to the Committee on the Judiciary.

STUDY OF OPERATION OF THE POST-KOREAN CONFLICT PROGRAM OF EDUCATIONAL ASSISTANCE

A letter from the Administrator of Veterans' Affairs, transmitting, pursuant to law, a study of the operation of the post-Korean conflict program of educational assistance (with accompanying papers). Referred to the Committee on Veterans' Affairs.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. CLARK):

A resolution of the Trust Territory of the Pacific Islands. Referred to the Committee on Labor and Public Welfare:

"RESOLUTION No. 34–1973

"Whereas for over two years the Micronesia Legal Services Corporation has been providing needed legal services to the people of the Marianas Islands District; and

"Whereas there are many unresolved legal problems affecting the people of the Marianas Islands; and

"Whereas the Micronesian Legal Services Corporation has applied to the United States Office of Economic Opportunity for a grant of $748,000 for the year beginning September 1, 1973; and

"Whereas the Micronesian Legal Services Corporation received a grant of $600,000 for the year beginning September 1, 1972, and ending August 31, 1973; and

"Whereas the High Commissioner of the Trust Territory has proposed that Micronesian Legal Services Corporation receive not more than $367,000 for the fiscal year beginning September 1, 1973; and

"Whereas it is the feeling of the Marianas Islands District Legislature that such a drastic reduction in funds would severely curtail the ability of the Micronesian Legal Services Corporation to provide the legal assistance needed by the people of the Marianas Islands District and of Micronesia; and

"Whereas, the Mariana Islands District Legislature believes that the Micronesian Legal Services Corporation should be enabled to provide better services to more people, rather than lesser services to fewer people;

"Now, therefore, be it resolved by the 4th Mariana Islands District Legislature that the United States Office of Economic Opportunity be and is hereby urged to grant funds to the Micronesian Legal Services Corporation in the amount requested for the year beginning September 1, 1973, and, in any event, not to diminish the funding of the Micronesian Legal Services Corporation below its present level;

"And be it further resolved, that the President certify to and the Legislative Secretary attest the adoption hereof and thereafter transmit copies of the same to United States President, Speaker of the House, United States Congress, President of the Senate, United States Congress and Chairman of the Appropriation Committee, United States Congress, the Director of the United States Office of Economic Opportunity, to the Director of the Office of Legal Services in the United States Office of Economic Opportunity, to the Regional Legal Services Attorney for Region IX of the United States Office of Economic Opportunity, to the High Commissioner of the Trust Territory of the Pacific Islands, and to the Executive Director of the Micronesian Legal Services Corporation."

A resolution adopted by the Stamford Chapter No. 13, Disabled American Veterans, Inc., Stamford, Conn., supporting Senate Resolution 84, to restore voluntary prayer in the public schools. Referred to the Committee on the Judiciary.

A resolution adopted by the Board of Chosen Freeholders, Union County, Elizabeth, N.J., praying for the enactment of S. 1672, relating to disaster victims. Referred to the Committee on Public Works.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, without amendment:

S. 1101. A bill to amend the Wild and Scenic Rivers Act by designating certain rivers in the State of Michigan for potential additions to the national wild and scenic rivers system (Rept. No. 93–398).

By Mr. JACKSON, from the Committee on Interior and Insular Affairs, with an amendment:

H.R. 6628. An act to amend section 101(b) of the Micronesian Claims Act of 1971 to enlarge the class of persons eligible to receive benefits under the claims program established by that Act (Rept. No. 93–400).

By Mr. NELSON, from the Committee on Interior and Insular Affairs, without amendment:

S. 1391. A bill to amend the Wild and Scenic Rivers Act by designating a segment of the Wisconsin River for potential addition to the national wild and scenic rivers system (Rept. No. 93–399).

EXECUTIVE REPORTS OF COMMITTEES

As in executive session, the following favorable reports of nominations were submitted:

By Mr. FULBRIGHT, from the Committee on Foreign Relations:

Henry A. Kissinger, of the District of Columbia, to be Secretary of State (Exec. Rept. No. 93–15).

The above nomination was reported with the recommendation that the nomination be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

By Mr. RANDOLPH, from the Committee on Public Works:

John R. Quarles, Jr., of Virginia, to be Deputy Administrator of the Environmental Protection Agency.

The above nomination was reported with the recommendation that the nomination be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. BAKER (for himself, Mr. BENTSEN, Mr. MANSFIELD, and Mr. ROBERT C. BYRD):

S. 2437. A bill to establish a commission to conduct a study and investigation of the manpower requirements and utilization of the Department of Defense. Referred to the Committee on Armed Services.

By Mr. TAFT:

S. 2438. A bill to authorize the establishment of the Edison Birthplace National Historic Site. Referred to the Committee on Interior and Insular Affairs.

By Mr. HELMS:

S. 2439. A bill to amend the Wild and Scenic Rivers Act of 1968 by designating a segment of the New River as a potential component of the national wild and scenic rivers system. Referred to the Committee on Interior and Insular Affairs.

By Mr. METCALF:

S. 2440. A bill to amend the Agricultural Marketing Act of 1946 in order to give the Secretary of Agriculture additional authority to promote and stimulate development in rural areas, and for other purposes. Referred to the Committee on Commerce.

By Mr. BAYH (for himself and Mr. WILLIAMS):

S. 2441. A bill to amend the Act of February 24, 1925, incorporating the American War Mothers, to permit certain stepmothers and adoptive mothers to be members of that organization. Referred to the Committee on the Judiciary.

By Mr. McINTYRE:

S. 2442. A bill to amend the Export Administration Act of 1969 to prohibit the export of crude oil and petroleum products during any period when prices in the petroleum industry are subject to economic controls. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. MONDALE:

S. 2443. A bill to amend the Wild and Scenic Rivers Act by designating a segment of the Upper Mississippi River in the State of Minnesota as a study river for potential addition to the wild and scenic rivers system. Referred to the Committee on Interior and Insular Affairs.

By Mr. MONDALE (for himself, Mr. JAVITS, Mr. HUMPHREY, Mr. STAFFORD, and Mr. CRANSTON):

S. 2444. A bill to amend the Social Security Act to provide for prevention, identification, and treatment in cases of abuse or neglect of children. Referred to the Committee on Finance.

By Mr. McINTYRE (for himself, Mr. BENTSEN, Mr. BIBLE, Mr. CLARK, Mr. COOK, Mr. McGEE, Mr. NELSON, Mr. NUNN, Mr. TAFT, Mr. ROTH, Mr. TOWER and Mr. HUMPHREY):

S. 2445. A bill to amend the provisions of the Social Security Act to consolidate the reporting of wages by employers for income tax withholding and old-age, survivors, and disability insurance purposes, and for other purposes. Referred to the Committee on Finance.

By Mr. BEALL (by request):

S.J. Res. 156. A joint resolution to authorize and request the President to designate the period from June 16, 1974, through June 22, 1974, as "National Right of Way Week"; and

S.J. Res. 157. A joint resolution to authorize and request the President to issue a proclamation designating the week beginning March 10, 1974, as "National Adoption Week." Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAKER (for himself, Mr. BENTSEN, Mr. MANSFIELD, Mr. ROBERT C. BYRD):

S. 2437. A bill to establish a commission to conduct a study and investigation of the manpower requirements and utilization of the Department of Defense. Referred to the Committee on Armed Services.

Mr. BAKER. Mr. President, I send to the desk a bill to be introduced for appropriate referral on my behalf, and on behalf of the Senator from Texas (Mr. BENTSEN).

Mr. President, the Senate will soon begin consideration of the military procurement bill as part of a $79 billion request for defense for fiscal year 1974. This is the highest request ever for defense and presumably represents the Pentagon's best estimate of what it costs to meet three basic defense objectives. Those objectives include a strong and credible nuclear deterrent, a well trained, well equipped, and properly deployed general purpose force, and a vigorous research and development program designed to keep the United States one step ahead of our closest rival in weapons technology.

Each and every one of these goals is essential to our defense posture; and in light of the current state of the economy, it is not surprising that they cumulatively require an exorbitant sum of money. I, for one, find that sum fairly reasonable in terms of the goals and policies of the present administration; but I can also understand the apprehension on the part of those who argue to the contrary. After all, how does one explain a substantial increase in defense spending after we have successfully extricated ourselves from the longest and most costly war in our history and achieved a unique rapprochement with our two foremost enemies?

This is the question which has prompted Members of both legislative bodies and their respective committees, to undertake a more extensive examination of the defense budget than usual and to recommend a variety of cuts in an effort to justify the expenditure of every dollar. I do not question the objective of such an exercise; in fact, it represents the essence of legislative oversight. But what I do question is an almost unavoidable tendency to devote the preponderance of our frugality to the most visible pieces of hardware in the defense budget. We do so almost to the exclusion of civilian and military manpower when manpower in the past 20 years has accounted for 93 percent of the increases in defense spending and 96.4 percent in the past 10 years.

This is not to say that I oppose the closest scrutiny of expenditures on all weapons projects, nor that I am unaware of attempts by the appropriate committees of Congress to deal with the issue of manpower; but rather that unless we attempt to come to grips with this complex issue with the same meticulous zeal that we have devoted to weapons in the past, then I fear we run the risk of eventually pricing our defense program virtually out of existence.

In the fiscal year 1974 budget, manpower constitutes 56 percent of the entire budget request, or roughly $44 billion. In only 10 years, that amount will most likely double with the possibility that total defense costs could reach a phenomenal $120 billion. Most will remember that at the height of the New Deal era in which the Federal Government was becoming increasingly involved in our individual lives, President Roosevelt proposed a budget totaling some $12 billion. Many found that shocking; and yet only 40 years later, we must entertain the prospect of spending 10 times that amount on defense alone.

In view of our defense commitments and the increased cost of living, what we are now spending on defense manpower may possibly represent the most reasonable approach to a very complex matter and is what budget analysts call "cost-effective." But then, perhaps it is not; and perhaps there are other means of meeting those objectives at a substantially reduced cost—means that we have never seriously considered. Admittedly, we cannot effectively compare the American Military Establishment to any other in the world in terms of global commitments and available technology; for despite the existence of a rough parity with the Soviet Union, our forces and weapons differ greatly.

However, I cannot help but observe that some of the more efficient and capable militaries in the world, the Israeli, British, and West German armed forces, all have command structures which differ significantly from the United States in that a great deal more responsibility is borne by younger, lower-grade officers or trained, upper-grade enlisted men. This does not mean that what is good for the Israeli army is necessarily good for the U.S. Army, but rather that there are other viable military force structures and that it would be well worth our while to examine some of those structures before manpower costs increase further.

Some have argued that by altering the ratio of enlisted men to officers, we could save substantial amounts of money without adversely affecting the ability of the military to discharge its responsibilities. Simple arithmetic shows that if we were to alter the ratio of enlisted men to officers from the present 6:1 to 12:1 over a period of a few years, we might save $6 billion. Moreover, it can be argued that by doing so, lower-rank individuals in the Armed Forces are compelled to assume greater responsibility and the competition for a limited number of senior officer positions is far more intense.

However, the Department of Defense disagrees and will quickly point out that first, the ratio of enlisted men to officers is an arbitrary and misleading yardstick of military manpower, and second, the ratio has not exceeded 9:1 since the end of World War II, or 8:1 since the end of the Korean War. Moreover, they contend that efforts to reduce the officer corps would work against the intent of the all-volunteer army by reducing the incentive for a career in the military; it would seriously damage the morale of the Armed Forces and significantly hinder their ability to fulfill their obligations; and finally, it would force enlisted men to assume many of the responsibilities now handled by officers, responsibilities which enlisted men are incapable of handling because of their technical nature.

All of these contentions are debatable, in my judgment, and should be considered in the context of what constitutes the most cost-effective military in light of our present and future defense objectives.

If there are adequate reasons why there are five times as many senior officers in the rank of colonel and above in proportion to the total number of officers today, than there were at the end of the Second World War, then I would like to know them. Or if there is sufficient justification for there being over 16,000 colonels in a total officer corps of 324,000, when at the end of World War II with a total officer corps of 1.2 million, there were only 15,000 colonels, then I would like to be made aware of it.

I realize that a great deal has changed in the last 30 years and some of it has been mandated by the Congress; but I am not at all sure how much could have been avoided, nor how much should be in the future, and this is the question which demands an answer. If there is a viable means of meeting current defense needs at a substantial reduction in cost, perhaps by altering the overall defense structure or better utilizing defense manpower, then I believe that we should be made cognizant of that means and given the opportunity to seriously consider it. It is for these reasons that Senator BENTSEN and I have called for the

most comphensive and detailed study of the civilian and military manpower structure at the Department of Defense since the end of the Second World War.

How to best achieve this is another problem. We first considered directing the Pentagon to undertake a fundamental reassessment of their manpower needs and to submit their findings to the Congress at a date certain in the future. However, human nature makes it most difficult for individuals who are members of the present institutional arrangement to fathom major structural change when the rest of their time is spent defending the status quo. Thus, we rejected that notion and considered creating a joint committee of Congress to investigate the problem of manpower and to report back to both Houses with recommended legislation. However, this would be extremely time consuming and could result in a communications gap between the executive and legislative branches of the Government with possibly a restricted flow of vital information.

Consequently, we decided upon one of the most valuable and yet most abused sources of information and expertise available to the Federal Government—the advisory commission. The Commission which we propose would consist of seven individuals chosen from public life, none of whom were presently on active duty, employed by the Federal Government, or Members of Congress. Four would be chosen by the Congress, two by each House, and three would be appointed by the President. The duties of the Commission would be essentially five-fold. They would be required to study the requirement for and utilization of all active duty military personnel, the adequacy and equitability of the pay structure at all levels, including fringe benefits, the distribution of grades within each armed force and the requirements for advancement in grade, the consistency of the military retirement system with overall DOD requirements as well as its comparability to civilian retirement plans, and the cost-effectiveness and manpower utilization of the U.S. Armed Forces as compared to the armed forces of other countries.

Such a mandate is indeed ambitious, but necessary in our view if we are to effectively examine the full military manpower problem. Although civilian manpower at the Pentagon and elsewhere in the Defense Establishment is not specifically mentioned, it is hoped that by examining military requirements and utilization, we can indirectly get at the problem of civilian manpower as well.

The Commission shall be required to report simultaneously to the Congress and the President as often as the Commission deems necessary in order to influence legislative and administrative proposals under consideration regarding military manpower. However, the Commission is not accountable to the President to either accept or reject its report as has been the case with many of the so-called Presidential commissions. Instead, we have made this Commission responsible primarily to the Congress with the hope that it might provide valuable recommendations to the respective Armed Services Committees as they consider manpower in the future. This is part of the reason why we have proposed that four members be appointed by the Congress while three members are to be appointed by the President. Moreover, we have put the Commission on a strict time schedule so as to coordinate their work with the consideration of manpower issues in the Congress in the next 2 years. The only problem which might arise is that of cooperation between the Commission and departments and agencies of the executive branch. But we have attempted to deal with that by requiring the provision of such data, statistics, et cetera, as the Commission may desire upon request from the Chairman or Vice Chairman. Should this section prove to be inadequate, it might be necessary to consider the imposition of time deadlines for the gathering of such data. However, I am sure that the Department of Defense, as well as the White House, will do all in their power to facilitate the fulfillment of the Commission's mandate and that the findings of the Commission will prove invaluable to Congress in its effort to maximize the cost-effectiveness of all aspects of the defense budget in the crucial years ahead.

Mr. President, it is a great pleasure for me to join the distinguished Senator from Texas (Mr. BENTSEN) in offering this bill. I look forward to an orderly and thorough examination of the matters listed earlier in my remarks.

Mr. President, I ask unanimous consent that a section-by-section analysis of the bill be printed in the RECORD.

There being no objection, the section-by-section analysis was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS

Section 2—Establishes 7-member Defense Manpower Commission. The Majority and Minority Leaders of each House appoint one member. The President appoints the remaining three. None of the members will be active duty military personnel, employees of the Federal Government, or members of Congress.

Section 3—Duties of Commission are to undertake a comprehensive study of Defense manpower requirements presently and for the next ten years and to determine how such manpower might be better utilized. Specifically, the Commission will consider:

(a) The requirement for and utilization of all active duty military personnel.

(b) The present pay structure, including fringe benefits, at all levels of the Armed Forces.

(c) The distribution of grades within each armed force and requirements for advancement in grade.

(d) The entire military retirement system.

(e) The comparability of U.S. armed forces to other armed forces in the world in cost-effectiveness and use of manpower.

(f) Such other matters as the Commission deems pertinent to their efforts.

Section 4—Authorizes Commission to hold hearings as may be required, to secure whatever information from other entities as may be useful to their study upon request of the Chairman or Vice Chairman, and to establish appropriate safeguards to protect all classified material entrusted to the Commission.

Section 5—Provides for standard compensation of Commission members when performing Commission functions, including travel and per diem.

Section 6—Provides for standard hiring and salaries for staff of Commission and authorizes the Commission to seek such additional professional advice as they deem necessary.

Section 7—Administrator of GSA shall provide administrative services for Commission on reimbursable basis.

Section 8—Authorizes Commission to submit interim reports to the Congress and President as it deems necessary to influence pending administrative or legislative proposals in this area. Also provides for a final report eighteen months after the appointment of Commission. The Commission ceases to exist 60 days after submitting report.

Section 9—Authorizes such funds for the Commission as may be necessary to carry out the provisions of this Act.

Mr. BAKER. Mr. President, I yield back the remainder of my time.

Mr. BENTSEN. Mr. President, will the Senator from Tennessee yield?

Mr. BAKER. I am delighted to yield to the Senator from Texas.

Mr. BENTSEN. It is the understanding of the Senator from Texas, and I would like to inquire of the Senator from Tennessee on this manpower question, when we talk about the Assistant Secretary for Manpower, his duty really, is to try to find ways to encourage men to enter the service and to try to find ways to retain men in the service, but that, in effect, he is explicitly denied the right to try to do things in the way of curtailment; is that not correct?

Mr. BAKER. I thank the Senator from Texas and would say that his inquiry is correct. That is the primary function of that official in the defense establishment. It is probably an essential part, with prospects for success in a volunteer army, that that be his fundamental and primary responsibility. But, as the Senator suggests, I think an important aspect of that, to find out what is the maximum utilization of personnel, is clearly not within his mandate or responsibility.

Mr. BENTSEN. Congress itself is in the very difficult position of trying to make that kind of study. What we are asking is a nonpartisan commission to devote its time and attention and staff to one of the most pressing problems facing this Nation in trying to provide an adequate defense that this country can afford.

Mr. BAKER. I entirely agree. I indicated in my previous remarks that I am very much pleased and honored to join the Senator from Texas in sponsorship of this measure. I know that he shares with me a deep and abiding faith that this kind of analysis, from the standpoint of national security, can be undertaken entirely on a bipartisan or a nonpartisan basis. Even a synthesis of a bipartisan spirit will carry over in the composition of the commission; that is, representation by Congress and the executive departments. So, a synthesized, bipartisan commission——

The PRESIDING OFFICER (Mr. ABOUREZK). All time of the Senator from Tennessee has now expired.

Under the previous order, the distinguished Senator from Texas (Mr. BENTSEN) is now recognized for not to exceed 15 minutes.

Mr. BENTSEN. I thank the Chair.

Does the Senator from Tennessee desire any additional time?

Mr. BAKER. No, I thank the Senator from Texas but I believe that I have said at least all I can at this time.

Mr. BENTSEN. Mr. President, I am very much pleased to have this opportunity to join the distinguished Senator from Tennessee in sponsoring a bill to establish a Defense Manpower Commission.

Mr. President, the problem this Nation faces is that we are trying to walk an economic-military tightrope. We are trying to spend enough money to keep this country out of war and to be certain that we do not become a second-class military power.

At the same time, we are trying to be certain that we do not break the back of the economy of this Nation. That would be the objective of a commission like this, to find out the problem this Nation faces today insofar as defense spending on personnel is concerned. The defense budget today has about 56 percent of its cost going directly into personnel. If we add in the other additional costs, like hospital construction, and so forth, we are talking about something more akin to two-thirds of the defense budget going for that purpose.

Take a look at another nation, Russia. The best estimates we can get are that they are spending closer to 30 percent in that regard.

Mr. President, I count myself as one dedicated to a strong national defense, but I am also one who is concerned about recent trends in the defense policies of this country which could jeopardize both our economy and our ability to provide for the nation's security.

Specifically, I am referring to the increasing of both military personnel and the equipment they must use. Current estimates are that the defense budget will exceed $114 billion by 1980, a staggering figure—particularly when one considers that approximately two-thirds of that amount will be attributable to the direct and indirect cost of personnel.

This is a trend that has developed over the past 20 years and which has reached such startling proportions that serious questions must be asked about the entire structure of our military manpower policy.

Some of these figures, I think, illustrate the point.

During the 20-year period between 1954 and 1974, defense outlays increased by about $35 billion. Of that amount, 93 percent, or $33 billion, went for pay and operating costs, with only 7 percent going for capital investments such as weapons and construction.

Manpower costs have not only increased as a percentage of the defense budget, but we are actually paying significantly more in personnel costs for significantly fewer people. For example, Defense is paying $22 billion more in fiscal year 1974 than in fiscal year 1964 in pay and allowances for 400,000 fewer military personnel.

Get that figure. Paying $22 billion more in 10 years for pay and allowances for 400,000 fewer military personnel.

The average cost of maintaining a U.S. serviceman on active duty has increased from about $3,400 in 1950 to about $12,400 in 1974. That is an increase of 262 percent.

Now I am not urging that we can or should provide salaries for the military at the same rate we did in the 1950's. I am saying, however, that we cannot afford to utilize personnel today as we did when $75 per month paid a private's salary but, regrettably, that is too often the case.

The purpose of the Manpower Commission, then will be to examine the personnel pipeline of the Department of Defense—from recruitment to retirement—and to give the Congress specific recommendations on how reforms can be made and savings achieved.

The Commission will consider a number of different issues, but among its most important responsibilities will be the following:

Examine the utilization of manpower giving special attention to the disturbing increase in personnel required for headquarters staffs and support forces in relation to combat forces.

Examine the present grade structure with particular attention to the phenomenon of grade creep which results in more high-ranking officers to command fewer enlisted personnel.

If the Assistant Secretary of Defense is trying to achieve a reduction of manpower, where do they make the reduction? They make it on the input, the low-grade noncommission personnel coming in, rather than in the higher grade personnel. We are talking about this Commission giving special attention to the disturbing increase in personnel required for headquarter staffs and to support forces in relation to combat forces.

In this regard, the Commission is authorized to study the grade structure of other armed services and to determine why the United States requires an officer-to-enlisted-man ratio of 6 to 1 as compared to ratios of 12 to 1, for instance, for the Israel Army.

The Commission must also examine the means by which we compensate our military personnel. Questions such as whether pay and allowances should not be combined into a single, direct form of compensation will be considered. Also, whether or not greater flexibility for pay differentials within specific ranks might not be an improvement over the present system of rigid pay to grade ratios, should be of concern to the Commission.

Quite frankly, it is my hope that this Commission will view all these issues with a healthy dose of skepticism concerning our present system and with an open mind toward new ideas for changing that system.

In order to insure a fresh look at some very old and persistent problems, we have excluded members of the active-duty military, the employees of the Federal Government and Members of Congress from membership on the Commission. In effect, we have excluded from the Commission the so-called vested interests.

Congress will have authority, through the leadership of both Houses, to appoint four of the seven members. The Commission is further directed to report periodically to Congress on the various issues covered in its charter. It is our expectation that these reports will be timed with the consideration of military manpower issues by Congress. We certainly do not want another Commission which merely delivers a weighty volume at the end of its charter that is long on rhetoric and sensationalism and short on logic and practical recommendations.

In this regard, I am sure that there are some who will greet this proposal with the refrain of "Oh, no, not another Commission." So let me say a few words about why I so strongly feel a Commission is needed.

On this complex issue of military manpower, Congress finds itself between a rock and a hard place. If we attempt to cut force levels or drastically alter personnel policy without securing Department of Defense data and support, we are accused of being irresponsible and of jeopardizing the Nation's security. If, however, we rely on the Department of Defense for the necessary information and action to provide us with a new personnel system, we are constantly frustrated by delay and a commitment to the status quo that is impregnable to congressional assault. As one frustrated observer put it:

> They would rather give up a battleship than a billet.

Perhaps an exaggeration, but a good measure of the truth as well. As one who has been subjected to the Pentagon lobby, I can attest to their influence and their support and what they are able to generate in the way of pressure.

Faced with this dilemma, I feel that an independent Commission with a congressionally appointed majority and an adequate, full-time staff may give Congress both the impetus and the means for facing up to the toughest issue in the national defense sector that we face today.

I hope this will be the case, and I urge those who share this concern with the Senator from Tennessee and myself to join in this resolution and to give it their full support.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. BENTSEN. I yield to the distinguished majority leader.

Mr. MANSFIELD. Mr. President, I believe I received a communication from the distinguished Senator from Texas this morning, and I told my office to call the Senator and tell him that I would like to be a cosponsor of this resolution.

It is my understanding that one of the responsibilities of this advisory group, as I believe it is called, would be to look particularly into the manpower situation as it affects computation, retirement, and excess personnel.

Mr. BENTSEN. The distinguished majority leader is correct.

Mr. MANSFIELD. Especially at the top, where we have more colonels and admirals and above, for a force of 2.2 million men today, than we had at the height of our strength in World War II, when we had 14.5 million men and women under arms.

Mr. President, I ran across some interesting statements in Forbes, a business magazine, under date of September 1, 1973. Under "Trends and Tangents," it states:

According to the Defense Department, in fiscal 1973 the cost of the military retirement system is estimated at $4.4 billion. By the year 2000, according to present projections, it will exceed $25 billion.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "The Easy Chair," a commentary by John Fischer in Harper's magazine of recent date, a month or so ago, and a transcript of "60 Minutes," a TV program, in which Mr. Mike Wallace participates. This has to do with a segment entitled "Retirement, Military Style."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Harper's magazine]

THE EASY CHAIR

(By John Fischer)

During the twenty years he has been in Congress, The Honorable Henry Publius has always voted to give the Pentagon everything it asked for. And every time he has been unhappy, not to say conscience-stricken, about his vote.

He knows that many of the billions he has voted for military appropriations have been wasted. He strongly suspects that most of the new weapons systems he will vote for this year will prove unnecessary or obsolete before they ever go into operation. He realizes that the military establishment is perhaps the most inefficient organization in American society, and the costliest—so featherbedded that it makes the railway unions look like paragons of public virtue. He yearns to use some of the money squandered by the Pentagon for things his constituents really need: schools, for example, and housing, and job training for out-of-work teen-agers. He is well aware that Congress has little hope of ending the destructive spiral of inflation unless it can get the military budget under control.

Yet he has never dared, up until now, to speak up against any of the demands for money by the Army, Navy, and Air Force—even though he is a more conscientious Congressman than most and really would like to do the best he can for his constituents and his country. Henry Publius has three reasons, or excuses, for his apparently irrational behavior:

1. He knows that the military has an awesome power to help its friends and punish its enemies. Congressmen it regards as "uncooperative" don't get many defense contracts for their districts; and if they become truly annoying, they may find that the airfields or naval bases in their bailiwicks are closed down. After all, the Pentagon has a lot more such installations than it really needs. Besides, it can always build a new installation in the backyard of a more understanding statesman.

2. If he were critical of the military budget, Publius is pretty sure that his opponent in the next election would accuse him of being unpatriotic and endangering the safety of the republic.

3. Above all, he doesn't know enough. The Honorable Publius, who is no coward, might take the first two risks if he could be sure he is right. But how can he tell whether the Air Force really does need to spend $40 billion over the next fifteen years to build and operate a new bomber fleet? How can he prove, to the voters and to his fellow Congressmen, that this project actually is a fly-boy's toy, as unnecessary as a squadron of sailing frigates and a million times more expensive?

For all the information he can get comes from the Pentagon itself. He has to accept it on faith, or challenge it in ignorance, as he has never had anywhere to turn for an independent and objective appraisal of the facts. The Armed Services Committees of Congress are of little help, because they traditionally have been spokesmen for the Pentagon, rather than cold-eyed examiners; and they too depend on The Brass, because they have no staffs capable of a searching scrutiny of the military budget. Neither, indeed, has the President's Office of Management and Budget. Ever since World War II, it and its predecessor, the Budget Bureau, have been in the habit of accepting the Department of Defense estimates without the careful line-by-line scrutiny to which all other federal agencies must submit. And outside the government, of course, there was no organization competent to look with informed and expert eyes at what the President was doing.

Until recently, that is. Today the notional Henry Publius and his colleagues on the Hill are, potentially, in a much stronger position for dealing with the military. For the first time they can now make intelligent decisions about the defense budget, because they at last have sources of independent and reliable information. If they choose to use this information in a courageous and responsible way, that could be the best news of the century for the American taxpayer.

For one thing, the Senate Armed Services Committee has begun to declare its independence from the Pentagon. Since Sen. John Stennis succeeded Richard Russell as chairman, the committee has built up a small but competent staff, which has recently been looking at military demands with surprising skepticism. It can now provide objective answers to many of Publius's questions.

Two other sources have developed outside the government. One of these is the Brookings Institution, a private research organization that has been making highly respected studies in economics, government, and foreign policy in the past fifty-seven years. Only in the past three years, however, has it concentrated a substantial part of its talent on investigation of the defense budget—with some quite startling results. Its analyses command respect because they are being prepared by a highly experienced staff under the direction of Charles L. Schultze, a former director of the Budget Bureau. Its latest findings are reported in two books that were published this summer—*Setting National Priorities: The 1974 Budget* by Schultze, Edward R. Fried, Nancy H. Peters, and Alice M. Rivlin; and *Strategic Forces: Issues for the Mid-Seventies* by Alton M. Quanbeck and Barry M. Blechman. These are more provocative documents than their scholarly titles suggest.

At this point it is only fair to warn you that I am not a disinterested observer. I happen to be a trustee of Brookings, and a long-time friend of both Schultze and Kermit Gordon, the Institution's president (and incidentally another former director of the Budget Bureau). My confidence in the soundness and integrity of the Brookings studies is shared, however, by innumerable scholars and people in government, of all shades of opinion. The Brookings staff is in constant demand for consultation by Congress and the Executive Branch, under the Nixon Administration as well as earlier ones.

The other independent source of data on armaments is a comparative fledgling: the Center for Defense Information, which opened for business last year. Its director is a retired rear admiral, Gene La Rocque, and its staff of consultants includes an array of retired admirals, generals, physicists, and former Defense Department officials. It is a project of the Fund for Peace, one of the more conservative peace organizations; the Fund's chairman is Randolph P. Compton, a vice-president of the Wall Street brokerage firm of Kidder Peabody, and its board is sprinkled with Senators, university presidents, lawyers, and businessmen. Unlike Brookings, it is a propaganda and lobbying organization rather than one devoted to nonpartisan research; but it has produced some illuminating documents.

The findings of these two organizations offer scant comfort to the snow-white doves among us. They do not support George McGovern's claims, made during the past Presidential campaign, that defense spending could be cut by one-third virtually overnight. Nor do they give any underpinning to the arguments of the more radical critics of the military, such as Seymour Melman, who believes that more than $50 billion could safely be trimmed out of the military budget.

But for more moderate types like myself—people who want to see the country well defended at any cost, but wonder if the cost has to be all *that* high—these studies are a revelation. Anyone seriously interested in the subject will want to reach his own conclusions after reading the two Brookings publications mentioned earlier (available through any bookstore) and the various documents issued by the Center for Defense Information (201 Massachusetts Avenue, NE, Washington, D.C. 20002).

My own conclusions run about like this:

1. The Nixon Administration's demands for defense spending are overblown. It is asking for $85 billion this year; and if it gets the new weapons systems it wants, the cost will rise to at least $114 billion a year by the end of the decade. This program is likely to weaken the country, rather than strengthen it, as it will damage our already inflation-crippled economy.

2. At least $7 billion could be cut out of the military budget for fiscal year 1974, which Congress is now considering, without weakening our defense posture. By fiscal 1978, the savings ought to rise to about $26 billion a year. These are relatively modest sums, compared to the dreams of the superdoves, but they aren't chicken feed either. They would go a long way toward balancing the total federal budget and stabilizing the economy.

3. If military need were the only consideration, the cuts in the Nixon program could be a good deal larger. But there are persuasive diplomatic arguments against cutting back too fast. For one thing, massive reductions in defense spending might remove the Russians' incentive to bargain for mutual and balanced disarmament. Why should they bother, if we seem to be disarming on our own? Besides, such cuts might look more serious than they actually are, to enemies and friends alike. The Soviets might read them as a signal that we are weakening in our determination to defend our own vital interests, and our allies'. Hence the Kremlin might be tempted into dangerous adventures in, say, the Middle East, the Mediterranean, or the Indian Ocean. True enough, we have been getting a lot of sweet talk from Comrade Brezhnev recently, and at least the short-term interests of the Soviet Union would seem to argue against any hostile moves. But Brezhnev won't last forever; the basic ideology of the Kremlin remains apparently unchanged; and nobody can guess what his successors might do.

Among our friends, overly drastic cuts in defense spending might well raise doubts about our ability, or will, to help them in a moment of crisis. Germany, Japan, and Israel might then decide that they have to develop atomic weapons of their own—a step that could lead to world disaster. So timing is important. Our swollen military machine can, and should, be slimmed down—but at a pace

that will not cause either alarm or temptation abroad.

4. For the first time in history, most military numbers don't mean anything.

No general ever lived who didn't want more men and weapons. And in the past this was understandable; one more battalion of artillery or an extra five thousand men could mean the difference between defeat and victory.

But the first atomic bomb blew up that kind of logic, along with Hiroshima—although most of our generals and some members of Congress are not yet willing to admit it out loud. For it is a simple fact that both Russia and America already have far more nuclear weapons than they need. Each nation can destroy the other many times over. An additional 1,000 warheads—or 10,000—could not make that destruction more complete. Nor can any weapon, known or imaginable, ward off that destruction, for either side.

This chilling situation was formally accepted by both countries when they signed the SALT agreement. Each promised, in effect, that it would not even try to defend its cities against a missile attack. Their joint policy is MAD—Mutually Assured Destruction—and on some sleepless midnights the acronym seems to me appallingly appropriate. Nevertheless, it is the only policy anyone has yet thought of for preserving a relatively stable peace.

Today the United States has about 6,000 strategic nuclear weapons. According to Admiral La Rocque's calculations, only 2,000 of these would be needed to wipe out every town in Russia of more than 20,000 population and to destroy virtually all its industry. The Soviet Union has only about 2,500 such weapons, but some of them carry larger warheads than ours so their destructive potential is probably about equal. Under these circumstances, it is a sheer waste of money for either side to heap up still more strategic weapons.

5. Yet the program the Administration is budgeting for would do just that. It would give us at least 12,000 strategic weapons by the early 1980s, together with new fleets of bombers and missile submarines for delivering them.

How does the Pentagon justify these plans? Well, the Joint Chiefs of Staff have a recurring nightmare. Someday, somehow, the Russians might develop an array of new weapons that could wipe out all of our strategic forces at one stroke—all our missiles in the underground silos, all our bombers (including those in the air at the time), and all our missile submarines scattered throughout the oceans. Then we would be helpless to hit back. And knowing that, the Soviets might therefore be tempted to strike first. Consequently, reasons The Brass, was have to keep multiplying our strategic arms indefinitely, to make sure that enough would always survive to destroy Russia—thus protecting the Kremlin from temptation.

To be sure, this nightmare does not look very probable. Russia does not have any antisubmarine force that can seriously menace our underseas weaponry, and there is no indication that she can develop one in the foreseeable future. Unless our whole Air Force decides to take a nap at the same moment, its bombers at all their widely scattered bases and in the air can hardly be blotted out simultaneously. The third member of our strategic triad—the land-based Minuteman missile—might someday become vulnerable to a first strike, *if* the Soviets aim the bulk of their missiles at that single target, and *if* they can improve considerably their accuracy and the mounting of multiple warheads. But that possibly is at least a decade away.

In sum, the military chiefs are asking us to spend vast sums because of their fear of imaginary weapons that the Russians don't have now and probably never will. Moreover, while contemplating this nightmare, the chiefs evidently are overlooking the fact that the enormous buildup in American nuclear weapons might make the Russians a little nervous, too. They might even get the notion that we are preparing a first strike of our own.

6. The Administration is embarking on a crash program to acquire a fleet of new bombers, a new generation of missile submarines, new aircraft carriers, and a new air defense system. The Brookings and the La Rocque studies demonstrate conclusively, it seems to me, that all of these are either totally unnecessary or premature.

The proposed B–1 bomber will be the most expensive plane ever built (at least $45 million a copy) but its performance will be only marginally better than that of our present B–52s, and its purpose is (to say the least) unclear. It is to be loaded with elaborate electronic gear to enable it to get through the anti-aircraft defenses that protect the Russian missiles. But since our basic assumption is that the Soviets would strike first, those missile silos would be empty long before the bombers arrive. As Peter J. Ognibene put it in a recent article in *The New Republic*, the B–1 is elaborately designed to bomb empty holes. Under the SALT agreement, Russian cities (with the exception of Moscow) must remain unprotected. For bombing them, the B–52 serves just as well as the B–1.

With some modernization, the late model B–52s (types G and H) could remain in service till the end of the century. By then, it should be possible to develop a much better and cheaper plane than the B–1: for example, a "standoff" bomber that could fire long-range missiles, and therefore would never have to get near the Russian anti-aircraft defenses.

The rush to develop a fleet of new submarines, called Tridents, is even harder to justify. They are designed to fire missiles with a longer range than those fitted into our present Polaris and Poseidon submarines; consequently the Tridents could roam around a wider area of the ocean and thus make it harder for an enemy to find them. But the longer-range missile could be adapted for use by our Poseidons, at far less cost. Besides, the Navy itself has boasted that the Russians cannot locate even one of our submarines, much less all forty-four of them simultaneously; and it has admitted that the Russians show no signs of developing a significant antisubmarine capacity. There is no apparent reason, then, for replacing the present fleet until it begins to wear out, perhaps ten years from now. The Senate Armed Services Committee, has in fact, recommended that the Trident program be slowed down, for a saving of $885 million in this fiscal year alone.

The Navy also wants a new attack carrier, to add to the fifteen it has now. Cost: with planes and escort vessels, at least $3 billion. Instead, it would make better sense to retire some of the carriers now afloat. They are highly vulnerable to missile, submarine, and air attack; they proved of limited value even in the Vietnam war; and they would add nothing to our strategic strength in a conflict with Russia. Perhaps their chief value is diplomatic: to intimidate weak countries, such as India and the Dominican Republic. And for that purpose, questionable as it is, we don't need fifteen of them.

Another proposal is for "modernization" of our air warning and defense systems against incoming Soviet bombers. Its purpose is a mystery, since we agreed in SALT not to try to protect our cities against nuclear attack. And if the Russians should attack, they obivously would use their missiles rather than their small fleet of obsolete long-range bombers. Indeed, the whole idea of "air defense" is almost comically antiquated, like the sky watchers who manned church steeples during World War II.

There are plenty of opportunities for minor economies—just a few billion here and there. For example, all our armed forces are top-heavy with officers. We now have one general or admiral for every 1,800 men of lower ranks; as recently as 1969, with a war on, the ratio was only one to 2,900. We have one colonel or Navy captain for every 143 personnel; during World War II we had one to 800. For every enlisted man, we have one officer or noncommissioned officer to supervise him. Ask any enlisted man if he really needs that much bossing.

Much larger savings could be made by modest cutbacks in the size of our armed forces and by the closing of unnecessary bases at home and overseas. With the end of the Vietnam war and a winding down of the cold war, a reduction in land forces from sixteen to eleven divisions and in the Navy from fifteen to nine carriers would seem entirely feasible.

There is no space here to spell out the billions that would be saved by each of the specific economies I have mentioned, or to give a detailed justification for each of the cutbacks in spending. Nor is there any need, because the figures, facts, and strategic scenarios are fully presented in the Brookings publications and the Center for Defense Information reports mentoned earlier.

My estimate of the total potential savings—$7 billion for the coming fiscal year, rising to $26 billion a year later on—is derived from these studies; but it is my conclusion, not that of either organization. Indeed, Brookings makes no single, specific recommendation. It merely sets forth a series of alternative military programs, of varying dimensions, together with their costs and probable consequences—leaving each reader to judge for himself which course might be most prudent. The cuts I have suggested fall in the middle range. If you care to examine the figures for yourself, you may feel that I have been too conservative.

Probably you don't—after all, that's a lot of figures—but your representatives in the House and Senate ought to, because that is what we pay them for. You may want to call these publications to their attention and ask what conclusions they come to. Your future tax bills might be a lot smaller as a result.

It might also be worth your while to mention these publications to your local newspaper, suggesting that some editorial analysis of military spending would be a major public service. Most Americans, I believe, have no idea what grandiose and unnecessary plans the Pentagon has put in motion—largely because there has been so little critical examination of military matters in the press. Not that the press is entirely to blame. Like the hypothetical Congressman Publius, it has never had a reliable source of independent information. But it does now, and the time has come to get alarmed.

[From "Sixty Minutes" TV Show]

RETIREMENT, MILITARY STYLE

WALLACE. If a soldier or sailor has served just twenty years he can retire on fifty percent of his basic pay. A Sergeant who retires today at the age of thirty-eight will get at least three hundred and seventy-three dollars for the rest of his life.

A colonel who quits after thirty years will get fifteen hundred and forty-six dollars for the rest of his.

And every time the cost-of-living goes up by three percent their pension goes up four. And if they get another job after they leave the service, they get their full pension just the same.

Commander Albert Pioso retired from the Navy at the age of fifty-one after thirty

years. He used to be an intelligence officer making seventeen thousand dollars a year. Well, then he got himself a civilian job with Uncle Sam, still with Navy Intelligence. So now he collects two checks instead of one. A retirement check of fourteen thousand dollars, another for his Civil Service job, twenty-five thousand dollars. And he's one of more than seventy thousand retired military who are known as "double-dippers".

You're what is known as a "double-dipper" Mr. Pioso. . . .

PIOSO. Yes, I've heard that word, Mr. Wallace.

WALLACE. Do you object to that word?

PIOSO. Not at all. No. I won't use that old cliche about names and sticks and stones.

WALLACE. In a sense you're doing the same kind of job that you did in the Navy, you're getting paid more for it now, that same job, and in addition, you're getting fourteen to fifteen thousand dollars in retirement pay.

PIOSO. That's a way of looking at it. However, we could also say that the first job that I have—had, is finished. It's over. I retired. Now I'm in a new career and this happens to be my new career in the United States—I'm still working for the United States Navy, working forty hours a week and earning the sum that we just talked about.

WALLACE. You still are entitled to certain benefits. What benefits?

PIOSO. I just recently had two cataract operations performed at the Bethesda Naval Hospital.

WALLACE. How much did it cost?

PIOSO. I believe the regulations call for paying for your food per day. I think my—the first cataract was around twelve dollars, the second was around twelve dollars because I was in the hospital approximately seven days and that was what I paid.

WALLACE. Retired servicemen and their families can get at any military base, almost all the same benefits they enjoyed on active duty. It's hard to say whether there are so many military retirees in California and Florida and Texas because of the weather or because of all the bases in those states.

At Patrick Air Force Base Hospital, a senior citizen orders a prescription but no money changes hands. Because he and his dependents are entitled to free medical care and free drugs for the rest of his life.

Of the seventy-one thousand records at the Naval Hospital in Orlando, only thirty-five hundred are for active duty personnel. The rest are for retirees and their families.

At the Commissaries savings of twenty to thirty percent. Examples from a commissary in the Virginia suburbs: Milk forty-two cents a half-gallon. It's sixty-three cents at a nearby Safeway. Eggs are fifty-six cents a dozen. Sixty-nine cents in the supermarket. Chopmeat seventy-two cents a pound . . . at the Commissary. Ninety-five cents at Safeway. GE light bulbs marked at a dollar twenty-eight, they cost fifty-two cents here.

And the Base Exchange, well-stocked department stores but prices are up to twenty-three percent lower.

The golf course at Patrick is one of the busiest in Florida. Used mostly by retired careerists. Membership five dollars a month for a sergeant, six dollars for a general.

The Officers Club at Patrick, almost two-thirds of the three thousand members are retired. At a recent lunch shrimp salad was a dollar-and-a-quarter; rib-eye steak a dollar sixty-five.

The rationale behind the system is that the military retiree has put his life on the line. Has endured sacrifice and hardship, long hours at low pay. He is rewarded in retirement for what was denied him on active duty.

Former Chief Petty Officer Bob Knowland now draws retirement of two hundred eighty-nine dollars a month. He makes the case for the man in the ranks.

KNOWLAND. I was on duty twenty-four hours a day if they needed me, and there was, of course, many times they needed me in peace time as well as wartime. I had no way to stay at home and build an equity, be part of the community life. We didn't have the family problem but the fellows who did were separated from their family, particularly in the Navy six to nine months deployments to the Western Pacific. So there are certain sacrifices that you make. Also, the pay I was drawing on active duty wasn't anything to write home about. Starting out at twenty-one dollars a month in 1941 and ending up three hundred and fifty dollars a month basic pay in 1962. And so you work and fulfill your career with the knowledge that Uncle Sam's holding back a little bit to pay you greater in retirement.

WALLACE. Pay greater in retirement. Especially for those who retire on disability. Because their pensions are tax-free. Remember General John LaVelle? He was fit enough to command the U.S. Air Force in Vietnam, was relieved from command for unauthorized bombing of the North, he was then found disabled and today he enjoys a twenty-seven thousand dollar a year pension virtually tax-free. He didn't want to talk about it.

Now we're not talking about disabled veterans or career men given early retirement because of injuries rendering them unfit to serve. We're talking about high ranking officers, many with thirty years service, men who were certified for flight pay, now found officially disabled . . . on retirement. General Leo Benade, the Pentagon's expert on personnel and retirement affairs.

In 1971, General, 47.6 percent of all retiring generals compared with 11.5 percent of retiring colonels and 9.2 percent of retiring Sergeant-Majors, retired on disability. Now I know the attrition rate, I know how hard you work General, but it does seem strange that almost one out of every two generals in 1971 who retired . . . retired on disability and therefore to some extent, tax-free on their pension?

Gen. BENADE. I think the figures are disproportionately high Mike, in favor of higher ranking individuals and I have no explanation for it.

WALLACE. What all this talk of pension and benefit costs adds up to is that Washington is deeply worried about where the money is going to come from. Almost sixty cents of every defense dollar goes to pay people, people now in the service, people already retired. By the year 2000 retirement costs alone will total twenty-one billion dollars a year and there's a fight on to make it even bigger. A battle being fought under the banner of something called "recomputation". That means raising a retired soldiers pay every time the active forces get a raise. So that all retirees of the same grade and same years of service get the same pay.

Congressman Sam Stratton, a foe of recomp. Senator Vance Hartke, a prime sponsor of it.

Sen. HARTKE. Is it right for a sergeant, for example, today, let me ask you this question, is it right for a sergeant today who retires today to have a bigger retirement than a sergeant who is now—who was sixty years of age now and retired say twenty years ago, is that fair?

Cong. STRATTON. Well, it's fair for a Vice President of the General Electric Company who retired in 1940 to get less in retirement than one who retired in 1971 or '72.

Sen. HARTKE. Let's take that—(crosstalk)—you want to go to General Electric. Take General Electric——

Rep. STRATTON. We had to decide whether we were interested in the active duty or whether we were going to let the tail wag the dog and make our decisions on pay for the active forces on the basis of what it was going to cost us to pay the retirees?

Sen. HARTKE. Number one, there's an awful lot of difference in taking a military career, it's a chancy career. In the first place they have this business of being involved in a military conflict and it's a lot different whether you're going to be a civilian employee for General Electric or whether you're going out there and risk your life for your country. Now maybe you don't think it makes any difference. I happen to think it makes a lot of difference whether you risk your life or whether you have a permanent job in a civilian occupation. (crosstalk.)

Rep. STRATTON. Let's admit that most of those who risk their lives don't get in on the retirement system at all. Some of them are in Arlington Cemetery, they don't get in on retirement. And most of the rest of us got out when the war was over. So we don't get in on retirement. . . . So the idea that you're paying the fellows that carried the battle is a slight exaggeration.

WALLACE. Privately, even sponsors admit that Recomp has little chance of becoming law. Later this year Congress will be taking a hard look at the whole military pension business. And the Pentagon itself is recommending major changes, more pay while serving, less in retirement.

A look at the so-called "Up or Out System" . . . keeping those service personnel who are useful in for more than twenty and even thirty years while giving others severance pay to get them out right now. That way the dead wood will be gotten rid of earlier so it doesn't hang around just to get in on retirement pay.

And many Congressmen would like to see these servicemen contribute toward their own retirement.

Mr. MANSFIELD. I hope these questions can be gone into thoroughly, on the basis of the proposal made by the distinguished Senator from Texas and the distinguished Senator from Tennessee, because when you get down to manpower, you are getting more and more costs, with less and less strength in the process, with less money being spent on weapons which are needed to back up the forces we have.

Mr. BENTSEN. Mr. President, with the great influence and prestige of the majority leader, I know that the addition of his support will mean much in the passage of this measure, particularly because he gets to his office to work in public service before many farmers get out in their fields. He has done his homework well, and he has our thanks this morning.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. BENTSEN. I yield.

Mr. BAKER. Mr. President, I should like to take this opportunity to add my thanks to those of the Senator from Texas for the cosponsorship of the distinguished majority leader, who has, in fact, done his homework on this and every other issue exceedingly well.

I think the great virtue of this inquiry and undertaking is its uniqueness in terms of the congressional representation on the Commission. I believe issues and observations of the sort that the distinguished majority leader alludes to will be thoroughly undertaken by such Commission, if it is formed and funded. There is a real opportunity here to think, not only in terms of the economy, but also in terms of a definite strengthening of our inherent defense capability.

I hope the Senate acts favorably and promptly in this matter.

I thank the Senator from Texas for his invaluable cosponsorship and for the bipartisan nature that we hope to bring to this matter. I look forward to working with him and others on the matter in the future.

Mr. BENTSEN. I thank the distinguished Senator.

Mr. President, I yield back the remainder of my time.

Mr. MANSFIELD. Mr. President, will the Senator yield first?

Mr. BENTSEN. I yield.

Mr. MANSFIELD. Mr. President, I ask consent of the two Senators and the Senate that I be added as a cosponsor of the bill.

Mr. BENTSEN. We are delighted.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN. Mr. President, I ask unanimous consent that throughout the day Senators be allowed to join as cosponsors of the bill of the Senator from Tennessee and the Senator from Texas.

The PRESIDING OFFICER. Without objection, it is so ordered.

By Mr. TAFT:

S. 2438. A bill to authorize the establishment of the Edison Birthplace National Historic Site. Referred to the Committee on Interior and Insular Affairs.

Mr. TAFT. Mr. President, I am pleased to introduce legislation which would authorize the establishment of the Edison Birthplace National Historic Site at Milan, Ohio.

I need hardly take the Senate's time to recount the achievements of Thomas Alva Edison, whose name has been a household word in America for generations. In summary, Mr. Edison was probably the greatest inventor in history. He had only 3 months of formal schooling, but he changed the lives of millions of people with such inventions as the electric light and the phonograph. Edison patented more than 1,100 inventions in 60 years. These inventions were important enough for Henry Ford to suggest that the period of Edison's life should be called "The Age Of Edison."

Edison defined genius as—

One percent inspiration and 99 percent perspiration.

He demonstrated this belief by working for days at a time, stopping only for short naps. Everything interested Edison. He experimented in the field of medicine and offered a program for farm relief. He came close to the invention of the radio, and he predicted the use of atomic energy. Edison always tried to develop devices that would work under ordinary conditions, could not easily get out of order, and were easy to repair. He also improved the inventions of other persons. These included the telephone, the typewriter, the motion picture, the electric generator, and electric-powered trains.

In my judgment, Thomas Edison's life truly symbolizes Americans' tremendous capacity for innovation and creativity, which has helped us meet so many important challenges in the past.

While Thomas Edison's career and works are illustrated at his home and laboratory in West Orange, N.J., which is already a national historic site, I feel that the addition of the Milan site to the national park system would add an important dimension to the public's understanding of this great man's personal life and character. The Milan site, which is presently listed on the national register of historic landmarks, does not simply consist of a dwelling where Mr. Edison was born. The surrounding land includes remaining evidence of the basin of an old canal which extended 9 miles to Lake Erie. In the 1840's, Milan was the canal town to which grain was brought to be shipped over the Great Lakes. It is my hope that in addition to the birthplace, the Interior Department would develop the canal basin and the rest of the adjacent area into a small park which could provide a symbol and information relating to life in the "canal era."

The expense to the taxpayers of establishing this site is unlikely to be excessive. The property is now owned by the Edison Birthplace Association, Inc., a nonprofit organization of which Madeleine Edison Sloane, Thomas Edison's daughter, is president and director. The association has generously offered to donate the property and a sizable endowment fund to the Government should the birthplace become a national historic site. Interest on the endowment fund has provided sufficient funds for the operation and upkeep of the birthplace and the curator's house. Therefore, the only governmental expense would be the development and maintenance of the surrounding lands.

The people of Ohio and the rest of the Nation will benefit if the Congress acts upon this legislation quickly. Particularly in view of the upcoming Bicentennial, what action could be more appropriate than the commemoration of a great American and an important era in American history?

By Mr. METCALF:

S. 2440. A bill to amend the Agricultural Marketing Act of 1946 in order to give the Secretary of Agriculture additional authority to promote and stimulate development in rural areas, and for other purposes. Referred to the Committee on Commerce.

Mr. METCALF. Mr. President, I am today introducing a bill to increase the availability of transportation facilities for people and goods in rural America and thus encourage the improvement of rural communities and their more rapid economic growth by reducing the costs of transportation.

One of the major gaps in a complete rural community improvement effort that is not taken care of by provisions of the Rural Development Act of 1972 is the great inadequacy both in quality and volume of rural transportation services.

The bill I am introducing will not fully fill that gap. We will still need to do something to make convenient transportation available to rural people who are too old or too poor to operate or to own automobiles. We will still need to formulate and enact some kind of transitional subsidy for rural transportation that is deliberately developmental in purpose and intent, similar to the developmental highway idea included in the Appalachian program.

The bill I am introducing will just make a modest start.

For many years, a special unit in the Department of Agriculture has had the statutory job of analyzing the effects upon farm and ranch income, and upon the agricultural industry generally, of the freight rate and transportation structure in the United States and of proposed changes in freight rates.

The bill I am introducing would expand the responsibility and authorization of this unit to include consideration of all phases of rural community improvement and particularly the industrial and business components of rural development.

Section 1 of the bill refers to the objective expressed in the Rural Development Act of 1972 and expresses the purpose of Congress to improve rural transportation to promote and stimulate development of rural areas through, among other actions, establishment of special freight and passenger rates to and from and within rural areas.

Section 2 amends the Agricultural Marketing Act of 1946 to expand the responsibilities of the Secretary of Agriculture with respect to initiation and participation in actions before transportation regulatory bodies to include consideration of all nonfarm phases of rural living, business, and development in addition to strictly agricultural concerns.

Section 3 authorizes the Interstate Commerce Commission to give favorable consideration to developmental or experimental freight and passenger rates to and from rural areas to aid in the development and growth of rural communities.

Section 4 requires the Secretary of Agriculture, after consultation with the Chairman of the Interstate Commerce Commission, to submit an annual report to Congress that will indicate the reductions in freight and passenger rates, if any, that would be required to attain rural industrialization and other goals established by the Secretary under section 603 of the Rural Development Act of 1972 and the additional actions necessary to insure adequate passenger and freight service for rural areas and rural people.

By Mr. BAYH (for himself and Mr. WILLIAMS):

S. 2441. A bill to amend the Act of February 24, 1925, incorporating the American War Mothers, to permit certain stepmothers and adoptive mothers to be members of that organization. Referred to the Committee on the Judiciary.

Mr. BAYH. Mr. President, today I am introducing legislation on behalf of myself and Senator WILLIAMS that would amend the act of February 24, 1925, incorporating the American War Mothers. Under its present charter, only the natural mother of a person who has

served or is serving in the Armed Forces is eligible to become a member of the American War Mothers. Under my amendment certain stepmothers and adoptive mothers would be allowed to become members of this fine organization.

It was in my own State of Indiana, that the American War Mothers was founded on September 29, 1917—

To keep alive and develop the spirit that prompted world service; to maintain the ties of fellowship born of that service and to assist and further any patriotic work; to inculcate a sense of individual obligation to the community, State and Nation; to work for the welfare of the Army and Navy; to assist in any way in their power, men and women, who served and were wounded or incapacitated in the World War; to foster and promote friendship and understanding between America and the Allies of the World War.

The American War Mothers was incorporated in 1925, but Congress has since amended its charter with the result that the blood mother of any person who has served in the Armed Forces is now eligible to be a member. Now the American War Mothers are requesting that Congress again amend their charter. Neither the original charter nor the amended version made provision for the membership of women whose stepsons or stepdaughters or adopted sons or daughters performed military service for the United States. The bill I am introducing today would correct that oversight.

Throughout its history, the American War Mothers have worked extensively to ease the specific and sometimes special problems faced by veterans. Their work has been most appreciated by those veterans who have suffered physical and emotional problems as a result of their service or who experienced severe financial or housing problems following their service.

Currently, the American War Mothers' principal work is in the Veterans' Administration hospitals. More than 2,500 of these dedicated women volunteer their time to provide the comfort and kindness which hospitalized veterans need and deserve. Moreover, the American War Mothers has donated televisions and radios for the use and enjoyment of hospitalized veterans; and, occasionally, it has even been able to contribute substantially to improving the medical facilities at these VA hospitals. For example, in 1968 the American War Mothers collected donations from across the country and purchased a kidney machine for the VA hospital here in Washington, D.C.

I sincerely hope that the Senate will take quick action on this significant improvement to the charter incorporating the American War Mothers so that more mothers will be able to participate in their many worthwhile public service projects.

By Mr. McINTYRE:

S. 2442. A bill to amend the Export Administration Act of 1969 to prohibit the export of crude oil and petroleum products during any period when prices in the petroleum industry are subject to economic controls. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. McINTYRE. Mr. President, I am introducing legislation today which would prohibit the export of any refined petroleum product.

The failure of the President to establish a mandatory allocation system, coupled with the Cost of Living Council's phase IV petroleum pricing regulations, has resulted in the export in the last few weeks of substantial quantities of domestically refined home heating oil.

In the last month, over 42-million gallons of heating oil refined in the United States has been exported primarily to European markets. The export of this essential product and the failure to establish mandatory allocations will only assure a widespread heating oil shortage for this upcoming winter.

Mr. President, all indications are that this country will experience a heating oil shortage this winter. If mandatory allocations of petroleum products had been implemented earlier this summer then the needed heating oil supplies so essential to our country's health and safety would have been available for domestic use rather than being exported to overseas markets. This is an intolerable situation that cannot be allowed to continue.

Phase IV pricing regulations issued by the Cost of Living Council are literally riddled with loopholes and inconsistencies. We now face a situation where petroleum price regulations issued and enforced by the Federal Government are resulting in the substantial export of home heating oil while, at the same time, the President has refused to implement a mandatory allocation system.

The export of this essential commodity in such substantial quantities reflect the total failure of the voluntary allocation system for petroleum products instituted in May of this year.

If home heating oil exports are allowed to continue under the present circumstances, shortages of unbelievable magnitude will surely develop this winter.

In introducing this legislation, I also call on the President to exercise existing legislative authority to immediately impose a ban on the further export of home heating oil and other domestically refined petroleum products.

Mr. President, I ask unanimous consent that the bill be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2442

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4 of the Export Administration Act of 1969 is amended by adding at the end thereof the following new subsection:

"(f) Notwithstanding any other provision of this Act, the authority conferred by this section shall be exercised to prohibit the export of crude oil and petroleum products during any period when crude oil or any petroleum product is subject to price controls under regulations or orders issued pursuant to the Economic Stabilization Act of 1970."

By Mr. MONDALE:

S. 2443. A bill to amend the Wild and Scenic Rivers Act by designating a segment of the Upper Mississippi River in the State of Minnesota as a study river for potential addition to the Wild and Scenic Rivers System. Referred to the Committee on Interior and Insular Affairs.

Mr. MONDALE. Mr. President, I am today introducing a bill to designate the Upper Mississippi River in the State of Minnesota for study as a potential addition to the National Wild and Scenic Rivers System.

Originating at Lake Itasca in northwestern Minnesota, the Mississippi flows 2,350 miles south to the Gulf of Mexico. Its importance to the history and economic development of the United States is unsurpassed by any other river in our country, and the Mississippi has also won a special place in the hearts of all Americans through the celebrated writings of Mark Twain.

Since the early voyages of Lewis and Clark and the later stories of life on the river authored by Samuel Clemens, pioneering vessels have given way to the legendary paddlewheelers and today to modern ships and barges hauling millions of tons each day in cargo.

Nevertheless in Minnesota today, it is possible to canoe down stretches of the Mississippi's still serene waters to enjoy untouched forests and plains and to swim and fish without fear of pollution.

With fast mounting pressures for development, however, the scenic and recreational values of the Upper Mississippi may soon be lost. Potential threats to the river include the physical destruction of the river shorelands, especially the loss of protective vegetation, overdevelopment resulting from the construction of industries and housing projects along its banks, and the discharge of harmful effluents into its waters.

In recognition of these dangers, the State of Minnesota has adopted legislation such as the 1969 Shoreland Management Act, the Flood Plain Management Act, and most recently the 1973 Minnesota Wild and Scenic Rivers Act. Through a combination of these measures the State and local jurisdictions are making every effort to provide essential interim protection for the Mississippi River. But with heavy pressures for development, rising land values, and limited State and local resources, without Federal help there is a growing danger that critical stretches of the Upper Mississippi may soon be lost.

The National Wild and Scenic Rivers System was created to preserve rivers of outstanding historic, scenic, recreational, geologic, and other values. Utilizing a combination of zoning, easements, and and land acquisition, the system provides the financial and management tools needed to safeguard America's endangered wild, scenic, and recreational riverways.

I believe that there is ample evidence to show that the Upper Mississippi is worthy of addition to the National Wild and Scenic Rivers System. The bill I introduce today is designed to provide for a study to evaluate the qualifications of the riverway and to develop a preliminary plan for its preservation. This proposal includes the segment of the Upper

Mississippi from its source at Lake Itasca to the point where it borders the city of Anoka.

From nearly every standpoint in the criteria set forth in the 1968 Wild and Scenic Rivers Act, the Upper Mississippi merits national protection.

Winding from its source at Lake Itasca to the point where it meets the Crow Wing River, much of the Mississippi is forested with jack pine and hardwood forests with excellent stands of white and Norway pine in the heavier soils. Included in this region are three-fourths of the Chippewa National Forest, parts of 12 State forests, and the Leech Lake Indian Reservation. Itasca State Park embraces roughly 50 square miles of scenic wilderness at the source of the Mississippi. Downstream near McGregor, the river passes the Rice Lake Federal Wildlife Refuge. Existing parklands provide opportunities for hiking and camping; and the Chippewa National Forest is one of the finest recreational areas in the country, offering miles of clear northern water, excellent stands of pines, and an abundance of wildlife.

Downstream from Lake Itasca, the Mississippi crosses Winnibigoshish Lake, encompassing an area of 114,800 acres. On the shore are the Turtle and Snake Indian Mounds, the site of ancient battles between the Chippewa and Sioux in 1748.

Southeast of Lake Winnibigoshish, the Mississippi passes Ball Club Lake and then changes in character, becoming exceedingly tortuous. A double stream of water encloses a series of large islands in its sinuous folds.

Below White Oak Point, the Mississippi enters Schoolcraft State Park, named for Henry Schoolcraft, who on July 13, 1832, first discovered the source of the Mississippi at Lake Itasca.

Moving past Lake Pokegama, down Pokegama Falls and through the Kabikons Rapids, the Mississippi reaches Grand Rapids, the historic site of Grant's Northwest Company, and the ghost town of La Prairie. It next traverses the ancient bed of glacial Lake Aitken, where the river meanders widely across a broad, alluvial plain. The Aitkin area is famous for the steamboats that provided passenger and freight service from 1870 to 1920.

Near the point where Sandy Lake discharges into the Mississippi, the old Northwest Company trading post and an Indian village were located. This area was a region of utmost importance connecting closely with a branch of the St. Louis River that links the Mississippi with the Lake Superior Basin. This route was used by the early voyagers, and further south remains of ancient settlements can still be found. The area was a point of major commercial and even political importance long before the 1800's—and it was such at the pivotal date, 1763, in the history of the French-English occupancy of the Upper Mississippi.

Below Aitkin, the river channel is straight and the valley deeper, running parallel to the Cuyvna Iron Range. Just south of the Mississippi's confluence with the Crow Wing River is the old site of the town of Crow Wing, one of Minnesota's oldest ghost towns. Here were located the crossing of the Red River Oxcart Trail and a fur trading post, dating back to the 1700's.

Glacial till stretches along the Mississippi from this area south. Downstream the river reaches the site of Fort Ripley, Minnesota's second oldest military post, built in 1848.

At St. Cloud the banks of the river are more developed. The community's rich history provides more evidence of the early commercial importance of the Mississippi. St. Cloud was a crossing where fur traders rested their oxen, built campfires and spent evenings sharing stories of the adventures and perils of pioneer life in America. A stageline first operated in this area in 1851, and by 1859 it was extended west to the Red River country. Furs were loaded on steamboats after supplies had been discharged for the wilderness forts and distant Canadian posts of the Hudson Bay Co.

Downriver, the Mississippi meets the Elk River, named by Zebulon Pike for the herds of elk he sighted there. It passes within view of the Anoka Sand Plain, where fine sand through the years has formed dunes up to 20-feet high and is preserved today in the Sand Dunes State Forest and Game Refuge.

The area around Anoka is interspersed with groves of native timber, and here the Mississippi is crossed by the Rum and Sunrise Rivers. The Rum provided an important water route for Jonathan Carver, Sieur du Luth, and Father Hennepin.

Thus, bound in the grandeur of the Upper Mississippi is the ancient history of Minnesota, its glacial origins, Chippewa and Sioux cultures, early exploration, settlement and burgeoning new industries.

Today, the Mississippi carries canoeists through parts of 10 counties in north central Minnesota, offering opportunities for excellent fishing, swimming, powerboating, and for those who like to hike, camp, or simply enjoy the beauty and serenity of this magnificient river.

Mr. President, to prevent the loss of this remarkable resource, I am hopeful that the Upper Mississippi will be added to the National Wild and Scenic Rivers System, for I believe it is without a doubt one of the most priceless symbols of our Nation's great heritage.

I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2443

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding at the end thereof the following:

"(28) Upper Mississippi River, Minnesota: The segment beginning at its source at the outlet of Itasca Lake to the point where it meets the Northern and Western Boundary of the City of Anoka."

By Mr. MONDALE (for himself, Mr. JAVITS, Mr. HUMPHREY, Mr. STAFFORD, and Mr. CRANSTON):

S. 2444. A bill to amend the Social Security Act to provide for prevention, identification, and treatment in cases of abuse or neglect of children. Referred to the Committee on Finance.

CHILD ABUSE AMENDMENTS

Mr. MONDALE. Mr. President, for several months this year, I have devoted a substantial portion of my time to the study of the horrifying and depressing subject of child abuse.

My Subcommittee on Children and Youth held hearings in Washington and in the field. We heard from doctors and lawyers, social workers and lay therapists, psychologists, and parents and many other concerned citizens. I personally visited victims of child abuse in several hospitals; and I read stories about and looked at pictures of child abuse victims until they made me sick.

The most important message that came through to me in the visits, the testimony, the conversations, was: We must act immediately, and we must do everything within our power to combat the horrors of child abuse.

I am highly gratified that the Senate voted on July 14 to approve the Child Abuse Prevention and Treatment Act, and that Representative JOHN BRADEMAS has indicated an interest in scheduled hearings on companion legislation before his House Select Subcommittee on Education this fall.

But I would also respectfully suggest to my colleagues that it is within our power to take another significant step toward eliminating this terrible problem. For that reason, I am introducing today the Child Abuse and Protective Services Amendments of 1973. The measures contained in this bill consist of amendments to title IV–A and IV–B of the Social Security Act, under which local social service agencies receive funds for a wide variety of human programs.

The purpose of the amendments is to buttress the efforts to combat child abuse already underway in these agencies; and to prod States that have not done all they could to strengthen and expand their programs. In order to support the additional activities which would be required by my amendments, I have personally requested that the Senate Appropriations Committee increase the funding level for protective services under title IV–B by $10 million—to $56 million—in 1974. This funding level would remain far below the authorized level of $211 million.

I would like to stress that the amendments I offer today are a logical complement to the programs authorized by the Child Abuse Prevention and Treatment Act which was approved by the Senate in July.

The purpose of the Child Abuse Prevention and Treatment Act is to provide support for any and all qualified agencies, institutions or individuals who are sincerely dedicated to improving current efforts to prevent, identify and treat child abuse. Under this legislation a school, a welfare department, a hospital, a nonprofit organization or other interested body could apply for funds to support an antichild abuse program. The program receiving the grant could be as broad as the multidisciplinary teams based in some hospitals or welfare departments around the country. Or it could be as narrow as a one-shot train-

ing session for law enforcement personnel or social workers, or the writing and publication of a pamphlet designed to inform the general public about child abuse.

The Child Abuse Prevention and Treatment Act also authorizes creation of a National Center on Child Abuse in the Department of Health, Education, and Welfare, for the purpose of collecting in one place all available research and information about child abuse, making it available to interested parties, and offering technical assistance.

The funding levels authorized in the bill are modest—$10 million for the current fiscal year and $20 million each for the next 4 fiscal years. Full funding of the bill would provide us with the beginnings of a significant national attack on child abuse—but it would not guarantee the successful handling or prevention of all child abuse cases all over the country.

But we do have in this country a structure which potentially could provide the kind of comprehensive, effective approach we need. This is our local and State social service agencies—whether they be called the welfare department or human resources department or something else. These agencies all receive some Federal funds through the Social Security Act which can be used for dealing with child abuse and neglect. In a period when funding for all human programs is in short supply, activities related to child abuse have not always received the support they deserve through these programs.

The amendments I introduce today are designed to make the existing mechanism for dealing with child abuse stronger and more effective. Specifically, the amendments would:

First, exempt protective services from the 90–10 matching requirement under title IV–A, the social services program;

Second, require that in addition to reporting child abuse and neglect, State agencies provide such multidisciplinary services as necessary to aid the prevention, identification and treatment of child neglect;

Third, require that in order to continue to receive funding for protective services under title IV–B of the Social Security Act, each State must establish:

Procedures for the discovery and reporting of instances of neglect or abuse of children;

Cooperative arrangements with all community agencies and resources dealing with child abuse;

A systematic method for receiving child abuse reports on a 24-hour basis; and

A central collection point for all data on child abuse and neglect.

Most of these requirements will not be a burden on most States. All States now have laws on the books which specify some sort of reporting procedure. The requirements in my bill follow closely the recommendations of the legislative workshop of the National Conference on Child Abuse sponsored by the District of Columbia Children's Hospital in Washington last June. Specifically, that workshop reported:

It is recommended that each state designate one agency for the receipt of child protective services funds provided under the Social Security Act, and that agency will be responsible for seeking and encouraging cooperative arrangements with a broad range of public and private agencies. As a condition precedent to receiving federal funds, a state must submit a comprehensive plan incorporating . . . minimum standards in the areas of reporting, investigation, follow-up, judicial process and coordination.

Among the standards elaborated in the workshop report were establishment of a 24-hour reporting service and both interstate and intrastate coordination and communication on abuse and neglect.

The amendments I am introducing today also have the support of the Child Welfare League, an organization known for its deep commitment to the improvement of the quality of life for all children.

I am hopeful that my colleagues on the Finance Committee will consider and act on these amendments soon. I ask unanimous consent that a copy of the "Child Abuse and Protective Services Amendments of 1973" be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2444

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Child Abuse and Protective Services Amendments of 1973".

SEC. 2. Section 402(a)(16) of the Social Security Act is amended to read as follows:

"(16) provide—

"(A) that where the State agency has reason to believe that the home in which a relative and child receiving aid reside is unsuitable for the child because of the neglect, abuse, or exploitation of such child it shall bring such condition to the attention of the appropriate court or other agency, including law enforcement agencies, in the State providing such data with respect to the situation it may have, and

"(B) that the State agency will provide such multidisciplinary services (including, but not limited to, medical, legal, social, and other services) as necessary to aid the prevention, identification, and treatment of child abuse and neglect;".

SEC. 3. Section 422(a)(1) of such Act is amended—

(1) by striking out "and" at the end of subparagraph (B); and

(2) by adding at the end of subparagraph (C) the following new subparagraph:

"(D) provides for the establishment and implementation of effective procedures for the prevention, identification, and treatment of cases of child abuse or neglect including, but not limited to—

"(i) procedures for the discovery and reporting of instances of neglect or abuse of children,

"(ii) use of the full resources of local communities including public and nonprofit agencies and organizations which provide services and activities that would be beneficial to a child and his parents or guardians,

"(iii) a systematic method for receiving reports of suspected or known instances of child abuse or neglect on a 24 hour a day basis, and

"(iv) a central collection point for all data and information on child abuse and neglect, and".

SEC. 4. Section 1130(a)(2) of the Social Security Act is amended—

(1) by striking out "and" at the end of subparagraph (D);

(2) by adding "and" at the end of subparagraph (E); and

(3) by adding after subparagraph (E) the following new subparagraph:

"(F) multidisciplinary services (including, but not limited to, medical, legal, social, and other services) as necessary to aid the prevention, identification, and treatment of child abuse and neglect,".

SEC. 5. The amendments made by this Act shall become effective six months after the date of enactment.

By Mr. MCINTYRE (for himself, Mr. BENTSEN, Mr. BIBLE, Mr. CLARK, Mr. COOK, Mr. MCGEE, Mr. NELSON, Mr. NUNN, Mr. TAFT, Mr. ROTH, Mr. TOWER, and Mr. HUMPHREY):

S. 2445. A bill to amend the provisions of the Social Security Act to consolidate the reporting of wages by employers for income tax withholding and old-age, survivors, and disability insurance purposes, and for other purposes. Referred to the Committee on Finance.

COMBINED OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE INCOME TAX REPORTING AMENDMENTS OF 1973

Mr. MCINTYRE. Mr. President, I introduce for appropriate reference a bill which would amend the provisions of the Social Security Act to consolidate the reporting of wages by employers for income tax withholding and old-age, survivors, and disability insurance purposes, and for other purposes.

My bill would change the present quarterly wage reporting system for social security purposes—IRS Form 941—to an annual system utilizing the existing IRS Form W2. This bill would accomplish this by a series of some 40 amendments to the present Social Security Act and to the Internal Revenue Code of 1954, as amended. Many of the amendments I propose are technical in nature.

The main objective which I seek in this legislation is to reduce part of the most difficult and costly Federal paperwork burden on small business: the internal Revenue Service Form 941. This form, which falls most heavily on small- and medium-sized businesses, costs employers $235 million per year in clerical and accounting costs, according to the President's Advisory Council on Management Improvement. This particular form has been singled out by the National Federation of Independent Business as one of the most onerous of the paperwork forms imposed by the Federal Government. In an NFIB survey it was estimated by 64.9 percent of the businesses contacted that their overhead costs could be significantly reduced if this form were changed from a quarterly to an annual report.

The Federal Small Business Administration surveyed 1,200 other businesses. The SBA survey determined that 8 out of every 10 respondents favored eliminating Form 941 and using IRS Form W2 to obtain data for social security purposes. The vast majority of the businessmen surveyed said that the changeover of the reporting system from a quarterly to an annual one would significantly reduce their expenses.

Mr. President, the Federal paperwork burden of which form 941 represents a significant part, has been described as

reaching crisis proportions. The Federal paperwork burden today is becoming the proverbial straw which is breaking the back of small business. Having neither the time nor the expertise to handle the large number of forms thrust on them by the Federal Government, many cannot afford to hire part- or full-time professional help to hack their way through the jungle of redtape. Oftentimes, the required paperwork is the "last straw" for a small businessman struggling to survive against big business on one hand and big government on the other.

For the past 2 years the Subcommittee on Government Regulation of the Senate Select Committee on Small Business has been conducting an extensive inquiry and public hearings into the nature and extent of the Federal redtape and paperwork burden and its effect on the economic viability of small businesses throughout the Nation. The testimony received from these hearings indicates that Federal paperwork is costing the 8½ million small businessmen of this Nation between $18 to $50 billion per year. The aggregate total dollars, however, do not reflect the real impact of the reporting burden on small business. For example, a small businessman must use a total of 100 man-hours or over 2 weeks of work-time per year to comply with Federal reporting requirements.

During hearings before the Subcommittee on Census and Government Statistics of the House Committee on Post Office and Civil Service in 1964 entitled "The Federal Paperwork Jungle," a small businessman in Falls Church, Va., testified that—

> Personally, I think Form 941A should be completely abandoned. If the IRS insists that it is necessary, I think it would be within the purview of this committee to demand precise and documented details on how many tax evaders were trapped by the use of this form, how much additional revenue was brought in, how much the investigative work cost, and how much it cost to administer Form 941A, and what the net profit was. . . . If the net profit was not in the order of many millions of dollars, I think it would be justifiable to abandon 941A and seek some more ingenious and efficient method.

Mr. President, the bill I am introducing today would accomplish this goal. The savings to both the business community and the Federal Government which processes approximately 175 million reports of wage payments per year would be significant, especially when the General Accounting Office calculates that the processing of paperwork costs the Federal Government over $15 billion a year.

This $15 billion per year accounts for approximately 6 percent of Federal expenditures in fiscal 1973. It now costs $7 billion more per year to process Federal paperwork than it did 6 years ago, and $11 billion more per year than paperwork costs in 1955. The astronomical rise in Federal paperwork costs serves to emphasize the urgency of the paperwork problem for small business.

On September 18, 1971, the President's Advisory Council on Management Improvement submitted a report which urged the President to consider establishing a system of annual reporting, and had this to say:

> A system of a single annual wage report, technically feasible and administratively adequate, would result in savings to business estimated in excess of $200 million annually; and in substantial net savings within the Internal Revenue Service and the Social Security Administration.

The President's Council in the conclusion of its report, went on to state:

> A study of the advantages of a single annual report against objections raised over the past twenty years indicates that:
>
> 1. Data processing systems have made tremendous strides since the initial proposal that a single reporting system is not only technically feasible but also administratively adequate.
>
> 2. The objections raised in the past are no longer of sufficient weight to continue the now obsolescent system.
>
> 3. The annual reduction in the number of reports submitted by business is estimated at approximately 18 million, with a savings in excess of 200 million dollars. Savings to the Federal Government would be reflected in a reduction in operating costs and increased compliance income, but accurate estimates of dollar savings will have to wait on the development of the system.

On July 20, 1973, Secretary of the Treasury George P. Shultz advised me that—

> One real opportunity for reducing paperwork is the proposal for limiting the duplication between Internal Revenue and Social Security reports on the wages of individual employees. The Office of Management and Budget has asked the Treasury and the Department of Health, Education and Welfare to work out means of accomplishing this. This work is in progress.

I feel certain that the administration as well as the business community wholeheartedly urges the reorganization of our quarterly wage reporting system into a simplified annual report.

I ask unanimous consent that a letter from George P. Shultz, Secretary of the Treasury, dated July 20, 1973, the bill, and a section-by-section analysis of it be printed at this point in the RECORD.

There being no objection, the bill and material were ordered to be printed in the RECORD, as follows:

S. 2445

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Combined Old-Age, Survivors, and Disability Insurance-Income Tax Reporting Amendments of 1973."

TITLE I—AMENDMENTS TO TITLE II OF THE SOCIAL SECURITY ACT

VERIFICATION OF TAX DATA AND FINANCING OF THE COST THEREOF

SEC. 101. (a) Title II of the Social Security Act is amended by adding after section 231 the following new section:

"PROCESSING OF TAX DATA

"SEC. 232. The Secretary of the Treasury shall make available information returns filed pursuant to part III of subchapter A of Chapter 61 of subtitle F of the Internal Revenue Code of 1954, to the Secretary for the purposes of this title and title XI. The Secretary and the Secretary of the Treasury are authorized to enter into an agreement for the processing by the Secretary of information contained in returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1954. Notwithstanding the provisions of section 6103 (a) of the Internal Revenue Code of 1954, the Secretary of the Treasury shall make available to the Secretary such documents as may be agreed upon as being necessary for purposes of such processing. The Secretary shall process any withholding tax statements or other documents made available to him by the Secretary of the Treasury pursuant to this section. Any agreement made pursuant to this section shall remain in full force and effect until modified or otherwise changed by mutual agreement of the Secretary and the Secretary of the Treasury."

(b) Section 232 of the Social Security Act, as added by subsection (a) of this section, shall be effective with respect to statements reporting income received after 1973.

(c)(1) Section 201(g)(1) of such Act is amended to read as follows:

"(g)(1)(A) The managing trustee of the trust funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by title XVIII) is directed to pay from the trust funds into the treasury—

"(i) the amounts estimated by him and the Secretary of Health, Education, and Welfare which will be expended, out of moneys appropriated from the general fund in the Treasury, during a three-month period by the Department of Health, Education, and Welfare and the Treasury Department for the administration of titles II, XVI, and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954, less

"(ii) the amounts estimated (pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection) by the Secretary of Health, Education, and Welfare which will be expended, out of moneys made available for expenditures from the trust funds, during such three-month period to cover the cost of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i).

Such payments shall be carried into the Treasury as the net amount of repayments due the general fund account for reimbursement of expenses incurred in connection with the administration of titles II, XVI, and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954. A final accounting of such payments for any fiscal year shall be made at the earliest practicable date after the close thereof. There are hereby authorized to be made available for expenditure, out of any or all of the trust funds, such amounts as the Congress may deem appropriate to pay the costs of administration of this title and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 other than those referred to in clause (i) of the first sentence of this subparagraph.

"(B) After the close of each fiscal year the Secretary of Health, Education, and Welfare shall determine the portion of the cost incurred during such fiscal year, of administration of this title, title XVI, and title XVIII and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the

Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury and the portion of such costs which should have been borne by each of the trust funds; except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying out such functions specified in section 232 shall be made pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection. After such determination has been made, the Secretary of Health, Education, and Welfare shall certify to the managing trustee the amounts, if any, which should be transferred from one to any of the other of such trust funds, and the amounts, if any, which should be transferred between the trust funds (or one of the trust funds) and the general fund in the Treasury, in order to insure that each of the trust funds and the general fund in the Treasury have borne their proper share of the costs, incurred during such fiscal year, of administration of this title and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The managing trustee is authorized and directed to transfer any such amounts in accordance with any certification so made."

(2) Subsection (g) of such section is further amended by adding at the end thereof the following new paragraph:

"(4) The Board of Trustees shall prescribe before January 1, 1977, the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relates to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). If at any time or times thereafter the Boards of Trustees of such Trust Funds deem such action advisable they may modify the method so determined."

(d) Any persons the Board of Trustees finds necessary to employ to assist it in performing its functions under section 201(g)(4) of the Social Security Act may be appointed without regard to the civil service or classification laws, shall be compensated, while so employed, at rates fixed by the Board of Trustees, but not exceeding $100 per day and, while away from their homes or regular places of business, they may be allowed traveling expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

(e) The Secretary shall not make any estimates pursuant to section 201(g)(1)(A)(ii) of the Social Security Act before the Board of Trustees prescribes the method of determining costs as provided in section 201(g)(4) of such Act. The determinations pursuant to section 201(g)(1)(B) of the Social Security Act with respect to the carrying out of the functions of the Department of Health, Education, and Welfare, specified in section 232 of such Act, which relates to the administration of provisions of the Internal Revenue Code of 1954 (other than those referred to in clause (i) of the first sentence of section 201(g)(1)(A) of the Social Security Act), during fiscal years ending before the Board of Trustees prescribes the method of making such determinations, shall be made after the Board of Trustees has prescribed such method. The Secretary of Health, Education, and Welfare shall certify to the Managing Trustee the amounts that should be transferred from the general fund in the Treasury to the Trust Funds (as referred to in section 201(g)(1)(A) of the Social Security Act) to insure that the general fund in the Treasury bears its proper share of the costs of carrying out such functions in such fiscal years. The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.

(f) Section 6103 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subsection:

"(g) Disclosure of Information to Secretary of Health, Education, and Welfare.—The Secretary or his delegate is authorized to make available to the Secretary of Health, Education, and Welfare information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F for the purpose of carrying out, in accordance with an agreement entered into pursuant to section 232 of the Social Security Act, an effective information return processing program."

"CREDITING OF SELF-EMPLOYMENT INCOME TO CALENDAR YEARS

SEC. 102. (a) Section 212 of the Social Security Act is amended to read as follows:

"CREDITING OF SELF-EMPLOYMENT INCOME TO CALENDAR YEARS

"SEC. 212. (a) For the purpose of determining average monthly wage, quarters of coverage, and coverage credits with respect to self-employment income derived by an individual during any taxable year which begins before 1974, the amount of such self-employment income shall be credited to calendar quarters as follows:

"(1) In the case of a taxable year which is a calendar year the self-employment income of such taxable year shall be credited equally to each quarter of such calendar year.

"(2) In the case of any other taxable year the self-employment income shall be credited equally to the calendar quarter in which such taxable year ends and to each of the next three or fewer preceding quarters any part of which is in such taxable year.

"(b) For the purposes of determining average monthly wage and coverage credits with respect to self-employment income derived by an individual during any taxable year which begins after 1974, the amount of such self-employment income shall be credited to calendar years as follows:

"(1) In the case of a taxable year which is a calendar year or which begins with or during a calendar year and ends with or during such year the self-employment income for such taxable year shall be credited to such calendar year.

"(2) In the case of any other taxable year the self-employment income shall be allocated proportionately to the two calendar years, portions of which are included within such taxable year, on the basis of the number of months in each such calendar year which are included completely within the taxable year, including as one of such calendar months the month in or with which the taxable year ends, even though only part of such month is included in that taxable year."

(c) The amendment made by subsection (a) shall take effect January 1, 1974.

QUARTER OF COVERAGE AND COVERAGE CREDIT

SEC. 103. (a) The heading of section 213 of the Social Security Act is amended to read as follows:

"QUARTER, QUARTER OF COVERAGE, AND COVERAGE CREDIT"

(b) Section 213(a)(2) of such Act is amended to read as follows:

"(2) The term 'quarter of coverage' means a quarter, occurring before 1974, in which the individual has been paid $50 or more in wages (except wages for agricultural labor paid after 1954 and before 1974) or for which he has been credited (as determined under section 212) with $100 or more in self-employment income except that—

"(A) no quarter after the quarter in which such individual died shall be a quarter of coverage, and no quarter any part of which was included in a period of disability (other than the initial quarter and the last quarter of such period) shall be a quarter of coverage;

"(B) if the wages paid to any individual in any calendar year equal—

"(i) $3,000 in the case of a calendar year before 1951,

"(ii) $3,600 in the case of a calendar year after 1950 and before 1955,

"(iii) $4,200 in the case of a calendar year after 1954 and before 1959,

"(iv) $4,800 in the case of a calendar year after 1958 and before 1966,

"(v) $6,600 in the case of a calendar year after 1965 and before 1968,

"(vi) $7,800 in the case of a calendar year after 1967 and before 1972,

"(vii) $9,000 in the case of a calendar year after 1971 and before 1973,

"(viii) $10,800 in the case of a calendar year after 1972 and before 1974,

"(ix) $12,600 in the case of the calendar year 1974, or

"(x) an amount equal to the contribution and benefit base (as determined under section 230) in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective.

each quarter of such year shall (subject to subparagraph (A)) be a quarter of coverage;

"(C) if an individual has self-employment income for a taxable year and if the sum of such income and the wages paid to him during such year equals—

"(i) $3,600 in the case of a taxable year beginning after 1950 and ending before 1955,

"(ii) $4,200 in the case of a taxable year ending after 1954 and before 1959,

"(iii) $4,800 in the case of a taxable year ending after 1958 and before 1966,

"(iv) $6,600 in the case of a taxable year ending after 1965 and before 1968,

"(v) $7,800 in the case of a taxable year ending after 1967,

"(vi) $9,000 in the case of a taxable year beginning after 1972 and before 1973,

"(vii) $10,800 in the case of a taxable year beginning after 1972 and before 1974,

"(viii) $12,600 in the case of a taxable year beginning after 1973 and before 1975, or

"(ix) an amount equal to the contribution and benefit base (as determined under section 230) which is effective for the calendar year in the case of any taxable year beginning in any calendar year after 1974,

each quarter any part of which falls in such year shall (subject to subparagraph (A)) be a quarter of coverage;

"(D) if an individual has self-employment income in a taxable year which begins in 1973 and ends in 1974 and the sum of such self-employment income and the wages paid to him in such taxable year equals $10,800, each calendar quarter of calendar year 1973 any part of which is included in such taxable year shall (subject to subparagraph (A)) be a quarter of coverage;

"(E) if an individual is paid wages for agricultural labor in a calendar year after 1954 and before 1974, then, subject to subparagraph (A)—

"(i) the last quarter of such year which can be but is not otherwise a quarter of coverage shall be a quarter of coverage if such wages equal or exceed $100 but are less than $200;

"(ii) the last two quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $200 but are less than $300;

"(iii) the last three quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if

such wages equal or exceed $300 but are less than $400; and

"(iv) each quarter of such year which is not otherwise a quarter of coverage shall be a quarter of coverage if such wages are $400 or more; and

"(F) no quarter shall be counted as a quarter of coverage before the beginning of such quarter.

If, in the case of any individual who has attained age 62 or died or is under a disability and who has been paid wages for agricultural labor in a calendar year after 1954 and before 1974 the requirements for insured status in subsection (a) or (b) of section 214 of this title the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 216(i) of this title are not met after assignment of quarters of coverage to quarters in such year as provided in subparagraph (E) of this paragraph, but would be met if such quarters of coverage were assigned to different quarters in such year, then such quarters of coverage shall instead be assigned, for purposes only of determining compliance with such requirements, to such different quarters. If, in the case of an individual who did not die before January 1, 1955, and who attained age 62 (if a woman) or age 65 (if a man) or died before July 1, 1957, the requirements for insured status in section 214(a)(3) of this title are not met because of his having too few quarters of coverage but would be met if his quarters of coverage in the first calendar year in which he had any covered employment had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid (any such wages paid that are reallocated on an earned basis shall not be used in determining quarters of coverage for subsequent calendar years), then upon application filed by the individual or his survivors and satisfactory proof of his record of wages earned being furnished by such individual or his survivors, the quarters of coverage in such calendar year may be determined on the basis of the periods during which wages were earned."

(c) Such section 213 is further amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"Crediting of Coverage Credits

"(b) For purposes of this title—

"(1) To each calendar quarter, in a calendar year before 1974, which is a quarter of coverage (as defined in subsection (a)), there shall be credited one coverage credit.

"(2) In any calendar year after 1973 in which the total wages paid to an individual and the self-employment income credited to him under section 212 equals $100 or more, the number of coverage credits credited to such calendar year shall be the number appearing in column II of the following table on the line on which in column I appears the total of such wages and self-employment income.

"I	II
"Total of wages and self-employment income for a calendar year	Coverage credits
$100 or more, but less than $200	1
$200 or more, but less than $300	2
$300 or more, but less than $400	3
$400 or more	4

"(3) Coverage credits which are credited to any calendar year after 1973 for any individual shall be deemed credited on the first day of such year; except that in the case of the following calendar years not more than one coverage credit may be credited before April 1, not more than two may be credited before July 1, and not more than three may be credited before October 1 and, in the case of any such year, no coverage credit may be credited after the date on which such individual died—

"(A) for purposes of section 214(a), the first year in which he both attained age 62 and would be a fully insured individual had his coverage credits for such year been credited on the first day thereof, or the year in which he died;

"(B) for purposes of section 214(b), the year in which such individual died or became entitled to old-age insurance benefits and the year immediately preceding such year;

"(C) for the purposes of section 216(i)(3), the year in which a period of disability could have begun for such individual if his coverage credits for such year had been credited on the first day thereof:

"(D) for the purposes of section 223(c)(1)(B), the year in which a waiting period could have begun for such individual if his coverage credits for such year had been credited on the first day thereof.

"(4) If an individual has self-employment income in a taxable year which begins in 1973 and ends in 1974 and the sum of such self-employment income and the wages paid to him in such taxable year equals $10,800, coverage credits credited to the calendar year 1974 shall be equal to not less than the number of calendar quarters in 1974 any part of which are included in such taxable year.

"(5) Notwithstanding the preceding provisions of this subsection, coverage credits may not be credited with respect to any individual to any calendar year any part of which is included in a period of disability (other than the initial and last calendar years of such period), or to any calendar year after the year in which he dies."

(d) The amendments made by this subsection shall take effect January 1, 1974.

FULLY INSURED STATUS

SEC. 104. (a) Section 214(a) of the Social Security Act is amended to read as follows:

"FULLY INSURED INDIVIDUAL

"(a) The term 'fully insured individual' means any individual who had—

"(1) a number of coverage credits (whenever acquired) not less than one credit for each of the years elapsing—

"(A) after (i) December 31, 1950, or (ii) if later, December 31 of the year in which he attained the age of twenty-one, and

"(B) before (i) the year in which he died, or (ii) if earlier, the year in which he attained aged 62, except that in no case shall an individual be a fully insured individual unless he has at least six coverage credits; or

"(2) forty coverage credits; or

"(3) in the case of an individual who died before 1951, six coverage credits;

not counting as an elapsed year for purposes of paragraph (1) any year any part of which was included in a period of disability (as defined in section 216(i) of this title) except the calendar year in which such period began if two or more coverage credits were credited to such year, and the calendar year in which such period ended if two or more coverage credits were credited to such year."

(b) The amendments made by this section shall apply with respect to lump-sum death payments under title II of the Social Security Act in the case of deaths occurring after, and monthly benefits under such title II for months after, December 31, 1973, based on applications filed after such day.

CURRENTLY INSURED STATUS

SEC. 105. (a) Section 214(b) of the Social Security Act is amended to read as follows:

"Currently Insured Individual

"(b) The term 'currently insured individual' means any individual who—

"(1) has not less than six quarters of coverage during the thirteen-quarter period ending with—

"(A) the quarter in which he died,

"(B) the quarter in which he became entitled to old-age insurance benefits,

"(C) the quarter in which he became entitled to primary insurance benefits under this title as in effect before enactment of this section, or

"(D) in the case of any individual entitled to disability insurance benefits, the quarter in which he most recently became entitled to disability insurance benefits,

not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage; or

"(2) had not less than six coverage credits which were credited to the period consisting of—

"(A) the year in which he died,

"(B) the year in which he became entitled to old-age insurance benefits, or

"(C) in the case of any individual entitled to disability insurance benefits, the year in which he most recently became entitled to disability insurance benefits,

and the two calendar years immediately preceding such year, not counting as part of such three-year period any calendar year any part of which was included in a period of disability (as defined in section 216(i)) except, in the case of an individual who does not otherwise meet the requirements of this paragraph, the calendar year in which such period began or the calendar year in which such period ended if he would meet such requirements by reason of the inclusion of such year and the coverage credits credited to such year, or both such years if he would meet such requirements by reason of the inclusion of such years and the coverage credits credited to them."

(b) The amendments made by this section shall take effect January 1, 1974.

PERIOD OF DISABILITY

SEC. 106. (a) Section 216(i)(3) of the Social Security Act is amended to read as follows:

"(3) The requirements referred to in clauses (i) and (ii) of paragraph (2)(C) are satisfied by an individual with respect to any day only if—

"(A) he would have been a fully insured individual (as defined in section 214) had he attained age 62 and filed application for benefits under section 202(a) on such day, except that the provisions of this subparagraph shall not apply in the case of any individual with respect to whom a period of disability would, but for such provisions, begin before 1951; and

"(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which such day occurred, not counting as part of such 40-quarter period any quarter any part of which was included in a prior period of disability unless such quarter was a quarter of coverage; or

"(ii) he had not less than 20 coverage credits which were credited to the period ending on such day and consisting of that part of the year in which such day occurred up to such day and the nine calendar years immediately preceding the year in which such day occurred, not counting as part of such period any year any part of which was included in a period of disability except, in the case of an individual who does not otherwise meet the requirements of this clause, the calendar year in which such prior period began or the calendar year in which such

prior period ended if he would meet such requirement by reason of the inclusion of such year and the coverage credits credited to such year, or both such years if he would meet such requirement by reason of the inclusion of such years and coverage credits credited to them."

(b) Section 216(i)(2)(C)(ii) of such Act is amended by striking out "of the first quarter thereafter in which" and inserting in lieu thereof "thereafter on which".

(c) The amendments made by this section shall take effect January 1, 1974.

INSURED STATUS FOR DISABILITY INSURANCE BENEFITS

SEC. 107. (a) Section 223(c)(1)(B) of the Social Security Act is amended by inserting "(i)" after "(B)" and by inserting before the period at the end thereof the following: ", or (ii) he had not less than 20 coverage credits which were credited to the period ending on such day and consisting of that part of the year in which such day occurred up to such day and the nine calendar years immediately preceding the year in which such day occurred not counting as part of such period any calendar year any part of which was included in a prior period of disability except, in the case of an individual who does not otherwise meet the requirements of this clause, the calendar year in which such prior period began or the calendar year in which such prior period ended if he would meet such requirements by reason of the inclusion of such year and the coverage credits credited to such year, or both such years if he would meet such requirements by reason of the inclusion of such years and the coverage credits credited to them".

(b) The amendments made by subsection (a) shall take effect January 1, 1974.

MISCELLANEOUS CONFORMING CHANGES

SEC. 108. (a)(1) Section 215(d)(2)(A) of such Act is amended to read as follows:

"(A) with respect to whom at least one coverage credit was credited to years before 1951;".

(2) Section 215(d)(2)(B) of such Act is amended by striking out "with respect to whom less than six of the quarters elapsing after 1950 are quarters of coverage" and inserting in lieu thereof "with respect to whom less than six coverage credits were credited to years after 1950".

(b) Section 205(c)(1) is amended by adding at the end thereof the following new subparagraph:

"(D) The term 'period' when used with respect to self-employment income means a taxable year (as defined in section 211(c)) and when used with respect to wages means—

"(i) a quarter (as defined in section 213(a)(1)) if wages paid to the individual were reported or should have been reported on a quarterly basis (a) on tax returns filed with the Commissioner of Internal Revenue under the Federal Insurance Contributions Act or regulations thereunder, or (b) on information returns filed by a State pursuant to an agreement under section 218 or regulations of the Secretary thereunder,

"(ii) a calendar year if wages paid to the individual were reported or should have been reported on a yearly basis on such tax returns or on such information returns, or

"(iii) the half year beginning January 1 or July 1 in the case of wages paid or alleged to have been paid during the calendar year 1937."

(c) Section 202(t)(4)(A) of such Act is amended to read as follows:

"(A) the individual on whose wages and self-employment income such benefit is based had not less than 40 coverage credits which were credited to the period ending with the year in which such month occurred, or".

(d) Section 202(u)(1)(C) of such Act is amended by striking out "calendar quarter" each place it appears and inserting in lieu thereof "calendar year".

(e) Clause (iv) of section 102(f)(2)(A) of the Social Security Amendments of 1954 is amended to read: "(iv) with respect to whom not less than six coverage credits (as defined in section 213 of such Act) have been credited to the period after June 1953, or".

(f) The first sentence of such section 102(f)(2)(B) is amended by striking out "and with respect to whom not less than six of the quarters elapsing after June 30, 1953, are quarters of coverage" and inserting in lieu thereof "and with respect to whom not less than six coverage credits have been credited to the period after June 30, 1953".

(g) Clause (i) of the third sentence of such section 102(f)(2)(B) is amended to read: "(i) if the application is filed by such individual, for and after the twelfth month before the month in which the application therefor was filed by such individual but in no case for any month before the day as of which his sixth coverage credit in the period after June 30, 1953, was credited, or".

(h) The provisions of this section shall take effect January 1, 1974.

DEFINITION

SEC. 109. As used in the provisions of the Social Security Act set forth in this title, the term "Secretary", unless the context otherwise requires, means the Secretary of Health, Education, and Welfare.

TITLE II—AMENDMENTS PRESERVING RELATIONSHIP BETWEEN RAILROAD RETIREMENT AND OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

SEC. 201. (a) Section 3(e) of such Act is amended by inserting after "quarters of coverage" where it first appears the following: "with respect to employment in any calendar year before 1974";

(b) Section 5(l)(5) of such Act is amended by inserting "and any coverage credit" after "quarter of coverage";

(c) Section 5(l)(9) of such Act is amended by changing the period at the end of the second proviso thereof to a comma and inserting thereafter the following: "except that for any calendar year after 1974, there shall not be excluded from this divisor that number of calendar quarters as equals the number of coverage credits, as defined in the Social Security Act, credited to him for such year."

SEC. 202. The amendments made by subsection (a) of section 201 of this title shall be effective upon enactment. The amendments made by the other subsections of such section 201 shall apply with respect to all annuities under the Railroad Retirement Act of 1937 accruing after 1973; and shall apply with respect to lump-sum benefits under section 5(f) of such Act on the basis of deaths occurring after 1973.

THE SECRETARY OF THE TREASURY,
Washington, D.C., July 20, 1973.

Hon. THOMAS J. MCINTYRE,
Chairman, Subcommitte on Government Regulation, Select Committee on Small Business, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of April 24 requesting the Treasury's views on pertinent parts of an attached report of the Senate Select Committee on Small Business dealing with the Federal paperwork burden.

We appreciate the opportunity to review the report.

Insofar as paperwork is increased by statutory complexities, I can assure you that it is the objective of both the President and the Secretary of the Treasury to develop and promote remedial legislation. In this connection, I think you will be interested in the statement that I made on April 30, 1973, to the Ways and Means Committee on this and related subjects. A copy is enclosed.

One real opportunity for reducing paperwork is the proposal for limiting the duplication between Internal Revenue and Social Security reports on the wages of individual employees. The Office of Management and Budget has asked the Treasury and the Department of Health, Education and Welfare to work out means of accomplishing this. This work is in progress.

The other comments of your Committee relate to administrative aspects of the Internal Revenue Service. I understand the Commissioner, Donald C. Alexander, has already given his views on these matters. I am enclosing a copy of his comments.

If we can be of further assistance to your Committee, please let me know.

Sincerely yours,

GEORGE P. SHULTZ.

SECTION-BY-SECTION ANALYSIS OF COMBINED OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE INCOME TAX REPORTING AMENDMENTS OF 1973

Section 101(a) would amend the Social Security Act by adding a section 232 entitled "Processing of Tax Data." The section directs the Secretary of the Treasury to make available to the Secretary of HEW tax returns filed pursuant to part III of subchapter A of chapter 61 of subchapter F of the Internal Revenue Code of 1954 (26 U.S.C. sections 6031–6056). Tax returns thus available are for the purposes of title II—Federal Old-Age, Survivors, and Disability Insurance Benefits—and Title XI—General Provisions—of the Social Security Act. The Secretary of HEW and the Secretary of the Treasury are empowered to enter into an agreement for the processing of information contained in such returns by the Secretary of HEW. The Secretary of the Treasury is required to provide to the Secretary of HEW any documents (e.g. withholding tax statements) they agree are necessary for such processing, notwithstanding the terms of section 6103(a) of the Internal Revenue Code of 1954 [26 U.S.C. § 6103(a)] respecting the conditions under which certain tax returns may be inspected. The Secretary of HEW is to process the information contained in the documents obtained pursuant to the agreement with the Secretary of the Treasury. Agreements between the Secretary of HEW and the Secretary of the Treasury are to remain in effect until modified or otherwise changed by mutual accord.

Section 101(b) would provide that section 232 of the Social Security Act as proposed by this bill will be in effect for tax information returns reporting income received after 1973.

Section 101(c) would amend sec. 201(g)(1) of the Social Security Act, 42 U.S.C. § 401(g)(1). This section generally provides for the payment of sums from the Trust Funds into the Treasury. The Managing Trustee of the Trust Funds, including both the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, is to pay from the Trust Fund into the Treasury the amounts he and the Secretary of HEW estimate will be expended from the general fund of the Treasury by the Department of HEW and Treasury for the administration of (1) titles II, XVI and XVIII of the Social Security Act, (2) subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and (3) chapters 2 and 21 of the Internal Revenue Code of 1954. The amounts so estimated

are to be reduced by an amount determined by the Secretary of HEW—pursuant to methods to be established by the Board of Trustees prior to January 1, 1977—which will be expended, from moneys made available for expenditure from the Trust Funds during the three month period, in covering the cost of the Department of HEW in carrying out the functions specified in sec. 232 relating to the administration of provisions of the Internal Revenue Code of 1954 (other than chapters 2 and 21 thereof).

Payments so made by the Managing Trustee will be carried as the net amount of repayments due the general fund for reimbursement of expenses incurred in the administration of the aforementioned titles of the Social Security Act and Internal Revenue Code. A final accounting of such payments is to be made as soon as practicable after the close of the fiscal year. Expenditures are authorized from the Trust Funds in amounts that Congress deems appropriate to pay only for the cost of administering title II of the Social Security Act and the cost of administering the functions of HEW pursuant to section 232 of the Internal Revenue Code of 1954.

After the close of each fiscal year, the Secretary of HEW is required to apportion (between each Trust Fund and the general fund in the Treasury) the costs of administering titles II, XVI and XVIII of the Social Security Act and its costs in carrying out the functions specified in sec. 232. However, the amount to be borne by the general fund of the Treasury with respect to expenditures made as a result of carrying out the functions of sec. 232 shall be in accord with the method prescribed by the Board of Trustees before January 1, 1977. After such determination, the Secretary of HEW is to certify to the Managing Trustee the amounts which should be transferred between the various Trust Funds and the general fund of the Treasury to ensure that each fund bears its proper share of costs. The Managing Trustee is to make the appropriate transfers.

Section 101(c)(2) would add a new paragraph (g)(4) to section 201(g) providing that by January 1, 1977, the Board of Trustees will prescribe a method for determining the share to be borne by the general fund of the Treasury of the cost of administration by HEW of the provisions of the Internal Revenue Code of 1954 specified in sec. 232, other than certain provisions identified in amended sec. 201(g)(1)(A)(i). The Board of Trustees may modify the method of allocation whenever it deems it advisable.

Section 101(d) would permit the Board of Trustees in the performance of duties specified in sec. 101(c)(2) to employ necessary personnel without regard to civil service or classification laws. Remuneration is limited to a maximum of $100 per day and provision is made for travel expenses and per diem allowances.

Section 101(e) would prohibit the Secretary from estimating costs pursuant to section 201(g)(1)(A)(ii), before the Board of Trustees prescribes the method of determining cost mandated in sec. 201(g)(4). The allocation of costs, pursuant to section 201(g)(1)(B), for the fiscal years prior to the time when the Board of Trustees prescribes such method, will be made after the method is prescribed. The Secretary of HEW is thereafter required to certify to the Managing Trustee amounts to be transferred from the general fund of the Treasury to the Trust Funds so that the general fund will bear its proper share of costs. The Managing Trustee is then required to make the appropriate transfers.

Section 101(f) would amend the Internal Revenue Code of 1954 by adding a new subsection (g) to section 6103 thereof [26 U.S.C. § 6103]. This new subsection specifically authorizes the Secretary of the Treasury, or his delegate, to make available to the Secretary of HEW tax information returns for the purposes of section 232.

Section 102(a) would amend section 212 of the Social Security Act. The section is retitled "Crediting of Self-Employment Income of Calendar Years." Part (a) of section 212 thus amended would provide that average monthly wage, quarters of coverage, and coverage credits derived from self-employment income for taxable years beginning before 1974 are to be determined on a basis of income credited to calendar quarters. The method of allocation between calendar quarters remains substantially unchanged. Part (b) of the amendment is entirely new and concerns determinations of average monthly wage and coverage credits derived from self-employment income for taxable years beginning after 1973. Income obtained in a taxable year which is a calendar year or wholly within a calendar year is credited to that calendar year. For all other taxable years, income is credited proportionately, that is, on the basis of time, between two calendar years in which the taxable year falls. The provisions of part (a) do not take effect until January 1, 1974.

Section 103(a) would amend the title of sec. 213 of the Social Security Act. The section is retitled "Quarter, Quarter of Coverage, and Coverage Credit."

Section 103(b) would amend section 213(a)(2) of the Social Security Act. The amendment limits quarters of coverage to quarters occurring before 1974. The exceptions thereto have been relisted, and the provisions regarding the minimum annual wage and self-employment income necessary for each quarter in the taxable year to be considered a quarter of coverage are updated with special formulae for such income derived after 1974. A special provision [§ 213(a)(2)(D)] is added dealing with persons having self-employment income in any taxable year overlapping both 1973 and 1974. It provides that, if any such person's income from wages and self-employment income equals $10,800, all calendar quarters of 1973 falling in whole or part within the taxable year are quarters of coverage. The quarters of coverage provisions for individuals paid wages for agricultural labor [§213(a)(2)(E)] is limited to the period between 1954 and 1974, but otherwise remains unchanged.

Section 103(c) would reletter section 213(b) of the Social Security Act section 213(c) and would add a new section 213(b). The new section is entitled "Crediting of Coverage Credits." This section would allocate coverage credits for earnings before 1974 based on quarters of coverage and after 1973 on the basis of earnings during the calendar year. A maximum of four coverage credits may be received during any calendar year. Coverage credited for any calendar year after 1973 is deemed credited on the first day of that year. No person can be credited with more than one coverage credit before the end of the first quarter of the year, two coverage credits before the end of the second quarter and three coverage credits before the end of the third quarter in the following calendar years:

1. For purposes of section 214(a), that year in which a person first attains the age of 62 and would be a fully insured individual had his coverage credits for such year been credited on the first day thereof, or the year in which he died..

2. For purposes of section 214(b), the year in which a person died or became entitled to old-age insurance benefits and the immediately preceeding calendar year.

3. For purposes of section 216(i)(3), the year in which a period of disability could have begun, if coverage credits were credited on the first day of that year.

4. For purposes of § 223(c)(1)(B), the year in which a waiting period could have begun if the person's coverage credits for that year had been credited on the first day thereof.

Subsection 213(b)(4) would provide that persons having self-employment income, with wages and self-employment income equal to $10,800, during a taxable year overlapping both 1973 and 1974 shall be credited with coverage credits for 1974, equal to "the number of calendar quarters in 1974 any part of which is included in the taxable year."

Subsection 213(b)(5) would provide that coverage credits may not be credited for any calendar year any part of which is included in a period of disability—other than the first or last calendar years of the period of disability. Also, coverage credits shall not be credited for any year *following* the year in which a person dies.

Section 103(d) would provide that section 213(b) will take effect on January 1, 1974.

Section 104(a) would amend section 214(a) of the Social Security Act. This amendment redefines a "fully insured individual" in terms of coverage credits rather than "quarters of coverage." The age distinction between men and women for purposes of determining whether one is a "fully insured individual" is eliminated. Any person upon obtaining the age of 62 with the proper number of coverage credits is fully insured. The provision that any year which was included in a period of disability shall not be counted as an elapsed year is retained, but this provision does not apply to the first or last calendar year of a period of disability if two or more coverage credits were credited to such year.

Section 104(b) would provide that the terms of section 214(a), as amended, will apply with respect to lump-sum death payments under title II of the Social Security Act in cases of death occurring after December 31, 1973 and also with respect to monthly benefits under title II, based on applications filed after December 31, 1973.

Section 105(a) would amend section 214(b) of the Social Security Act. The amendment retains the current definition of "currently insured individual" in subsection (b)(1) and adds a further definition based upon coverage credits. Generally an individual is currently insured if he has not less than six coverage credits credited during the year in which he died or the year of eligibility for either old-age or disability insurance benefits and the two preceding calendar years. If any of these calendar years was included in a period of disability, coverage credits shall not be counted towards the total for purposes of determining whether one is currently insured. However, if a person would meet the requirements of being currently insured, except for such a period of disability, the coverage credit attributable to either, or both, the calendar years during which the period of disability began or ended may be counted for purposes of determining currently insured status.

Section 105(b) provides that the amendments to section 214(b) will become effective January 1, 1974.

Section 106(a) would amend section 216(i)(3) of the Social Security Act. The amendments to paragraph 3(A) thereof generally conform the paragraph to the revised definition of a "fully insured individual." The amendment to paragraph 3(B)(i) provides that for determining the number of quarters of coverage no quarter any part

of which was included within a period of disability will be counted, unless such quarter otherwise was a quarter of coverage.

Section 216(i)(3)(B)(ii) is amended to provide that a person will satisfy the requirements prerequisite to a determination of disability if he has 20 or more coverage credits which were credited to the period ending on the day the disability arose and consisting of that part of the current calendar year up until the day the disability began and the nine prior calendar years. The coverage credits attributable to any prior year which included a previous period of disability would not be counted. However, if an individual would not otherwise be eligible because of such exclusion, then the coverage credits attributable to the years in which the period of disability began and ended could be counted.

Section 106(b) would amend section 216(i)(2)(C)(ii) of the Social Security Act by striking out "of the first quarter thereafter in which" and inserting in lieu thereof "thereafter on which." The effect of the change would be to provide that if a person did not satisfy the requirements of paragraph (i)(3) on the day the disability began, the period of disability would commence from the time those requirements were fulfilled, rather than on the first day of the following quarter.

Section 106(c) provides that the amendments to section 216 will take effect January 1, 1974.

Section 107(a) would amend subsection 223(c)(1)(B) of the Social Security Act. The amendment relating to paragraph (c)(1)(B)(i) is unnecessary; the appropriate changes having already been effected. The amendment to paragraph (c)(1)(B)(ii) would redefine an optional eligibility requirement for an individual to be insured for disability insurance benefits. Redefinition is in terms of "coverage credits" and is identical to the amendment to section 216(i)(3)(B)(ii), discussed above.

Section 107(b) provides that the amendments to section 223 will take effect January 1, 1974.

Section 108(a)(1) would amend subsection 215(d)(2)(A) of the Social Security Act as follows: "(A) with respect to whom at least one coverage credit was credited to years before 1951." The effect of this change is to conform the terms of primary insurance eligibility to "coverage credits" rather than "quarters of coverage."

Section 108(a)(2) would amend subsection 215(d)(2)(B) of the Social Security Act by striking out "with respect to whom less than six of the quarters elapsing after 1950 are quarters of coverage" and inserting in lieu thereof "with respect to whom less than six coverage credits were credited to years after 1950." This likewise would change the terms of eligibility from "quarters of coverage" to "coverage credits."

Section 108(b) would amend section 205 of the Social Security Act by adding at the end of subsection 205(c)(1) a new subparagraph defining the word "period" to accord with the different contexts in which it is used.

Section 108(c) would amend section 202(t)(4)(A) of the Act. The amendment provides that certain benefits shall be paid to individuals not citizens or nations of the United States who have amassed sufficient coverage credits.

Section 108(d) would amend section 202(u)(1)(C) of the Act. The term "calendar quarter" is struck each place it appears and "calendar year" is inserted in lieu thereof.

Section 108(e) would amend clause (iv) of section 102(f)(2)(A) of the Social Security Amendments of 1954 (68 Stat. 1070). The clause is amended to read "(iv) with respect to whom not less than six coverage credits (as defined in section 213 of such Act) have been credited to the period after June 1973, or . . ." The term coverage credits is substituted for quarters of coverage.

Section 108(f) would amend the first sentence of section 102(f)(2)(B) of the Social Security Amendments of 1954, 68 Stat. 1071, by striking out "and with respect to whom not less than six of the quarters elapsing after June 30, 1953, are quarters of coverage" and inserting in lieu thereof "and with respect to whom not less than six coverages credits have been credited to the period after June 30, 1953."

Section 108(g) would amend the third sentence of section 102(f)(2)(B) of the Social Security Amendments of 1954, 68 Stat. 1071, to read "(i) if the application is filed by such individual, for and after the twelfth month before the month in which the application therefore was filed by such individual but in no case for any month before the day as of which his sixth coverage credit in the period after June 30, 1953, was credited, or . . ."

Section 108(h) provides that the amendments set forth in Section 108 will be effective January 1, 1974.

Section 109 provides that unless the context of this title, that is, title I of the "Combined Old-age, Survivors, and Disability Insurance-Income Tax Reporting Amendments of 1973," requires otherwise, the term "Secretary" refers to the Secretary of HEW.

Section 201(a). The Act referred to in this and the following amendments is the Railroad Retirement Act of 1937, 45 U.S.C. § 228a et seq. This amendment would insert the phrase "with respect to employment in any calendar year before 1974" after the first appearance of the terms "quarters of coverage" in section 3(e) of the Act.

Section 201(b) would amend the definition of "wage quarter of coverage" contained in subsection 5(1)(5) of the Act by inserting "and any coverage credit" after the phrase "quarter of coverage."

Section 201(c) would amend the definition of "an employee's 'average monthly remuneration'" by changing the period at the end of the second proviso thereof to a comma and inserting thereafter "except that for any calendar year after 1974, there shall not be excluded from this divisor that number of calendar quarters as equals the number of coverage credits, as defined in the Social Security Act, credited to him for such year." This amendment provides that in the calculation of an employee's "average monthly renumeration" after calendar 1974 an individual employee obtains the benefit of full allowable coverage credits, irrespective of whether particular quarters of coverage were otherwise available for calculation purposes.

Section 202 would provide that the amendments contained in subsection (a) of section 201 shall be effective upon enactment, and that the amendments of subsections (b) and (c) of section 201 apply to all annuities occurring after 1973 under the Railroad Retirement Act of 1937 and they shall also apply to lump-sum benefits occurring after 1973 based upon section 5(f) of that Act.

BRUCE P. MOORE,
Legislative Attorney.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTION

S. 2147

At the request of Mr. DOMENICI, the Senator from Texas (Mr. TOWER), the Senator from Alaska (Mr. GRAVEL), the Senator from Kentucky (Mr. COOK), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Pennsylvania (Mr. SCOTT), the Senator from Wyoming (Mr. HANSEN), the Senator from Colorado (Mr. DOMINICK), and the Senator from South Dakota (Mr. ABOUREZK) were added as cosponsors of S. 2147, to conduct a study relating to the procurement and use by the Federal Government of products manufactured from recycled materials.

S. 2217

At the request of Mr. BAKER, the Senator from Rhode Island (Mr. PELL), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Georgia (Mr. TALMADGE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Kentucky (Mr. COOK), the Senator from Michigan (Mr. HART), the Senator from Oklahoma (Mr. BELLMON), the Senator from New Mexico (Mr. DOMENICI), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Kansas (Mr. DOLE), the Senator from Iowa (Mr. HUGHES), the Senator from New York (Mr. JAVITS), the Senator from Tennessee (Mr. BROCK), the Senator from Utah (Mr. MOSS), the Senator from Maryland (Mr. BEALL), the Senator from Nevada (Mr. BIBLE), the Senator from Ohio (Mr. TAFT), and the Senator from California (Mr. TUNNEY) were added as cosponsors of S. 2217, to provide for improvement in the treatment of animals in air transportation.

S. 2354

At the request of Mr. HUMPHREY, the Senator from Utah, (Mr. Moss) was added as a cosponsor of S. 2354, authorizing U.S. participation in the African Development Bank.

S. 2410

At the request of Mr. CRANSTON, the Senator from New Hampshire (Mr. MCINTYRE) was added as a cosponsor of S. 2410, a bill to amend the Public Health Service Act to provide assistance and encouragement for the development of comprehensive emergency medical services systems.

S. 2415

At the request of Mr. CURTIS, the Senator from Oklahoma (Mr. BARTLETT) was added as a cosponsor of S. 2415, to amend section 203 of the Economic Stabilization Act of 1970 to permit the passthrough of certain cost increases.

S. 2420

At the request of Mr. BAYH, the Senator from Nevada (Mr. CANNON) and the Senator from South Dakota (Mr. MCGOVERN) were added as cosponsors of S. 2420, a bill to amend the Economic Stabilization Act of 1970 to adjust ceiling prices applicable to certain petroleum products and to permit retailers of such products to passthrough increased costs.

SENATE JOINT RESOLUTION 147

At the request of Mr. MCINTYRE, the Senator from Nevada (Mr. BIBLE) and the Senator from Utah (Mr. Moss) were added as cosponsors of Senate Joint

Resolution 147, calling for a report on the People's Republic of China grain purchase.

PROHIBITION OF DISCRIMINATORY BURDENS UPON INTERSTATE COMMERCE IN WINE—AMENDMENT

AMENDMENT NO. 509

(Ordered to be printed, and referred to the Committee on Finance.)

Mr. PACKWOOD submitted an amendment, intended to be proposed by him, to the bill (H.R. 2096) to prohibit the imposition by the States of discriminatory burdens upon interstate commerce in wine, and for other purposes.

DEPARTMENT OF DEFENSE APPROPRIATION AUTHORIZATION ACT, 1974—AMENDMENTS

AMENDMENT NO. 510

(Ordered to be printed and to lie on the table.)

Mr. JACKSON (for himself, Mr. NUNN, Mr. PERCY, and Mr. BROCK) submitted an amendment intended to be proposed by them jointly to the bill (H.R. 9286) to authorize appropriations during the fiscal year 1974 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve of each reserve component of the Armed Forces, and the military training student loads, and for other purposes.

AMENDMENT NO. 511

(Ordered to be printed and to lie on the table.)

Mr. BEALL submitted an amendment intended to be proposed by him to the bill (H.R. 9286), supra.

DISABLED VETERANS AUTOMOBILE AND ADAPTIVE DEVICE ASSISTANCE ACT—AMENDMENT

AMENDMENT NO. 512

(Ordered to be printed and referred to the Committee on Veterans' Affairs.)

Mr. CRANSTON. Mr. President, I send to the desk for printing an amendment to S. 2363, a bill to amend chapter 39 of title 38, United States Code, relating to automobiles and adaptive equipment for certain disabled veterans and members of the Armed Forces. Mr. President, this amendment to S. 2363, which I introduced along with Senator HARTKE and Senator RANDOLPH on August 3, is necessary due to an error in drafting the bill as introduced. In effect, Mr. President, what my amendment today will do is remove the artificial restriction between the individual who would be eligible for chapter 39 benefits while still a member of the Armed Forces on active duty, but who would lose that eligibility upon his discharge when he would assume veteran status.

Individuals who are still on active duty in the Armed Forces, who suffered—after August 4, 1964—a disability, total and permanent in nature, may apply for chapter 39 benefits and receive them provided that their injury was sustained in the line of duty. Under present law, after that individual's discharge, a more restrictive criterian is then applied. That criterion calls for the injury to have occurred in the direct performance of duty, as well as in the line of duty. My amendment today would correct that artificiality by making the individual eligible so long as his injury was not the result of willful misconduct and was incurred in the line of duty, regardless of when the injury was sustained.

In summary, Mr. President, the bill as amended would continue, as at present, to apply a single criterion for service connection to all veterans who retired from military service from January 31, 1955, until the present for disabilities that are total and permanent in nature. But the criterion applied would be the same line of duty criterion presently applied to veterans of prior service periods. And that same criterion would also be applied to all servicemen prior to discharge regardless of the date on which their disability was first sustained.

ADDITIONAL COSPONSORS OF AMENDMENTS

AMENDMENT NO. 487 TO H.R. 9286

At the request of Mr. BAYH, the Senator from Arkansas (Mr. FULBRIGHT), and the Senator from Illinois (Mr. STEVENSON) were added as cosponsors of amendment No. 487 to the bill (H.R. 9286) to authorize appropriations during the fiscal year 1974 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve of each Reserve component of the Armed Forces, and the military training student loads, and for other purposes.

AMENDMENT NO. 494 TO H.R. 9286

At the request of Mr. HARTKE, the Senator from California (Mr. CRANSTON), the Senator from Kansas (Mr. DOLE), the Senator from New Mexico (Mr. DOMENICI), and the Senator from South Dakota (Mr. MCGOVERN) were added as cosponsors of amendment No. 494 to House bill 9286, supra.

NOTICE OF CHANGE OF HEARING DATE ON OIL AND GAS DEVELOPMENT IN SANTA BARBARA CHANNEL

Mr. METCALF. Mr. President, because of the holiday on October 8 I wish to inform all Senators and other interested persons that the hearings on S. 1951 and S. 2339, both dealing with the Santa Barbara Channel situation, previously scheduled for that day, will be held on Tuesday, October 9. The hearing will begin at 10 a.m. in room 3110, Dirksen Senate Office Building.

NOTICE OF HEARINGS ON SENATE JOINT RESOLUTION 1

Mr. BAYH. Mr. President, the Subcommittee on Constitutional Amendments is scheduling hearings on electoral reform to consider Senate Joint Resolution 1, Direct Popular Election, and other proposed amendments which effect our electoral process. These hearings are scheduled for September 26 in room 2228, Dirksen at 10 a.m. and September 27 in room 457, Russell at 10 a.m. Any person wishing to appear or insert material into the hearing record should contact J. William Heckman, Jr., chief counsel, Subcommittee on Constitutional Amendments, room 300, Russell Senate Office Building, Washington, D.C. 20510.

Witnesses already scheduled to appear on September 26 include Senator ROBERT DOLE, U.S. Senator from Kansas and former chairman, Republican National Committee, Robert Strauss, chairman, Democratic National Committee, Lucy Wilson Benson, president, League of Women Voters, and Prof. Paul Freund, Harvard Law School. On Thursday, September 27, the subcommittee is scheduled to hear Stephen I. Schlossberg, general counsel, UAW, John Feerick, American Bar Association, and Daniel A. Mazmanian, research associate, The Brookings Institution.

NOTICE OF HEARINGS ON BILINGUAL COURTS ACT

Mr. BURDICK. Mr. President, as chairman of the Judiciary Subcommittee on Improvements in Judicial Machinery, I wish to announce hearings for the consideration of S. 1724, the bilingual courts act. The purpose of the bill is to implement the right of non-English speaking persons to have effective oral translation of court proceedings, both civil and criminal, to which they are a party. This legislation also requires consideration of the affect of the proposed bill upon judicial proceedings in the U.S. District Court for the District of Puerto Rico, where Spanish is the language most commonly spoken.

The hearings will be held on October 10 and 11, 1973 beginning at 10 a.m. in room 2228, Dirksen Office Building.

Those who wish to submit a statement for inclusion in the hearing record should communicate as soon as possible with the subcommittee staff, room 6306, Dirksen Office Building, extension 5-3618.

NOTICE OF HEARINGS ON S. 2053 AND H.R. 8547

Mr. STEVENSON. Mr. President, the Committee on Banking, Housing and Urban Affairs will hold hearings on S. 2053 and H.R. 8547, amendments to the Export Administration Act of 1969, and related matters, at 10 a.m. on Wednesday and Thursday, September 26 and 27, in room 5302 of the Dirksen Office Building. All persons wishing to testify should contact Stanley J. Marcuss, room

456, Russell building; telephone (202) 225–8813.

ADDITIONAL STATEMENTS

FEDERAL PROBATION SYSTEM

Mr. SCOTT of Pennsylvania. Mr. President, the Judiciary's appropriations bill passed Monday by the Senate contains funds for 340 new probation officers, the precise number requested in the budget. I am pleased that Congressman TOM RAILSBACK successfully offered an amendment on the House floor to restore the original request.

I have spoken on this subject for several years now, because I am troubled by the rate of recidivism—I am concerned that nearly three-fourths of first-time juvenile offenders who have gone to prison one time are going to be back in prison within a 5-year period.

Federal probation officers now carry caseloads in excess of 100—far too many for any officer to do an effective job. The optimum number is approximately 35 cases. Although the additional funds provided on the House floor will only bring the caseload down by approximately 20 cases, it is still an improvement.

The Federal probation system now has under its supervision some 50,000 individuals. The only effective way to deal with these people is to have probation officers assigned to these cases in a reasonable number. Statistics have shown that 60 percent of all adult felons are paroled, yet 35 to 40 percent of these individuals return to prison after a subsequent conviction. The revolving door must stop—and it can be stopped with a workable probation system.

If the Congress wants to do something about reforming our criminal justice system, then probation is the best place to start.

PHASE IV REGULATIONS GOVERNING THE OIL INDUSTRY

Mr. BAYH. Mr. President, yesterday I placed in the CONGRESSIONAL RECORD the text of a letter being sent by a number of Senators to John Dunlop, Director of the Cost of Living Council, asking that the Council revise its regulations that have placed such a severe burden on home heating oil and gasoline retailers.

I can now report that that letter was signed by 42 Senators. To evidence the fact that this is not a partisan issue, I would like to note that both the majority and minority leaders signed this letter, and that of the 42 signers there were 26 and 16 Senators from the majority and minority parties, respectively.

Moreover, this is not a regional issue as the letter was signed by Senators from 30 States representing all regions of the country.

The situation confronting the small businessmen who retail the gasoline so essential to our economic well-being is so grave that the magnitude of the problem cannot be overstated. I recall the instance of a service station operator in my own State of Indiana who reported last week that every time a customer drives into his station the retailer loses an average of 11 cents. Obviously, he cannot remain in business very long under those circumstances.

The need for action to revise the phase 4 regulations governing the oil industry is obvious and the situation requires an immediate response on the part of the Cost of Living Council.

Because this position was so clearly and strongly evidenced by the letter sent to Dr. Dunlop by the 42 Senators, I request permission to include the text of the letter and list of signers in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SEPTEMBER 17, 1973.

DR. JOHN T. DUNLOP,
Director, Cost of Living Council,
Washington, D.C.

DEAR DR. DUNLOP: We are persuaded that the Cost of Living Council's Phase Four regulations governing the oil industry have placed the nation's gasoline and home heating oil retailers in a totally unreasonable position. The combination of reduced mark-ups and curtailment in supplies will likely force many of these small businessmen out of business in a matter of weeks.

We did note that the Council has agreed to review these regulations. In this regard, we want to urge strongly that the Cost of Living Council immediately use its authority, granted by Congress in the Economic Stabilization Act, to revise those Phase Four regulations in a fashion that will ensure retailers of an adequate price mark-up. We recognize the desirability of holding down the price of fuel to consumers and will welcome anything that can be accomplished toward that goal within the framework of revised regulations protecting the legitimate interests of retailers.

Because of the urgency of this matter we request an immediate response.

Sincerely,

Mr. BAYH. The letter was signed by Senators BIRCH BAYH, THOMAS EAGLETON, CARL CURTIS, J. BENNETT JOHNSTON, MIKE MANSFIELD, HUGH SCOTT, J. GLENN BEALL, HENRY BELLMON, LLOYD BENTSEN, QUENTIN BURDICK, HOWARD CANNON, LAWTON CHILES, DICK CLARK, NORRIS COTTON, ALAN CRANSTON, ROBERT DOLE, PETE DOMENICI, PETER DOMINICK, MIKE GRAVEL, EDWARD GURNEY, CLIFFORD HANSEN, FLOYD HASKELL, ERNEST HOLLINGS, HUBERT HUMPHREY, CHARLES MATHIAS, GALE MCGEE, GEORGE MCGOVERN, THOMAS MCINTYRE, WALTER MONDALE, FRANK MOSS, GAYLORD NELSON, JENNINGS RANDOLPH, ABRAHAM RIBICOFF, RICHARD SCHWEIKER, TED STEVENS, ADLAI STEVENSON, STUART SYMINGTON, ROBERT TAFT, HERMAN TALMADGE, STROM THURMOND, JOHN TUNNEY, and LOWELL WEICKER.

NANCY HANKS—A SUCCESS STORY

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD an editorial published in this morning's Washington Post.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

NANCY HANKS: A SUCCESS STORY

Last week, the President called Nancy Hanks, the chairman of the National Endowment for the Arts, and some of her council members—among them actress Rosalind Russell, painter Jamie Wyeth, pianist Bill Taylor and opera singer Robert Merrill—to his White House office. He told her that he had nominated her for a second four-year term. "You are here," Mr. Nixon said, "because you have been able to get a 900 per cent increase [in federal funds for the arts] out of Congress."

We prefer to think that it is the other way around. We think Congress has authorized a spectacular and most gratifying increase in funds for the arts program because Miss Hanks was there.

With still relatively meager funds (last year the U.S. federal government spent 20 cent. per citizen for the arts, in contrast to Canada's $1.40 and West Germany's $2.80); the Endowment under Miss Hanks' chairmanship, has not only assisted individual artists and touring companies, more importantly, its efforts have considerably increased private donations and local matching funds. It has established a firm and creative partnership between the federal program and ever-increasing state and local efforts to help the arts improve the quality of life in America. The Endowment puts great stress, for instance, on supporting and enhancing the country's rich cultural diversity by aiding the indigenous artistic expression of the people of Appalachia, blacks, Chicanos Indians, Puerto Ricans, Chinese, Japanese and other minortiy groups.

Under another program, the Endowment, together with state arts councils, has brought hundreds of dancers, musicians, poets, painters, sculptors, film-makers, craftsmen and actors into America's classrooms and community meeting halls. Nancy Hanks and her council now have an ambitious and important program underway to improve the esthetics of the many things government does that shape the appearance of America: The government's own buildings, graphics, landscaping, renewal projects and other public works that might as easily be well than poorly designed.

And contrary to earlier misgivings by conservatives and liberals alike that federal support of the arts might lead to federal control of the arts, the council has maintained a healthy and at times even scrappy independence. At its last meeting, on the basis of its congressional mandate "to foster a climate of artistic freedom of expression," the council urged artists and art oragnizations to help make sure that local zealots do not misuse the recent Supreme Court obscenity ruling to restrict or curtail valid artistic and creative freedom. A sheriff who would ban Playboy, might, after all, be persuaded to cover up a Rubens painting.) The council doesn't seek to provoke controversy when it strives to act as the nation's artistic conscience. But neither does it shrink from telling the U.S. Postal Service that some of its postage stamps are poorly designed or to tell museums to make sure that their buildings—with their imposing Greek temple stairs—are made easily accessible to the physically handicapped.

At that same meeting, the council expressed its delight at the re-nomination of its chairman, Nancy Hanks. So do we. We hope the Senate will act promptly to confirm her. And we are particularly delighted that the President has now charged the Arts Council to focus on the arts in the com-

memoration of the Bicentennial. We can think of no better way to give the planning for that event some much needed focus.

EXPERIMENTAL USE OF DRUGS ON HUMAN SUBJECTS

Mr. RIBICOFF. Mr. President, on October 20, 1972, as chairman of the Subcommittee on Executive Reorganization and Government Research, I asked the GAO to investigate the FDA's regulation of a number of investigational new drugs—drugs approved for testing but not for public sale—that had been administered in clinical experiments to human subjects. At the same time, I directed the staff of the subcommittee to supplement the GAO study with its own evaluation of the FDA's performance with respect to these drugs. I am today releasing the GAO report.

The GAO study discusses only 10 of the more than 6,000 drugs currently classified as investigational new drugs. But the results of the GAO study and the subcommittee staff findings strongly suggest that FDA regulation of investigational new drugs has been lax and has not adequately protected the patients who take these drugs. They also show a failure to adopt safe testing procedures by certain drug companies, as well as resistance to FDA regulation. The FDA and the companies involved have shown a disregard for public safety which is incompatible with their responsibility to protect and promote public health.

Specifically, the report found that in eight cases, FDA failed to halt human tests after receiving indications that the drugs were not safe. As a result, over 2,000 people were exposed to the hazard of unsafe drugs. GAO further found that the drug companies unnecessarily delayed reporting adverse drug effects to FDA and that once this data was received, FDA did not require necessary patient followup in six cases to protect the health of the people who had been given suspect or unsafe drugs.

FDA LAW AND PROCEDURE

Since the passage of the Kefauver-Harris amendments of 1962, the law has required the FDA to regulate the use of all drugs shipped in interstate commerce for investigational use on human beings. Under FDA procedures established pursuant to this statute, FDA has required the sponsor—usually a drug company, but in some cases an institution, such as NIH—to submit an investigational new drug application before such shipment could take place. Prior to August 14, 1970, a sponsor could begin clinical experiments on human subjects immediately upon submission of its application—that is, prior to any FDA review of its data. Since August 14, 1970, however, FDA has required sponsors to wait 30 days after submission of an IND application before initiating human testing. No positive FDA approval is required once 30 days have passed, and sponsors may initiate such testing unless FDA has affirmatively directed them not to do so.

FDA's procedures for the testing of investigational new drugs are divided into three phases:

Phase I covers the first trials in human subjects. This trial is normally limited to a group of 20 to 50 healthy people. If the results are satisfactory, testing proceeds to phase II.

Phase II involves testing the drug on 100–200 patients with the disease the drug is expected to treat. If phase II results are satisfactory, testing may proceed to phase III.

Phase III involves expanded trials on a much larger group of patients. It is not uncommon for phase III testing to include several thousand patients.

Before an experimental drug may be administered to human beings, it must first be given to animals. Prior animal testing is required because there is often some correlation between the ability of a drug to produce adverse effects in animals and its ability to produce such effects in human beings. While the precise relationship between animal results and human results is often indeterminate, it is clear that a drug that has been shown to produce cancerous tumors in animals presents a greater potential risk to human beings than a drug that has shown no adverse health effects in animals.

Current FDA regulations require both substantial animal testing and substantial human testing before a drug is approved for general public sale, rather than investigational use. Under current FDA practice, a drug may be administered to human beings in phase I studies for up to 2 weeks after only 2 weeks of animal studies and prior to full evaluation of those animal studies. Human subjects in phase I and phase II experiments may be given the drug for up to 3 months after only 1 month of animal studies, and may be given a drug for an unlimited period after only 3 months of animal studies. Phase III subjects may be given the drug for an unlimited period after only 6 months of animal studies.

GAO STUDY

The GAO study contains a comprehensive discussion of each of the drugs it reviewed. I ask unanimous consent that a summary of its report be printed at the conclusion of my remarks.

As a result of the study, GAO made three recommendations for changes in FDA regulation of investigational new drugs to the Secretary of Health, Education, and Welfare. They were that FDA should:

First. Make a written determination that a drug's benefits outweigh the possible risks of its experimental use, before allowing clinical tests to begin or continue when serious safety questions concerning testing drugs in humans arise.

Second. Institute a program to insure IND sponsors' timely performance and reporting of animal studies to FDA and emphasize to sponsors the need to proceed with clinical investigations in accordance with the Code of Federal Regulations.

Third. Establish (1) a patient followup policy which requires a written commitment in the IND application from the sponsor to provide appropriate followup before an IND exemption is granted and (2) guidelines describing adequate performance and reporting requirements for followup.

The Department concurred in the recommendations and has taken steps to implement them.

ADDITIONAL RECOMMENDATIONS

After reviewing the GAO report, and the staff investigation, I believe HEW should promptly take the following additional actions:

First, FDA approval should be required before any testing of an investigational new drug can be done on human subjects. Affirmative FDA approval should also be required for each phase of human testing. The requirement that a sponsor wait 30 days after submission of its IND before beginning human testing should be extended to provide a sufficient period for medical, pharmacological, and chemical officers to do an adequate review of the IND application, including results of substantial animal testing, before human testing can begin.

The GAO survey showed a consistent pattern for FDA delay in reviewing the data submitted with the IND application. For Practolol, the delay was 3 months. For Triflocin, it was 8 months. In both cases, animals given the drugs developed cancerous conditions. For the other drugs reviewed, the delay ranged from 4 months to a full year. During this time, the drug companies routinely began human testing.

Second. FDA regulations should be modified to state clearly that any finding of nodules or tumors—even benign—in animals is cause for automatic suspension of all testing on human subjects until a full evaluation can be made of the data and further animal tests are made and evaluated.

The most dramatic example of FDA's failure to halt human testing after notice of evidence of cancer in animal tests is the drug Practolol, sponsored by Ayerst Labs. When the test data was reviewed, the medical officer concluded that "this study is indefensible and unacceptable." On March 11, 1970, FDA recommended to the sponsor than human testing be discontinued. Testing continued. On April 8, FDA again advised the sponsor to discontinue testing, but the sponsor refused. At that time, the sponsor submitted to FDA the results of a study showing that cancerous tumors had been found in mice. (Ayerst had notice and substantial documentation of the results of this study on August 14, 1969, but had failed to provide it to FDA until nearly 8 months later. By contrast, the Canadian Food and Drug authorities had had possession of the study since August 27, 1969.) Still, FDA took no effective action to terminate testing on human subjects.

In January 1971, FDA tried for a third time to persuade the sponsor to discon-

tinue tests on human beings. Ayerst not only refused to discontinue the tests, but also refused even to make the finding of the mouse study—indicating cancerous tumors—available to the doctors who were conducting the experiments. Those doctors thus had no way of evaluating the risks to which their patients were being subject. Finally, on August 27, 1971, fully 17 months after FDA had first advised the Ayerst firm to discontinue testing, and afte ra fourth request from FDA to discontinue, the tests were stopped.

This case is not unique. Another similar case history is that of Oxprenalol Hydrochloride, sponsored by Merrell-National Labs. In this case, it took the FDA 6 months and two requests to stop human testing after tumors had been found in mice.

Third. FDA should require immediate evaluation by the drug companies of all animal and human testing. In addition, FDA should require immediate reporting of all such evaluations. As a sanction for failure to provide adequate testing information, FDA should rely primarily on cancellation of the IND, not on the cumbersome, and relatively ineffective, sanctions of the criminal law.

The GAO found that the time lag between discovery of the effects of human and animal tests and reporting them to FDA ranged from 40 days to 19 months. The case of Triflocin, sponsored by Lederle Labs, was typical. There, the sponsor took 7 months to analyze the results of a study which eventually showed bladder cancer in rats. Meanwhile, human testing was in progress, FDA concluded that the delay was "not unjustified because such delays were apparently standard operating procedure for this company." FDA stated that it "did not consider the delay unusual." The fact that the delay was not unusual, rather than supporting a finding that it was justified, seems to point to the very opposite conclusion.

With respect to Practolol, sponsored by Ayerst Labs, the sponsor failed for 8 months to supply FDA with the results of a study showing cancerous tumors in mice.

In the case of MK–665, an oral contraceptive sponsored by Merck, Sharp and Dome Research, the sponsor waited over a month before notifying FDA that cancer had been found in dogs treated with the drug. The Justice Department declined to bring a criminal prosecution in this matter.

Fourth. FDA should more closely monitor all human testing of IND so that it knows, in each case, precisely how many people have received the drug, how long each patient has been receiving the drug, the dosage each patient is taking, and the name and address of each patient. FDA regulations should be promulgated promptly to require at a minimum that each sponsor of an IND commit itself to do "such followup as the FDA may require." FDA should enforce this regulation vigorously. If further study is required before complete followup regulations are promulgated, an interim regulation should still be issued promptly to protect the rights of patients. FDA should disqualify from all IND investigations any medical investigator who fails to provide information or followup examinations. FDA regulations should provide that any company that fails to perform adequate followup should be disqualified as a sponsor of any investigational new drug.

Several of the cases reported by GAO illustrate the need for these steps. One of them was MK–665, sponsored by Merck, Sharp and Dome, which was shown to cause breast cancer in dogs. Only about one-third of the patients who received the drug in clinical tests have been examined.

Another is Hexobendine. When dogs which were given the drug developed cataracts, human testing was halted in September 1971. The sponsor, Merrell-National Labs, resisted an FDA request to do a followup on all patients who received the drug. As of December 22, 1972, 48 percent of the patients who had received followup eye examinations showed evidence of cataract development. While it cannot be said with certainty that this cataract development was drug related, as of March 1973, only 48 percent of the persons who had received Hexobendine had received eye examinations. The FDA regarded this followup as inadequate. (One problem the FDA encountered with respect to Hexobendine was that no one—neither FDA nor the sponsor—seemed to know precisely how many people had taken the drug, how long they had taken it, and when it had been administered.)

One of the most flagrant cases of a drug company's resistance to FDA with respect to followup is that of Cinanserin, sponsored by E. R. Squibb & Sons. Human testing had been discontinued in August 1969, because of the appearance of tumors in the livers of rats. In October 1969, Squibb informed FDA that it was not considering followup. According to a letter of July 30, 1970, from the FDA Commissioner Edwards to Squibb, the question of followup had been raised by FDA with Squibb in a telephone conversation of December 9, 1969, with Dr. Lawrence Marks, a Squibb vice president. According to the letter, "he—Marks—stated that he would investigate and call back in a week. There was no reply."

Squibb continued to resist FDA's suggested followup procedures. As a result of Squibb's refusal, FDA medical officers recommended a full evaluation of Squibb's qualifications to be a sponsor of any investigational new drugs, because of its failure to fulfill its responsibility to patients placed in jeopardy.

After several FDA letters had gone unanswered, FDA officials visited the Squibb facility in New Brunswick, N.J., on June 26, 1972. As of November 17, 1972, the FDA still considered Squibb's followup on Cinanserin inadequate. It is noteworthy, however, that throughout this protracted and sometimes heated disagreement, FDA relied exclusively on persuasion in attempting to require a followup. In the absence of regulations requiring followup, FDA apparently felt itself powerless to act more vigorously. FDA could have at any point, however, required followup as a condition of IND approval or required followup by regulation. Thus, the agency's inability to require followup was a direct result of its own inaction.

Fifth. FDA should adopt and enforce adequate rules on conflicts of interest for members of its advisory committees.

Realizing that its lack of followup regulations was leaving patients unprotected and that drug companies would not voluntarily perform adequate followup, FDA contracted with the National Academy of Sciences for a study to be conducted by an NAS committee. The committee was formed in April 1972. Its chairman was Dr. Lawrence Marks, the Squibb vice president who had participated in the controversy over followup on Cinanserin.

As mentioned previously, after receiving no reply to a series of letters asking Squibb to undertake further followup, on June 26, 1972, FDA officials visited the Squibb plant in New Brunswick, N.J. According to a memorandum dated June 29, 1972, by an FDA inspector, Dr. Marks telephoned the inspector from Squibb headquarters in Princeton while the inspector was at the New Brunswick plant. According to the memorandum, Dr. Marks advised the inspector of his position as chairman of the NAS committee studying the very question of followup. The memorandum continues:

> In view of this, Dr. Marks did not feel that as a representative of Squibb, he should commit the firm to a followup procedure until such a procedure is standard throughout the industry. He further supports this belief in that he feels that the FDA is not completely sure as to what followup should be made as evidenced by the fact that they set up the NAS Committee. Dr. Marks said that he had advised Dr. Marion Finkel (an FDA official) of his position several weeks ago and questioned the need for our assignment.

Dr. Marks confirmed to the subcommittee his conversation with Dr. Finkel and stated that he does not remember the conversation with the inspector. It was confirmed, however, by the two other FDA employees. At the time of the conversation, June 26, 1972, Dr. Marks was still Chairman of the NAS Committee. He subsequently resigned in August 1972, for reasons unrelated to the Cinanserin followup problem.

It was poor policy for FDA to tolerate a situation where the chairman of a committee established and financed by FDA for the purpose of recommending followup procedures is at the same time personally attempting, on behalf of his firm, to dissuade FDA from requiring followup examinations in a particular case. It is clear that responsible officials at the FDA were quite aware of Dr. Marks' dual role.

Sixth. Congress should provide FDA with the resources to hire enough personnel to evaluate IND applications effectively.

One of the reasons for delays and other inadequacies in review is FDA's lack of manpower. A report prepared by one medical officer shows that in 1972 he was responsible for 251 Investigational New Drug files, most of which contain thousands of pages of material. In these circumstances, effective supervision of clinical experiments by the FDA is impossible. FDA must be given the resources to employ enough trained personnel to do an adequate supervisory job.

Mr. President, the GAO report is a strong indictment of FDA regulation of certain investigational new drugs and of the practices of several drug companies in carrying out their human and animal testing. I believe FDA must substantially tighten its supervision of drug testing and the companies must develop a greater sense of corporate responsibility to the thousands of people on whom they test their discoveries. The companies must also increase their cooperation with FDA, for effective drug regulation must be a joint effort of Government and the industry.

I am writing to FDA Commissioner Schmidt to inform him of my recommendations and requesting his comments on them.

Mr. President, I ask unanimous consent to have the report printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

COMPTROLLER GENERAL'S REPORT TO THE SUBCOMMITTEE ON REORGANIZATION, RESEARCH AND INTERNATIONAL ORGANIZATIONS—COMMITTEE ON GOVERNMENT OPERATIONS, UNITED STATES SENATE

SUPERVISION OVER INVESTIGATIONAL USE OF SELECTED DRUGS,

Food and Drug Administration, Department of Health, Education, and Welfare B-164031(2)

DIGEST

Why the review was made

The Chairman, Subcommittee on Reorganization, Research and International Organizations, Senate Committee on Government Operations, asked GAO to examine the Food and Drug Administration's (FDA's) supervision over the investigational use of selected drugs.

As agreed, GAO reviewed FDA records for 13 drugs designated by the Chairman's office. Also, as agreed, GAO obtained formal written comments on the report from the Department of Health, Education, and Welfare (HEW). Comments from drug companies on drugs discussed in this report were also obtained.

Basic information

FDA administers the Federal Food, Drug, and Cosmetic Act (FD&C Act).

The FD&C Act requires that before a new drug may be introduced into interstate commerce it must be approved for safety and efficacy. Evidence concerning a drug's safety and efficacy is obtained, in part, from clinical (human) tests conducted by the sponsor (manufacturer or others seeking to distribute the drug in interstate commerce).

When clinical tests involve interstate shipment of an unapproved drug, FDA requires the sponsor to submit an investigational new drug (IND) application to exempt the IND from the ban on interstate shipment of unapproved drugs. The IND application must include data which demonstrates that clinical tests can be undertaken with reasonable safety.

Under procedures set forth in the Code of Federal Regulations, FDA can terminate the IND exemption and require the sponsor to recall unused supplies of the drug at any time. Conditions which could prompt this action include:

Omission of material facts from the IND application,

Existence of substantial evidence that the drug is unsafe or ineffective for the purpose intended,

Failure to follow the IND plan for investigational use,

Failure to submit accurate reports to FDA, or

Failure to promptly investigate and report to FDA any newly found serious or potentially serious hazards.

From June 1963, when sponsors were first required to submit IND applications, through fiscal year 1972, about 9,000 IND exemptions were granted. In fiscal year 1972, 982 exemptions were granted, and 3,617 exemptions were active at the end of the fiscal year.

Findings and conclusions

Drugs in Which Major Safety Questions Arose Tested in Humans

In 10 of 13 cases reviewed, FDA raised questions concerning the safety of testing the drugs in humans because:

Data from preclinical animal tests, long-term animal tests, or early clinical tests indicated there were possibilities of major drug-related adverse effects in humans or

The preclinical or early clinical tests were inadequate.

In 2 of the 10 cases FDA experienced no problems in stopping the clinical tests after the safety questions arose. In the other eight cases, FDA permitted sponsors to begin (one case) or continue (seven cases) clinical tests after initial safety questions arose.

In four of the eight cases a causal association between the adverse effect and the drug was subsequently established and clinical tests were stopped. According to FDA, the association was related to additional safety questions which arose during long-term animal tests and was not related to the initial safety question except in one case. About 2,057 people were exposed to these 4 drugs.

In the other four cases the safety questions have not been completely resolved. In two of these cases, after considerable delay, FDA persuaded the sponsors to stop the clinical tests until the questions were resolved. In the other two cases, the questions were substantially resolved and the tests continued. About 2,498 people were exposed to these drugs.

FDA said it allowed tests for the eight cases because in each case it believed the drug's possible benefits outweighed the risks associated with the safety questions. Subsequently, in six cases, tests were stopped, according to FDA, when the benefit-risk ratio was no longer considered favorable.

In total, about 4,555 people were exposed to the 8 drugs. However, due to inadequate information in FDA files, GAO could not determine in all cases how many patients received the drugs after the safety questions arose. (See p. 12.)

In one case, although the sponsor had been allowed to start clinical tests, 13 months later in March 1970 FDA recommended to the sponsor that tests be discontinued until preclinical tests had been performed which would justify clinical testing. The clinical tests continued and in April 1970 the sponsor reported finding thymic lymphosarcomas (malignant disorders of lymphoid tissue invading the adjacent thymus gland) in mice during long-term animal tests. Proportionately fewer control mice had these disorders. FDA again advised the sponsor to stop clinical tests until the carcinogenicity question was resolved. However, the sponsor did not stop the tests until FDA threatened to withdraw the IND exemption in August 1971—16 months later. This drug had been given to about 194 patients during the tests. (See pp. 20 to 22.)

FDA advised GAO that:

Evaluating a drug's safety in clinical tests intimately involves the drug's proposed use and expected benefits. It has been and continues to be FDA's policy to evaluate INDs in terms of benefits versus risks (including serious health questions raised during animal studies) involved in the drug's experimental use.

The benefit-risk ratio is not a constant and factors such as the severity of the condition being treated or the availability of other treatment must be considered in evaluating the ratio.

Since 1970 procedures have been implemented to effect timely review of and decisions regarding INDs. (See p. 31.)

Because the 13 cases reviewed, which were not randomly selected, span about 9 years during which about 9,000 IND exemptions were granted, GAO recognizes that the conditions involving these cases may not be representative of FDA's processing of past and present IND cases. In addition, FDA's evaluation of INDs, in large part, is based on medical judgments about which GAO has no opinion. However, GAO believes that in several cases reviewed, the FDA actions appear to have lacked timeliness or aggressiveness.

Although FDA policy is to evaluate INDs in terms of benefits versus risks, the IND files reviewed did not contain documentation showing benefit-risk evaluations to support FDA actions. Rather FDA officials often differed in their opinions regarding a drug's safety and benefits. In some cases, FDA wrote sponsors expressing concern over a drug's safety while permitting clinical tests to continue.

GAO believes serious safety questions concerning testing drugs in humans should be resolved before allowing clinical tests to begin or continue, unless a written determination is made that benefits outweigh risks of its experimental use. (See p. 32.)

Reporting information on major drug-related adverse ecects was delayed

The Code of Federal Regulations requires sponsors to promptly investigate and report to FDA any findings suggesting significant hazards and to immediately report alarming findings. Violations of these requirements may be referred to the Department of Justice for prosecution under section 301 of the FD&C Act.

Information on major drug-related adverse effects encountered in long-term animal tests of three drugs reviewed was not reported on a timely basis to FDA. The time lag between discovering the effects and reporting them ranged from 40 days to 19 months. (See p. 33.)

GAO believes that to maintain the integrity of the IND process, all requirements placed on IND sponsors must be strictly observed. In addition, FDA should institute a program to insure IND sponsors' timely performance and reporting of animal studies to FDA. (See p. 36.)

Policy on patient followup needed

For those situations where clinical tests are discontinued because of major drug-related adverse effects, FDA has no formal policy on whether patient followup should be provided and no formal guidelines describing adequate followup. However, FDA

officials said each division of its Bureau of Drugs has informal operating procedures which cover followup.

In April 1972 FDA contracted with the National Academy of Sciences/National Research Council (NAS/NRC) to perform a study which would include consideration of followup problems.

The NAS/NRC report was submitted to FDA in January 1973 and was under review as of March 1973.

According to FDA, the FD&C Act provides ample authority to require, as a condition to granting the IND exemption, a commitment from the sponsor to provide followup. FDA has required no such commitment.

When FDA has requested sponsors to provide followup, the requests were for such actions as informing patients of the major drug-related adverse effects, conducting physical examinations and tests, and advising patients of the need for continued examinations and tests. (See p. 37.)

In 6 cases about 2,781 patients were exposed to drugs which were later found to cause major drug-related adverse effects during animal studies. The effects were serious enough to stop clinical tests because it was determined that the drug's risks outweighed the benefits. In these instances FDA did not effectively insure that patients were provided satisfactory follow-up. (See p. 37.)

GAO believes FDA should establish, as soon as possible, (1) a formal policy stating that the sponsor should provide patient followup and (2) guidelines describing adequate followup. The policy and guidelines could be refined if warranted by FDA's evaluation of the NAS/NRC study. (See p. 48.)

Recommendations

The Secretary of HEW should direct the Commissioner, FDA, to:

Make a written determination that a drug's benefits outweigh the possible risks of its experimental use, before allowing clinical tests to begin or continue when serious safety questions concerning testing drugs in humans arise. (See p. 32.)

Institute a program to insure IND sponsors' timely performance and reporting of animal studies to FDA and emphasize to sponsors the need to proceed with clinical investigations in accordance with the Code of Federal Regulations. (See p. 36.)

Establish (1) a patient followup policy which requires a written commitment in the IND application from the sponsor to provide appropriate followup before an IND exemption is granted and (2) guidelines describing adequate performance and reporting requirements for followup. (See p. 48.)

Agency actions and unresolved issues

HEW concurred in GAO's recommendations and said it had initiated action to implement them. (See pp. 32, 36, and 48.)

Identification of coded investigational new drugs (IND included in report on supervision over investigational use of selected drugs—DHEW–FDA (B–164031(2))

IND code, IND number, drug name, and sponsors:

A, 859, Pronethalol, Ayerst Labs.

B, 1959, Cinanserin, E. R. Squibb & Sons.

C, 5096, Triflocin, Lederle Labs.

D, 3784, Chlormadinone Acetate, Syxtex Labs.

E, 5486, Practolol, Ayerst Labs.

F, 6371 and 6878, Oxprenolol Hydrochloride, Merrell-National Labs.

G, 2905, Perhexiline Maleate, Merrell-National Labs.

H, 5185, Colestipol, Upjohn Co.

I, 64, MK–665, Merck, Sharp & Dome Research.

J, 4196, Hexobendine, Merrell-National Labs.

DEATH OF DR. LEONARD CARMICHAEL, VICE PRESIDENT, NATIONAL GEOGRAPHIC SOCIETY

Mr. SCOTT of Pennsylvania. Mr. President, Dr. Leonard Carmichael, vice president of the National Geographic Society and former head of the Smithsonian Institute, died Sunday at the age of 74. The obituary in the New York Times speaks eloquently of the fascinating and illustrious career of Dr. Carmichael. What it does not reveal, however, is the warm, personal quality of the man—his keen perception, his skill, his integrity and judgment. He was a good friend. I will miss him greatly.

I ask unanimous consent that this New York Times article be printed in the RECORD.

DR. LEONARD CARMICHAEL DIES; HEADED SMITHSONIAN INSTITUTION

WASHINGTON, Sept. 16.—Dr. Leonard Carmichael, a vice president of the National Geographic Society and former head of the Smithsonian Institution, died today of cancer at the Washington Hospital Center. He was 74 years old.

Dr. Carmichael, who had a long and distinguished career as a scientist and educator, came to the Smithsonian in 1953 after earlier declining the secretaryship. He declined, he later recalled, "because, like most other Americans, I didn't know what the Smithsonian was, really."

During his 11 years as the seventh secretary of the institution, Dr. Carmichael set about to revise the image of the Smithsonian as "the nation's attic." During his tenure, with the modernizing of exhibits and the building of the Museum of History and Technology, expansion of the Museum of Natural History and renovation of the National Zoo, the institution experienced a 500 per cent increase of visitors.

VERSATILITY OF INTERESTS

The versatility of his interests responded to the range of the collections. When he retired from the Smithsonian at the age of 65 in 1964, he recalled his fascination with tiny hummingbird eggs and the biggest dinosaur bone ever found; of unwrapping the Hope Diamond when it joined the collection; and of a formal letter from an Army official beginning "I am honored to transmit to you one fly" (a rare one).

His favorite exhibits included the Revolutionary gunboat Philadelphia; the Star-Spangled Banner from Fort McHenry; a pre-Columbian giant stone grasshopper, the work of a native Indian; and a newborn gorilla in the zoo.

Dr. Carmichael's role thereafter with the National Geographic Society was to head its research and exploration activities. Again this meant sponsoring an unusual range of activities including the late Dr. Louis S. P. Leakey's discoveries of new evidence bearing on man's descent in the Olduvai Gorge in Africa; Jacques-Yves Cousteau's explorations of the depths of the Mediterranean and Red Seas; and an expedition to the summit of Mount Everest.

Born on Nov. 9, 1898, in the Germantown section of Philadelphia, Dr. Carmichael graduated from Germantown Friends School and earned a bachelor's degree in 1921 from Tufts University. He later received his doctorate from Harvard and subsequently taught at Princeton, Brown and Rochester, where he was dean of the arts and sciences faculty.

While chairman of the department of psychology at Brown in the early nineteen-thirties, Dr. Carmichael and a colleague, Dr. Herbert Jasper, developed electroencephalography—the measurement of brain waves—at a time when many medical men in the country doubted that the brain emitted electrical impulses.

In 1938, Dr. Carmichael returned to Tufts to become, at 39, one of the youngest presidents in the school's history. He remained at the New England college until World War II, when he came to Washington to hold several Government posts. In one of these, director of the national roster of scientific and specialized personnel, he organized the recruiting of a million scientists to work on war-related research projects. After the war he returned to Tufts, where he remained until joining the Smithsonian in 1953.

HELD MANY HONORS

In addition to holding honorary degrees from 21 educational institutions, Dr. Carmichael received the Presidential Citation of Merit in 1942 for his work in World War II. In 1970 he was elected president of the American Philosophical Society, a position he held until April of this year.

Last year the National Academy of Sciences bestowed its highest award, the Hartley Public Welfare Medal, upon Dr. Carmichael "for eminence in the application of science to the public welfare."

Dr. Carmichael is survived by his widow, Pearl; a daughter, Mrs. S. Parker Oliphant, and two grandsons, all of Washington.

TRUTH IN SAVINGS

Mr. HARTKE. Mr. President, for the past 2½ years, I have been urging my colleagues to extend the consumer movement to the savings industry. It is clear that there is a need for legislation which establishes disclosure standards so that consumer depositors know the rules by which savings institutions operate.

The initial response of some of the Federal regulatory agencies was that disclosure legislation was not needed. I introduced S. 1858, the Consumer Savings Disclosure Act, on which hearings were held in June of this year. By the time those hearings were held, most of the Federal regulatory agencies conceded the need for more disclosure, but felt that it could be done through regulation rather than legislation.

It is a fact that the regulatory agencies do have authority to require their member institutions to disclose more information to consumers, although the regulatory process does not reach as many savings institutions as does S. 1858. Nevertheless, despite the fact that this regulatory authority exists, I have noticed very little propensity on the part of the Federal agencies to use that authority to protect consumers.

Recently, however, the Federal Reserve Board invited comment by August 27 on regulations designed to provide persons placing time deposits in savings institutions with basic information about the requirements and penalties associated with such deposits. Without commenting on the substantive merits of the proposed regulations, I think it is noteworthy that, at least in one small part of the consumer savings picture, the Federal Reserve Board has moved to protect the consumer.

Mr. President, I ask unanimous consent

that the text of the proposed regulation be printed in the RECORD.

There being no objection, the proposed regulation was ordered to be printed in the RECORD, as follows:

FEDERAL RESERVE SYSTEM

[12 CPR Part 217]

INTEREST ON DEPOSITS

Protection of Depositors

The Board of Governors proposes to amend its Regulation Q to provide that (1) any advertisement, announcement, or solicitation relating to interest paid on time deposits by member banks include clear and conspicuous notice that Federal law and regulation prohibit the bank from paying a time deposit before maturity unless certain interest is forfeited, and (2) the bank customer shall be given, at the time that a time deposit is made, a disclosure statement which makes it clear that the customer has contracted to leave his funds on deposit for the stated maturity and which describes how the early withdrawal penalty applies to time deposits in the bank, in the event the bank, notwithstanding the contract provisions, permits payment before maturity. This amendment to Regulation Q would be made to the Board's authority under section 19 of the Federal Reserve Act to prescribe rules governing the payment and advertisement of interest on deposits in member banks.

To aid in the consideration of the matter by the Board, interested persons are invited to submit relevant views, arguments, or data. Any such submission should be addressed in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than August 27, 1973. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information.

To implement its proposal, the Board proposes to amend its Regulation Q (12 CFR Part 217) in the following respects:

1. § 217.4 would be amended by redesignating paragraph (e) as paragraph (f) and by adding a new paragraph (e) to read as follows:

§ 217.4 *Payment of time deposits before maturity.*

* * * * *

(e) *Disclosure of early withdrawal penalty.* At the time a customer makes a time deposit in a member bank, the bank shall provide a written statement of the effect of the penalty prescribed in paragraph (d) of this section, which shall (1) state clearly that the customer has contracted to keep his funds on deposit for the stated maturity, and (2) describe fully and clearly how such penalty provisions apply to time deposits in such bank, in the event the bank, notwithstanding the contract provisions, permits payment before maturity. Such statements shall be expressly called to the attention of the customer and shall contain arithmetic examples illustrating how the penalty provisions shall apply to specific time deposit contracts.

2. § 217.6 would be amended by redesignating paragraphs (e), (f), and (g) as (f), (g), and (h) and by adding a new paragraph (e) to read as follows:

§ 217.6 *Advertising of interest on deposits.*

* * * * *

(e) *Penalty for early withdrawals.* Any advertisement, announcement, or solicitation relating to interest paid by a member bank on time deposits shall include clear and conspicuous notice that Federal law and regulation prohibit the bank from paying a time deposit before maturity unless substantial interest is forfeited.

By the order of the Board of Governors, July 26, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

THE ABA—MARIHUANA AND THE LAW

Mr. JAVITS. Mr. President, the state of the current law respecting criminal penalties for the personal, private, noncommercial possession and use of marihuana continues to be of growing concern to ever increasing numbers of Americans.

As the Senate knows, 2 years ago, President Nixon's National Commission on Marihuana and Drug Abuse—of which I and Senator HUGHES were members—published the most thoroughly documented study of marihuana ever undertaken, and recommended a comprehensive national policy on all aspects of marihuana, including an end to criminal penalties for its simple possession and use in private. Senator HUGHES and I introduced a bill in the 92d Congress and again this year to implement this recommendation without changing Federal law regarding criminal penalties which apply to the sale of marihuana for profit.

As I have previously indicated, many respected national organizations, newspapers, periodicals, radio and television stations, and others have supported our objective including to name only a few: The National Institute of Mental Health, the National Conference of Commissioners on Uniform State Laws, the American Medical Association, the New York State Bar Association, Consumers Union, "National Review," and the Los Angeles County Grand Jury.

Mr. President, last month at its annual convention here in Washington, the American Bar Association joined the ranks of those of us seeking to remove penalties for the simple possession of small quantities of the drug and "the casual distribution of small amounts not for profit." This support underscores once again the need for a national policy on this subject which serves several districts and important interests while recognizing the historical, social, and political contexts in which our policy in this area has been developed over the last 40 years.

The limited decriminalization of marihuana for private use in private will finally remove the stigmatization as criminals of the more than 26 million Americans who have used marihuana—which both the Commission and NIMH found after exhaustive research to be not seriously harmful to either the physical or mental health of the individual when taken in moderate amounts.

This proposal makes sense for the following four reasons:

First. It recognizes that criminal penalties for its use and possession in private are so disproportionate to the degree of mental and physical risk involved that there can no longer be any justification for their imposition in view of the Commission's findings. To equate the risk of using marihuana—which the Commission found to be a relatively benign drug—with the risk inherent in the use of hard narcotics is, in my view, totally indefensible. Yet in many jurisdictions throughout the country, this equation is written into the criminal law.

Second. It recognizes that casual marihuana usage is so common—the Commission found that 24 million Americans have tried marihuana at least once, and that 8.3 million are current users—that fair and impartial enforcement and prosecution are impossible. In some States, a first offender can be jailed for 10 or 20 years. In others, he may be placed on probation. In most, he will not enter the criminal justice system at all.

Third. It recognizes that use of the drug has reached such proportions that the present law is clearly ineffective as a deterrent.

Fourth. It recognizes that the "rhetoric and emotion" generated by the use of the criminal sanction in cases of personal marihuana consumption is severely impairing the fight against more dangerous drug abuse.

Mr. President, on October 5, Oregon will become the first State to remove completely criminal penalties for the private possession and use of marihuana. The new law reclassifies possession of up to one ounce as a "violation" with a maximum penalty of $100 fine. Violators will receive no criminal record.

Although this approach does not go as far as what is advocated in our bill, it is nevertheless an important step in the direction of an enlightened and commonsense policy on marihuana possession. I urge the Senate and the Congress as a whole to heed these developments and give serious consideration to this important issue. I believe that our bill will eliminate the potential for grave injustice while reinforcing national government policy aimed at discouraging the use of any drug or psychotropic substance for recreation rather than medical purposes.

EPA IS SENDING DETROIT A MESSAGE

Mr. MOSS. Mr President, on June 20 I introduced a bill (S. 2036) to encourage the development of a more efficient automobile engine in order to conserve our dwindling energy supplies to minimize pollution and to make life a little less costly for the average American by reducing the cost of his gasoline bill.

I am delighted to note in the RECORD of September 18 that my colleague Senator PERCY has also introduced a bill which is quite similiar in nature.

Mr. President, I believe this is an important matter which the Senate should consider and I intend to urge the Committee on Finance, to which both bills were referred, to hold hearings immediately.

EPA, in a news story released to the Washington Post of September 19 has clearly shown us the hard facts about

gas guzzling automobiles. Just how many miles to the gallon various 1974 cars will go on a precious gallon of gas, is becoming a vital matter. I ask unanimous consent that the newspaper story be printed in the RECORD for the information of the Senate. I think we should heed this message.

EPA MILEAGE TESTS SHOW JAPAN AHEAD

(By George C. Wilson)

Japanese cars got more miles per gallon than any of their American and other foreign competitors among lightweight autos tested by the Environmental Protection Agency, according to a government report released yesterday on 1974 automobile models.

The bantam-sized Honda Civic beat all others tested by achieving 29.1 miles per gallon while the heavier Datsun B-210 and Subaru SW led in the 2,250 and 2,500-pound weight classes, respectively, by getting 24.9 and 22.7 miles per gallon.

In the luxury field, the 5,550-pound class, the Cadillac El Dorado led the way with 10.4 miles per gallon, and the Oldsmobile Toronado came in last in the economy test with 6.8 miles per gallon.

The tests come at a time when both the executive branch and Congress are urging American manufacturers to slim down their cars to improve gas mileage. A penalty tax for gas guzzlers is one proposal before Congress.

The test results released yesterday show a correlation between vehicle weight and miles per gallon, and Detroit's auto makers agreeing that they must move to lighter cars in the future.

Ford, for example, sees narrower, European style cars in its future, while General Motors is counting on the Wankel rotary engine, to go into its Vega next year, to save weight.

But while this switch to smaller cars will save gas, safety engineers point to studies showing that serious injuries from accidents go up as car sizes go down.

Riskier or not, the nation's fuel shortages have accentuated the government's effort to force development of smaller, more economical cars. Most 1974 models, at EPA's urging, will bear labels showing how many miles to the gallon they achieved in EPA tests.

Those tests amounted to putting a fully loaded car on dynamometer at EPA's Ann Arbor, Mich., laboratory and simulating a 7.3-mile trip in the city, with the top speed 57 m.p.h.

Other first-and-last-ranking cars in those economy tests, by weight class, were:

2,750-pound class—Chevrolet Vega Hatchback, 24.6 miles; Toyo Kogyo Mazda RX 2 coupe, 10.6 miles.

3,000-pound class—Chevrolet Vega Kammback, 20 miles; Ferrari Dino 246 GT, 9.2.

3,500-pound class—Ford Comet, 19.9 miles; Jaguar E Type III, 9.7 miles.

4,000-pound class—Ford E-100, 18.9; Ferrari 465 GTB-4, 6.3.

4,500-pound class—Chevrolet G-20 Sportvan, 12.4 miles; Oldsmobile Cutlass S, 7.3 miles.

5,000-pound class—Buick Century wagon, 16.7 miles; Plymouth FS, 7.4 miles.

HOW 1974 AUTOS DID UNDER TEST CONDITIONS

This is how many miles to the gallon various 1974 model year cars achieved when tested by the Environmental Protection Agency.

The EPA put the cars on a dynamometer at its Ann Arbor, Mich., laboratory and simulated urban driving, with the top speed 57 m.p.h.

The list does not show some mechanical factors which would affect gasoline mileage: automatic transmission, engine and carburetor sizes and axle ratios.

The cars are listed by weight class and in order of mileage achieved, with the best performer in each class listed first.

Manufacturer and Model	*Mileage*
2,000-POUND CLASS	
Honda, Civic	29.1
Toyota, Corolla-1 Coupe	27.1
Toyota, Corolla-1 Sed	24.8
Standard Triumph, Spitfire	23.1
Austin Morris BMC, MG Midget	22.4
Standard Triumph, Spitfire	22.3
Austin Morris BMC, MG Midget	21.7
2,250-POUND CLASS	
Nissan, Datsun B210	24.9
Toyota, Corolla-2 Sed	22.6
Nissan, Datsun B210	22.2
Nissan, Datsun B210	21.9
Saab, Saab 97	21.7
Volkswagen, Karman Ghia 14	21.7
Full Heavy Ind., Subaru Coupe	21.7
Volskwagen, VW 181	21.0
Volkswagen, Deluxe Sedan 11	20.9
Toyota, Corolla-2 Sed	20.8
Full Heavy Ind., Subaru Coupe	20.8
Saab, Saab 97	20.3
Toyota, Corolla-2 Sed	18.8
2,500-POUND CLASS	
Full Heavy Ind., Subaru SW	22.7
Volkswagen, Convertible 15	22.6
Full Heavy Ind., Subaru SW	21.5
Toyota, Corolla-2 Stwg	21.1
Nissan, Datsun 710	20.7
Nissan, Datsun 710	20.0
Toyo Kogyo, Mazda 808 coupe	20.0
Opel, Manta Rallye	19.8
Toyota, Corolla-2 sed	19.6
Alfa Romeo, 2000 GTV	19.1
Renault, 12 sdn	19.1
Mitsubishi, Dodge Colt coupe	19.1
Toyota, Corolla-2 stwn	19.0
Toyo Kogyo, Mazda 808 coupe	18.9
Renault, 12 sdn	18.8
Austin Morris BMC, MGB Sports	18.7
Opel, Manta Rallye	18.7
Mitsubishi, Dodge Colt coupe	18.7
Toyota, Corona-2d sed	18.4
Toyota, Corona-2d sed	18.4
Opel, Manta	18.2
Opel, Opel 1900	18.2
Alfa Romeo, 2000 GTV	18.0
Renault, 15 coupe	17.9
Renault, 12 sdn	17.8
Volkswagen, Roadster 914-4	17.5
Volkswagen, Roadster 914-4	17.0
Toyota, Corona-2d sed	16.9
Opel, Manta Luxus	12.2
2,750-POUND CLASS	
Chevrolet, Vega Hatchback	24.6
Ford, Pinto	22.8
Mitsubishi, Dodge Colt SW	22.8
Renault, 12 St Wag	22.2
Renault, 17 Sport Coupe	22.2
Mitsubishi, Dodge Colt SW	21.9
Mitsubishi, Dodge Colt SW	21.8
Isuzu, Luv Pickup	21.7
Ford, Pinto	21.0
Nissan, Datsun 610	20.6
Nissan, Datsun Pickup	20.4
Chevrolet, Vega Panel Exp	20.0
Ford, Capri	19.8
Nissan, Datsun 610	19.8
Chevrolet, Vega Hatchback	19.6
Nissan, Datsun 710	19.5
Nissan, Datsun 610	19.5
Mitsubishi, Dodge Colt SW	19.5
Porsche, 911T	19.1
Saab, Saab 99	18.8
Mitsubishi, Dodge Colt SW	18.6
Nissan, Datsun Pickup	18.5
Renault, 17 Sport Coupe	17.8
Isuzu, Luv Pickup	17.5
Renault, 17 TL Coupe	17.5
Porsche, 9115	17.2
Ford, Capri	16.9
Porsche, 911S	16.9
Standard Triumph, TR-6	16.9
Toyota, Corona Hrd. Top	16.9
Ford, Pinto	16.7
Toyota, Hilux Pickup	16.3
Porsche, 911T	16.1
Standard, Triumph, TR-6	16.0
Ford, Capri	15.5
Chevrolet, Vega Panel Exp	15.1
Toyo Kogyo, Mazda RX3 Wagn	10.8
Toyo Kogyo, Mazda RX3 Coupe	10.7
Toyo Kogyo, Mazda RX2 Coupe	10.6
3,000-POUND CLASS	
Chevrolet, Vega Kammback	20.0
Ford, Pinto Wagon	19.6
Toyota, Mark II Wagon	19.4
Chevrolet, Vega Kammback	18.9
Ford, Capri	18.7
Ford, Pinto Wagon	18.2
Volvo, 142	17.5
Toyota, Hilux Camper	17.1
Peugeot, 504 Sedan	17.0
Peugeot, 504XN1	17.0
Saab, Saab 99 LE	17.0
Volvo, 144	17.0
Ford, Mustang	16.9
Peugeot, 504 Sedan	16.8
Peugeot, 504XN1	16.8
Volvo, 142	16.7
Ford, Pinto SW	16.6
Ford, Mustang	16.5
Austin Morris BMC, MGB GT	16.3
Nissan, Datsun 260Z	16.2
Saab, Saab 99 LE	16.1
Volvo, 144	16.1
American Motors, Gremlin	15.9
Ford, Capri	15.8
Nissan, Datsun 260Z	15.8
American Motors, Gremlin	15.6
Ford, Comet	15.5
Toyota, Mark II Sedan	15.4
Toyo Kogyo, Courier Pickup	15.2
Toyo Kogyo, Courier Pickup	14.3
Toyo Kogyo, Courier Pickup	14.3
Toyo Kogyo, Courier Pickup	14.2
Ford, Maverick	15.0
Nissan, Datsun 260Z	15.0
Toyota, Mark II Sedan	15.0
Toyo Kogyo, Courier Pickup	14.3
Toyo Kogyo, Courier Pickup	14.2
Ford, Maverick	14.0
American Motors, Gremlin	13.2
Toyo Kogyo, Mazda Rotry PU	12.8
American Motors, Universal	12.1
American Motors, Universal	11.5
American Motors, Universal	11.1
Toyo Kogyo, Mazda RX4 Wagon	10.4
Toyo Kogyo, Mazda RX4 Coupe	10.3
Ferrari, Dino 246 GT	10.0
American Motors, Universal	9.8
Ferrari, Dino 246 GT	9.2
3,500 POUND CLASS	
Ford, Comet	19.9
Volvo, 145	15.8
Rover, 88 Land Rover	17.7
Ford, Mustang	17.3
Ford, Comet	17.2
Plymouth, Plymouth Comp	16.7
Ford, Maverick	16.3
Dodge, Dodge Comp	16.0
Volvo, 145	15.8
Plymouth, Plymouth Comp	15.7
Ford, Maverick	15.6
American Motors, Sportabout	15.5
Chevrolet, Nova Hatchback	15.2
Ford, Mustang	15.0
American Motors, Hornet	14.7
Volvo, 164	14.5
American Motors, Hornet	14.3
Ford, Bronco	14.3
Mercedes Benz, MB-115	14.3
Ford, Bronco	14.1
Mercedes Benz, MB-114	14.1
American Motors, Hornet	13.8
Volvo, 164	13.4
American Motors, Javelin	13.2
Mercedes Benz, MB-114	13.1
Ford, Mustang	13.0
Mercedes Benz, MB-115	12.9
American Motors, Hornet	12.5
American Motors, Javelin	12.1
Ford, Maverick	12.1

Manufacturer and Model	Mileage
3,500 POUND CLASS—Continued	
Volvo, 164	12.1
Citroen, SM	11.9
American Motors, Hornet	11.7
Mercedes Benz, MB–114	11.3
Citroen, SM	11.2
American Motors, Javelin	11.1
American Motors, Hornet	11.0
Mercedes Benz, MB–114	10.9
Rover, 88 Land Rover	10.9
Ford, Pantera	10.4
Jaguar, E Type Ser. III	9.7
4,000 POUND CLASS	
Ford, E–100	18.9
Ford, F–100	16.4
Chevrolet, Nova Hatchback	15.7
Ford, F–100	14.1
Ford, Torino	14.0
Ford, E–100	12.0
Ford, E–200	13.0
IHC, 100 Pickup 2 WD	12.7
Toyota, Land Cruiser HT	12.6
Plymouth, Plymouth Comp	12.5
American Motors, Matador	12.4
Ford, E–200	12.4
IHC, Scout 4 WD	12.3
Dodge, Dodge Truck	12.1
Ford, E–100	12.0
Plymouth, Plymouth Comp	11.8
Ford, Torino	11.8
Chevrolet, C–10 Fleetside	11.7
American Motors, Javelin	11.6
American Motors, Matador	11.6
Plymouth, Plymouth Inter	11.6
Dodge, Dodge Sp Wag	11.5
Ford, F–100	11.3
IHC, Scout 2 WD	11.3
IHC, 100 Pickup 2 WD	11.1
Plymouth, Plymouth Comp	10.9
American Motors, Javelin	10.8
Mercedes Benz, MB–107	10.6
Ford, F–100	10.4
American Motors, Wagoneer	10.1
Ford, Bronco	10.1
Pontiac, Ventura	9.9
Ford, E–200	9.6
IHC, Scout 4 WD	9.6
Ford, Bronco	9.4
Pontiac, GTO	8.9
Pontiac, GTO	8.9
Ford, F–100	8.6
Lamborghini, Jarama 400GT	7.3
Lamborghini, Espada 400GT	7.2
Ferrari, 365 GTB–4	6.5
Ferrari, 365 GTB–4	6.3
4,500-POUND CLASS	
Chevrolet, G–20 Sportvan	12.4
American Motors, Matador SW	12.3
Ford, E–200	12.3
Plymouth, Plymouth Inter	11.8
Chevrolet, C–10 Pickup	11.6
Ford, E–300	11.5
Dodge, Dodge SP wag	11.4
Ford, Econoline	11.2
American Motors, Matador	11.1
Ford, F–100	11.1
American Motors, Matador	11.0
American Motors, Ambassador	10.8
Ford, Torino	10.8
Ford, Ford	10.7
American Motors, Wagoneer	10.6
American Motors, Ambassador	10.4
Buick, Century 350	10.4
American Motors, Truck	10.3
Oldsmobile, Cutlass Salon	10.3
Mercedes Benz, MB–116	10.3
Buick, Century	10.1
Chevrolet, Impala Cust Coupe	10.1
Mercedes Benz, MB–116	10.1
American Motors, Matador	10.0
Ford, F–100	10.0
Chevrolet, C–10 Pickup	10.0
Ford, Torino	9.9
Chevrolet, Malibu Classic	9.9
Pontiac, Lemans	9.9
Mercedes Benz, MB–116	9.9
IHC, 100 Pickup 2 wd	9.9
Ford, Torino	9.8
Toyota, Land Cruiser	9.7
Dodge, Dodge SP wag	9.6
IHC, Scout 4 Wd	9.6
IHC, 100 Pickup 2 wd	9.6
Ford, Cougar	9.5
Oldsmobile, Cutlass S	9.5
Oldsmobile, Cutlass Supreme	9.4
Pontiac, Lemans Sport	9.4
Ford, F–100	9.3
IHC, 100 Pickup 2 wd	9.3
Plymouth, Plymouth Inter	9.2
Pontiac, Lemans Sport	9.2
Plymouth, Plymouth Inter	9.1
Ford, Montego	9.1
Buick, Gran Sport	9.1
Ford, Ranchero	9.0
Pontiac, Lemans	9.0
IHC, 100 Pickup 2 wd	9.0
Ford, Torino	8.8
Buick, Regal	8.8
Buick, Century 350	8.8
Pontiac, Grand AM	8.8
Ford, F–100	8.7
IHC, 100 Pickup 2 wd	8.7
Pontiac, Trans Am	8.6
American Motors, Truck	8.5
Plymouth, Plymouth Inter	8.5
Chevrolet, G–10 Beauville	8.5
IHC, Scout 4 wd	8.5
Pontiac, Grand Prix SJ	8.4
Pontiac, Lemans	8.4
Toyota, Land Cruiser SW	8.3
Chevrolet, Laguna	7.6
IHC, Scout 2 wd	7.4
Dodge, Dodge truck	7.3
Oldsmobile, Cutlass S	7.3
5,000-POUND CLASS	
Buick, Century Wagon	16.7
Ford, Montego Wagon	11.4
Chevrolet, Impala Spt. Sed	11.0
Ford, Ford	10.7
Plymouth, Plymouth FS	10.4
Ford, Ford SW	10.4
Buick, LeSabre	10.4
Ford, Torino Wagon	10.3
Plymouth, Plymouth Inter	10.2
Ford, Ford	10.0
Buick, LeSabre	10.0
Plymouth, Plymouth FS	9.9
Ford, Montego	9.9
IHC, 100 Travelall 2 Wd	9.8
Buick, Century Lux Wag	9.7
Ford, Ford	9.6
Chevrolet, K–70 Blazer	9.6
Ford, Montego	9.5
Ford, Ford	9.3
Ford, Cougar	9.3
Pontiac, Catalina 4-dr. Sed	9.2
Chrysler, Chrysler	9.1
Ford, Montego	9.1
Ford, Ford	9.1
Buick, LeSabre	9.0
Oldsmobile, Delta 88 Royal	9.0
Chrysler, Chrysler	8.9
Plymouth, Plymouth FS	8.9
Chevrolet, C-10 Suburban	8.8
Chevrolet, Caprice CLS SP	8.8
Chrysler, Chrysler	8.7
Plymouth, Plymouth FS	8.7
Buick, LeSabre	8.7
Oldsmobile, Vista Cruiser	8.7
Plymouth, Plymouth FS	8.6
Ford, Cougar	8.6
Chevrolet, Caprice CLS Sed	8.6
Pontiac, Lemans Safari	8.6
Dodge, Dodge Sp Wag	8.5
Chrysler, Chrysler	8.4
Ford, Torino Wagon	8.3
IHC, 100 Travelall 2 Wd	8.3
Dodge, Dodge FS	8.2
Dodge, Dodge FS	8.1
Buick, LeSabre	8.1
Pontiac, Grand Ville	8.1
Dodge, Dodge FS	7.9
Pontiac, Bonneville	7.8
Buick, LeSabre	7.6
Plymouth, Plymouth FS	7.4
5,500 POUND CLASS	
Cadillac, Eldorado	10.4
Chevrolet, Impala Est. Wag	10.0
Buick, Estate Wagon	9.6
Chevrolet, Caprice Wagon	9.6
Ford, Ford S.W	9.5
Buick, Estate Wagon	9.3
Chrysler, Chrysler S.W	8.9
Plymouth, Plymouth FS S.W	8.9
Cadillac, Deville	8.9
Chevrolet, Caprice Wagon	8.8
Ford, Ford S.W	8.7
Cadillac, Fleetwood 75LI	8.7
Pontiac, Stageway Coach	8.5
Pontiac, Grand Safari	8.4
Buick, Electra 225	8.3
Oldsmobile, Toronado	8.3
Pontiac, Catalina Safari	8.3
Dodge, GE FS S.W	8.2
Cadillac, Fleetwood 75LI	8.2
Ford, Mercury	8.1
Buick, Estate Wagon	8.1
Plymouth, Plymouth FS S.W	8.0
Cadillac, Eldorado	8.0
Ford, Mercury S.W	7.9
Ford, Lincoln	7.9
IHC, 100T'all 2 wd	7.8
Buick, Electra 225	7.6
Oldsmobile, Delta 88 Wagon	7.6
Oldsmobile, 98 Regency	7.6
IHC, 200T'all 4 wd	7.5
Chevrolet, C-20 Suburban	7.2
IHC, 100T'all 2 wd	7.2
Chevrolet, C-20 Suburban	7.1
Oldsmobile, Delta 88 Wagon	7.0
Oldsmobile, Toronado	6.8

STATE TAXATION OF INTERSTATE COMMERCE

Mr. MATHIAS. Mr. President, yesterday the Subcommittee on State Taxation of Interstate Commerce of the Senate Finance Committee began hearings of great importance to individuals and businesses in every State of our Nation. I was privileged to testify before the subcommittee in support of S. 1245, which I introduced with Senators RIBICOFF and HUMPHREY. Because of the significant benefit to all Americans that would result from simplifying the morass of State and local taxes now placed on interstate businesses, I would like to call the attention of the Senate to these hearings and to the testimony given before the subcommittee.

I would therefore like to ask unanimous consent that there be printed in the RECORD the statement made in support of S. 1245 by spokesmen for well over 100 business associations at the national, State, regional, and local levels, together with a copy of my own testimony.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TESTIMONY OF CHARLES McC. MATHIAS, JR.

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today on a subject I believe can be described as one of the more pressing areas of "tax reform" demanding congressional attention.

I commend the subcommittee for holding these hearings and hope they will result in the enactment this year of much needed remedial legislation.

I think it is fitting that these hearings are being held by a subcommittee of the Committee on Finance, for it was this committee which initiated the legislation which became the first enactment in this important

area, the so-called stop-gap legislation of 1959 (P.L. 86-272).

Since coming to the Congress in 1961 I have consistently introduced interstate tax legislation. The latest version is S. 1245, the Interstate Taxation Act of 1973. Senators Ribicoff and Humphrey have joined me as cosponsors of S. 1245.

The magnitude of the problem has increased manyfold since that initial legislation. When I served on the House Special Subcommittee on State Taxation of Interstate Commerce, we issued a four-volume report at the end of 1964. We found at that time, for example, sales and use taxes were levied by approximately 2,300 state and local units. Since that time there has been about a 250% increase. Commerce Clearing House reports that today there are more than 8,000 entities which levy sales and use taxes. And there are 46 different state corporate income tax laws, plus other laws of general applicability, such as gross receipts and capital stock taxes. The problem of determining liability with this vast number of differing taxes appear almost insurmountable particularly for the small businessman.

We do not claim that S. 1245 is the perfect solution but believe it provides a more than adequate basis for the development of legislation which would be satisfactory to both the business community and state and local governments. Your hearing schedule is crowded, so I will not attempt to describe S. 1245 in detail, for I know you will hear much about it, both pro and con, during these hearings. I would submit for the record, however, a section-by-section analysis of S. 1245 and a copy of the remarks I made at the time S. 1245 was introduced. The basic design of S. 1245 is to provide some certainty for the business community as to its liability for state and local taxes applicable to interstate business. I believe that its income tax provisions—for example, those applying to appointment of income or capital—are perhaps less controversial than the sales and use tax provisions. S. 1245 makes concessions to the views of the states in the apportionment area when compared with earlier versions of the legislation, such as that which I introduced in the 91st and 92nd Congresses.

I believe the sales and use tax provisions of S. 1245, however, would provide the most substantial relief for small business. In general, if a company, large or small, has a business location in the state, then it would be liable for collection of sales and use taxes as well as the payment of income taxes. If the business did not have a business location as defined in S. 1245, an interstate seller would be able to rely on a registration procedure as assurance that the business purchaser is liable for the payment of tax to the state in which he is located. Such a procedure would remove the liability for collection from the seller who makes only occasional sales, often with the cost of compliance exceeding the amount of tax due.

Having begun my government service at the state level, I am not unmindful of the needs of the states and localities for revenue. I think I have indicated this by my consistent support for revenue-sharing legislation. As I have said on a number of occasions we expect the states and localities to be responsible in their use of general revenue-sharing funds. But we must also expect them to act responsibly by breaking down tax barriers that impede the free flow of commerce among the 50 states. If we do not, then I fear that we face what a former Chairman of the House Judiciary Committee termed "balkanization" of the economy. Incidentally, it was this House Committee on which I served which initiated legislation which passed the House by overwhelming majorities in 1968 and 1969.

Actually, I believe that a proper registration procedure with adequate reporting to the states would in the long run increase sales and use tax revenues. With the growth of sophisticated tax collection methods, state and local governments would for the first time be able to compile a record of total sales from out of state. Therefore, they would be able to collect the maximum revenues from taxpayers from within the state rather than rely on the present selective method of collection from out-of-state sellers, principally large firms.

Major business organizations who will be appearing later in these hearings have worked with me in developing S. 1245. I know they also have been trying to reach an accommodation with the states. Of course, the most desirable course of action would be reporting legislation that is 100 per cent agreeable to all affected parties. I hope such an agreement can be reached. I think much progress has been made. If unanimity is impossible, I would urge the subcommittee to recommend legislation along the lines of S. 1245 at the earliest possible date so that the Senate can act on it in 1973.

If we delay much longer, I fear there will be an ultimate demand for Federal collection and distribution of most, if not all, state and local taxes. Existing laws have created a chaotic condition with widespread non-compliance due largely to lack of knowledge of liability, with always the possibility of a demand for years of back taxes plus penalties. Individual problems of businessmen have been described by their letters in support of this bill.

Perhaps the most succinct summary comes from a small businessman who wrote as follows:

"Even though it is our sincere intent to be a good corporate citizen, I know that we are in violation of some taxing legislation at some governmental level, but I don't know which one, where it is, or the extent of our liability. In some cases, the penalties for late filing or noncompliance are staggering.

"On the other hand, the cost of locating each taxing authority, filing, keeping up to date with the rules, regulations and rates, plus finding any new taxing authorities is even more costly."

I have a few more illustrations of the type of problems being faced on a day to day basis by those who operate in interstate commerce, but in the interest of time I will not read them but ask that they be included as part of my testimony.

". . . we have not had a sale in California since 1967 and we have not had a sale in Arkansas since 1968, yet we must still file an annual Sales Tax report with California and submit monthly reports to Arkansas; we have had no employees in Alabama since 1968, yet we must still file an Employers Quarterly Tax Withholding report; we have had no fuel purchases nor trucks in Nebraska since 1970, yet we must file a monthly report indicating zero activity."

* * * * *

". . . we are a small company employing 55 people . . . Sales are made to all types of businesses, schools, hospitals and government agencies in all 50 states through manufacturers representatives . . .

"We have no property or employees at any location other than in . . . As a practical matter we now have three people in our accounting department who probably spend as much time accumulating the information necessary for tax returns and preparing tax returns as they spend on the accounting necessary for the operation of our business . . .

"Our principal concern at this time is the State of . . . We were first contacted by the State of . . . in September of 1963. We did not apply for a sales tax permit because it appeared that there would be some Federal regulation to regulate interstate taxation . . . The Tax Commission did send an auditor in March of 1971 and I point out that this was nearly eight years after the first contact. We cooperated with the auditor and before he left he informed us that we would receive a determination of the tax due for the years prior to 1971 . . .

"The . . . tax people let the problem drag seven and one half years before the first audit. Over two years have passed between this audit and a date when we can expect a determination of tax for prior years. The prospects are that because of the delay the accumulated interest and penalty will exceed the tax . . .

"We are aware that if we receive a . . . Sales Tax Permit we will have to make regular returns—the worst part of which is that these sales will have to be reported by counties and special tax districts with special assessments for some of the tax districts. The auditor suggested that we might make use of a computer for this detailed accounting. We don't need a computer to run our business but it isn't hard to see where it would be useful for tax accounting. We are also mindful of the fact that there are 44 other states collecting sales and use taxes as well as innumerable counties, cities, and special tax districts."

* * * * *

"We are a small company, less than 50 employees . . .

"We do business in all 50 states . . .

"Most of our dealers do not buy from us daily or weekly. Many of them purchase only two, three or four times per year. According to individual State law some of these sales should be taxable, others are not. In some states a particular type of sale is taxable, in another state is not."

* * * * *

"Then there is the constant bickering with each State about income tax. Some say we owe it if we have a desk and phone in their State. Some base it on whether our sales representatives are local or out of state."

* * * * *

"In an attempt to determine what our tax status is in other states, we wrote exactly the same letter to 43 states, outlining the way we do business and inquiring if any of their state tax laws applied to us. After 60 days, we have received only 31 replies, of which only 5 gave an unqualified yes, that we were liable for collecting sales and use taxes, and 1 a probable yes. Seven gave an unqualified no, 2 a probable no, and 6 advised us to consult a private attorney, the remainder gave various indefinite answers or sent copies of their tax laws with no comments."

* * * * *

"The awareness of an unknown tax liability has plagued us for some time. We have subscribed to state tax services and tried in many ways to determine our tax liabilities accurately. However, from time to time we are confronted with a liability from some town or subdivision concerning a tax liability we knew nothing about.

"We have also discovered that the contents of local tax laws are not clear, leaving a great deal of discretion to the administrators which can change as administrators are replaced.

"We had been advised by our auditing firm and our own tax people that we were not liable for the business and occupation tax in the State of * * *. However, due to some insignificant technicality we were found liable and had to pay taxes for five years retroactive to 1966. During this investigation we also discovered that any local municipality could also tag on a piggyback tax if they so desired.

"In some areas . . . local taxation has made us raise our eyebrows and consider whether or not we wish to continue to sell in the area."

INDUSTRY STATEMENT ON PROPOSED INTERSTATE TAX LEGISLATION

(Organizations Represented by This Statement)

NATIONAL ASSOCIATIONS

Committee on State Taxation of the Council of State Chambers of Commerce.
National Association of Manufacturers.
National Association of Wholesaler-Distributors.
National Small Business Association.
The Tax Council.

NATIONAL TRADE ASSOCIATIONS

American Footwear Industries Association.
American Machine Tool Distributors Association.
American Research Merchandising Institute.
Associated Equipment Distributors.
Association of Footwear Distributors.
Association of Institutional Distributors.
Association of Steel Distributors.
Automotive Service Industry Association.
Bearing Specialists Association.
Direct Mail Advertising Association.
Distilled Spirits Council of the U.S.
Federal Wholesale Druggists' Association.
Industrial Fasteners Institute.
Laundry and Cleaners Allied Trades Association.
Lawn and Garden Distributors Association.
Manufacturing Chemists Association.
Material Handling Equipment Distributors Association.
Millers National Federation.
National Association of Aluminum Distributors.
National Association of Container Distributors.
National Association of Glove Manufacturers, Inc.
National Association of Hosiery Manufacturers.
National Association of Photographic Manufacturers.
National Association of Sporting Goods Wholesalers.
National Association of Textile & Apparel Wholesalers.
National Association of Upholstery Fabrics Distributors.
National Builders' Hardware Association.
National Building Material Distributors Association.
National Council of Salesmen's Organizations.
National Electronic Distributors Association.
National Fastener Distributors Association.
National Frozen Food Association.
National Industrial Distributors Association.
National Locksmiths' Suppliers Association.
National Ornamental Metal Manufacturers Association.
National Paint Distributors, Inc.
National Paper Trade Association, Inc.
National Sash and Door Jobbers Association.
National School Supply & Equipment Association.
National Screw Machine Products Association.
National Swimming Pool Institute.
National Welding Supply Association.
National Wholesale Druggists' Association.
National Wholesale Furniture Association.
National Wholesale Hardware Association.
National Wholesale Jewelers' Association.
North American Wholesale Lumber Association, Inc.
Northamerican Heating & Airconditioning Wholesalers.
Paper Stationery & Tablet Manufacturers Association.
Petroleum Equipment Institute.
Pharmaceutical Wholesalers Association.
Point-of-Purchase Advertising Institute.
Power Transmission Distributors Association.
Scientific Apparatus Makers Association.
Shoe Service Institute of America.
Single Service Institute.
Society of American Florists.
Steel Plate Fabricators Association.
Steel Shipping Container Institute.
The American Association of Nurserymen.
The American Paper Institute.
Toiletry Merchandisers Association.
Toy Wholesalers Association of America.
Truck Equipment & Body Distributors Association.
Wholesale Florists & Florist Suppliers of America.
Wood Turners and Shapers Association.
Writing Instrument Manufacturers.

STATE ASSOCIATIONS

Alabama Chamber of Commerce.
Associated Industries of Alabama.
Associated Industries of Missouri.
California Beer Wholesalers Association, Inc.
Connecticut Business & Industry Association.
Delaware State Chamber of Commerce.
East Texas Chamber of Commerce.
Empire State Chamber of Commerce.
Florida State Chamber of Commerce.
Georgia Chamber of Commerce.
Greater South Dakota Association.
Idaho State Chamber of Commerce.
Illinois Manufacturers' Association.
Indiana State Chamber of Commerce.
Kansas Association of Commerce & Industry.
Kentucky Chamber of Commerce.
Maryland State Chamber of Commerce.
Michigan Manufacturers Association.
Michigan State Chamber of Commerce.
Minnesota Association of Commerce & Industry.
Montana Chamber of Commerce.
New Jersey Manufacturers Association.
New Jersey State Chamber of Commerce.
Ohio Chamber of Commerce.
Pennsylvania Chamber of Commerce.
Pennsylvania Manufacturers' Association.
South Texas Chamber of Commerce.
Texas Manufacturers Association.
Utah Manufacturers Association.
Virginia Manufacturers Association.
Virginia Soft Drink Association, Inc.
Virginia Wholesalers and Distributors Association, Inc.
West Texas Chamber of Commerce.
West Virginia Chamber of Commerce.
Wisconsin State Chamber of Commerce.

REGIONAL AND LOCAL ASSOCIATIONS

Associated Industries, Inc. (Gastonia, N.C.).
Associated Industries & Manufacturers (Sheboygan, Wisc.).
Associated Industries of Oshkosh (Wisconsin).
California Association of Employers (San Francisco).
Central Illinois Industrial Association (Peoria).
Central Piedmont Industries (Charlotte, N.C.).
Central Virginia Industries, Inc. (Lynchburg).
Greater Boston Chamber of Commerce (Massachusetts).
Industrial Association of the Mohawk Valley (New York).
Manufacturers Association of Berks County (Pennsylvania).
Manufacturers Association of Jackson (Michigan).
Manufacturing Association of Southern Connecticut, Inc. (Bridgeport).
Northeast Wisconsin Industrial Association (Manitowoc).
Piedmont Associated Industries (Greensboro, N.C.).
San Francisco Employers Council (California).
Small Business Association of New England.
Southern Industrial Distributors Association.
Southern Wholesale Hardware Association.
Southern Wholesalers Association.
The Naugatuck Valley Industrial Council, Inc. (Waterbury, Conn.).
West Branch Manufacturers Association (Montoursville, Pa.).

SUMMARY

1. The Report of the Special Subcommittee on State Taxation of Interstate Commerce (the Willis Committee) documented the need for Congressional action to correct: (a) "widespread noncompliance," (b) "overtaxation and undertaxation," and (c) "diversities and complexities in legal rules, the prevalence of returns in which the cost of compliance exceeds the tax. . . ." These defects found by the Willis Committee have not been refuted, but there has been no relief from their burden on interstate commerce and, in some respects, the situation has worsened in recent years.

2. S. 1245 provides remedies for the defects found by the Willis Committee by: (a) establishing a "business location" jurisdictional test for state and local imposition of net income, capital, and gross receipts taxes; (b) codifying the present case law on the liability of the seller to collect sales and use taxes, but providing some relief and protection for *small* business through a registration procedure; and (c) clearing up the present great uncertainty as to how corporate income from interstate sales is to be allocated and apportioned among the states.

3. Title II of S. 1245 establishes a "ceiling" which a state could not exceed in determining the amount of income or capital of an interstate business it can tax without placing an excessive burden on interstate commerce. As long as it does not exceed the ceiling, a state would still be free to tax such businesses as it sees fit.

4. Congressional action on state taxation of dividends and foreign source income is necessary because an undue, and very likely an unconstitutional, burden is being placed on interstate and foreign commerce. Moreover, state taxation of foreign source income improperly injects the state into foreign policy. S. 1245 would remedy this situation by making state taxation of dividends and foreign source income generally compatible with the Internal Revenue Code and by eliminating discriminatory taxation of foreign source income.

Any serious discussion of State Taxation of Interstate Commerce ought to begin with the 1964 Report of the Special Subcommittee of the House Judiciary Committee that became popularly known as the Willis Committee in recognition of the ability and dedication of its chairman. The Subcommittee and its excellent professional staff worked for four years during which time it held extensive hearings and compiled the only comprehensive and authoritatively documented survey of state taxes as they affect interstate commerce in the United States.

This was a landmark study in that it represented the first time in the history of our country that the Congress had undertaken to shoulder the responsibility to assure a proper relationship between interstate commerce and the tax systems of the states. The study, exclusive of appendices, contains well over one thousand pages and certainly is not susceptible to brief summarization. However, the basic thrust of the Report is indicated in the transmittal letter to the Hon. Emanuel Celler, Chairman, Committee on the Judiciary on May 25, 1964:

"I think it will suffice for me to say that the information contained in this report inevitably leads to the conclusion that the prevailing system of state and local income taxation creates, for companies engaged in interstate commerce, serious problems which

it would be appropriate for Congress to attempt to resolve."

The Report found that the major problems are not confined to income taxes, but relate to all the taxes studied. It also found that the present system of state taxation as it affects interstate commerce works badly for both business and the states. Quoting from the Report, the major defects that pervade the present system are:

"First, it was found that the system is characterized by widespread noncompliance. This includes both a failure to file returns, especially where jurisdiction is asserted on the basis of something less than a place of business in the State, and a failure among companies which do file to comply accurately with the requirements of the prescribed system. For the States, the gap between what is prescribed and what is practiced means a loss of revenue. For business, the result is inequity among similarly situated taxpayers some of whom comply and most of whom do not. However, were noncompliance to be replaced by full compliance with all of the requirements of the prescribed system, it is likely that the inequities of haphazard taxation would be transformed into the burden of excessive compliance costs.

"A second defect of the current system is its tendency to give rise to overtaxation and undertaxation. Overtaxation is implicit in inconsistencies in the rules prescribed by the various States. These inconsistencies also give rise to undertaxation, which is augmented by noncompliance. The Subcommittee's studies confirm the fact that both of these departures from a coherent system do in fact occur.

"A third defect of the present system is the existence of provisions which are advantageous to locally based companies relative to competitors based elsewhere. While litigation might ultimately invalidate some of these provisions, the generally low level of State tax rates and the expense and uncertainty of the litigation process discourages taxpayers from seeking relief by that means.

"A fourth defect of the present system is the attitude which it has generated among taxpayers, especially small and moderate-sized companies. The diversities and complexities in legal rules, the prevalence of returns in which the cost of compliance exceeds the tax, the demand that a distant seller account for a local buyer's tax under circumstances in which taxability depends on what the buyer is to do with the goods—these and other aspects of the present system have produced widespread resistance to the assumption of taxpayer responsibility."

The existence of these defects was not challenged when the Report was issued and has not been refuted in the interim; but there has been no relief from their impact. What has happened is exactly what the Willis Committee predicted:

"There is every reason to believe that, without congressional action, the worst features of the present system will continue to multiply. For the company selling in interstate commerce the likelihood that it will be caught up in the troubles of the system becomes greater with increased exposure through the passage of time and the widening of its spread of activities."

On pages 11 through 14 of the Report the Subcommittee established that the courts cannot remedy the defects in the system. This inability is explained as follows:

"The reason for this inadequacy is completely unrelated to the ability or diligence of a particular court or of any particular judge. The inadequacy is entirely institutional."

The problem arises from the fact that a court deals in absolutes, and in this area an absolute decision in either direction is not likely to be satisfactory.

The inadequacy of the judicial process to deal with the problems of multistate taxation has long been recognized by members of the Supreme Court with widely different philosophies: Justices Jackson,[1] Rutledge,[2] Black,[3] Frankfurter,[4] Douglas,[5] and Clark.[6] Justice Frankfurter put it this way in his dissenting opinion in the *Northwestern States Portland Cement Co.* v. *Minnesota*:[7]

"At best this Court can only act negatively; it can determine whether a specific state tax is imposed in violation of the Commerce Clause. Such decisions must necessarily depend on the application of rough and ready legal concepts. We cannot make a detailed inquiry into the incidence of diverse economic burdens in order to determine the extent to which such burdens conflict with the necessities of national economic life.

* * * * *

"The problem calls for solution by devising a congressional policy. . . The solution to these problems ought not to rest on the self-serving determination of the States of what they are entitled to out of the Nation's resources."

It is obvious why the Subcommittee recommended Federal legislation in 1965. Its bill, H.R. 11789, provoked cries of anguish from all sides.

A spotlight had been focused on the parochial viewpoints and haphazard enforcement practices of the states and for the first time the matter was being moved out of the sphere of an academic exercise toward remedial action. The tax collectors were joined by certain taxpayers who felt that the proposed legislation injected the Federal Government into state taxation to an unnecessary degree. The Subcommittee was most receptive of constructive criticism and modified its legislative recommendation to remove most of the direct federal involvement. Nevertheless, many thought the states should be given a chance to reform the system so that federal legislation would be unnecessary and the states have had such an opportunity for the last eight years. The record is one of all the frustration, futility, and aggravation of the problems that the Willis Subcommittee foresaw.

This is not intended to be a criticism of the states. The inability of the states to cope cooperatively with the problems of commerce between themselves was apparent 200 years ago and resulted in the Commerce Clause in the Constitution, which places the responsibility for regulation of interstate commerce on Congress. There have been some state efforts toward reform—but, in all honesty, their vigor has been in direct proportion to the threat of federal action.

At first, the concept of a Multistate Tax Compact seemed to offer a promising vehicle. However, it soon became clear, even to some of its leaders, that effective action was impossible without federal legislation. More than half the states are not members of the Compact. The most significant action the Multistate Tax Commission has taken, from the point of view of taxpayers, is the adoption of regulations implementing the Uniform Division of Income for Tax Purposes Act. This renders 99% ineffective the provisions of the Act relative to allocation of income from investments, thereby destroying the considerable degree of uniformity that had previously existed as to the taxation of this type of income. In adopting these regulations, the Multistate Tax Commission rejected regulations recommended by its own Rules and Regulations Committee, regulations adopted by the National Association of Tax Administrators, and comprehensive and well-documented testimony by the business community that the intent of the drafters of the Uniform Act and the plain words of the pertinent provisions precluded the adoption of such regulations. After almost eight years of frustration and ineffectiveness, even the most die-hard "states-righter" must concede that the Willis Subcommittee displayed remarkable foresight when it predicted:

"Without congressional action, the worst features in the present system will continue to multiply."

There has been practically no disposition on the part of the states to relieve the plight of the small businessman that was so frankly and fully exposed in 1964. Taxpayer attitudes have not improved; taxpayer morale has been ignored; the free flow of commerce has been hampered by needless interference, particularly in the case of businesses which are too small to afford the burden of excessive tax compliance costs. The inequities in this unhappy situation have been magnified by the dramatic rise in state and local tax collections from $44 billion in 1962 to an estimated $111 billion. In 1972,[8] and the equally dramatic increase in compliance costs due to the proliferation of local taxation of interstate business.

There are two approaches to solution of this problem—the theoretical approach and the practical approach. It is hoped that the emphasis will be on the practical, but—above all else—we hope that, in the technical discussions that will take place during this hearing, the basic long-range objectives will not be lost sight of and that Congress can speedily reach, in the words of the Willis Committee, "a general solution which substitutes order and realism for chaos and impracticality."

We believe that S. 1245, introduced by Senators Mathias and Ribicoff, provides a practical approach toward the solution of the many problems existing in this area.

I—JURISDICTION TO TAX

The Willis Committee found that efforts to impose state taxes and tax obligations on persons with no business location in the state create a situation where filing returns is rare and the state is incapable of systematic enforcement on an equitable basis. This situation is extremely undesirable for both taxpayers and tax administrators. Title I of S. 1245 provides the following remedy.

A. *Net income, capital stock and gross receipts taxes*

A "business location" in the state is the jurisdictional standard for net income, capital stock, and gross receipts taxes. A taxpayer has a business location in a state if he:

(1) owns or leases real property within the state; or

(2) has one or more employees located in the state; or

(3) regularly maintains a stock of tangible personal property in the state for sale in the ordinary course of his business; or

(4) regularly leases tangible personal property to others for use in the state.

An employee is not considered to be in a state if his only activities in the state are either solicitation covered by P.L. 86-272, or installation and repair activities which are incidental to an interstate sale of tangible personal property.

B. Sales and use taxes

S. 1245 also provides for two jurisdictional standards for sales and use taxes—one for nonbusiness customers, another for business customers. The standard for nonbusiness customers codifies the *Scripto* and *National Bellas Hess, Inc.* decisions, while overruling the *Miller Bros.* decision.[9] A person making interstate sales to nonbusiness customers may be required to collect and remit a sales or use tax if:

(1) he has a business location in the state; or

(2) regularly makes household deliveries

Footnotes at end of article.

in the state other than by common carrier or U.S. Postal Service; or

(3) regularly engages in the solicitation of orders in the state for sale of tangible personal property by means of salesmen, solicitors, or representatives.

As for business customers, a seller without a business location within the state cannot be required to collect a sales or use tax when such seller obtains the buyer's registration number in writing. Every person with a business location within a state and purchasing goods in interstate commerce must obtain a registration number from that state.

One of the major problems in the interstate taxation matter has been the need to arrive at some reasonable federal jurisdictional standards with respect to the collection of state and local sales and use taxes on interstate sales. This concern dates back to the United States Supreme Court decision in the *Scripto* case, which required an out-of-state business to collect and remit use tax on sales within a state even though the business maintained no facilities in the state and handled all of its sales through independent contractors.

The establishment of a minimum jurisdictional rule for the collection of state sales and use taxes has been of particular concern to small and-medium-sized businesses. These businesses have been particularly anxious to eliminate the uncertainty about the liability for collecting these taxes—liability which in many cases is a small fraction of the compliance cost. The need for a reasonable jurisdictional standard was well documented during the hearings held about 10 years ago. Because of the proliferation of local sales and use taxes there is a substantial interest in the business community as a whole in establishing some reasonable minimum jurisdictional rules.

Prior to 1972, most of the business-supported bills restricted the power of the states to require an out-of-state seller to collect sales and use tax to instances in which the seller had a "business location" in the state or regularly made household deliveries, whereas the bills supported by state tax administrators, such as the Cranston-Talcott Bills, would codify the major U.S. Supreme Court decisions. In an effort to solve this impasse, the National Association of Manufacturers, the Committee on State Taxation (COST) of the Council of State Chambers of Commerce, and the National Association of Wholesaler-Distributors got together during 1972 and agreed to accept the states' approach with respect to sales and use jurisdictional standards provided it was coupled with some registration procedure. The registration procedure was advanced not as the only possible solution to the problem, but rather as one way to avoid the impasse. In fact, it is understood that some state tax administrators are working on an alternative solution to the problem.

As incorporated in Sec. 304 the registration procedure would provide that a seller without a business location in the state is not required to collect or pay a sales or use tax if the seller obtains the buyer's registration number in writing. The central thought of this approach is that the state would look to its home-based businesses for the tax rather than to an out-of-state vendor which has no business location in the state. In fact, in most cases the tax already is technically imposed on the in-state buyer. There are many who believe that the adoption of such an approach could result in the states obtaining revenue from some in-state buyers that they currently are not getting.

Some state tax administrators have argued that the registration procedure would result in the states having to register many business buyers not currently registered. But if this is the case, such a procedure could have the desirable effect of identifying on the tax rolls of the state buyers who would then be required to self-assess tax.

There has been some misunderstanding about the registration procedure which should be cleared up. It should be understood that this procedure would only apply to sellers that do not have a business location in the state. Also, the proposal does not mean that the states would have to look to most purchasers for the tax because in most cases the vendor who is selling to the purchaser does have a business location in the state and thus would be required to collect the tax. Let us say again that it is simply one attempt to help the small businesman compete in interstate commerce. We certainly would be receptive to consideration of an alternative means as long as it provided some effective relief.

Most of the other sales and use tax provisions included in S. 1245 are much less controversial and generally consistent with similar provisions included in other legislative proposals. Specifically, subsection 301(a) provides that a state or political subdivision may impose a sales or use tax only if the destination of the sales in that state or in a contiguous state or political subdivision of a contiguous state for which there is a reciprocal collection agreement. Subsection 301(b) provides for a use tax credit for tax previously paid to another state or locality on the same property and subsection 301(c) provides for a refund of use tax paid to another state on the same property. Subsection 301(d) imposes a limit on the credit for prior sales or use taxes paid which are measured by periodic payments made under a lease. Vehicles and motor fuels are exempted from the provisions of section 301 by subsection 301(e).

Section 302 precludes a state or political subdivision from levying a sales of use tax on household goods and motor vehicles brought into a state by a person establishing residence there if the goods were acquired and used by the person for 90 days or more before bringing the property into that state.

Section 303 would exclude from the tax base transportation charges incidental to an interstate sale provided such charges are separately stated in writing. The purpose of this section is to ease the compliance burden by establishing a uniform treatment for all states.

The purpose of Section 305 is to relieve a seller from liability for sales or use tax if the seller obtains a valid exemption certificate from the purchaser. Such certificate would have to include the name and address of the purchaser, his registration number if any, and the signature of the purchaser. The purpose of this section is to eliminate the many disputes which arise when a seller has obtained what he considers to be a valid exemption certificate but a state will not accept it because the state contends the seller did not use "good faith" in accepting the certificate.

The purpose of Section 306 is to deal with the current morass of local sales and use taxes. This section limits the requirements for collection or classification of interstate sales for political subdivisions to those instances in which the seller has a business location in or regularly makes deliveries other than by common carrier or U.S. Postal Service to the political subdivision. However, if the local tax is imposed in all geographic areas of a state upon like transactions at the same combined state and local rate, administered by the state, and applied uniformly so that a seller would not be required to classify interstate sales by geographic areas in the state, the tax shall be treated as a state tax and the jurisdictional standards for state tax purposes will apply. In order to give the states and localities adequate time to adjust to the limitations for collecting local sales and use taxes, subsection 531(b) provides that the effective date of these provisions will be for periods beginning on or after July 1, 1978.

II—ALLOCATION AND APPORTIONMENT FOR PURPOSES OF DETERMINING MAXIMUM PERCENTAGE OF INCOME OR CAPITAL ATTRIBUTABLE TO A TAXING JURISDICTION

A. General comments

S. 1245 and H.R. 977 contain provisions which limit the percentage of income or capital of a multistate business enterprise that may be attributed to a taxing jurisdiction. S. 2092 contains similar provisions with respect to income only. What is the function of federal legislation limiting the amount of income or capital which a state or other taxing jurisdiction may subject to tax? A matter of jurisdiction as well as burden on interstate commerce is involved. It has been stated that:

"The due process clause of the Fourteenth Amendment both prevents a state from enforcing a tax in its courts against a person outside their jurisdiction and prohibits the taxation of persons or things whose relationship to the state is thought insufficient to sustain the particular exaction." [10]

It has been mistakenly assumed that the only issue involved with respect to those provisions in federal bills which prescribe allocation and apportionment methods is one of uniformity. It goes without saying that a limitation of the nature contained in the bills under discussion will protect interstate business against overtaxation and will have some effect on making state income and capital stock tax laws uniform. Nevertheless, the provisions are in the form of a limitation on the power to tax and do not prevent other methods of allocation and apportionment as long as the limit is not exceeded.

Although uniformity is important as a protection against overtaxation, it is even more important that multistate taxpayers be fairly treated and, at the very least, that they have all of the protections afforded by the due process requirement of the Fourteenth Amendment. Indeed, any provisions concerning allocation and apportionment must adhere to concepts of due process for it is without the power of the Congress to encroach on the protections afforded by the Fourteenth Amendment. It is equally important that the allocation and apportionment provisions do not go beyond the power of the Congress to restrict the power of the states to tax under the guise of regulating interstate commerce. If the states are taxing local incidents, even though engaged in by a multistate business enterprise, it is doubtful that the Congress can restrict such taxation. If a federal bill attempts to restrict a state in the amount of income it may subject to tax in favor of another state and the restriction on the first state fails on constitutional grounds, multistate business will be taxed on a part of its income in more than one state. This possibility is discussed in more detail in that part of the statement dealing with the treatment of dividend income.

Limiting the amount of income or capital which a taxing jurisdiction may subject to tax will protect the multistate taxpayer against overtaxation and duplicative taxation, will clarify the limits of due process with respect to taxation of income derived from sources outside the taxing jurisdiction or of extraterritorial values, will lessen the possibility of discriminatory treatment of out-of-state taxpayers, will provide a measure of certainty (particularly with respect to maximum tax liability) and will materially reduce the burden of litigation to resolve doubtful applications of state tax laws which otherwise would exceed the boundaries of due process or result in overtaxation.

Certain guidelines should be followed in drafting allocation and apportionment provisions. Such provisions should lend them-

Footnotes at end of article.

selves to ease of enforcement and compliance so that the least amount of interpretive effort is required. They should be neutral in their effect on different types of business enterprises and should not discriminate between corporate taxpayers. They should distribute fairly the tax burden of the state (or other taxing jurisdiction) among the corporate taxpayers having a presence, conducting activities or owning property within the borders of the state (or other taxing jurisdictions). Manipulation and avoidance schemes by taxpayers should be made as difficult as possible and, hopefully, impossible. Whatever method is adopted should be the least disruptive of existing state tax laws and practices.

B. *The need for limits on amounts of income or capital attributable to a taxing jurisdiction*

Federal legislation must include provisions limiting the maximum amount of income or capital attributable to the taxing jurisdiction. The present systems of allocation and apportionment in state taxation result in uncertainty, overtaxation and duplicative taxation, excessive compliance burdens, and an inefficient allocation of economic resources by reason of inefficient and unsound business practices that are required in order to avoid excessive taxes.

1. Uncertainty

A great deal of uncertainty exists today because the states cannot agree on a common interpretation of the Uniform Division of Income for Tax Purposes Act. The Uniform Act was drafted by the Commissioners on Uniform State Laws in 1957 upon consultation with representatives from the states and the business community. It was intended to reflect what had come to be generally accepted practices among the states with respect to allocation and apportionment of income for tax purposes.[11] Accordingly, sections 4 through 8 provide for specific allocation of rents, capital gains, interest, dividends and royalties to the extent that they constitute "non-business income." "Non-business income" is defined as all income other than "business income" and the definition of "business income" is an extraction from California decisional law.[12] It is quite clear from the material which bears on the intent of the Commissioners and those who participated in the drafting of the Act that the enumerated types of income would generally be assigned under the provisions of sections 4 through 8 but that in the less usual situations where such types of income could not be readily segregated from the "business income" of the taxpayer and more logically should be included with the "business income," they would be apportioned by formula.[13]

The Uniform Act, or its equivalent, is in effect in a majority of states including 20 of the 21 member states of the Multistate Tax Compact.[14] The Compact emerged in 1967 as a product of the Council of State Governments and the National Association of Tax Administrators. It was intended to bring uniformity and certainty to systems of allocation and apportionment in state income tax laws. The same motive prompted the adoption of the Uniform Act by the states. The impetus for the movement among the states toward uniformity and certainty was the Report of the Special Subcommittee on State Taxation of Interstate Commerce of the House Judiciary Committee (the Willis Committee) in 1964.[15]

The Report described the various attempts to achieve uniformity and noted their failure:

"The conclusion is inescapable that the voluntary adoption by the States of any kind of uniform system is a slow and halting process, if not a virtual impossibility. Efforts over many years have failed to achieve any marked degree of acceptance of uniformity of tax base or division-of-income rules. The result has been that highly regarded State tax administrators have themselves concluded that if uniformity is to be achieved, it can be done only by Federal action." [16]

It is an unfortunate fact that the enactment of the Uniform Act and the adoption of the Multistate Tax Compact by a significant number of states have not brought about uniformity and certainty with respect to the allocation and apportionment of income. Of particular importance to multistate business is the distinction between income to be specifically allocated ("non-business income") and income to be apportioned by formula ("business income"). There has been no consistency among the states or state associations or commissions in the application of the distinction between "non-business income" and "business income" as the following instances will show.

Although the Multistate Tax Compact came into being in 1967 and a Multistate Tax Commission was created and given authority to adopt uniform regulations, the Commission had not proposed uniform regulations as of April 1970 when the State of Illinois published proposed regulations under its Income Tax Act. The Illinois Act included the allocation and apportionment provisions of the Uniform Act. Those proposed regulations construed the definition of "business income" to include virtually all income. Only in rare instances would income of the types to be specifically allocated under the Uniform Act not be apportioned by formula. The regulations did not take into account the legislative history of the Uniform Act.[17] Instead, the authors of the regulations were unaware of that legislative history.

At about the time the State of Illinois was drafting regulations, the National Association of Tax Administrators (NATA) was engaged in the same task. At its annual meeting in Detroit in June of 1970, it released proposed regulations under the Uniform Act for consideration by the states. These proposed regulations differed significantly from the Illinois regulations but heavily favored apportionment of income in distinction to specific allocation under sections 4 through 8 of the Uniform Act. These regulations were eventually adopted by California, Oregon and Kentucky. Meanwhile, Illinois adopted its proposed regulations without substantial change.

In December 1971, the State of Indiana adopted regulations which followed rather closely the intent of the drafters of the Uniform Act. These regulations differ significantly from the Illinois regulations and those proposed by NATA with respect to the distinction between "non-business income" and "business income."

The Multistate Tax Commission established a Rules and Regulations Committee which worked closely with the NATA Regulations Committee. The Committee submitted regulations identical to those proposed by NATA to representatives of the member states for adoption. Hearings were held and the Hearing Officer recommended drastically different regulations with respect to the definition of "non-business income" and "business income." Again, the legislative history of the Uniform Act was ignored and reliance was placed on concepts in the Internal Revenue Code having to do with deductions and having nothing to do with allocation and apportionment of net income. At its meeting in September of 1971 (four years after the Compact had been in effect), the member states adopted uniform regulations which followed the recommendations of the Hearing Officer. The turmoil which this created is evident from the report of the Multistate Tax Commission describing the impact of the action taken by the member states.

"The vote appeared to constitute a stunning victory for the philosophy that all of a corporation's taxable income is "business income" and should, therefore, be apportioned. The new regulations shift to the taxpayer corporation the burden of establishing why, under the Uniform Division of Income for Tax Purposes Act (UDITPA), any of its income should be considered to be "non-business income" and, therefore, allocable to the state of the corporation's commercial domicile. The Multistate Tax Compact includes UDITPA in its entirety.

"In contrast to the regulations which were approved by the Commission, the proposal of the Rules and Regulations Committee accepted the position that, under UDITPA, certain of a corporation's income is "business income" and certain of it is "non-business income;" that the former is apportionable and the latter is allocable. In taking this position, the Committee believed that it was reflecting the interpretation of UDITPA which can generally be expected from the courts. The Hearing Officer disagreed with them on this score and the Commission supported him. Of course, the possibility exists that some courts will object that the regulations do not interpret the statute correctly." [18]

In a letter dated September 24, 1971 to the members of the Ad Hoc Committee drafting federal legislation, Eugene Corrigan, Executive Director of the Multistate Tax Commission, noted the adoption of the "full apportionment" concept in the Commission's regulations. He stated:

"While none of you apparently like to see full apportionment of all corporate taxable income, many of you on the business as well as the state side are concerned about the problems which may arise legally in making the change." (emphasis added)

The States of Alaska, North Dakota and, perhaps, Idaho adopted the Multistate Tax Commission regulations. At this point in time, multistate business was faced with four different applications of the definition of "non-business income" and "business income" in the Uniform Act, but that is not the end of the story.

In February 1973, the Multistate Tax Commission revised its regulations. Although the revised regulations are closer to the NATA regulations than those originally adopted, there are still significant differences. California has adopted the revised Multistate Tax Commission regulations with one notable exception involving dividend income. North Dakota and several other states have initiated steps to adopt the revised Multistate Tax Commission regulations. It is impossible to tell how many of the states will adopt the revised Multistate Tax Commission regulations or when they may do so.

Thus, in the period of time since the Willis Committee completed its comprehensive study there has been increased confusion, diversity and uncertainty. Concepts of allocation and apportionment are extremely important to the multistate business enterprise and the failure of the states to adhere to traditional concepts founded on constitutional principles and grounded on the determination of source of income has placed a heavy burden on interstate commerce. It is impossible, in many instances, to advise a multistate business on the proper way to allocate or apportion income for state tax purposes with any degree of assurance that the state will accept the method used in the tax return. The inclusion in a federal bill of allocation and apportionment provisions which operate as a limit on the amount of income which can be attributed to a taxing jurisdiction will reduce the uncertainty presently existing to manageable proportions.

2. Overtaxation and duplicative taxation

Overtaxation (or undertaxation) is implicit in the different methods of allocation and apportionment adopted by the states.

Footnotes at end of article.

The multistate business finds itself caught between different basic approaches to allocation and apportionment. For example, a number of states have established their right to tax all dividend income received by corporate taxpayers having a domicile within the state.[19] Under the MTC regulations, this same dividend income would be subject to formula apportionment and to tax in all states in which the recipient corporation is doing business.

There are not only differences between the states with respect to what is "non-business income" and "business income" under the Uniform Act but also in the application of the Act to related corporations. In *Chase Brass & Copper Company, Inc.* v. *Franchise Tax Board,* 10 Cal. App. 3d, 496 (1st Dist.), *cert. denied,* 400 U.S. 961 (1970), the California Supreme Court upheld the imposition of a combined report for the purpose of ascertaining the income tax liability of Chase Brass (a subsidiary of Kennecott Copper Corporation) which included the business income and apportionment factors of Kennecott and certain of its subsidiaries, while the Utah Supreme Court upheld a refusal to permit a similar report in Utah by Kennecott and permitted the State Tax Commission to use a separate accounting approach that treated one division of Kennecott as the taxpayer for Utah income tax purposes. *Kennecott Copper Corporation* v. *State Tax Commission,* 27 Utah 2d 119, *cert. denied,* 93 S. Ct. 323 (1972). The Supreme Court of the United States refused to intercede in spite of a representation in the Jurisdictional Statement of Kennecott to the effect that it was being taxed on more than 100% of its net income. Its refusal, no doubt, was due to the fact that the Court considered each method reasonable under the circumstances of the situation in each state, although the methods were not compatible with each other. As stated by Justice Frankfurter in his dissent in *Northwestern States Portland Cement Company* v. *Minnesota,* 358 U.S. 450, 476 (1959), "The problem calls for solution by devising a Congressional policy."

The Supreme Court also refused to review *Commonwealth* v. *Emhart Corporation,* 443 Pa. 397, 278 A.2d 916 (1971), *cert. denied,* 92 S. Ct. 451 (1971) although the Jurisdictional Statement alleged that the gain on the sale of securities which Pennsylvania included in the apportionable base of the Connecticut-domiciled taxpayer had been taxed in full by Connecticut on the theory that it did not represent business income.

In addition to the diversity that exists with respect to the interpretation and application of the Uniform Act, there is still considerable diversity in state income tax laws. As we have noted a number of states adopted the Uniform Act following the congressional study of state taxation of interstate commerce. More recently, there has been a trend away from the adoption of the Uniform Act in state income tax laws. Florida enacted a corporate net income tax law which adopts the full apportionment concept and contains a sales factor, which is weighted more heavily than the other factors of the formula. Ohio's recent corporate income tax law recognizes the federal dividend received deduction but apportions some dividend income. Wisconsin has just revised the sales factor of its corporation income tax law to provide for a method of assigning sales (other than of tangible personal property) contrary to the method prescribed by the Uniform Act and giving more weight to the sales factor than the other factors of the formula. Income tax laws have been approved by legislatures in New Hampshire and Washington which do not contain the distinction between "non-business income" and "business income" found in the Uniform Act. The Washington Act will not become effective unless the voters approve a constitutional amendment to authorize an income tax at the November 1973 elections.

There has been no attempt at uniformity in the apportionment of capital values for capital stock tax purposes similar to that with respect to income for state income tax purposes. As might be expected, there is considerable diversity in the formulas prescribed by state capital stock tax laws. As a result, there is the same potential for overtaxation and undertaxation inherent in this situation as there is with respect to state income taxation. The fact that many state capital stock tax laws contain a relatively low maximum tax or tax rate and that a number of states do not have such taxes probably accounts for the lack of attention heretofore paid the apportionment provisions in such laws. Also, the privileged nature of capital stock taxes has given them a different history in the development of the law. A Federal bill which contains a prescribed method of apportioning capital values beyond which a taxing jurisdiction may not go will relieve interstate commerce of the specter of overtaxation and will result in greater uniformity. It may be noted here that the multicorporate business enterprise is also faced with duplicative taxation if investments in and advancements to subsidiary or affiliated corporations are included in the capital stock tax base.

3. Unsound Business Practices

The attempt by some states to tax an apportioned part of dividends received by an out-of-state corporate taxpayer from a subsidiary corporation will have a profound effect on the way in which a multicorporate business enterprise is structured. Such a business will find it extremely beneficial to conduct its business in those states by means of separate subsidiaries which will have no dividend income to be taxed. It will give rise to the creation of pure holding companies in states that do not tax dividends for the limited purpose of receiving dividends from subsidiaries and investments. Multicorporate businesses may have to resort to filing consolidated returns as the only viable way to avoid an exorbitant tax burden thereby "impelling an unwarranted increase in the filing of consolidated returns" with all of the difficulties and inequities that such returns create.[20] On the other hand, if a multicorporate business cannot arrange its business affairs in order to reduce the duplicate effect of dividend taxation, it will find itself subject to a heavy and discriminatory tax burden. The present state of affairs lends itself to inefficient allocation of resources.

It is perfectly natural for a state to adopt a tax system that minimizes the impact on its citizens and, in effect, exports its tax burden. The incidence of taxation of dividend income or foreign source income of a multistate or multinational business will be distributed far beyond the borders of the state imposing the tax and will affect residents very little. The resulting shift in the state's tax burden may be desirable from the state's point of view but it is not in the national interest as evidenced by the manner in which those items of income are treated under the Internal Revenue Code. In order to minimize the deleterious effect of state taxation of intercorporate dividends, whether from domestic or foreign sources, this income should not be taxed at all but if taxed should be allocated to the state of the receipient's domicile.

4. Compliance Costs

State income and capital stock taxes are providing an increasingly large share of tax revenues, with an increasing number of states imposing such taxes. The magnitude of these taxes indicates the high cost to taxpayers and the burden on interstate commerce caused by diverse interpretations of tax laws, inconsistency in administration, and overzealous enforcement of inequitable tax laws. An example is the enforcement of "throwback" provisions contained in the sales factor of some income tax laws which present serious compliance and enforcement problems. The amounts involved in litigation before the courts today and in the assessments outstanding against multistate businesses bear mute testimony to the seriousness of this situation.

It is not possible to determine precisely the costs associated with the problems described above or to measure the economic impact those costs might have upon interstate commerce. Indeed, we may not be able to do so until it is too late and a proliferation and aggravation of the problems discussed above together with increasingly sharp foreign competition create a crisis for United States businesses. Few municipalities or other units of local government impose income taxes or capital stock taxes today. There is no reason why they might not do so in the future and all of the problems described above will be aggravated many times if that should come to pass. In the final analysis, the key question is whether the Congress is willing to permit the present condition in which interstate commerce must operate—a situation which is both chaotic and unpredictable—to continue; or whether the Congress will take this opportunity to create an orderly system of state taxation of interstate commerce.

G. How should limits on the amount of income or capital attributable to a taxing jurisdiction be determined?

The attributes which well-drafted allocation and apportionment provisions should have are set forth in the General Comments at the beginning of this section. Allocation and apportionment provisions afford the multi-state taxpayer the protection of due process and comport with generally accepted concepts of fairness and equity. Due process is satisfied if there is a discernible connection between the income or capital attributed to a taxing jurisdiction and the presence, activities or property of the taxpayer within the boundaries of the taxing jurisdiction. If the method of attributing income or capital does not fulfill this requirement, there is taxation of extraterritorial values or events. While the measure of a tax is subject to less scrutiny when a franchise fee is involved, the policy consequences pertinent to franchise taxes are irrelevant to the proper limitations under a federal bill governing all state income and capital stock taxes. If extraterritorial values or unrelated income are attributed to a taxing jurisdiction, the taxpayer is being subjected to taxation without representation with all of the consequent harm resulting from such a situation.

It has been generally accepted that the income and capital values of a corporation may be attributed to a taxing jurisdiction by means of a formula. This is admittedly a rough measure of the income or capital values having a source or location in the taxing jurisdiction. In the absence of federal legislation, many different apportionment schemes have been permitted by the Courts. Nevertheless, the outer limits of permissible attribution have been set by the Courts. A profit which is the end result of a series of interrelated activities, such as purchase of raw materials, manufacturing and sale to wholesalers, is appropriately attributed to a taxing jurisdiction by means of a formula whose factors reflect the income-producing elements of the profit realized. Income from investment activities presents a more difficult problem of attribution. Courts have taken different approaches to the attribution of rents, royalties, interest and dividends. This subject will be explored further in the discussion of the treatment of dividend income.

Footnotes at end of article.

As a general proposition, attribution by means of formulary apportionment should comply with two fundamental principles: (1) there should be a relationship between the income or capital being apportioned and the factors of the apportionment formula; and (2) the factors of the apportionment formula should represent the activities or property of the taxpayer in the taxing jurisdiction. If the concept of source of income is adopted, due process is afforded the taxpayer and the criteria of appropriate attribution by formula will be met. To the extent that source of income is not recognized, there will be a departure from the principles outlined above and, if severe enough, a violation of due process.

The allocation and apportionment provisions of Title II of S. 1245 satisfy the criteria for appropriate limits on the amount of income or capital attributable to a taxing jurisdiction. The formula prescribed is one in common usage today in state income tax laws. Its application to capital stock taxes may be somewhat more controversial. A serious problem is avoided in this regard if there is little likelihood that there will be any significant amount of intangibles in the capital stock tax base. For this reason, S. 1245 includes investments in and advancements to subsidiary and affiliated corporations—the major item of intangibles in many corporate taxpayers' balance sheets.

S. 1245 describes an optional three-factor formula to be applied to a corporation's apportionable income, or to its entire capital (reduced by investments in and advancements to subsidiaries and affiliated corporations) as determined under state law for the valuation date at or after the close of the taxable year. In the case of a tax measured by income, the limit on the amount of income attributable to a taxing jurisdiction includes the amount of income apportioned to it by the formula and, in addition, income allocable to it. Apportionable income does not include foreign source income and divided income (dividend income will be treated as apportionable income if the taxpayer's principal business activity is dealing in securities). Dividend income, other than that which constitutes foreign source income, received from corporations in which the taxpayer owns less than 50% of the voting stock is considered allowable income and will be allocated to the state of commercial domicile of the taxpayer receiving such income.

The property factor is limited to the average value of the corporation's real and tangible personal property owned and used, or rented and used, during the taxable year and located in the United States. Owned property is valued at its original cost. Rented property is valued at eight times the net rents payable during the taxable year. Property leased to others is excluded. Inventory is included. The location of movable property is determined in accordance with rules set out in section 514 of the Act. These rules are identical to those suggested by the Special Subcommittee on State Taxation of Interstate Commerce of the Committee on the Judiciary in House Report No. 952, 89 Cong., 1st Session.

The payroll factor includes wages as defined for purposes of the Federal Unemployment Tax Act paid to employees located in the United States. The location of an employee for purposes of computing the amount of wages paid in a state is determined under the provisions of section 515 of the Act. Those provisions were adopted from the Model Unemployment Compensation Act which has been enacted in all the states so that a taxpayer will have readily available data to compute its payroll factor in any state.

The sales factor includes receipts from all sales and from the rental of tangible personal property. Sales of tangible personal property are assigned on a destination basis. Sales, other than sales of tangible personal property are assigned by reference to the income-producing activity. Rental receipts are assigned to the state in which the property is located. Only sales within the United States are included.

If the denominator of any factor is zero, that factor is disregarded in computing the apportionment fraction. If the denominators of all factors are zero, then all income is assigned to the state where the corporation has its business location.

Section 207(b) provides for adjustment of the apportionment factors to include property, payroll and sales attributable to sales of tangible personal property having an ultimate destination outside the United States if income from such sales is included in the apportionable base.

The most controversial aspects of the allocation and apportionment provisions of S. 1245 are those concerning the allocation of certain dividend income and the definition of the sales factor. This discussion will be limited to those two aspects of the bill with a few comments on the problem of rigidity that is inherent in the prescription of a formula to be applied to many different kinds of business.

In S. 1245, that dividend income which is subject to state income taxation (dividends other than certain dividends constituting income from sources outside the United States and dividends from domestic corporations in which the taxpayer owns less than 50 percent of the voting stock) are specifically assigned to the state of commercial domicile.

There are several reasons why this method of assigning dividends appears to be appropriate. First, such income can be readily accounted for separately. Second, the activities which produce such dividend income normally take place at the taxpayer's headquarters, i.e., in the state of taxpayer's commercial domicile. Third, such dividend income typically has little or no economic connection with the states in which the business assets and activities of the taxpayer are located. More specifically, such income is not related to the three factors of the prescribed apportionment formula because such income is not the product of the tangible property used in the production or sale of the taxpayer's goods or services; very little, if any, of the taxpayer's payroll is associated with it; and there is seldom any relation to the state of destination of the goods or services generated by the taxpayer's direct business operations. Dividend income traditionally has been specifically allocated on a situs basis by state income tax laws, and it has been recognized by the courts that the state of commercial domicile has a strong claim to the taxation of dividend income.[21]

Although the Congress has full and complete power to regulate interstate commerce and this power has been broadly interpreted in other areas, such as labor relations,[22] different considerations are present when the taxing power of the state is involved. If taxation of dividend income received by one corporation from another is not of itself an impediment to interstate commerce, it is difficult to understand upon what basis of national interest a state in which a corporate taxpayer maintains its commercial domicile may be forbidden to tax all of the dividend income received by that corporation. Indeed, the state of commercial domicile in which the investments giving rise to the dividend income are managed and controlled is best able to support its taxation of such income on a valid economic foundation and in accord with the basic justifications for governmental taxing power. Congress should not attempt to restrict this taxing power of the state of commercial domicile except for strong and convincing reasons. It is submitted that no such reasons exist.

Assignment of all such income to the state of commercial domicile by the proposed federal statute will avoid Constitutional problems raised by the attempts of other states to tax portions of the same income or by the denial of the right of the state of commercial domicile to tax all of such income. Since attribution to the state of commercial domicile has been the general practice among the states until very recently, such treatment of dividend income by S. 1245 would not seriously affect state income tax revenues.[21]

The definition of the sales factor in S. 1245 includes the total sales of the taxpayer within the United States during the taxable year. Sales include receipts from the rental of tangible personal property. There is no question but what a sales factor should include receipts from all sales made in the ordinary course of business. Also, it is logical to include rental receipts. There does not appear, however, to be any basis for distinguishing between receipts from the rental of tangible personal property and from the rental of real property.

A more difficult problem is presented with respect to receipts from the investment of intangible property. In one sense, interest is the rent one receives for the use of his money and should be treated no differently than receipts from the rental of tangible personal and real property. Receipts from sales of intangibles should be included if tangibles are regularly sold by the taxpayer. Royalties and dividends, to the extent included in the apportionable base, should be included in the receipts factor. The problem is locating receipts from intangibles within and without the taxing jurisdiction. If the policy is to apportion such income, then the specific assignment of such income for purposes of developing the receipts factor counters the effect of including such income in the apportionable base.

The problem is essentially what to include in the apportionable base, rather than how to assign income in the receipts factor. If it is decided to apportion interest, royalties and dividends, then it must be determined that such types of income are appropriately assigned to a taxing jurisdiction on the basis of a taxpayer's tangible business assets, payroll and receipts from sales of its products or services. For the many reasons set out above, it is believed that dividend income cannot be appropriately assigned by means of a formula. The business community has reservations about the appropriateness of assigning interest, capital gains and royalties by formula but is willing to accept formulary apportionment of such types of income because they are more difficult to segregate and they will not likely represent a relatively significant amount of income to the taxpayer.

The sales factor in S. 1245 includes sales of real property as well as intangible property. These sales, however, are assigned to a state based upon the place where the income-producing activity is performed. Sales of real property logically should be located in the state in which the real property is located. The location of the income-producing activity may cause some difficulty with respect to sales of intangible property and it may be desirable to define more precisely the location of such sales.

The sales factor in S. 1245 does not include a "throwback" provision. Sales of tangible personal property are on a straight destination basis. A "throwback" provision requires sales to be reported to the state from which the property was shipped if either (1) the taxpayer is not taxable in the state of the purchaser, or (2) the purchaser is the United States Government.

In attempting to determine for each state how much of the taxpayer's income is attributable to that state, the philosophy should be to measure the activities being performed in that state which help generate the in-

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come—and not the activities of the taxpayer in some other state. For example, it does not seem appropriate that less income should be assigned to State A for 1973 compared to the amount assigned for 1972 if the taxpayer's activities in State A were exactly the same in both years but, because of additional activities in State B, the taxpayer became subject to the jurisdiction of State B during 1973. This is exactly what would happen if State A and the so-called "throwback" provision and a taxpayer who previously was not subject to the jurisdiction of State B to which he shipped did become subject to that state's jurisdiction.

The utilization of a "throwback" provision would also encourage taxpayers to adopt uneconomic routing procedures in order to minimize their taxes. For example, with the existing state tax rates, a taxpayer who has substantial foreign shipments might well find it economical to transfer all shipments to a place of business in a low-tax state and then make all of these shipments to his foreign customers from that state. Also, the use of a "throwback" or "recapture" provision increases the administrative complexities because of the dual test with most sales on a destination basis but others on an origin basis. These practical problems were recognized by the Special Subcommittee on State Taxation of Interstate Commerce. On page 244 of Volume I of their report they stated that:

"It should also be observed that the existing throwback rules add to the complexity of the system even if their applicability is clear. When a throwback rule applies, it will normally require the taxpayer to develop data in addition to that needed to comply with the primary division-of-income rules of the taxing State. When a destination State requires that certain sales be thrown back to the State of origin, for example, the taxpayer is required to determine the point of origin of each transaction subject to the throwback. The development of such information may materially increase the burden of compliance."

With respect to foreign sales, there is considerably less justification for a sales recapture provision because the tax laws in foreign countries are entirely different from those in the United States and P.L. 86-272 has no meaning in these foreign countries. There is nothing to prevent a foreign country from levying a tax strictly based on the fact that the shipment was made into that foreign country. In other words, the foreign country has the right to levy a tax if it so chooses, regardless of order activity, place of business, etc. Further, we believe it is in the national interest to encourage the exportation of products and the exclusion of foreign destination sales from the "throwback" rule does offer such encouragement. It sould be noted that the property and payroll factors will still work to apportion a substantial part of the income from such export sales to the various states. Apparently, those who worked on the Ad Hoc Bill (S. 2092) recognized many of these considerations and, therefore, that bill provides that there would be no "throwback" provisfon for foreign shipments, other than sales to the United States Government. In the analysis supporting the Ad Hoc Bill, the following comments were made concerning the "throwback" rule as it might apply to foreign shipments:

"Export sales, however, other than export sales to the U.S. Government, are assigned to the foreign destination. . . . The "throwback" provisions properly apply where the nationally imposed jurisdictional standards prevent the destination state from imposing tax, but such justification is lacking where sales have a destination in foreign countries, since such countries are subject neither to the jurisdictional standards nor the uniform apportionment formula imposed on the states."

It is safe to predict that the administrative problems both for the states and taxpayers will be increased substantially and numerous disputes will arise if a "throwback" rule is adopted with respect to foreign shipments.

As to sales to the U.S. Government, there appears litle justification for assigning such sales to the state from which they were shipped. This is true, particularly, when viewed from the standpoint of the many administrative complexities that result from a sales test which would require the accounting for some sales on a destination basis and others on an origin basis. It might be argued that sales to the United States Government differ from commercial sales in that more of them are transacted in Washington, D.C. or at the taxpayer's principal place of business. However, if such were the argument, then an order-activity type test would seem more appropriate than a point-of-shipment basis. On balance, however, the exception in treatment for sales to the United States Government does not seem to justify the administrative problems.

It should also be noted that a number of states, in adopting their laws, have not included the sales "recapture" provision, but rather have enacted a straight destination sales test.

There is rigidity in the prescribing of a formula in definite and specific terms and it may be that difficulty will arise in applying the prescribed formula to every type of business covered by the bill. This is a matter which needs further study. Such a study should not in any way delay prompt Congressional action.

D. State taxation of dividends and foreign source income

The multicorporate business enterprise is also faced with duplicative taxation when states subject intercorporate dividends and foreign source income to taxation. Although few states that have any number of multicorporate and multinational businesses headquartered within their boundaries have subjected intercorporate dividends (particularly from subsidiaries) and foreign source income to taxation, the trend toward apportionment of dividend and foreign source income is likely to change this situation. It should be noted here that the result of such taxation by the states is the obstruction of the free flow of funds between affiliated corporations, unwieldy capital structures for subsidiaries, and the subjection of a single economic gain within an affiliated group to multiple taxation. The transfer of funds up a chain of affiliated corporations usually does not result in a change in beneficial ownership and should not be considered taxable events. There is also the matter of discrimination. State income tax laws should be neutral as far as the form which a business enterprise takes is concerned and should not penalize multicorporate enterprises unless there are sound reasons for discouraging multiple corporations. It is not practicable for some businesses to operate as a single corporate entity and the Congress should protect them against discriminatory taxation that requires them to bear a disproportionate share of a state's tax burden.[24]

Recognizing constitutional limitations, it is often the expressed intent of state income tax laws to tax only that income derived from sources within that state.[25] However, some of these same states are reaching well beyond that scope and taxing foreign source income by either taxing the foreign source dividends received by a taxpayer or, alternatively, by requiring that the income of foreign companies be included in the state's apportionable tax base, whether or not such income has been received by the taxpayer in the form of dividends.

In the view of many taxpayers, state taxation of dividends and foreign source income are the two most important elements in the current controversy in state taxation. It is also the view of many taxpayers that the sections of S. 1245 dealing with these items of income are needed to make state tax requirements compatible with present Internal Revenue provisions dealing with these types of income at the federal level.

In regard to the taxation of income, states generally take a different approach to the determination of the source of the income than does the Federal Government:

(1) States generally do not have provisions in their income tax laws comparable to those contained in Subchapter N of the Internal Revenue Code, which are generally known as the sourcing sections of the Code.

(2) Another important difference between state and federal tax rules is the fact that only one state (Alaska) provides a mechanism similar to the foreign tax credit provisions contained in Sections 901 through 906 of the Internal Revenue Code. In fact, many states do not even provide a deduction for foreign taxes paid.

(3) A few states aggravate further the burden upon taxpayers in regard to foreign source income by invoking the so-called unitary business concept of taxation. Under this concept, income of domestic companies related to a taxpayer with a business location in the state by application of a 50% ownership test will be included in that taxpayer's income base to be apportioned to the state. The same is true of foreign companies whether or not their income has actually been distributed in the form of dividends.

(4) Additionally, some state laws do not provide for the elimination of "gross-up" from the federal starting point in arriving at state income tax base. Since the amount "grossed-up" is equivalent to foreign taxes paid before the payment of dividends and is included in the Internal Revenue Code merely as a mechanism for arriving at the proper amount of income to which the foreign tax credit will apply, the inclusion of "gross-up" in state tax bases can result in the taxation of fictitious income.

It is the foregoing differences between the federal and state tax rules which create the need for compatibility, which can be achieved by the enactment of an Interstate Taxation Act by the Congress. We feel that it is within the power of Congress to act in this area because of the authority vested in it by Article I, Section 8, Clause 3 of the U.S. Constitution. Moreover, state taxation of foreign source income improperly injects the states into foreign policy, which is the sole jurisdiction of the Federal Government.

Section 207(a)(1) of S. 1245 prohibits the inclusion in "apportionable income" of income from sources without the United States, including dividend income. The prohibition against the apportionment of foreign source income, coupled with the prohibition against allocating such income in Section 208, results in a total exclusion from the tax base of income earned outside the United States. It is important to note that, by virtue of Section 522, the income to be excluded is that to which the foreign tax credit provisions of the Internal Revenue Code presently apply. Most states have not attempted to tax this income, but, because of the actions of a relatively few states, the S. 1245 prohibitions regarding foreign source income are necessary.

Section 207(a)(2) excludes all dividends, regardless of source, from apportionable income unless the taxpayer's principal business activity is dealing in securities. Indirect taxation of dividends, such as through the California "interest offset provision," is also forbidden. The purpose of this exclusion is the

Footnotes at end of article.

elimination of double taxation by one or more states, and to make clear as to a single state that having taxed the earnings of a corporation, it cannot again tax those earnings as dividends to an affiliate. Thus, dividends from foreign sources and dividends from corporations in which the taxpayer owns 50 percent or more of the voting stock are not allocable to any state. However, by virtue of Section 208, "portfolio dividends," i.e., those from less than 50 percent-owned corporations, are allocable to the state of commercial domicile and that state will determine whether or not it desires to tax them.

The combined result of Sections 207 and 208 is to exclude from the tax base all dividends from affiliated corporations. This, too, is compatible with the taxation of intercompany dividends under the Internal Revenue Code. Under the Internal Revenue Code dividends passed among a consolidated group of U.S. corporations affiliated by stock ownership of at least eighty percent are eliminated from the tax base. To the extent that there is less than an eighty percent ownership of one U.S. corporation by another, eighty-five percent of the dividend income is eliminated by virtue of Internal Revenue Code Section 243 (dividend received credit). In the case of dividends from foreign affiliates, the tax on such dividend income is largely, if not wholly, eliminated by the foreign tax credit.

At this point, it may be beneficial to present, by way of an hypothetical survey, a comparison of the different approaches to taxation of dividends and foreign source income now prevalent among the various states. In our hypothetical case we have assumed a United States operating company domiciled in New York and also doing business in the states of Michigan, California and Maine. We have assumed that the corporation receives dividends from three wholly-owned foreign subsidiaries whose earnings are completely outside the United States. For the purpose of simplicity in comparing tax burdens in the four states, we have assumed identical operating favors (sales, payroll and property) in these states. Also, we have computed the state taxes at a standard rate of 10 percent, as well as showing the taxes at the actual rates.

The four states selected for our examples represent four different approaches to taxation of foreign source income by the states. The methods used and the resulting tax liabilities based on the assumed operating facts and a 10 percent tax in each state follow:

Michigan requires the inclusion of foreign subsidiary dividends in the income base to be apportioned. These foreign dividends are included in the denominator of the sales (receipts) factor in the computation of the apportionment percentage. In the attached example, $923,200 of income is apportioned to Michigan and, with a 10 percent tax rate, the tax liability would be $92.320.

California follows a technique known as the unitary concept, which requires the consolidation of all affiliated companies 50 percent, or more, owned by a common parent. As indicated by the attached example, many taxpayers are presently bearing an unreasonable burden in that state with respect to taxation of foreign source income. Based on the assumed operating facts, $1,485,000 of income is apportioned to California and the tax liability at a 10 percent rate would be $148,500.

Maine follows the practice of allocating dividends, including foreign dividends, to the state of commercial domicile. In the case of the U.S. parent company, which in our example is domiciled in New York, only the parent's domestic operating income would be apportioned to Maine. The apportioned amount under the assumed facts would be $250,000 and the tax at 10 percent would be $25,000. But if the parent company in the example were domiciled in Maine instead of New York, all of the foreign dividends would be included in the income base, together with the $250,000 apportioned operating income of the parent. The result would be a tax of $325,000, based on apportioned and allocated income of $3,250,000 and a 10 percent tax rate.

New York does not tax dividends received from subsidiaries more than 50 per cent owned. Other dividends are taxed in proportion to the payor's business done in New York State. Therefore, although the parent company in our example is domiciled in New York, only its domestic income is taken into the base for apportionment. This produces apportioned income of $250,000 and tax liability of $25,000 at a 10 percent rate.

PARENT COMPANY OPERATING ONLY IN THE UNITED STATES

	Total	Operating in States, domicile			
		New York	Michigan	California	Maine
Sales by destination	$10,000,000	$2,500,000	$2,500,000	$2,500,000	$2,500,000
Payroll	4,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Property:					
1st cost	8,000,000	2,000,000	2,000,000	2,000,000	2,000,000
Depreciation reserve	4,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Net value	4,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Net income before Federal income tax:					
Operating income	1,000,000				
Foreign source dividends	3,000,000				
Total	4,000,000				

FOREIGN INCORPORATED SUBSIDIARIES—100 PERCENT OWNED—FOREIGN OPERATING

	Sub A	Sub B	Sub C
Sales—Foreign destination	$10,000,000	$10,000,000	$10,000,000
Payroll—Foreign	1,000,000	100,000	1,000,000
Property—Foreign:			
1st cost	2,000,000	200,000	1,000,000
Depreciation reserve	1,000,000	100,000	500,000
Net value	1,000,000	100,000	500,000
Net income before foreign income tax	4,000,000	2,000,000	4,000,000
Foreign income tax	2,000,000	1,000,000	
Net after tax income	2,000,000	1,000,000	4,000,000
Dividends paid to parent	1,000,000	1,000,000	1,000,000

MICHIGAN

Apportionment fraction	Numerator	Denominator	Percent
Sales: Parent	$2,500,000	$10,000,000	
Dividends:			
Sub A		1,000,000	
Sub B		1,000,000	
Sub C		1,000,000	
Total	2,500,000	13,000,000	19.23
Payroll: Parent	1,000,000	4,000,000	25.00
Property: Parent, gross	2,000,000	8,000,000	25.00
Total			69.23
Average			23.08

Apportionment fraction	Numerator	Denominator	Percent
Income base:			
Operating income before Federal income tax		1,000,000	
Dividends:			
Sub A		1,000,000	
Sub B		1,000,000	
Sub C		1,000,000	
Total		4,000,000	
			Amount
Apportioned to Michigan at 23.08 percent			$923,200
Tax at 10 percent (hypothetical rate for comparison)			92,320
Tax at actual Michigan tax rate of 7.8 percent			72,010

CALIFORNIA

Apportionment fraction	Numerator	Denominator	Percent
Sales: Parent	$2,500,000	$10,000,000	
Sub A		10,000,000	
Sub B		10,000,000	
Sub C		10,000,000	
Total	2,500,000	40,000,000	6.25
Payroll: Parent	1,000,000	4,000,000	
Sub A		1,000,000	
Sub B		100,000	
Sub C		1,000,000	
Total	1,000,000	6,100,000	16.39
Property: Parent, gross	2,000,000	8,000,000	
Sub A		2,000,000	
Sub B		200,000	
Sub C		1,000,000	
Total	2,000,000	11,200,000	17.86
Total			40.50
Average			13.50
Income base:			
Operating income before Federal income tax		1,000,000	
Sub A: Income before foreign income tax		4,000,000	
Sub B: Income before foreign income tax		2,000,000	
Sub C: Income before foreign income tax		4,000,000	
Total		11,000,000	
Apportioned to California at 13.50 percent			$1,485,000
Tax at 10 percent (hypothetical rate for comparison)			148,500
Tax at actual California tax rate of 9 percent			133,650

MAINE

Apportionment fraction	Numerator	Denominator	Percent
Sales: Parent	$2,500,000	$10,000,000	25.00
Payroll: Parent	1,000,000	4,000,000	25.00
Property: Parent	2,000,000	8,000,000	25.00
Total			75.00
Average			25.00

MAINE

Apportionment fraction	Numerator	Denominator	Amount
Income base:			
Operating: Before Federal income tax			$1,000,000
Apportioned to Maine at 25 percent			250,000
Tax at 10 percent (hypothetical rate for comparison)			25,000
Tax at actual Maine rate of 4 percent			10,000
Domiciled in Maine: Apportionment fraction, same as above.			
Income base:			
Operating: Before Federal income tax			1,000,000
Income subject to apportionment			250,000
Dividends to be allocated to Maine:			
Sub A		$1,000,000	
Sub B		1,000,000	
Sub C		1,000,000	
Total		3,000,000	
Apportioned and allocated to Maine			3,250,000
Tax at 10 percent (hypothetical rate for comparison)			325,000
Tax at actual Maine tax rate of 4 percent			130,000

NEW YORK

Apportionment fraction	Numerator	Denominator	Percent
Sales: Parent	$2,500,000	$10,000,000	25.00
Payroll: Parent	1,000,000	4,000,000	25.00
Property: Parent, net	1,000,000	4,000,000	25.00
Total			75.00
Average			25.00
			Amount
Income base: Operating income before Federal income tax			1,000,000
Apportioned to New York at 25 percent			250,000
Tax at 10 percent (hypothetical rate for comparison)			25,000
Tax at actual New York State tax rate of 9 percent			22,500

The effect of these different approaches to taxation of our hypothetical U.S. corporation by the four states may be summarized as follows, using the standard 10 percent tax rate. New York excludes the foreign dividends from the income base as does Maine, with the result that the tax liability in both states would be $25,000. But if the parent were domiciled in Maine instead of New York, the Maine tax would be increased by $300,000 as a result of allocation of $3,000,000 dividends to that state. Because of bringing foreign dividends into the base for apportionment, Michigan's tax is increased by $67,320 above the $25,000 liability which would result with the dividends excluded. By including some of the foreign subsidiaries in applying the unitary concept to the U.S. parent company, California increases the tax liability by $123,500 above the $25,000 liability with foreign income excluded.

Of the above examples, the Michigan approach follows the regulations developed by the Multistate Tax Commission. As member states in the MTC adopt these regulations, they too can be expected to use the Michigan approach. While only Oregon has so far adopted the California unitary business concept, pressures are mounting in several other states to adopt it.

The examples illustrate how our foreign commerce and investment are burdened by state taxation of foreign source income, with the trend being for more and more states to tax such income.

It is the position of those who support S. 1245 that the enactment of sections 207, 208, 209, and 522 of that measure will accomplish the result of eliminating discriminatory taxation of foreign source income and achieving compatibility of state income taxes with federal income taxes under provisions of the Internal Revenue Code.

E. Consolidation-combined reporting

The first step in any discussion of "consolidation" requires that it be reconciled with the phrase "combined reporting." Both terms refer to the joining of the income and factors of more than one related company for the determination of state income. While various distinctions have been made between the terms [26] (e.g., when only the income and factors of taxpayers within a single jurisdiction are joined, some states call it "combined reporting" and others "consolidation"), for purposes of this presentation the term "consolidation" is used to describe the concept regardless of scope.

The majority of states have statutes that authorize some degree of consolidation but, as a practical matter, less than a dozen states either require or permit consolidation of any type.

There are four general practices with respect to consolidation. They are:

(1) Prohibited.

(2) Permitted or required.

(3) Required but not permitted.

(4) Permitted but not required.

To the extent, if any, that federal legislation recognizes consolidation, identical options should be available both to taxpayers and states—consolidation must not be a one-way street.

The Willis Committee considered consolidation and made the following recommendations:

Footnotes at end of article.

THE TREATMENT OF MULTICORPORATE ENTERPRISES

Often corporations which are controlled directly or indirectly by the same interests are so mutually dependent on each other for their success that the books of an individual corporation cannot accurately reflect that corporation's contribution to the profitability of the entire multicorporate enterprise. In short, separate accounting among affiliated corporations is often as inappropriate and as troublesome as is separate accounting among the branches of a single corporate entity. As a result some States have formulated "unitary business" rules designed to treat the income of affiliated corporations in the same manner as though earned by a single business.

The present "unitary business" rules provide vague and sometimes unevenly administered standards for determining when the income of a multicorporate enterprise should be treated as a whole. In order to clarify this troublesome area and to provide standards which are both easy to apply and equitable in their effect the Committee recommends that State tax administrators be allowed to require consolidation in any case where two or more corporations are affiliated by common ties of more than 50 percent of stock ownership and at least one of the affiliates has realty or an employee in the State. Conversely, all such affiliated corporations should have the right to consolidate their income for the purpose of any State's tax. Thus, not only would administrators be able to obviate the inaccuracies that flow from separate accounting among members of a multicorporate group, but the multicorporate enterprise would be able to insist that its total liabilities to all States be no greater than if all

of its operations were conducted by a single corporate entity.

CORPORATIONS WHICH OPERATE OUTSIDE OF THE UNITED STATES

In keeping with the basic structure of our Federal system, the Committee is of the view that international tax policy should be formulated by the Federal Government and not by individual States. Therefore, with respect to income earned by corporations which operate either wholly or partially outside of the United States, the Committee recommends that State apportionment rules be required to conform to the international policies that have been formulated for Federal income tax purposes.

Thus, if the immunity of any income from taxation by the United States results from its being considered to be from sources outside the United States, such income could not be attributed to any State of the United States. Likewise, no State would be allowed to require that such income be included in the consolidated income of a multicorporate enterprise for apportionment purposes. These prohibitions apply to corporations incorporated outside of the United States and are designed to eliminate inconsistencies which currently exist between Federal policy and the practice of a few States.

At the same time, if a corporation is considered to have income from sources outside the United States and that income is taxable by the United States, such income could be included in a State's tax base prior to apportionment and the State would not be required to include property or payroll located outside the United States in its apportionment formula. These rules would apply to corporations incorporated in the United States and are designed to make available for apportionment among the States all of the tax base available to the United States.

Before proceeding to consider the available consolidation alternatives, it must be emphasized that the treatment accorded dividends and foreign source income has a controlling effect as to any proposal. If such items are considered taxable to the States then consolidation must be available so that proper factor representation will more accurately affect the assignment of income to the taxing jurisdictions. However, we are strongly opposed to the taxation of dividends and foreign source income.

Assuming, as we believe correct, that such intercorporate dividends and foreign source income are exempt from taxation, then the following alternatives would be available:

The first alternative would be consolidation based solely on ownership. This is the basis in S. 2092. Its asset is simplicity of determination of companies included. Among the strong objections to this procedure are these:

(1) Consolidation would be mandated in every state in which any affiliate of a multicorporate organization is taxable.

(2) In the case of an affiliated group of corporations engaged in diverse businesses, consolidation would join unlike taxpayers with indefensibly distorted results.

(3) Since not a single state has a consolidation procedure based solely on ownership, this type of consolidation would be seriously disruptive of existing tax systems.

(4) This procedure would raise a serious question of constitutional due process since only the single thread of ownership could be offered to support the right to consolidate.

The second alternative would be consolidation based upon the unitary relationship of the consolidated corporations; i.e., only those corporations having an operational interdependence would be included. This unitary concept has the same degree of theoretical justification that applies to the taxation of a corporation with unitary divisions—it differs principally in the legal concept of "piercing the corporate veil." As a practical matter, however, the unitary procedure suffers the following defects:

(1) The determination of the affiliates to be included in the consolidation requires highly informed and sophisticated subjective judgments. This results in:

(a) Complex budget forecasting problems for states and taxpayers.

(b) Potential variances in the consolidated group among the states and attendant disputes resulting in litigation.

(c) Problems resulting from the high degree of sophistication required in making audit determinations involving such a consolidated group. Few, if any, states are currently staffed to perform such audits on a sustainable basis.

(2) Since only two states currently enforce the unitary consolidation procedure, its spread to other jurisdictions would produce essentially the same disruptive result previously mentioned under the bare-ownership theory.

The third alternative would be the "non-arms-length" concept presented in S. 1245. This confines the consolidation to those related corporations which are found to be engaged in non-arms-length transactions. Among the defects are:

(1) The states lack the expertise to audit.

(2) The states could claim that any sale between related parties is prima facie non-arms-length.

(3) The corporations could create non-arms-length transactions with affiliates desired in a consolidation.

(4) Complex budget projections for states and taxpayers.

A fourth alternative would confine consolidation to affiliates which are taxpayers in the State. This is the current practice of many states and affords corporations a potential to consolidate loss affiliates. To some, its principal defect is the lack of theoretical consistency with the use of the apportionment formula. An acceptable variant would be the consolidation of unitary affiliates which are taxpayers in the state.

The fifth alternative is a prohibition of consolidation. As previously mentioned, the alternatives are presented on the assumption that dividends and foreign source income will be exempt from state taxation, thereby limiting any consolidation to domestic corporations. Under these circumstances consolidation is not the panacea that some suggest. Consolidation does not necessarily produce income. Currently only five states (Washington, Texas, South Dakota, Wyoming and Nevada) do not have an income tax. It can be reasonably anticipated that the first three will fall from these ranks in the near future. What would domestic consolidation do then? It would not alter the income to be divided among the states—it would merely alter the reporting by adding to some states only what is taken from others.

Thirty-eight states had taxes measured by income at the time of the Willis study. Eight have enacted such taxes since then. The potential tax havens in Illinois, Ohio, Michigan, Florida, etc. have vanished. The variation in tax rates would not be adequate incentive for a corporation to shift its income, if such were possible.

This prohibition will cause the least disruption in current tax systems, since under current statute and practice the majority of states do not regularly require consolidation. The case of compliance, audit and budget projections would be greatest for both state and corporation.

III—JURISDICTION OF FEDERAL COURTS

A federal law regulating the taxation by the states of interstate commerce should provide for a single federal court with exclusive jurisdiction to review disputes arising from its application or from P.L. 86–272.

The principle of federal review was included in the original Willis Bill, H.R. 11798, in 1965 (Sec. 522 (f) and (g), and in the Willis Report (Vol. 4, pp. 1162–63)). The reasons include these:

(1) *Uniform judicial interpretation.* Review by a single Federal court is far preferable to the creation of individual and inevitably conflicting bodies of precedential law in state courts. The most compelling recent example, already cited, is the treatment of Kennecott Copper Corporation and a subsidiary by the courts of California and Utah. In *Chase Brass & Copper Co., Inc.* v. *Franchise Tax Board,* California found Kennecott and its subsidiary, Chase Brass, to be unitary businesses and imposed its tax on a "combined" basis even though Kennecott did no business there. This produced far more revenue for California than if Chase Brass had been separately taxed. Soon thereafter, in *Kennecott Copper Corporation v. State Tax Commission,* the Utah Supreme Court upheld the Utah Tax Commission it its determination that, even though the same two companies were indeed unitary, they must file tax returns on a separate reporting basis. Utah's revenues also were greatly increased. The United States Supreme Court refused to review either case. This was inequitable treatment which mandatory review by a single federal court would have avoided.

(2) *Avoidance of Undue Litigation Burdens.* Taxpayers would avoid litigation of similar issues in numerous states, and thus save the expense of unnecessary and unjustifiable court actions.

(3) *Development of an Expert Court.* A single court hearing many cases and guided principally by its own decisions would produce results of higher quality than the judgments of numerous state courts charged only occasionally with deciding complex issues of interstate taxation.

(4) *Consistent Handling of Interstate Commerce Taxation.* The principal reason for federal legislation to mandate the method of taxing interstate transactions is to assure uniform treatment. Such legislation must be supplemented by uniform mandatory regulations. A third logical requirement is that the decision of judicially disputed issues be lodged in a single impartial tribunal.

This statement is concerned with the adoption of the principle of Federal review by a single court rather than with the details of its implementation. It is suggested, however, that either the Court of Claims or the Tax Court could perform this function. Either court could minimize the expense of litigation by hearings on circuit, and either could develop a consistent body of law based on expert knowledge.

We believe that a properly drafted bill could establish the jurisdiction of a federal court without violating the Eleventh Amendment. Although the Amendment and judicial interpretations provide that a suit shall not be commenced or prosecuted against a state in federal court by a citizen of any state (*Hans v. Louisiana,* 134 U.S. 1 (1890)), it is established that this immunity can be waived. The question whether a state may claim immunity from suit in federal court initiated by persons asserting federally created causes of action was considered in *Parden v. Terminal Railway of the Alabama Docks Department,* 377 U.S. 184 (1964) and *Employees of the Department of Public Health & Welfare v. Department of Public Health & Welfare,* (decided on April 18, 1973). These cases are concerned with the circumstances in which a state will be deemed to have waived its immunity from and consented to suit in federal court by an individual. Although some of the Supreme Court justices have philosophical differences over what constitutes consent by a state to suit in federal court, all would agree that

consent, effectively given, properly vests jurisdiction in a federal court. The decisive question appears to be whether the Congress intends that a state must waive its immunity as a condition to functioning under the provisions of a federal law. We believe that the rationale of the *Parden* and *Public Health* cases would uphold jurisdiction in a federal court to consider interstate taxation disputes if the following, or a similar, provision were included in the statute:

"Any state, or subdivision of any state, that imposes any tax or the duty to collect a tax regulated by this Act, whether or not such tax or duty to collect shall have been imposed before the effective date of this Act, shall have waived its immunity from and consented to suit by any person in any duly designated Federal court concerning any issue relating to a dispute arising under this Act or under Public Law 86-272."

A hearing in the federal court should be de novo. While exhaustion of state administrative remedies is a proper requirement, the parties to the de novo proceeding should not be bound by the factual determinations of the administrative tribunals of the states. Therefore, the federal law should provide that additional evidence could be introduced before the designated federal court, to be considered by it together with, or to the exclusion of, findings of fact by state administrative tribunals.

FOOTNOTES

[1] *Northwest Airlines, Inc. v. Minnesota,* 322 U.S. 392, 306-07 (1944) (concurring opinion).

[2] *International Harvester Co. v. Department of Treasury,* 322 U.S. 340, 360 (1944) (concurring opinion).

[3] *McCarroll v. Dixie Greyhound Lines,* 309 U.S. 176, 188-89 (1940) (dissenting opinion).

[4] *McCarroll v. Dixie Greyhound Lines,* supra note 24, at 188-89 (dissenting opinion).

[5] *McCarroll v. Dixie Greyhound Lines,* 309 U.S. 176, 188-89 (1940) (dissenting opinion).

[6] *Northwestern States Portland Cement Co. v. Minnesota,* 358 U.S. 450, 457-58 (1959).

[7] *Ibid.* at 476-77.

[8] *Source:* Department of Commerce, Bureau of the Census. 1972 estimate by the Tax Foundation.

[9] *Scripto, Inc. v. Carson,* 362 U.S. 107 (1960), *National Bellas Hess, Inc. v. Department of Revenue of the State of Illinois,* 386 U.S. 753 (1967), and *Miller Bros. Co. v. Maryland,* 347 U.S. 340 (1954).

[10] "Developments in the Law—Federal Limitations on State Taxation of Interstate Business" 75 *Harvard Law Review* 961-2, (1962).

[11] Pierce: "The Uniform Division of Income for State Tax Purposes," 35 *Taxes Magazine,* No. 10, 749 (1957).

[12] Peters: "The Distinction Between Business Income and Non-Business Income," 1973 *So. Calif. Tax Inst.* 251

[13] *Ibid.* p. 272 et seq.

[14] Article IV of the Compact Act adopts the Uniform Act as the Compact's rules concerning apportionment and allocation. Florida, while a member of the Compact, adopted a new corporate income tax law which repealed Article IV of the Compact.

[15] House Report No. 1480, 88th Cong., 2nd Sess. (1964).

[16] *Ibid.* p. 133

[17] Sarver and Hynes: "Proposal For a Uniform Regulation on Business Income Under UDITPA," 22 *The Hastings Law Journal* 31 (1970).

[18] *Multistate Tax Newsletter,* No. 30, September 1971.

[19] Opinion of the Attorney General, 1 CCH North Carolina Tax Cases, 201-470; *Southern Pacific Co. v. McColgan,* 68 Cal. App. 2d 48, 156 P. 2d 81 (1945).

Cf. Atlantic Coast Line R.R. Co. v. Kentucky, 302 Ky. 36, 193 S.W. 2d 749 (1946); *California Packing Corp. v. State Tax Commission,* 97 Utah 367, 93 P. 2d 463 (1939).

[20] Review and Status Report on Interstate Taxation Bills Pending in *Congress.* Paper prepared for National Association of Tax Administors Annual Meeting, June 14, 1973, in Atlantic City by Owen L. Clarke, Deputy Commissioner of Massachusetts Department of Corporations and Taxation.

[21] Cases cited in note 8. Also, 1941 Opinion of Attorney General of Louisiana, P-H State & Local Taxes (Louisiana 13,062); *Gulf Oil Corp. v. Clayton,* 267 N.C. 15,147 S.E. 2d 522 (1966); *Square D Company v. Ky. Bd. of Tax Appeals,* 415 S.W. 2d 594 (1967).

[22] *United States v. Darby,* 312 U.S. 100 (1941).

[23] The exclusion of intercorporate dividends with respect to subsidiaries will have a revenue effect in the few states that now tax such dividends, such as California, but that state has traditionally followed the practice of allocating dividend income to the state of taxpayer's commercial domicile. As to the general practice with respect to allocating dividend income, see Cohen, "Apportionment and Allocation Formulae and Factors Used by States in Levying Taxes Based on or Measured by Net Income, etc.; A Research Report Prepared for Controllership Foundation, Inc." (1954), and *Humble Oil & Refining Co. v. Calvert* (Tex. Civ. App.), 414 S.W. 2d 172 (1967).

[24] The Report of Hearings before the Committee on Finance, U.S. Senate, on H.R. 8300, 83rd Congress, Second Session, pages 1975-6, with respect to removal of 2 percent tax on consolidated returns of regulated public utilities.

[25] Section 63-3002 Idaho Income Tax Act, "Declaration of intent. -It is the intent of the legislature by the adoption of this act . . . to impose a tax on . . . the income of nonresidents which is the result of activity within or derived from sources within this state."

[26] As examples: Georgia will permit consolidation only where the companies involved are Georgia taxpayers reporting 100 percent of their income to Georgia and filing consolidated federal income tax returns. California, under similar circumstances, where all taxpayers involved report 100 percent of their income to California, does not permit combined returns. Another example is that California may require a combination of all unitary companies whether organized in the United States or in foreign countries even when only one affiliate may be a taxpayer in California. New York will permit or require combination where there are unitary features between related companies but will confine the combination to companies which are New York taxpayers.

GROWING PUBLIC SUPPORT FOR FEDERAL NUTRITION EFFORTS

Mr. HUMPHREY. Mr. President, on September 6, a special filmed document entitled "Prescription: Food" was aired on KMSP-TV in Minneapolis. This program dealt with the critical problem of poor nutrition faced by far too many American infants and children and steps that are being taken to alleviate it. A panel discussion on this problem in Minnesota followed a prerecorded film of efforts being made by citizens in Memphis, Tenn., to eliminate the problem of malnutrition among its infants and children and the unfortunate consequences of a failure to do so.

The response from those who viewed this program has been gratifying to all of us who participated in this program. It indicates a growing public awareness of and concern over this important public health problem. The great majority of the letters we have received indicate strong backing for expanded Federal support of programs to alleviate hunger and malnutrition in our Nation.

This program, and the subsequent response, further exemplifies the outstanding contribution that public service programing can make in bringing to the attention of our people serious problems that we face in this Nation but that may not be obvious to many Americans.

I believe that we should all take note of the growing public concern over the paradox of hunger and malnutrition in a nation with the most productive agricultural sector in the world.

For this reason, I ask unanimous consent that a sampling of letters responding to the "Prescription: Food" special, be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

LETTERS

DEAR SIR: Just this evening I watched your broadcast of the film "Prescription Food" and was very moved.

I am the mother of a happy healthy 3-month old baby boy and feel very fortunate that I have the facilities available to me to provide him with the vitamins and proper food that it will take for him to grow to be a normal adult that may be an asset to society.

Just recently our baby was in Children's Hospital for surgery and in the bed next to him lay a six-month old baby that was suffering from malnutrition. The baby I'm sure weighed no more than 15 lbs., was bloated, had a respiratory problem and had a yellow-gray skin color. At 6-months of age this baby could hardly move in his crib, he never once smiled, and for the 6 days that I made daily trips to the hospital to see our baby, never once had his mother, or father, come to see him. I overheard the nurses and doctors concern for this baby—the fact that the damage already done to this baby's development could really never be repaired. What an awful waste!

I would so very much have liked to have helped him. The amount of time that I have to offer for volunteer work is limited, but please send me any information you can on anything that I may be able to do to help.

Send it to me at 2896 Lexington Ave., So., Eagan, Minn. 55121.

Thank you for presenting this problem. It's sad how blind we can become to problems such as this, when we don't have the concern of where we will get the money for our next meal. It's so easy to forget about the "other person".

Sincerely,

MRS. DENNIS G. LARSON.

To Whom It May Concern:

I watched the program on TV last nite and was very upset that malnutrition is so rampant among all of us. I want you to know that you have my full support on any malnutrition programs in the future. Sen. Hubert Humphrey is doing a good job and should have more support.

Please let me know if there is anything personally that I can do to help. I've been talking to neighbors and teachers. What else can I do?

Sincerely,

MRS. DAVID MCLAUGHLIN.

ST. PAUL ASSOCIATION FOR RETARDED CITIZENS, INC.,
St. Paul, Minn., September 7, 1973.

PRESCRIPTION: FOOD, KMSP-TV,
Minneapolis, Minn.

DEAR SIR: On behalf of the St. Paul Association for Retarded Citizens, I would like to convey our appreciation for your highly informative presentation of "Prescription: Food". One of the most frustrating problems we face today is malnutrition in our country often resulting in developmental retardation.

We salute your contribution to the com-

munity in pointing out this neglected problem and some of the solutions possible. Perhaps you have started enough people thinking to bring about change. Let us hope so!

Thank you.

Sincerely,

Mrs. KATHLEEN PINE,
Program Coordinator.

HOPKINS, MINN.

DEAR SIRS: After watching your informative program, "Prescription Food," and having a 6-month-old child of my own, I was compelled to write.

Is there anything that a common citizen can do about this problem? It is too bad that our nation is so concerned about spending on defense when our people are starving. We need more Senators like Sen. Humphrey.

Your program was enlightening and I hope that more will have the reaction that I did. Please try to inform the public of their responsibility to prepare our children's America.

Sincerely,

Mrs. ROGER ENGLE.

DEAR SIRS: I just finished viewing your program, "Prescription Food" and I congratulate you for showing it. I am in complete agreement with the presentation. We need more programs literature and action on the topic.

When we have taken proper care of all of our people, regardless of race, color, creed, income, "position" etc.; maybe then we have the right to call America as the greatest nation in the world.

Sincerely,

MARJA LEENA BODIN.

SEPTEMBER 7, 1973.

GENTLEMEN: After watching Prescription Food last night, I certainly had "Food for Thought."

It's truly hard to believe in this wonderful Land of Plenty of ours there are hungry children. I was not aware of the food retardation aspect.

Tell me what we as a nation and I as an individual can do about this appaling situation.

Sincerely

Mrs. RICHARD HARDESTY.

DEAR SIRS: I want to thank you for showing the program "Prescription Food." It was excellent though very disturbing. That any child's potential for physical and intellectual development and future achievement is being stunted by malnutrition is scandalous and shocking. The cost to the individual and to the country is incalculable. The situation must be remedied—our priorities must be reordered. Please let me know if there is anything I can do to help.

Sincerely,

Mrs. THEODORE LITMAN.

SEPTEMBER 7, 1973.

PRESCRIPTION—FOOD, KMSP,
Minneapolis, Minn.

GENTLEMEN: Your program last evening focused on several important elements which continually concern the day care community: the relationship between mental and physical growth and good nutrition, the need to provide nutrition training for all ages, the inadequacy of the allotment for the school lunch program considering the rising cost of food. Equally important, as stated by Senator Hubert Humphrey, is the need to provide food universally without the need to prove poverty.

Malnutrition is no respecter of age, but observing young children who are hungry is especially painful.

We sincerely hope that those of your panel will do all in your power to (a) increase the daily allotment for the school lunch program and (b) remove the means test. Our society must be responsible for the provision of adequate food to its most important resource.

Very truly yours,

EDWINA L. HERTZBERG,
Executive Director.

ORGANIZATIONAL CONSULTING TO MENTAL HOSPITALS

Mr. JAVITS. Mr. President, we are all deeply concerned with the problems of mental hospitals. I would like to bring to the attention of my colleagues an interesting recent article, which proposes a reasonable response to the common framework of legal, social, and other constraints faced by these institutions.

The article, "Notes on Organizational Consulting to Mental Hospitals," is written by Dr. Kenn Rogers; his credentials follow:

Professor of Business Administration, The Cleveland State University, Cleveland, Ohio; formerly, Professor of Organizational Behavior, The American University, Washington, D.C. Dr. Rogers received his Ph.D. in psychology from the University of London, England, and is a member of the American Marketing Association, the American Psychological Association, the British Psychological Association, the British Market Research Society, the American Academy of Political and Social Science, the Academy of Management, the World Association of Public Opinion Research, and the Association of Voluntary Action Scholars.

I ask unanimous consent that the text of this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NOTES ON ORGANIZATIONAL CONSULTING TO MENTAL HOSPITALS

(By Kenn Rogers, Ph.D.)

INTRODUCTION

Mental hospitals, among the most complex of institutional systems, are frequently not well organized or administered. This circumstance may be attributed to the wide variety of services that must be integrated for the institution to perform effectively and efficiently. An important cause of internal problems seems to be psychotherapy itself—the anxieties that result from the staff's awareness of the uncertainties inherent in the treatment process along with their responsibility for the lives and welfare of their patients.

This paper presents a summary of organizational difficulties I discovered in four mental hospitals, together with some general interventions recommended and implemented during my work as a consultant in organizational behavior to these institutions from 1969 to 1972. One difficulty with developing a model from a sample of only four institutions is the necessity of generalizing from specific insights derived from single instances. Another difficulty is that a single consultant's perceptions are inevitably affected by the particular criteria he considers relevant to understanding an institution's problems. The complexity of institutional life, especially in a mental hospital, embraces a multitude of attitudes, beliefs, philosophies, hopes, and fears. In selecting those relevant to particular organizational phenomena, I do not deny the existence and importance of many others.

These four institutions, however, are not individually unique. All work within a generally common framework of legal, social, and other constraints; and all are keenly aware of the effects of these constraints on their institutional work. The four did differ in degree of staff coherence and task perceptions, relationships to patients and to external environment; and yet, these geographically-separated institutions did show impressive similarities in tasks, structure, and culture. Therefore, it seems justified to apply a specific, although heuristic, model of consulting, and then to examine its usefulness in helping to improve institutional task performance.

THEORETICAL CONCEPTS

The theoretical concepts underlying the consultancy model to be described and discussed are largely derived from those developed by Rice (1963, 1965, 1970), Miller and Rice (1967) and Jaques (1951, 1970). Other concepts are my own, derived from experience in numerous institutions. Still others are taken from organization and learning theories.

Critically important to this model are: (1) Bertalanffy's "open system concept" (1950, 1951, 1956) as applied by Rice to institutions (1963, 1965, 1970); (2) Rice's concepts of the "import-conversion-export process," "primary task" and "sentient groups," and the need to specify the boundaries of institutions and their parts, e.g., departments, roles; (3) the acceptance of the fact that organizational structures are mere tools for facilitating task performances and have no inherent value in themselves; and (4) a working philosophy, perhaps best expressed by the late President Kennedy, that what there is, is not good enough, and that we can do better.

Institutions and their parts are seen as "open systems" which, in order to maintain themselves, continuously interchange people, objects, materials and concepts with their environments. For example, a mental hospital *imports* moneys, equipment, staff members with different skills, patients with problems, etc. It exposes patients to a therapeutic environment designed to *convert* them by enabling them to gain greater insights and knowledge of their own behavior and that of others in their environment. Eventually, it *exports* patients, presumably better equipped to deal with life's problems; it also exports personnel, presumably better qualified through their work experiences; further exports are the knowledge and concepts presented in papers and other publications disseminated in the external environment. If those in the environment judge the export useful, evidenced by additional patient referrals, prestigious persons seeking employment, increased research and endowment grants, etc., the work of the institution proceeds as an "open system" pursuing the "import-conversion-export process."

A *primary task* is one that an institution must perform to survive and to justify its existence. An institution may have several primary tasks, the combination of which makes up its overall objective or mission (Selznick 1957). A mental hospital's primary task may be assumed to be the provision of therapeutic services to its patients. It will often also engage in education and research. In addition, some hospitals may provide hotel, catering, and other services. With this wide range of functions or tasks, the boundaries of these different services must be defined in clear operational terms to enable those concerned to integrate the various primary tasks—both of institutional and individual roles—with the aim of accomplishing the hospital's specific mission.

Carrying out this mission requires resources, both human and material. Primary tasks and the resources allocated for their implementation reflect the particular culture of that institution, the "customary and traditional way of thinking and of doing things, which is shared to a greater or lesser degree by all its members" (Jaques 1951, p. 251).

Sentient groups consist of members who demand of and give to one another loyalty in the context of that institutional culture.

One effect of this institutional culture might be that the various constituent parts of a mental hospital—the departments and their role occupants—may differ among themselves in the perception of their primary tasks and, therefore, in the ways of discharging their professional responsibilities. For example there may be differences in terms of "open" and "closed" hospital operations or in variations of these models; in terms of behavior modification, drug or psychoanalytically-oriented therapy or combinations thereof; or in terms of different priorities for the welfare of patients, staff or the institution as seen by doctors, residents, nurses, paramedical or research staff, maintenance personnel or business managers.

Such differences in attitudes and the resulting behavior make it difficult for various individuals to cooperate in integrated and effective institutional task performance. Thus, it is imperative to provide the various role occupants with clear boundaries of what they are responsible for and how they are to work with others in the institution. However, experience indicates that reliance on a structural approach in developing role specifications, while necessary, is not enough to bring about effective personal and institutional task performance. In fact, what is required more often than not is a change of the prevailing culture in the institution and a reconceptualization of some of its constraints. The understanding of these work problems in open-system institutions generally, and in mental hospitals specifically, is rarely complete and clear-cut. Consequently, dealing with such problems involves an open-ended process with its ensuing residues of personal frustrations which sharpens the need for administration and staff to accept and cope with such frustrations. Closely linked to this factor is another constraint—the present tools of psychotherapy do not insure certainty about the outcome of the treatment process. At best, a series of alternative approaches can be used, a rational assessment of which can only be made in part—aside from differences among the personalities involved. Thus, clear boundaries must be set—limits which define the clinical freedom to be exercised in the institution.

In this context, attempts to establish harmony where none exists are bound to fail; and an explanation of the psychological dynamics of the institution is necessary. For example, there is often the conviction in mental hospitals that the staff, as opposed to the patients, are "healthy"; but this view can readily be identified as a defensive idealization. The danger is believing that irrationality, i.e., nontask-oriented behavior, is limited to the patients alone, while irrational manifestations in the staff, such as scapegoating, rivalry, dependence, jealousy, futility, euphoria or despair, are denied.

Those directly involved usually find the task of integrating these differences into a constructive whole extremely difficult, pointing up the need for a consultant with particular skills. The skills are those of understanding group processes; the task is to increase group and individual awareness of these dynamics and, in the process, to highlight the conditions that impede effective task performance. The assumption is that these new insights will redirect the energies of the institution's staff toward desirable and requisite changes.

THE CONSULTANCY APPROACH

I believe that the consultant's approach to working with institutional clients is essentially that of process consulting. Stated operationally, it is to help the client-system recognize and define the institutional processes that potentially or actually interfere with achievement of its primary tasks. Following this beginning, the consultant proceeds to help the client determine the necessary steps for dealing with these goal-impeding processes. The consultant's working skills, therefore, are his knowledge of processes or dynamics at the intra- and interpersonal level, as well as at the intergroup working level. His task is one of a joint organizational diagnosis with the client, while at the same time he conveys this diagnostic skill to the client-system—at first creating a synergy of client-consultant competence in organizational problem solving, and eventually eliminating the client's dependence on the consultant. Of course, the consultant may also have other skills, e.g., in business management or psychotherapy. However, barring exceptional circumstances, he will keep the communication of these skills out of his consulting efforts.

The rationale for this approach is embedded in the psychotherapeutic model and cautions against acceptance of problem descriptions as initially defined overtly by the patient. Too often the client describes his difficulties in trying to accomplish certain tasks instead of the real problem. Further analytic work, however, may reveal that the client has substituted symptoms for the problem or, in defense of his self-esteem, has stated a different problem from the one at issue. This state of affairs is to be expected; for if the client was able to be insightful and honest with himself, there would be little need for the consultant's services. Because the client is defensive, consciously or not, he wishes for and seeks dependence on the consultant. Specifically, the client may expect the consultant to "solve the problem" and perhaps also reward the client by sympathizing with him, expressing admiration for "having put up with the problem for so long."

Although such an approach by the client seems unlikely to remove impediments to institutional or individual task performance, it does highlight the consultant's responsibility to involve the client-system in a teaching-learning process leading to the acquisition of diagnostic and problem-solving skills. Throughout this process, members of the client-system will frequently find themselves frustrated in their wish for dependence which arouses their resistance to the process-consulting approach and often brings on an eruption of taboo feelings which previously were largely unconscious or at least nonverbalized.

This resistance, however, does provide useful material for demonstrating the client-system's practices in managing institutional conflicts. These practices often satisfy some of the staff's sadomasochistic wishes, but are not conducive to effective institutional task performances. Indeed, an institution's culture may cherish behavior, stressing standards in which politeness prevails at the expense of reality perceptions or honest convictions, such as "Don't rock the boat" or "Nice guys don't fight." Meanwhile, the real institutional conflicts, although often close to the surface, are not examined. They continue to fester and erode the effectiveness of the institution's work, eventually damaging even its substance for survival.

If the consultant were merely to tell the client what to do and the client were to try to implement this advice, the institution's defensiveness and resistance to change would remain untouched. Therefore, another persuasive reason for using the teaching-learning process in consultancy is that organizational problems dealt with by the client-system itself tend to be managed or resolved more effectively and to recur less frequently.

GENERAL BACKGROUND TO THE CONSULTANT'S WORK

My initial contact as consultant to each of the four institutions was through an interview with the hospital's medical director. Similar to initial meetings between patient and therapist, such client-consultant encounters convey many symptoms and few clues to the causes of the problems. They also involve a great deal of testing of the consultant by the client, focused on the former's capacity for insight and professional integrity. The consultant should first try to determine how serious the client perceives the institution's problems to be and then to define operationally what the client-system expects of the consultant and how his work should be done. The consultant should also estimate how much time it will take and how many visits he will have to make to the institution in order to carry out his consultancy task. When he determines that he will be able to assist the client in bringing about desirable changes, the following two precepts will serve as a guide in the more detailed examination of the client's problems:

1. Organizational structures and delegation of authority to individuals in various roles represent tools for carrying out tasks of an institution. In themselves, neither structure nor roles have any value, and, therefore, either may be amended or even discarded if they conflict with the institution's efficient task performance.

2. All roles in a mental hospital by definition must have a common characteristic—caring for the interests of the patients. Consequently the work in all roles, whether or not in direct contact with patients, affects the therapeutic process and must be structured with that in mind.

DIAGNOSIS OF THE INSTITUTIONS

In an attempt to formulate a diagnosis of the institutions' problems, I started field work (except for one instance in which there were overriding considerations) by interviewing all of the hospital staff who were willing to talk to me. I asked few direct questions in these interviews. Instead, I encouraged expressions of significant feelings, attitudes, fears, wishes and desires relating to the respondent, the institution, its staff, patients, and management by asking such questions as:

"What satisfaction might someone derive from holding a position similar to yours?"

"If I were to ask this question at different levels of the institution and also of patients, what kind of answers do you think I might get?"

"Psychotherapy, unlike physics, biology, or mathematics, which are thought of as 'exact sciences,' is often based on widely differing views and beliefs. How might this affect the work of a mental hospital and how might such differences be dealt with?"

In diagnosing each of the institutions' difficulties in task performance, I found their intraorganizational relationships were affected by various conflicts, overt and obscure. Essentially, these conflicts involved the authority and the responsibility vested in various organizational roles, and were aggravated by the personal power of the role occupants. These conflicts affected the hospitals' organizational structure, their work, their patients, and the communities in which these hospitals operate.

Some of the discord was caused by personality conflicts within a single person or between different individuals. For example, among the administrators were medical professionals who had discontinued their therapeutic practice, having decided that being an administrator conflicted with the role of a therapist. Conflict arose between these administrators and practicing therapists who saw the former as envious or jealous of the doctors who continued to treat patients. Although the administrators often defended their feelings in sophisticated ways, their task performance was, nevertheless, adversely affected. Therapists, on the other hand, often felt that administrators were preying on their authority and "clinical freedom." In short, the administrators' role and their previous professional identity created intra-

personal problems for themselves and interpersonal problems with therapists responsible to them.

In other instances, personality conflicts arose from the traditional relationship between nurse and doctor—with the nurse in a subordinate role, obeying every instruction and wish of the "managerial" doctor. Indeed, only occasionally were nurse and doctor viewed as partners in the task of treating patients. The nurse was seen as either revering or resenting the doctor's "authoritarian" attitudes; and the explicit acceptance of the doctor's obvious dependence on the nurse seemed to be taboo. The working relationships within the sentient groups of doctors and nurses were frequently affected by external pressures impinging on their task performance—specifically, the differential values society attributes to the work of men and women. At the overt interpersonal level, the doctor-nurse relationship was alluded to as having specific personal, sexual connotations, implying—and at times openly stating—that personal and nontask-related considerations superseded the institution's values. Covertly, doctors and nurses more often seem to be engaged in acting out unconscious collusions of a sadomasochistic nature.

In contrast, other conflicts between therapists, nurses, administrators, paramedical staff and maintenance personnel were caused by a lack of clarity in the organizations' structure or policy. Doubt was expressed about whether the administrator or a senior therapist was in charge of residents, what was the institution's accepted criteria for judging residents' or nurses' concern for patients, who was specifically charged with evaluating their work, etc. These doubts, fostered by the lack of organizational clarity, were expressions of concern about the authority assigned to various roles and the responsibility following the exercise of this authority. Individuals were not always certain about the authority of their roles, and personal power began to influence unduly the institution's working processes. Nonrequisite clashes of interest became manifest; serious problems were unattended and usually became even more serious. Needed organizational changes became difficult and often impossible because they clashed with individuals' interests; those changes that were accomplished were achieved only by manipulative persuasion or by those who recklessly threw their "weight" around. For example, during one particular staff meeting, it seemed obvious that some nurses knew which patient had slashed some furniture and draperies; yet, they preferred to remain silent, at least during the staff conference, and told me they had to "protect their patients." By being uncommunicative, the nurses exercised a power play which was readily noted by patients and was not likely to benefit the therapeutic process.

In short, the lack of clarity about organizational structure generally and the lack of definition of authority specifically provided fertile ground for personalities to become major determinants of institutional conflicts. Organizational splittng processes* occurred, frequently expressed in "double messages" among staff members and between staff and patients, most of them having the characteristics of a "double-bind," i.e., "damned if you do and damned if you don't." † Residents, paramedical staff, and nurses complained that senior staff members encouraged them to express themselves freely and, indeed, critically; yet, when they followed this encouragement—citing situations in which they questioned senior staff's "fuzzy directions," "contradictory policy statements," or "the differential status of psychiatrists and psychologists" regardless of their individual rank and experience—the senior staff member's tone of voice, and sometimes even choice of words, conveyed defensiveness, at times perceived as being "downright testy." Moreover, answers were not always clear; and the questioners became "uptight," "turned off," and saw themselves as forced to decide whom to approach subsequently for greater clarification.

The patients were not immune to the tense psychological atmosphere created by the staff's conflicts. The patients were keenly aware of the staff's "insoluble conflicts" and "double-binds"; and frequently patients and staff were involved in a process of mirroring, i.e., acting out an imitation of each other. The patients reacted emotionally, often with heightened irrationality, and at times felt like children caught in the middle of a family conflict. The tenor of the patients' complaints was expressed by one patient who said she was treated as a case about which the staff argued and who was shoved around, and not thought of as a human being for whom all had responsibility. This psychological atmosphere affected the treatment process, although its effects never seemed to appear in the hospital records. Yet, it might be speculated that some patients' undesirable reactions such as attempted or carried out suicides or premature termination of treatment might have been triggered by the staffs' conflicts.

The conflicts in the four institutions did not remain within the walls of each of the hospitals, but also affected the relations between the hospitals and the communities in which they operate—potentially affecting relations with doctors on whose referrals the hospitals depended, with other professionals whom the hospitals wished to recruit for their staffs, and with the communities in which the hospitals hoped to raise funds and other special benefits.

However, these four institutions did service the social and medical needs of their external environments as evidenced by the high utilization of the hospitals' capacities and by lengthy waiting lists of patients, residents, and nurses. Indeed, two of the four institutions enjoyed great professional prestige among practicing psychotherapists, universities, and the general public, even beyond their national borders. Clearly these were functioning institutions. However, their staffs felt that certain difficulties—difficulties which were vaguely defined—impeded the optimal use of their capacities.

PRIMARY TASKS AND VALUES

When the various intrainstitutional relationships had been examined, it became important to arrive at operationally-defined models for all the primary tasks of the institutions, to specify the needs the institutions wished to satisfy, and then to create a coherent statement of the values guiding the institutions in the pursuit of their objectives. The clients at first resisted as "too difficult" the need to define the primary tasks operationally, i.e., feasible in terms of quality, quantity, time and expenditure. They preferred to define the hospitals' primary tasks in such broad terms as therapy, research, or education. The clients and I explored the usefulness of such inclusive definitions, and it became apparent that such headings clarified neither the specific nature nor the scope nor the quality of these activities. Moreover, when stated abstractly and in isolation from one another, these headings did not show how the tasks were to be integrated into a total and potentially effective institutional task performance.

This approach led finally to an operational definition of the boundaries of the roles and the work allocated to those roles, including those of the trustees, within the institutions' organizational structures. Role boundaries included the responsibilities of each role occupant—the institutional resources he is authorized to use in discharging responsibility in the role, the decisions he is authorized to make within the limits of the work allocated to this role, and how he is to cooperate with other role occupants in carrying out the tasks of his working unit or department and the task of the entire institution. The role definitions also specified the qualifications required for occupying specific roles and the potential career opportunities at the institution, e.g., promotions within projected time limits, additional qualifications needed for newly-defined roles, special working conditions required by these new roles, etc.

The role specifications made explicit the institutions' responsibilities to themselves and to their staffs. Having agreed to plan for their staffs' professional development, the institutions obviously had to plan their own growth and development. Moreover, since they were operating as open systems in which varying conditions affect the institutions' work, their planning had to be examined at varying time intervals and revised when necessary. Then, in this continuing evaluation of the entire institution's work, each role could be judged for requisite work content, for position in the hospital's organizational structure, for staffing, and, indeed, for justification of continued existence.

Before procedures and policies for work behavior were clearly defined, most role occupants had perceived their own and other roles individualistically and thus were confused about who was authorized to do what. Organizational inefficiencies and even breakdowns had followed, because of the frustration and failure of individuals to function effectively. However, the hospitals' definition of detailed responsibilities for specific task performances and determination of the authority and resources required to discharge such responsibilities also caused considerable anxiety among the staffs. This anxiety was usually expressed by a persistent defense of previous policies and structures, although the staffs seemed to be aware, consciously or not, that these policies had caused great disruption and were no longer suited to the current changing situation.

This defensive behavior, inappropriate to the institution's changing conditions in the "here and now," may be illustrated by a particular situation that occurred in one of the hospitals in which I was consultant that underwent the transitional process of changing its primary tasks and implementation of those tasks. Prior to this change process, the institution had seen its mission as providing therapeutic services to patients; as a welcome by-product, this therapy was also seen as enhancing the institution's goals by educating its staff and in related research. By contrast, the newly-defined mission of the hospital stressed an increased emphasis on research and education, through which it also improved the quality of its therapeutic services. Therapy was now seen as a primary task and *primus inter pares* among education and research.

* Splitting, according to Melanie Klein (1948), represents two aspects of one's relation to the same object—love and hate. For example, clinging to the good while denying the existence of the bad preserves the belief in the good object and the capacity to love it. Although an essential condition for the infant to keep alive, splitting processes diminish in the normal, later development of the ego. However, it is suggested that in times of stress the childish parts of the personality emerge and use primitive defenses, among them splitting, to ward off anxiety and discomfort caused by contradictory impulses.

† For a discussion of the "double-bind" see Steinfeld (1970).

Although the explicit decision to change the hospital's mission in concept and implementation had been made and agreed upon, a contest of advocacy emerged between individual and community therapeutic approaches. Frequent arguments arose about the relative merits of "medical models" and "social models." At times, it sounded as if the "medical model" was restrictive, authoritarian, old-fashioned and "bad," while the "social model" was seen as democratic, growth-inducing, and "good." Indeed, various staff members experienced difficulties in defining these terms—difficulties which seemed manifestly different from the perplexity faced by those who tried to state explicitly what they meant implicitly and intuitively. It soon became apparent that these terms were used as shibboleths, barely concealing personal strivings for power positions in the institution. In short, the shibboleths were symptomatic expressions of deep-seated personal anxieties.

These phenomena appeared to be particularly acute when there had been recent changes in the institution's top-level management. Often these changes were linked with a revision of the hospital's therapeutic policy and methods, thereby affecting the previously-accepted limits of clinical freedom. Moreover, changes in the occupancy of the hospital's chief executive role implied changes in the institution's actual authority relations, which frequently extended through several tiers of the hierarchy. When these changes were not made explicit, the staff's perception of their own roles was blurred which, in turn, diminished the effectiveness of their task performances. In such cases, clusters of disciples of the new direction and adherents to the previous tradition seemed to live rather uncomfortably with each other. Clashing allegiances were found both at the inter- and intrapersonal levels. There were manifestations, explicit and implicit, conscious, of ambiguity and even bitterness about these changes and nostalgia for the good old days of the hospital.

THE ROLE OF THE MEDICAL DIRECTOR

The chief executive in each of the institutions was a psychiatrist; in three instances his official role title was medical director. In all four institutions, discussions among the staff indicated that some of them had "doubts about the wisdom of having a medically-educated head of the organization rather than one experienced in business management." They argued that expertise in individual psychotherapy is an inadequate base for the administrative functions of a chief executive, i.e., integrating the various functions of a mental hospital—admissions, diagnosis treatment, rehabilitation, education, nursing, research, physical plants, hotel catering, finance—which are all linked to therapy in a complete way.

These arguments were found to represent mere screens for feelings the staffs had about their medical directors. For instance, various staff members were angry with their director because they felt they could not depend on him to run the institution smoothly and to their satisfaction. Indeed, the lack of organizational clarity induced staff members to regress into what Bion (1961) describes as a basic assumption culture of dependency, or fight-flight, in which the medical director became invested with quasi-magical power for good or bad. Since it was impossible for him to live up to such idealized expectations, his actions were frequently distorted in a paranoid way and frustration and further hostilities developed.

Subsequently, when this question of who should head a mental hospital, a layman or a therapist, was examined in the context of reality constraints, the staffs accepted the fact that all activities in a mental hospital have an impact on the therapeutic process and thereby on the patients' welfare and agreed that it makes little sense to have a nontherapist in charge of the institution. The clinching argument in each case was the consideration that medicolegal responsibility for the welfare of patients ultimately rests on the medical director who represents the institution. However, their doubts about the medical directors' "underdeveloped capacity" for optimal organization decision-making remained unresolved.

It is my judgment, as consultant, that the staffs' conclusion was justified, although not necessarily for the reasons they stated. Indeed, insisting on medical qualification, to the exclusion of other related professional qualifications, might well result in a serious error. It seems necessary to select as a candidate for the chief executive's role an individual with experience in any profession relevant to the institution's primary tasks. Most important, however, is the candidate's capacity to accept criticism, constructive and otherwise, and his capacity for critical self-assessment of the quality of services provided by the institution.

THE WORKING-THROUGH PROCESS

The next phase of the work was directed at developing reality-oriented and up-to-date role specifications for the various professions, e.g., therapists, administrators, nurses, paramedical staff, maintenance personnel. Jobs were defined so the role occupants could understand where they fit into the organization and how they were expected to cooperate in providing the services that had been contracted between the institution and its patients—the primary task of the institutions.

In the process of defining their roles, individuals began to face their anxieties and gradually to "work them through," although in varying degrees. Underlying this process was a growing acceptance of the desirability of having full and free exchange of views, respecting technical competence and knowledge rather than personal preferences, and recognizing the inevitability of organizational conflicts. Indeed, in due course, the staffs welcomed open discussions of covert conflicts as opportunities to develop their own capacity to tolerate painful insights into such phenomena as scapegoating, rivalry, dependency, jealousy, futility, and despair—in short, to develop their capacity for dealing with reality.

Jaques (1951) points out that this kind of working through, adopted in modern management practices from psychoanalysis, means considerably more than just saying a full discussion has taken place. It means a serious attempt has been made to voice the unrecognized difficulties, often socially taboo, which impede a group's working on its task. Through this process, a group develops an awareness of the tensions which lower its effectiveness and develops a willingness to undertake open discussions to deal with these tensions. Such discussions are not listed on the agenda of a work group; however, once a group has developed the ability to recognize factors not related to its task—status, security, power, suspicion, hostility, memories of past events—these previously unconscious factors tend to lose their effect on the process and progress of the group's work. The group may then work more effectively on those issues which are on the written agenda.

That experienced and highly-qualified psychiatrists and clinical psychologists required an organizational consultant as a catalyst in this working-through process should not be surprising. Working through "organizational anxieties" is a process similar to that of working through personal unconscious anxieties; even the best psychotherapist may need someone else's professional expertise to help him see himself as subject to the same impulses, resistances, and "blind spots" in a working situation as other people, and then to help him accept the fact that intellectual knowledge of oneself may not always be available.

CHANGING INSTITUTIONAL CULTURE

Development of a new and more reality-oriented structure, without efforts to change the institution's culture, seems unlikely to have any lasting, favorable impact on its task performance. Indeed, one effective way of changing the hospital's culture was to encourage all levels of staff to raise points of puzzlement or dissatisfaction with colleagues and superiors—the working-through process. In this process, I assisted, whenever feasible, in examining the reality content of the client's judgments which uncovered latent hostilities, revealed apparently incompatible attitudes, and aroused considerable anxiety among those involved. This approach not only increased staffs' insights but also led to some significant changes in their attitudes toward establishing and maintaining shared modes of professional and technical practices.

I do not mean to suggest that organizational problems and the inherent conflicts can always be resolved or even that it is desirable to do so. Conflicts are actually symptoms of organizational health, just as pain is often an important symptom of physical health. However, working through these conflicts does represent an effort to control and rechannel them for the benefit of individuals, institutions, and patients.

Another important way of facilitating change was the development of a common terminology that enhanced clear communication, and relevant concepts were defined operationally in terms of the needs of the staffs. These concepts, of course, were not presented as organizational principles or laws, but rather as a heuristic model designed to aid in the examination of institutional reality. When applied, however, these concepts cannot be accepted as free of error; each individual must exercise judgment and be responsible for the consequences; clients, therefore, become less dependent on consultants and recognize their status as mature, adult, responsible professionals.

When an individual accepts a position within an organization a working contract between the institution and the individual is negotiated. The institution, for its part, agrees to compensate the individual with pay, security, pension rights, social and psychological benefits, and other tangible and intangible rewards. In return, the individual agrees to accept the extent and limitations of the *authority, power,* and *responsibility* of the assigned role. These three concepts—authority, power, and responsibility—are organizationally important and inextricably intertwined and will be operationally defined and discussed as they affect institutional work.

Authority

Authority, organizationally defined, is the right to do assigned work—what one is authorized to do. It is an attribute of a role in an organization, and the occupant of this role exercises authority by accepting and carrying out the tasks assigned or delegated by a higher-level role occupant, i.e., manager to subordinate.

Managerial authority, then, is limited by delegation from a higher-level role on the one hand, and by consent of the lower-level role on the other. For example, manager A, a hospital's director of therapy, instructs therapist *B* to prepare a process report on a patient. *B* instructs his secretary *C*, subordinate to him, to type this report. *B* is authorized to do this work by *A*, and is is authorized to assign a part of this work, the typing, to *C*. *C* consents to do so, thereby enabling *B* to complete his authorized task.

Power

Power, organizationally distinct from authority, is the individual's capacity for carrying out work. It has physical, intellectual and emotional aspects; it is, therefore, an at-

tribute of the person, e.g., one's skill, knowledge, experience, insights. Being personal, power remains within the individual whether or not the person actually occupies a role.

Authority and power

Authority and power are distinctly different organizational concepts that are not interchangeable; yet, power is necessary for exercising authority. However, when power is exercised without authority, it is seen as illegitimate or unauthorized power. A medical practitioner, otherwise qualified but not licensed to practice in a given state or to treat a patient without that patient's consent, uses power without authority. Students rioting on campus or prisoners rioting in jail wield power without authority. The American colonists, throwing bales of tea into Boston Harbor, used unauthorized power.

There are similar instances wherein a role occupant has authority without the power necessary for the task. Examples might be a doctor who is incapacitated by illness and unable to attend his patients or a qualified doctor who has no patients. In either case, the doctor cannot exercise his authority to treat patients since he lacks the capacity or consent to do so. Organizationally-authorized managers who lack the necessary capacity for their tasks invite inefficiency and eventual anarchy. If this situation does not cause the institution's demise, it is likely that in an effort to compensate for their shortcomings these managers will either throw their "weight" around—rarely to the advantage of the institution—or they will abdicate, thereby permitting others to use unauthorized power. A secretary who tells her manager what to do or a trustee who unduly influences the therapy of a patient in whom he has a personal interest are all too well known examples of unauthorized power. Thus, when there is either authority or power without a balance of the other, malfunctions occur both organizationally and personally.

Responsibility

Responsibility, organizationally defined, is the accounting that must be made for the resources that are used to carry out the assigned task. Minimally, this concept involves the employee's expended resource—time spent at work—and the institution's compensating resource—money for wages and salaries.

At another level, however, responsibility also includes an attitudinal accountability—making continuous efforts to be aware of problems related to one's work and committing oneself to deal with them not only within one's own value system. It is here that many in the so-called helping professions face a dilemma between organizational responsibility as determined by the institutional role and personal responsibility according to one's own system of values. This dilemma is psychologically and historically deep-rooted—difficult, if not impossible, to resolve—and one that affects individuals consciously and unconsciously with feelings of guilt.

Currently, this dilemma is taking on particular social and personal significance, for behavioral scientists such as Skinner (1971) are seriously suggesting new technologies for controlling human behavior; Kenneth Clark (1971) recommends the routine administration of drugs to political leaders; and Krech (1967, 1968) foresees chemical brain control agents that can be used without the knowledge of those affected by them. For those who work with patients in mental hospitals and who frequently suffer from heightened guilt and difficulties with responsibility, the problems of organizational clarity can assume special significance which reemphasizes the need for operational definitions of a mental hospital's mission, its value system, its policies, and the authority and responsibility assigned to each of its roles.

The last, but certainly not the least important, of my tasks as consultant was to help the medical director and his immediate staff become aware of their responsibility to create and maintain a milieu in which various individuals and groups could examine their anxieties, which implies a relative de-emphasis of comfortable resolutions of conflicts. Indeed, it often demands a nurturing by management of conflicts, potentially leading to greater clarity in task orientation of the organizational structure and its occupants. There was ample evidence that because of confusion about authority and responsibility in roles, top-level management had been spending a great deal of time in conciliation and *ad hoc* decision making. By contrast, when there was reasonable clarity later on about the various role functions, top-level management was able to direct its efforts increasingly toward delivery of the services that the institution had contracted to provide—its primary tasks.

In the instances described here, these psychiatrists in the role of chief executive of a mental hospital and most of their colleagues and organizational subordinates were emotionally and intellectually committed to carrying out successfully their institution's tasks. It seems reasonable to accept the fact that their professional medical education did not include preparation for dealing effectively with organizational problems; thus, they were handicapped by a lack of knowledge of modern organizational concepts, let alone expertise in the complexity of their application. They were, in a sense, gifted amateurs. While psychiatrists obviously know a great deal about anxiety at the intrapersonal level, this study surely indicates rather extensive gaps in their theoretical and applied knowledge of anxiety at the organizational level. Therefore, it may be well to consider adding to the curriculum of psychiatric education, and perhaps even to all medical education, course work, both theoretical and experiential, that will provide an understanding of the interrelation between organizational authority, leadership, and structure on the one hand, and the individual's behavior in organizations on the other.

CONCLUSION

Organizational conflicts are often embedded in an "organizational unconscious," and diagnosing the "unconscious of an institution" requires a different kind of expertise than that traditionally provided in professional mental health training. My task as consultant was greatly facilitated by the fact that members of the client-systems were willing to adapt themselves to changed realities and were resilient to change. Furthermore, I had data derived from direct observation of the institutions' work, and I was able to draw from my own experience of many years as an executive administrator responsible for institutions of various sizes.

It is not altogether traditional, nor is it easy, to examine the structure and culture of a mental hospital in straight organizational terms. A variety of factors involved in the operation of a mental hospital complicate such an examination. Nevertheless, the appropriate application of these terms gave a base for this study. Thus, the structure of a mental hospital—as in other organizations—is seen as the strategy for carrying out tasks related to clients—in this case, the patients. The organizational culture can then be seen as the way in which the institution and the people it comprises—staff, patients, trustees, consultants—do or do not fall into a dynamic unity and the way in which they consciously and unconsciously use each other for their own and their institution's purpose, both constructively and otherwise (Rogers 1963). Yet, these considerations are by no means the only valid criteria for task performance. Among the numerous other constraints that impinge on the institution's task performance are: (1) relationships with and pressures from the institution's external environment; (2) technologies selected for the institution's tasks; (3) members' needs for professional, social, and psychological satisfactions; and, perhaps crucially important, (4) their needs for support in dealing with their own task-linked anxieties—guilt, doubt, uncertainty, feelings of impending crisis, frustration, loneliness, and hostility—often kaleidoscopically mixed with inordinate demands for acceptance, reassurance, and love.

The organizational structure, ultimately "worked through," will inevitably represent a compromise between the model and these constraints. The value of the model, however, lies in providing a basis against which to test the reality of the constraints and the need for the particular form of compromise and the degree to which the efforts of the institution are either directed toward the benefit of patients or dissipated in the organizational dislocations of administrative duplications, nontask-oriented disputes, and other confusions.

The application of organizational concepts is as important to mental hospitals as to any organization, particularly when one considers that, in the absence of clearly understood authority, decision making relies on personal power. The latter evokes in the institution's staff feelings of abuse and illegitimate authority, which, in turn, causes undue strain on the psychological system of individuals and the institution itself. As it is, there is often already enough of this kind of strain to carry, especially in mental hospitals. Of course, even when authority relations are clearly understood, psychological stress will not necessarily be removed. However, it will help to place the stress where it requisitely belongs in the organization. In short, clearly-defined roles—in terms of authority and overall integration in the goals and purposes of an organization—potentially reduce aggravation of personal problems, and, in so doing, enhance the probability of successful institutional task performance.

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INTERSTATE LAND SALES

Mr. HARTKE. Mr. President, Congress attempted, 5 years ago, to put an end to the abuses which have plagued the interstate land sales industry. However, as time goes on, it becomes increasingly apparent that this attempt has not been as successful as might have been hoped. It is for this reason that I have introduced S. 1753, the Interstate Land Sales Act Amendments. The bill requires Federal licensing of all interstate land sales dealers.

Mr. President, an article by Paul Hoffman, which recently appeared in the Saturday Review gives an insight into the selling techniques used by these salespeople today. I request unanimous consent that this article be printed in the RECORD for the information of the Senate.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ABOUT THOSE LAND HUSTLERS YOU'VE BEEN HEARING FROM

(By Paul Hoffman)

By now, every man, woman, and child who's ever had his name on a mailing list must have received at least one invitation to a dinner-and-sales pitch from Alligator Gardens, Florida, or Culjones Canyon, Arizona, or some other chunk of Sun Belt real estate. And most, like me, must have chucked them into the waste basket.

But when one came from an outfit called Rio Rancho Estates, I got curious. What are such presentations like? I wondered. And what did I have to lose—provided I didn't sign anything?

So I mailed back the card and at the appointed hour showed up at Zwaaf's International restaurant on West 52nd Street (formerly Toots Shor's watering hole). I was ushered into a basement dining room, where a projector flashed faded color slides of western scenes onto the screen. About thirty people, ranging in age from their late twenties to sixty, were seated at five tables. At each table was a Rio Rancho salesman. Three of them were women—one in a broadbrimmed hat that made her look like a little league Bella Abzug.

At my table were three other couples in their thirties—two, like me, singles, the third, a doctor and his schoolteacher wife. One of the girls seemed interested only in getting a job with the company. I didn't get a chance to find out much about the others because our salesman, a fiftyish man named Jack Z. Greenberg, spewed a running spiel throughout the evening.

Rio Rancho Estates, it turned out, is an 86,200-acre development seventeen miles from Albuquerque. A former cattle ranch that borders the Rio Grande, its developer is a division of AMREP Corporation (formerly American Real Estate & Petroleum), which is listed on the Big Board, selling about a point under its 1972 high of 29½, and which has two smaller projects in Florida. Our hosts were the ATC Realty Corporation, a local AMREP subsidiary.

Greenberg spoke glowingly about the wonders of the Albuquerque area—the climate, the clean air, the booming job market, the recreational facilities. "There are only two sports you can't indulge in there—salt-water swimming and deep-sea fishing, unless the earthquake comes and California falls into the ocean." He seemed particularly proud of Rio Rancho's golf course, scheduled site of the Jimmy Durante–Dale Robertson Open.

He also stated the line we were to hear time and again throughout the evening: Albuquerque is hemmed in to the east by mountains and to the north and south by government-reserved land; its only area of expansion is to the west—and Rio Rancho is right in the path. So land values are bound to boom.

He pointed this out on a map among the pile of leaflets on our table. One of them was the offering statement (the real estate equivalent of a stock prospectus), which I started scanning.

"Hey! You're not supposed to read that until later!" Greenberg snapped.

I think he realized then that I was a "no sale."

In response to our questions, Greenberg said that he attended these dinners two or three nights a week, though most were smaller than ours. The invitations were mailed out by the Reuben H. Donnelley Corporation (the *Yellow Pages* people), and he had no idea of how many had been sent or why we were chosen.

Only a small portion of Rio Rancho was already developed, he explained, though gravel and dirt roads had been laid through the entire area. He didn't expect us to pack up and move out there right away; we should look on our purchase as an investment. Within six months of purchase, we could take a five-day package tour to Albuquerque for $450 per couple and, if we didn't like the property, trade it for another or get our money back—no questions asked. Or we could sell it to someone else.

"But wouldn't we be competing with you?" I asked.

Greenberg assured us that wouldn't be the case, since 90 per cent of the lots were already sold.

"How about water?" the doctor asked.

Greenberg said the water table was sufficient to supply one million people for the next 500 years.

The lots, he continued, were mostly a half-acre, though a few were larger.

"How much do they cost?" my companion asked.

"We'll get to that later," he said.

"But I want to know how much," she insisted.

We were interrupted by Rio Rancho's honcho for the evening, a Mr. Olivieri, a swarthy, perfectly programed organization man who would make Richard Nixon seem appealingly rough-hewn. He introduced the evening's first film—a bit of boosterism called *Albuquerque's West Side Story*, put out by the local chamber of commerce.

When it ended, he asked, "Well, how did you like it?"

There was a smattering of polite applause, led by the five salesmen.

Then the dinner, which was surprisingly good—fruit cup, Salisbury steak, mashed potatoes, green beans, and a delicious cheese cake. No liquor was evident, though I learned later there was a cash bar.

After dinner Olivieri introduced the second film—a straight half-hour commercial for Rio Rancho called *Your Golden Future*. It showed golf courses, rodeos, barbecues, pool parties and picnics, interviews with happy residents relocated from Middle America, and endless shots of Rio Rancho's ranch houses—on lots that seemed far smaller than the minimum half-acre and that reminded me of Malvina Reynold's "ticky-tacky." When it finished, there was another round of induced applause.

Then Olivieri made his pitch, repeating all the points that Greenberg had made in conversation and Your Golden Future had made on film. Meanwhile, a Xeroxed sheet was passed to each table, listing the twenty-four lots that would be up for sale that night. The smallest was three-fourths of an acre for $3,065, the largest, 3.11 acres for $11,430. Ten per cent down would reserve any lot.

As soon as Olivieri had finished, the salesmen jumped up and shouted their "options" for various lots. It sounded like the pledge call at a United Jewish Appeal dinner.

The other couples at our table soon departed without buying. Greenberg gave up on me, but he made a strong pitch to sell my companion a one-acre lot for $5,010—$505 down, $67 a month. What the Xeroxed sheet didn't show was that the payment stretched over eighty-nine months for a total of $6,468—which figures out to be 22½ per cent interest. For most customers that moment of truth would come only when the contract was thrust out for final signature.

Greenberg showed us on a larger map in which of Rio Rancho's twenty-six "units" the lot was located, but there was no plot map to indicate how it fitted into the overall scheme of development. No customer could learn that until he flew to Albuquerque.

By the time we left, only one lot had been "reserved"—the smallest one.

We weren't allowed to take any of the promotional flyers with us, but I, with assumed naïveté, asked if I could keep the offering statement.

"If I didn't let you have that, we'd be out of business," Greenberg said, though his tone clearly indicated that he wished I hadn't asked.

I could see why when I got home and perused the fine print at leisure:

Lots may be purchased for speculative purposes but such purchasers are advised that resale for a profit may be difficult for a number of years in view of the fact that water and utilities may not be available to certain lots for an indefinite number of years . . . and that in trying to make a resale the purchasers may be competing with the company, which has thousands of lots to sell.

Instead of the 90 per cent sold, as Greenberg had said, Rio Rancho, according to the statement, as of March 1 had 71,499 of its 86,176 lots for sale. In the better-developed areas, only 600 of 1,800 residential lots had been sold.

Rio Rancho's water table may be sufficient for 500 years, but its supplier, the Albuquerque Utilities Corporation, has facilities to serve the needs of only 8,000 homes and plans to install new equipment for only another 2,000 to 4,000.

More fine print: The possibility exists that no water service will be available to many of the lots for an indeterminate number of years. . . No representation is made that such service will ever be installed or rendered.

Olivieri had said that Rio Rancho lots were selling for far less than others in the Albuquerque area. If so, it would mean that the other real estate developers are even bigger profiteers than AMREP.

Rio Rancho's cash statement for fiscal 1971 showed that it was reselling the land for nearly ten times the original purchase price. Annual sales were $29.7 million—for land that originally cost $3 million. Interest added another $4.1 million in income. Rio Rancho's promotional costs outran land cost by nearly 3 to 1—$8.2 million.

The development's post-tax profits were $8.5 million—or 22 per cent. It had retained earnings of $37.7 million.

A few minutes of calculations showed that each 6,000 acres sold brought profits of about $8 million. And there are 71,499 lots left to go.

RESOLUTIONS PASSED BY VFW AT 74TH NATIONAL CONVENTION

Mr. THURMOND. Mr. President, the 74th National Convention of the Veterans of Foreign Wars of the United States was held in New Orleans, La., August 17 through 24, 1973.

During this convention a number of resolutions were adopted which addressed our national security and other important issues presently before the Congress.

Mr. President, these resolutions approved by the membership of the influential VFW are well thought out and deserve the attention and consideration of the Congress and the Nation. I ask unanimous consent they be printed in the RECORD at the conclusion of my remarks.

There being no objection, the resolutions were ordered to be printed in the RECORD, as follows:

RESOLUTION NO. 403: POSTWAR U.S. POLICY TOWARD SOUTHEAST ASIA

Whereas, the objective of U.S. policy toward Southeast Asia—supported by the last five American Presidents—is a durable peace in which peoples of the area do not have governments imposed upon them; and

Whereas, U.S. policy seeks to avoid a clash among the United States, the Soviet Union, and Mainland China in this part of the globe; and

Whereas, while the President has completed both U.S. troop withdrawals and the Vietnamization program, U.S. policy will continue to focus upon this area; and

Whereas, within their limited capabilities both Cambodia and Laos are resisting, along with South Vietnamese, the intrusion of regular North Vietnamese divisions within their national borders; now, therefore

Be it resolved, by the 74th National Convention of the Veterans of Foreign Wars of the United States, that our beloved country support the President of the United States as he steadfastly seeks a durable peace in Southeast Asia having boldly reduced the U.S. military presence therein; and

Be it further resolved, that the sense of the foregoing resolution be conveyed to the President, the Congress, the communications media, and the country at large by all means available to this organization.

Adopted at the 74th National Convention of the Veterans of Foreign Wars of the United States, held in New Orleans, Louisiana, August 17 through 24, 1973.

RESOLUTION NO. 404: U.S. POLICY TOWARD COMMUNIST CUBA

Whereas, since the President's visits to Communist China and Communist Russia, many newspapers, TV stations, and other media have sent up "trial balloons" stating that, in their opinion, it is now time to "normalize" relations with Communist Cuba in the wake of the anti-hijacking agreement; and

Whereas, Communist Cuba's dictator, Fidel Castro, has, notwithstanding, kept thousands of Cuban citizens languishing in horrible conditions in filthy prisons and concentration camps; and

Whereas, the Cuban Communist regime has continued the repressive policy of no free elections, systematic withdrawal of all democratic freedoms, systematic spying on all citizens and coercion of all Cubans into the Communist system; and

Whereas, Communist Cuba has continued in its implacable hatred of the United States of America and has continued to send out Communist agents to other countries in this hemisphere and continued to train and inspire agents for sabotage and insurrection in various countries; and

Whereas, the United States of America has admitted hundreds of thousands of anti-Communist refugees from Cuban shores; now, therefore

Be it resolved, by the 74th National Convention of the Veterans of Foreign Wars of the United States, that we call upon the President and the Congress to continue the present policy of no trade with Communist Cuba and the policy of no diplomatic recognition of the Communist state for as long as it remains the policy of the Cuban Communist regime to retain the many harsh injustices now extant in that unfortunate land; and

Be it further resolved, that the U.S. Government grant no concessions whatsoever on the control or use of Guantanamo Bay.

Adopted at the 74th National Convention of the Veterans of Foreign Wars of the United States, held in New Orleans, Louisiana, August 17–24, 1973.

RESOLUTION NO. 406: "NO WIN" WARS

Whereas, during the wars in Korea and in Vietnam, the United States has engaged in widespread hostilities without willing the means to achieve victory; and

Whereas, the "No Win" Wars in Korea and Vietnam have divided and enfeebled our beloved country, there being no substitute for victory; and

Whereas, ever since the Bolshevik Revolution in 1917, whenever the Soviets have turned to force of arms, they fully achieved their objectives, most recently Czechoslovakia in 1968; now, therefore

Be it resolved, by the 74th National Convention of the Veterans of Foreign Wars of the United States, that should, in the future, the United States find it necessary to defend the nation or the nation's security interests by recourse to arms, that no obstacle be allowed to arise which would deny victory to our beloved nation in the shortest possible time.

Adopted at the 74th National Convention of the Veterans of Foreign Wars of the United States, held in New Orleans, Louisiana, August 17–23, 1973.

RESOLUTION NO. 408: THE PANAMA CANAL ZONE

Whereas, Article II of the 1903 Convention between Panama and the United States, as modified in part by the 1936 Treaty between the two Governments, states:

ARTICLE II

"The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for construction, maintenance, operation, sanitation, and protection of said canal of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the Canal to be constructed; the said zone beginning in the Caribbean Sea three miles from mean low water mark extending to and across the Isthmus of Panama into the Pacific Ocean to a distance of three marine miles from mean low water mark with the proviso that the cities of Panama and Colon and the harbors adjacent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant . . .

"The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the zone above described and in addition thereto the group of small islands in the Bay of Panama, namely Perico, Naos, Culebra, and Flamenco;" and

Whereas, the United States of America has fully met its obligations to Panama under has efficiently and responsibly accommodated an ever-incresing number of transits and existing treaty arrangements and, moreover, amount of tonnage through the canal; and

Whereas, the revolutionary government of Panama, a product of coup d'etat, has, since June, 1971, under the guise of seeking new canal treaty arrangements, undertaken a bitter and sustained campaign of anti-American propaganda fueled in large part by Cuban and Soviet Communists; and

Whereas, given the emotionally irrational situation in Panama, a political/psychological "timebomb" is being consciously fabricated by the revolutionary government of Panama set to explode to the detriment of the United States and the world shipping community, as was the case in the abortion meeting of the UN Security Council in the Panama and the subsequent threat to the U.S./UN Ambassador; now, therefore

Be it resolved, by the 74th National Convention of the Veterans of Foreign Wars of the United States, that:

(a) U.S. control and defense of the Panama Canal are non-negotiable;

(b) tensions relating to the administration of the Canal Zone be resolved on the spot without disturbing present treaty arrangements;

(c) U.S. citizens and employees in the Canal Zone continue to meet their responsibilities under U.S. sovereignty; and that

(d) the foregoing position be again communicated to both the President and to the Congress.

Adopted at the 74th National Convention of the Veterans of Foreign Wars of the United States, held in New Orleans, Louisiana, August 17–24, 1973.

RESOLUTION NO. 411: A PROPER NATIONAL DEFENSE POSTURE

Whereas, it is the Constitutionally-ordained duty of our beloved country and its citizens "to provide for the common defense;" and

Whereas, the most crucial "social service" our beloved country can provide for her citizens is to keep them alive and free; and

Whereas, domestic problems with their increasing demands on the tax dollar have driven down the national defense portion of the budget from a recent high of near 10 percent of the gross national product to about six percent for fiscal year 1974; and

Whereas, the Soviet Union has, despite the May, 1972 Strategic Arms Agreement, continued to modernize and expand her strategic and tactical land, sea, and air deployments with a heavy concomitant investment in military research and development; and

Whereas, no ally or combination of allies have the will and capacity, without large scale U.S. support, significantly to enhance the freedom and safety of our beloved country and the rest of the Free World; now, therefore

Be it resolved, by the 74th National Convention of the Veterans of Foreign Wars of the United States, that

1. The Congress "raise and support" an Army structure to meet fully the many commitments world-wide it faces;

2. We support modernization and procurement of manned bombers, fighters and manned interceptors as major elements of our Nation's total air/space offensive/defensive team;

3. The Congress "provides and maintains" a combat/ready Marine Corps with sufficient funds to maintain a strength of at least four divisions and four air wings (one division and one wing as reserves);

4. The Congress "provides and maintains" the U.S. Navy as the world's most modern, powerful and versatile naval power;

5. The National Guard and Reserve be fully funded and supported in line with their enhanced importance under the "total force concept;"

6. We reaffirm our support of a U.S.-built, enlarged and modern Merchant Marine as a vital element of our nation's maritime policy to include needed subsidies;

7. We support strong and meaningful separate military departments under their respective Service Secretaries;

8. we advocate continued development of atomic and hydrogen weapons and the necessary testing of such weapons to sustain and preserve our role as the strategic guardian of the Free World;

9. we support a policy of central control and coordination of research and development, by the Secretary of Defense, that eliminates unnecessary duplication, but assures the benefits of constructive competition and experimentation of weapons appropriate to the missions of the military services. We continue to support the Congressionally-established basic roles and missions of the Army, Navy, Air Force and Marine Corps;

10. we support adequate U.S. forces under NATO and oppose any unilateral troop withdrawals from Europe;

11. we support every feasible public and private measure to restore and enhance discipline, morale, esprit de corps and professionalism in the Armed Forces;

12. we oppose any further reductions or constraints upon our strategic offensive forces in SALT II which are not more than offset by verifiable Soviet reductions;

13. we support a vigorous and professional ROTC and Junior ROTC program;

14. we note the early attainment of service recruiting goals under the "All Volunteer Forces Concept" during a period of no hostilities, but reserve definitive comment until this concept has met the test of time and hostile fire;

15. the United States maintain a viable and effective Selective Service System, specifically to include the authorization of the President to induct civilians into the Armed Forces, so that in time of national need, non-volunteer military forces may be raised quickly and effectively with equity; and, finally

16. we support the legislation sponsored by Chairman F. Edward Hebert of the House Armed Services Committee to establish a U.S. Military Medical University to provide medical officers for the armed services.

Adopted at the 74th National Convention of the Veterans of Foreign Wars of the United States, held in New Orleans, Louisiana, August 17–24, 1973.

RESOLUTION NO. 427: OPPOSE SENATE BILLS DEALING WITH CORRECTION OF DISCHARGES

Whereas, it has come to our attention that several bills have been introduced into the first session of the 93rd Congress dealing with the correction of discharges and other matters thereto; and

Whereas, we question whether these bills are a back door entrance to granting a type of amnesty or forgiveness for misconduct while in military service; now, therefore

Be it resolved, by the 74th National Convention of the Veterans of Foreign Wars of the United States, that we hereby go on record as opposing the passage by the Congress of the United States Senate Bills 1714, 1715, 1716, 1717 and 1718.

Adopted at the 74th National Convention of the Veterans of Foreign Wars of the United States, held in New Orleans, Louisiana, August 17–24, 1973.

THE REMARKABLE WORK OF NANCY HANKS AND THE NATIONAL ENDOWMENT FOR THE ARTS

Mr. MOSS. Mr. President, the Washington Post today praises the work of Nancy Hanks, Chairman of the National Endowment for the Arts. The outstanding accomplishments of the Endowment since its conception deserve wide notice.

Miss Hanks and her council members have brought new depth and vision to the task of improving and extending artistic programs throughout the country. President Nixon has shown wise judgment in renominating her as chairman of the National Endowment for the Arts.

This growth has been accomplished at a cost of no more than 20 cents per citizen—Vienna contributes $5.50 per person. Programs supported by the Endowment have brought a long list of cultural and artistic activities to all parts of my home State of Utah. These include support for the Utah Repertory Dance Theater, which travels over 250 miles to southern Utah to give performances, demonstrations, lessons, and lectures; the Utah Symphony Orchestra touring program; Ballet West Residential Professional Dance Co. program; artist and poet in residents programs; a minority art program called Utah Ballet Folklorico Co.; and a museum purchasing program to buy works of living artists.

Similar accomplishments have been repeated throughout every corner of America. In an age when the quality of our life has become a central point of discussion, the lift that comes through exposure to the many forms of art is sorely needed. Miss Hanks and her council are to be commended for all they have done to improve our lives through an expansion of the arts. I ask unanimous consent that the Washington Post editorial of September 19, 1973, "Nancy Hanks: A Success Story," be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

NANCY HANKS: A SUCCESS STORY

Last week, the President called Nancy Hanks, the chairman of the National Endowment for the Arts, and some of her council members—among them actress Rosalind Russell, painter Jamie Wyeth, pianist Bill Taylor and opera singer Robert Merrill—to his White House office. He told her that he had nominated her for a second four-year term. "You are here," Mr. Nixon said, "because you have been able to get a 900 per cent increase [in federal funds for the arts] out of Congress."

We prefer to think that it is the other way around. We think Congress has authorized a spectacular and most ratifying increase in funds for the arts program because Miss Hanks was there.

With still relatively meager funds (last year the U.S. federal government spent 20 cents per citizen for the arts, in contrast to Canada's $1.40 and West Germany's $2.80), the Endowment, under Miss Hanks' chairmanship, has not only assisted individual artists and touring companies. More importantly, its efforts have considerably increased private donations and local matching funds. It has established a firm and creative partnership between the federal program and ever-increasing state and local efforts to help the arts improve the quality of life in America. The Endowment puts great stress, for instance, on supporting and enhancing the country's rich cultural diversity by aiding the indigenous artistic expression of the people of Appalachia, blacks, Chicanos, Indians, Puerto Ricans, Chinese, Japanese, and other minority groups.

Under another program, the Endowment, together with state arts councils, has brought hundreds of dancers, musicians, poets, painters, sculptors, film-makers, craftsmen and actors into America's classrooms and community meeting halls. Nancy Hanks and her council now have an ambitious and important program underway to improve the esthetics of the many things government does that shape the appearance of America: The government's own buildings, graphics, landscaping, renewal projects and other public works that might as easily be well than poorly designed.

And contrary to earlier misgivings by conservatives and liberals alike that federal support of the arts might lead to federal control of the arts, the council has maintained a healthy and at times even scrappy independence. At its last meeting, on the basis of its congressional mandate "to foster a climate of artistic freedom of expression," the council urged artists and art organizations to help make sure that local zealots do not misuse the recent Supreme Court obscenity ruling to restrict or curtail valid artistic and creative freedom. (A sheriff who would ban Playboy, might, after all, be persuaded to cover up a Rubens painting.) The council doesn't seek to provoke controversy when it strives to act as the nation's artistic conscience. But neither does it shrink from telling the U.S. Postal Service that some of its postage stamps are poorly designed or to tell museums to make sure that their buildings—with their imposing Greek temple stairs—are made easily accessible to the physically handicapped.

At that same meeting, the council expressed its delight at the re-nomination of its chairman, Nancy Hanks. So do we. We hope the Senate will act promptly to confirm her. And we are particularly delighted that the President has now charged the Arts Council to focus on the arts in the commemoration of the Bicentennial. We can think of no better way to give the planning for that event some much needed focus.

RECOMPUTATION OF MILITARY RETIREMENT ANNUITIES

Mr. DOMENICI. Mr. President, from the time of the Civil War until 1958, military retirement annuities were directly tied to active duty pay scales. Then 15 years ago, this tradition was abandoned by Congress in favor of a cost-of-living increase system. The new system has not proven to be beneficial for retirees.

Previous to 1958, retired pay was a function of years of service and merit, and today, it is dependent upon one's date of retirement. The inequities of this system are obvious. The differences between active duty pay and retired pay has widened each year. Older retirees now receive considerably less than their younger counterparts. In some cases, the disparity is as high as 50 percent.

I do not believe this is another Federal giveaway program; it is just compensation for dedicated service to the United States.

President Nixon said in 1968 that suspension of the recomputation system was "A breach of faith for those hundreds of thousands of American patriots, who have devoted a career of service to their country and who, when they entered the service, relied upon the laws insuring equal retirement benefits."

As President Nixon goes on to say:

My Administration stands strongly behind the principle that the men and women who have served this country honorably will be served by this country as their needs dictate.

The fiscal 1974 budget includes a first-year recomputation cost of $360 million which is about $17 million more than this amendment asks for.

Mr. President, I urge my colleagues to

take prompt action by voting for this amendment and thus remedy this injustice.

I ask unanimous consent to have two letters with regard to this matter printed in the RECORD:

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

MARCH 21, 1973.

Hon. PETE V. DOMENICI,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DOMENICI: It is my understanding that in the near future, the Congress intends to consider various measures for recomputing military retired pay. The inequities in the present system are glaringly apparent, and I think it is a sad commentary on our moral values that such a condition is allowed to exist.

Neither I nor my husband are in a category that will benefit monetarily by any changes in the system, but as concerned citizens we feel we have a moral obligation to justly compensate those who have given their minds, bodies and years to the defense of our country.

Our tax money is now being spent on many welfare, relief, assistance, subsidy and other programs, some of which are good and necessary, others of little or no value. Many of the beneficiaries of these programs have never done anything for our country or themselves, will not work and pay no taxes, but we continue subsidizing them while ignoring others who have worked hard, paid their taxes, and continue paying taxes on the pittance received in retirement.

Some subsidization programs are of particular concern to us. We would much rather our money be used to equalize retired pay for the military, rather than have it used to increase our cost of living. Two prime examples of this are the agriculture and lumber industries. We pay them to enable them to get more money for their products, and then we have to purchase these products at their inflated prices. Because of this, food and building costs are completely beyond reason, and the underpaid military retiree of several years ago is today left hungry and cold.

The fact that a person retiring from the military today is paid 60% more than a person of the same rank and length of service who retired 10 years ago, speaks for itself. Because of this, we urge you to give your utmost support to passage of legislation granting the retired serviceman the just and equitable retirement pay he has earned and deserves.

Sincerely yours,

BARBARA J. MACDONALD.

PLACITAS, N. MEX.,
July 28, 1973.

Hon. PETE V. DOMENICI,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DOMENICI: This is to bring your attention to a number of bills regarding recomputation of military retiree pay.

I am a military retiree, retired for permanent physical disability. This disability prohibits my engaging in any effort that will add to my income; consequently, I must depend on retirement pay for my bread and butter.

During my active duty years, it was universally accepted that upon retirement ones retirement pay would be increased whenever the basic pay of active duty personnel was increased. However, during the reign of MacNamara this was changed. By that time I was too far along in my career to consider resignation and a second beginning, so I remained in the service.

As you know, a cost of living provision was added that raises retired pay under some circumstances. While this has helped, it has not compensated for the general erosion of retired benefits and the additional cost of living. Such things as CHAMPUS helped, but did not, for instance, take the place of military medical care. Each change designed to replace some existing benefit has resulted in a decrease.

I am aware that the courts have ruled that we have no legal basis to demand recomputation of retired pay, but often there seems to be a difference between legal rights and ethical rights. I suspect that compiete recomputation of military retiree pay may well carry a total price tag that is quite high. However, there should be a compromise that would provide a measure of relief and still be within the bounds of reason.

May I then ask that you not reject recomputation bills out of hand, but study them carefully. Keep in mind a reasonable compromise between what we were promised and the limits of ultimate costs. Please try to support a reasonable bill that promises to alleviate the problem.

Sincerely,

STANLEY T. MAJOR.

ALBUQUERQUE, N. MEX.,
June 9, 1973.

Hon. PETE V. DOMENICI,
U.S. Senate,
Washington, D.C.

SIR: Thank you for co-sponsoring Senator Tower's Recomputation of Military Pay Bill S. 838. I appeal to you to also co-sponsor Senator Hartke's Bill S. 762 and support of the Administration's Department of Defense Recomputation Budgeted Measure.

I entered into the Army Air Corps, a volunteer military service in 1934 and served 10 years in the enlisted status, attaining the grade of Master Sergeant. I was commissioned as an officer from Officers Training School in 1944 and served 13 years as an officer and was promoted to the grade of Major after 9 years of commissioned service. I retired in 1957 after 23 years of continuous service.

When I entered the military service my pay scale started at $19.98 per month, then $21 per month. Promotions were infrequent and pay was small and each pay raise was accompanied with the comment that a percentage was withheld to support military retirement and recomputation of pay after retirement. My base pay when I retired was 41 percent of the comparable present grade and pay scale.

At the 13th year of my military career I seriously considered whether I should stay in the military or leave, recognizing that my military salary was substantially lower than the comparable civilian salary. There were two overriding reasons that motivated me to stay in the service. They were that my retired pay would be recomputed with future pay raises to compensate for low past base pay and that I liked what I was doing; my assignments were challenging and I was accomplishing something.

Recomputation was abandoned in 1958 without a saving clause. Hundreds of thousands of retired military personnel, predominately in the enlisted grades and lower six commissioned grades, having served before 1958 have suffered substantial financial loss as compared with today's retired scales.

The legislation that has been proposed can help correct a long overdue obligation. Thank you for your attention and cooperation in this issue.

Sincerely yours,

LON E. AUCKER,
Major, U.S. Air Force, Retired.

THE U.N.—A DREAM TURNED SOUR

Mr. ALLEN. Mr. President, the Montgomery, Ala., Advertiser on September 15, 1973, carried as its lead editorial an editorial entitled "The U.N.—A Dream Turned Sour," which reflects the views of a large percentage of the people of the Nation. I ask unanimous consent that it be printed in the RECORD, as a matter of interest and of information to Senators.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THE U.N.: A DREAM TURNED SOUR

What has the United Nations done for me? Many Americans ask this question rhetorically and very few, except the most starry-eyed liberals, come up with anything close to an acceptable answer.

Surely it had great promise when it was being touted in the closing days of World War II. We'd had our fill of the horrors of armed conflict and the promises held out by UN advocates were exactly what war-weary nations wanted to hear.

Like Woodrow Wilson's League of Nations, however, the UN proved to be more a dream than a reality.

When UN critics begin assailing the world body, its apologists usually jump to the defense, saying it is a "forum for international discussion, for quiet meditation, for continuous contacts between nations."

The above are the words of Secretary General Kurt Waldheim, who is calling for renewed confidence in the organization in the wake of increasing criticism of its effectiveness over the past 28 years.

Beginning Monday on this page, Robert Alden of the New York Times will discuss the UN in a three-part series which leans heavily on its shortcomings.

While Alden finds plenty of areas to criticize, Waldheim is considerably less detailed in his assessment of the UN's accomplishments.

Some of the most "notable achievements" Waldheim said recently, must remain "highly confidential" if the organization is to continue in a trusted role as mediator among opponents.

This sounds like the veil of secrecy the Defense Department usually employs to conceal its blunders and failures. The UN, however, must drag out the secret stamp to conceal its successes, or so Waldheim would have us believe.

"When our efforts are not successful, the results are only too evident," he tells us. And we agree there has been plenty of evidence of unsuccessful UN ventures.

Waldheim explains that this is a situation that "does undoubtedly affect the public's view of the UN."

He is willing for the world body to take credit for the "gradual reduction of tensions between the major nuclear powers" and "the liberation of over a billion people from colonialism."

Well, perhaps.

However, we like to think President Nixon—with little help from the UN—played a far greater role in the lessening of tensions among the nuclear powers, notably the U.S., Red China and the Soviet Union.

As to the liberation of these billions of people from colonialism, this has been one of the weakening factors in the UN.

As Alden points out in his second installment, "There were 51 members when the UN was founded in 1945. Now there are 132 and by the end of the General Assembly session that begins later this month, there will be 135."

Each of these new members, some barely out of the bush, votes as an equal to any other nation, including the U.S., Great Britain, the Soviet Union and Communist China.

Many of these politically immature states tend to align themselves against the U.S. and other major powers, forcing the UN to concern itself with their own petty interests.

From our standpoint, the great UN dream has faded. Perhaps the Secretary General will

be able to whip up renewed confidence in the organization, but for many Americans, the UN has yet to prove itself effective.

CONGRESS AND THE PRESIDENT

Mr. THURMOND. Mr. President, President Nixon has called upon the Congress to leave Watergate to the courts and to return to the Nation's business. He has extended the olive branch to Congress and it is our responsibility to do the same.

This extension of cooperation is mandatory if we are to deal effectively with the multiplicity of problems confronting the country this year.

My attention was called to a recent editorial which expressed these views very well. In part, it said:

Establishment of good communications and agreement to disagree within all segments of government can do much to get the country moving again.

Since this editorial is so timely, I would like to share it with my colleagues. Accordingly I ask unanimous consent that the editorial entitled "Getting Back on the Track," which appeared in the Greenville News of Greenville, S.C., September 14, 1973, be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

GETTING BACK ON THE TRACK

President Nixon's second State of the Union message can be considered a challenge to Congress to cooperate with him in making the federal government work as it ought to work. Congressional response to the challenge has been generally favorable.

There are indications that the destructive wall that has existed between the administrative and legislative branches can be broken down by a spirit of compromise and cooperation which is essential to the functioning of government. Mr. Nixon apparently is determined to break out of the self-imposed isolation which has hampered establishment by his administration of a working relationship with Congress.

The President's call for "creative cooperation" and his expressed willingness to compromise on solutions to many of the nation's pressing problems represent important steps toward getting on with "the people's business". And the agenda is loaded with urgent business.

The estrangement of the executive and legislative branches of government cannot be blamed completely on either Congress or the President. It has been, nevertheless, very real with the two branches acting not only separately, but also independently. As a result, government problem solving has become almost nonexistent.

Watergate may have broken the impasse. The President now seems more aware than at any other time in his administration that he cannot effectively govern without the cooperation of Congress. The Congress itself is in the process of assuming once again constitutional responsibilities that it has relinquished over several decades.

Most congressmen, just back from summer recess and talks with their constituents, realize that the American public, as a whole, is willing to let Watergate run its course through legal channels. This means working closely with the President to tackle some of the difficult problems that are hitting people where they live.

All of the proposals listed for action by the President cannot possibly receive consideration in the remaining four months of the current session. Given, however, a genuine atmosphere of cooperation between the administration and Congress, some of the country's most pressing issues can be faced.

At the top of the list are inflation, defense, the energy crisis and domestic-spending programs. Defense spending and Mr. Nixon's plans for more direct revenue sharing may well create the greatest confrontations between the President and Congress in the coming months.

The President is firmly committed to retaining defense spending to at least its present level, while many congressional leaders favor cutting it and placing more money in new domestic programs. Congress also has been extremely weary of turning more funds directly back to local governments.

The new drive for cooperation does not mean that Mr. Nixon and the Congress will be able to avoid head-on collisions on these and other issues. The hopeful thing about the President's message, as far as the American people are concerned, is that it clears the way for the executive and legislative branches of government to start talking to one another.

Establishment of good communications and agreement to disagree within all segments of government can do much to get the country moving again.

MINNESOTA—A STATE THAT WORKS

Mr. MONDALE. Mr. President, I take great pleasure in calling to the attention of my colleagues in the Senate a recent cover story in Time magazine, entitled "The Good Life in Minnesota."

In attempting to identify and solve many of our Nation's most pressing problems, advocates of reform have at times been criticized for emphasizing what is wrong instead of what is right with America.

Although Minnesotans have frequently pressed for action to achieve greater social justice and a higher quality of life in our country, we are at the same time proud of what we have been able to accomplish, generally optimistic about the future, and confident of the ability of people working together to shape it for the better.

As Time points out:

(Minnesota) is a State where a residual American secret still seems to operate. Some of the nation's more agreeable qualities are evident there: courtesy and fairness, honesty, a capacity for innovation, hard work, intellectual adventure and responsibility. The land is large (84,068 sq. miles), the population is small (just under 4,000,000). Nature is close (20 minutes from a downtown Minneapolis office building to a country lake) and generally well protected.

Politics is almost unnaturally clean—no patronage, virtually no corruption. The citizens are well educated; the high school dropout rate, 7.6 percent, is the nation's lowest. Minnesotans are remarkably civil; their crime rate is the third lowest in the nation (after Iowa and Maine). By a combination of political and cultural tradition, geography, and sheer luck, Minnesota nurtures an extraordinary successful society.

I believe one of the primary reasons for Minnesota's success, as observed by Neal R. Peirce in "The Great Plains States of America," is that no special interest group has ever been able to take control of the State. Instead, people feel a sense of control over their own destiny and tend to participate actively in the processes of government.

While Minnesotans have few illusions about the complex challenges we face, I believe a sense of community, a spirit of cooperation, and an eagerness to become involved in the decisions of Government combine to make those challenges a great deal easier to meet.

Mr. President, I commend to my colleagues in the Senate Time's cover story, and I ask unanimous consent that it be printed in full in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MINNESOTA: A STATE THAT WORKS

On an August Saturday afternoon, the scene is a slice of America's Norman Rockwell past. Barefoot children play one old cat and race their wagons down gently sloping sidewalks. Under the overhanging oaks, their fathers labor with hand mowers, and rakes. On one lawn up the street, a rummage sale is in progress. Station wagons, laden with children, groceries, dogs and camping equipment, and trailing boats, slide out of driveways, heading north for a week or two at the lake.

It could as well be Little Rock, Ark., or Great Barrington, Mass., or Portland, Ore., for the nation is in its easier summer rhythms. But the setting is the north side of Minneapolis, in Minnesota, a state where the Rockwell vision pertains with a special consistency. If the American good life has anywhere survived in some intelligent equilibrium, it may be in Minnesota.

It is a state where a residual American secret still seems to operate. Some of the nation's more agreeable qualities are evident there; courtesy and fairness, honesty, a capacity for innovation, hard work, intellectual adventure and responsibility. The land is large (84,068 sq. mi.), the population small (just under 4,000,000). Nature is close (20 minutes from a downtown Minneapolis office building to a country lake) and generally well protected.

Politics is almost unnaturally clean—no patronage, virtually no corruption. The citizens are well educated; the high school dropout rate, 7.6%, is the nation's lowest. Minnesotans are remarkably civil; their crime rate is the third lowest in the nation (after Iowa and Maine). By a combination of political and cultural tradition, geography and sheer luck, Minnesota nurtures an extraordinarily successful society.

The state harbors some of the nation's fastest-growing computer companies—Honeywell Inc., Control Data Corp., Univac—along with a diversity of such other corporations as 3M Co., General Mills Inc., Geo. A. Hormel & Co., Pillsbury Co., and Investors Diversified Services Inc., one of the world's largest mutual fund conglomerates. The University of Minnesota, whose alumni and faculty have included seven Nobel laureates, ranks among the nation's best. It helped to develop the Salk vaccine, open-heart surgery, blight-resistant wheat. The Mayo Clinic remains America's secular Lourdes. Minneapolis' Tyrone Guthrie Theater displays some of the most distinguished drama west of Broadway. The Minnesota Orchestra under Stanislaw Skrowaczewski is one of the finest in the country. The Twins, the North Stars and the Vikings have brought a state of natural participant sportsmen into the big leagues.

"I have traveled this world over thoroughly" says Harry Heltzer, chairman and chief executive of the St. Paul-based 3M Co., "but I've never seen a place I would rather live. I can be home in 20 minutes and feed deer, ducks and geese in my yard." Indeed, one personnel problem in the large corporations is that executives transferred to Minnesota are so reluctant to leave that they would

often rather quit and find other work there than accept a transfer. Steve Scarborough, a young Honeywell engineer who turned down a promotion two years ago because it would have meant moving to Florida, says flatly: "Many places are nice, but none is better than Minnesota."

A lot of Minnesotans concur:

Orthodontist Richard Paulson, 39, lives with his wife Betty Ann and two daughters in the Minneapolis suburb of Golden Valley. In the woods behind his large rambling house, Paulson likes to take his children walking to see woodchucks, mallards, chipmunks and an occasional fox. They feed pheasant on their lawn. The Paulsons attend church ten minutes away in downtown Minneapolis, and in the summers vacation on the thickly wooded shores of sparkling, uncrowded Gull Lake, 2½ hours north of the Twin Cities. "I feel fortunate," says Paulson, "that we can still taste the things that 50 years ago people took for granted."

Theater buffs, the Paulsons have not missed a show at the Guthrie Theater since it opened in 1963. They occasionally attend the Minnesota Orchestra and frequently visit art shows at Minneapolis' Walker Art Center. "There is a certain peace in our existence," says Paulson, who admits, "You can lose yourself in this utopia. It's so easy not to be confronted by the needs of others." For that reason, the Paulsons have become social activists—working in local politics and serving as youth volunteers.

Chuck Ruhr, 36, owner of a Minneapolis ad agency, lives a long commute—by Minneapolis standards—from his office. But he can make the 25 miles of freeway in 30 or 40 minutes, likes to point out that within an hour after leaving work, he can be sitting on his pontoon boat in the middle of White Bear Lake, enjoying a drink and watching the sun go down. He and his wife and two children live in a 1912-vintage five-bedroom house on the shores of the lake, with their own beach and dock. His wife's optometry business is three blocks away; stores and schools are just as close. Says Ruhr: "There is a little less of the bad things here—drugs, pollution. Being way up here, people have had a chance to see the crest of the wave coming and react to it. There's an attitude, too, that we've got a nice little thing and let's keep it that way."

Arlene Kulis, 24, migrated to Minneapolis from Chicago seven years ago. At first, she did not like it; the winters were formidable; the people seemed a bit provincial. But then she began savoring the lack of traffic, the safety of the streets, the camping weekends. "No one ever bothers you on the streets," she says. "You listen to the news in the morning, and there aren't 20 million murders."

Blaine Harstad, 44, a Minneapolis lawyer, has never forgotten his farm upbringing. Like other Minnesotans, he remains drawn to the land. Three times a year, he returns to the family farm near Harmony in the southeast part of the state. He loves to listen to the school-closing notices on snowy mornings to see if Harmony is mentioned. The small-town flavor of the Twin Cities appeals to him. As Harstad points out, he knows just about every one of the 2,500 lawyers there, either directly or indirectly. "I can walk two blocks," he says, "and meet five people I know."

Minnesota has its drawbacks. Its winters are as hard as the Ice Age, and in the summers, mosquitoes often seem half the size of dive bombers. Unemployment outside the Twin Cities area is troublesome, and personal income taxes are the highest in the nation. Duluth residents worry about possible carcinogenic asbestos particles in their drinking water. At the same time, the Reserve Mining Co. is dumping thousands of tons of taconite talings into Lake Superior every day, polluting the once limpid waters. Contentment can sometimes amount to middle-class complacency. Once, in its years in the cultural wilderness, Sauk Centre, Minn., was Sinclair Lewis' *Main Street*, his symbol for a kind of porcine American self-satisfaction: "The contentment of the quiet dead . . . dullness made God."

Some argue that Minnesota works a bit too well and too blandly, that its comparatively open and serene population is a decade or two behind the rest of the U.S. The place lacks the fire, urgency and self-accusation of states with massive urban centers and problems. Minnesota's people are overwhelmingly white (98%), most of them solidly rooted in the middle class. Blacks rioted in Minneapolis in 1966 and 1967, but with only 1% of the state's population, they have not yet forced Minnesotans into any serious racial confrontation. Or at least, not an apocalyptic confrontation.

Minnesotans are proud of that. After the 1967 riots, in the intelligently direct style of most Minnesota politics, businessmen, civil rights leaders and educators met to organize the first Urban Coalition chapter in the country. Today blacks are often among the state's more enthusiastic boosters. Says Gleason Glover, executive director of the Minneapolis Urban League: "For a black, Minneapolis is one of the truly outstanding cities in the U.S. to live in. The problems here—housing, education, discrimination, unemployment—are manageable . . . There just isn't the real, deep-seated hatred here that blacks often encounter in other cities." Two black state legislators were elected last fall from predominantly white middle-class suburban districts.

The state's other significant minority, its 23,000 Indians, most of them Chippewa, are clearly the most poverty-stricken residents. About half of them live in the Twin Cities, mainly in Minneapolis, in a tight ghetto that is the only really shabby area of town. The other half live on seven reservations, also in poverty, but with considerably more dignity. The Red Lake Chippewa are developing a logging industry, a sawmill and a small fish cannery. At Grand Portage Reservation in Northeastern Minnesota, the tribe is planning a resort complex. Says Ernie Landgren, 38: "Now we've got more opportunities. Sure, unemployment is high on the reservations, but things are improving."

Minnesota's economy is a fairly well-balanced mix of manufacturing, agriculture and services. Fur, northern pine, wheat and iron ore once were the dominant forces. Manufacturing displaced farming as the major source of income in 1952. Though farm and forest products remain a vital part of the economy, the gap has been widening. Over the past ten years, Minnesota has become one of the nation's leading "brain-industry" centers—more than 170 electronic and related technical businesses now employ more than 70,000 people. Food companies, however, still lead the state in employment. Minneapolis-based companies produce more than half the cakes in the nation, for example. Minnesota leads the U.S. in butter production, is second in dry milk, third in meat production.

The state's per capita income of $4,032 ranks 19th among the 50 states. For all that, Minnesota has been attracting new population, notably from the neighboring Dakotas. Between 1960 and 1970, the population increased by 11.5%—slightly less than the overall national increase of 13.3%.

Minnesotans sometimes point to themselves as the reason for the state's success. "You just don't have people barking at you when you're walking down the street or sitting in a restaurant," says Jim Johnson, a former Princeton instructor and Muskie campaign worker who recently moved back home. At the Minneapolis Club, where corporation executives and political leaders gather, the waitresses are so friendly and informal that a guest almost expects one to sit down and share the meal she has just served.

Wayne E. Thompson, a transplanted Californian, is now a senior vice president of Dayton Hudson Corp., one of the Midwest's largest retailers. Says his wife Ann: "People are so nice here that for a while I thought they were putting me on. I would call the plumber or the electrician, and my problem became his problem. I found that hard to believe." Sometimes the slower Minnesota pace irritates Thompson: "When I get frustrated because a project isn't moving fast enough, I am tempted to bring in someone from the outside, a heavy." But he's never done so because "you just can't get mad at anybody here."

THE LAND

Informality permeates business dealings as well as private life. Says Stephen Keating, president of Honeywell: "The nature of this community—its size, its cohesiveness, its informality—means that you can accomplish things at lunch, in the street, or your friends come by on the way home." A younger lawyer raised in New York City observes, "In New York, when you wanted a deposition from the other side in a lawsuit, you had to go through a heavy exchange of letters. Here I just pick up the phone and say, 'George, I need your client's deposition. Can we get together Wednesday?' So we do it then. No correspondence. No hassle." As Keating says, "There is a hell of a lot of mutual trust."

Much of the mood in Minnesota has to do with the comparatively unspoiled land. Southern Minnesota is an expanse of rolling countryside, a patchwork of rectangular fields, the loam that has made Minnesota the country's third largest corn producer (after Iowa and Nebraska), the soil that yields 100 bushels of corn and 40 bushels of soybeans to the acre. To the north and west, the land flattens into prairies that merge going eastward, with hills of nearly primeval forest. The northwestern lands are more sandy, but rich enough to produce ample crops of wheat.

Northeastern Minnesota, sometimes called the Arrowhead Country because of its shape, begins at the rugged Misquah Hills and Giants Range, a sharp granite ridge as high as 500 ft. To the southeast rises the Mesabi Range, a rocky belt that used to produce 82% of the nation's iron ore and still yields 63% in iron and taconite, the iron pellets sifted magnetically from huge loads of earth. Below the Canadian border stretch vast expanses of forests and lakes, a region of shaggy and pristine beauty. Timber wolves roam there. Moose can be seen feeding in the clearings. Sometims a bald eagle is spotted atop an enormous pine.

Such an abundance and accessibility of nature has much to do with the Minnesotans' sense of place and roots. More than almost any other Americans, they are outdoor people, and at least 50% of them customarily vacation within their own state. The seasons have their own sporting rhythms. On summer weekends, the traffic moves bumper-to-propeller out of the Twin Cities toward what has become a Minnesotan index of the good life—the "lake up north." The state's license plates advertise it as "Land of 10,000 Lakes," but that is an understatement. Actually, there are 15,291 lakes of ten acres or more, as well as 25,000 miles of rivers, including the Mississippi, which begins at Itasca State Park near the center of Minnesota. The lakes cover 5% of the state, remnants of the glaciers' departure a million years ago. Few Minnesotans are more than minutes from water. Minneapolis residents have 21 lovely quiet lakes within the city iself.

In the fall, Minnesota is a hunting society: 253,668 deer licenses are issued annually. But for all the gunfire, the deer population now numbers about 450,000, and seems stable. Other game includes duck and pheasant, moose, black bear and timber wolf.

Winter, which brings down ferocious cold from the polar icecap, used to be a compara-

tively closed-down season, a deep hibernation. Snowmobiles, for better and for worse, have changed that. Many Minnesotans now worry about the ubiquitous high-pitched snarls of snowmobiles churning across the winter landscapes. Still, snowmobiling is the state's fastest-growing sport. Some 340,000 vehicles are licensed now.

As a winter alternative, thousands of Minnesotans are rediscovering cross-country skiing, or snowshoeing, or ice-boating. Ice hockey is also something like an obsession in the state. Since the land was settled, Minnesotans have enjoyed ice fishing, sometimes in opulent style. In the Twin Cities' expensive suburban community around Lake Minnetonka, while their children skate, executives sit in their carpeted cabins on the lake ice, drinking bourbon, playing poker, occasionally pulling in a pike from one of the holes drilled in the ice.

Winters are hard but bracing: "Our best time of year," according to a Duluth mine worker. "They build character," says Frank Barth, a transplanted Chicagoan. "They are a great blessing to us. You don't get the weak-kneed beachboys here. They can take it for one winter, then leave." Dr. Ronald J. Glasser, a Minneapolis kidney specialist and author (*365 Days, Ward 402*) who grew up in Chicago, argues that Minnesota winters account for a lot of the social solidity and character of the state. Says he: "You have to be strong and productive to survive here."

Part of Minnesota's secret lies in people's extraordinary civic interest. The business community's social conscience, for example, is a reflection of the fact that so many companies have their headquarters in the state. The Mayo Foundation has offered to invest $1,000,000 in face-lifting the downtown district of Rochester. The IBM plant there has given employees leaves of absence, with pay, to work on public interest projects. At the Mayo medical complex itself, now in the midst of its largest expansion in history, Honeywell, 3M Co. and other big state-based corporations have been major contributors to a $100 million fund drive. The companies' concerns are reflected in their annual reports; most of them carry a section called "Social Concerns," or some such.

Even more important than corporate giving is personal funding raising. Fund drives currently under way or about to begin in the Twin Cities amount to a staggering $300 million, of which $136 million has already been raised. The business effort is twofold—one for cultural activities, one for social and civic affairs. The leading family in both is the Daytons, five brothers who are dominant stockholders in the Dayton Hudson Corp., which last year rang up $1.4 billion in retail sales.

As downtown Minneapolis was deteriorating in the 1950s, the Daytons elected to keep their huge department store there rather than move it to the suburbs. Cooperating with the city, they turned Nicollet Avenue into a shopping mall and built a system of skyways linking the buildings along the street. The project, spearheaded by Donald C. Dayton, 58, has stimulated more than $200 million in new downtown construction, reversing the familiar urban pattern of decay and turning the area into a bright and active commercial district. The new 51-story IDS tower, designed by Philip Johnson, is the tallest and most distinguished building between Chicago and San Francisco. Other adornments: Minoru Yamasaki's gracefully pillared Northwestern National Life Insurance Co. Building, and Gunnar Birkerts' Federal Reserve Bank, built along the sweeping lines of a suspension bridge.

The Daytons are best known as patrons of the arts. Kenneth Dayton, 51, is deeply involved in fund raising for a new $18.5 million music-center complex, which he hopes will rival Washington's Kennedy Center in architecture and acoustics. Bruce B. Dayton, 55, is raising $26 million for the Minneapolis Institute of Arts, with a new wing designed by Yamasaki. The Guthrie Theater is primarily the contribution of John Cowles Jr., head of the Minneapolis Star & Tribune Co. But the list of big business contributors and fund raisers is much longer.

MIGRATIONS

Minnesotans tend to be participants in their communities, perhaps because for so long they were comparatively isolated and developed traditions of mutual reliance. Citizens' lobbies are a real force. The most notable is the Twin Cities Citizens League. Funded by membership fees, foundation and business grants, it includes lawyers, bankers, laborers and company vice presidents. Each fall, the league settles on a variety of projects to study. Committees are formed and meet once a week to hear an expert on the subject under scrutiny. Among the league's pioneering recommendations that became law: the Twin Cities metropolitan council creating an urban regional government and also a tax-sharing program in the seven-county metropolitan area. Through the tax reforms, the effects of new development in one part of the area are shared by all, thus eliminating the pockets of poverty and boom that characterize other urban sprawls. Quite aside from its other accomplishments, the council signals the end of a long and frequently childish rivalry between St. Paul and Minneapolis.

Some of Minnesota's success can be traced to its ethnic traditions. The earliest pioneers were American Yankees. Then came the migrations—Germans after the Revolution of 1848, then waves of Irish and Scandinavians, later an admixture of Poles and Slavs and other groups. In many respects, the Scandinavians, long the largest single group in the state, have shaped Minnesota's character. They, together with its large Anglo-Saxon and German strain, account for a deep grain of sobriety and hard work, a near-worship for education and a high civic tradition in Minnesota life. Such qualities helped to produce the intelligent calm—and the stolidity—that characterize the efficient Minnesota atmosphere. It is telling that the University of Minnesota is probably the dominant and most prestigious institution in the state. Its president, Malcolm Moos, sees Minnesota as a felicitous mixture of the New England influence and the spirit of the frontier.

Arthur Naftalin, a brilliant mayor of Minneapolis during the '60s, points out that no single group—ethnic, religious or business—has ever been able to take control of the state. There were no Tammany machines to greet the immigrants. "With our great variety," says Naftalin, "we have always had to form coalitions."

The most notable was the Democratic-Farmer-Labor Party that Hubert Humphrey helped nail together in 1944 just before he became mayor of Minneapolis. The Farmer-Labor Party was radical in its origins, with mostly rural, Scandinavian Protestant members and roots in the antimonopolist, Greenback and Populist movements. The Democrats were mostly urban and more conservative, with strong Irish, German and Catholic elements. Within a decade of the merger, the D.F.L. emerged as the dominant force in Minnesota politics, breeding a remarkable collection of national figures like Humphrey, Orville Freeman, Eugene McCarthy and Walter ("Fritz") Mondale.

The Minnesota Republicans, once intensely conservative, have supported the liberal wing of the G.O.P. for more than a generation. The shift started with Harold E. Stassen, who took over as Governor in 1938, when he was 31. He later became a figure of fun as a perennial presidential candidate, but one of Stassen's many state reforms accounts for much of the honesty of Minnesota politics today. Stassen pushed through a comprehensive civil service law that abolished patronage. "By taking politics out of the back room and engaging thousands in political activity, from women to college students," observes Author Neal R. Peirce in *The Great Plains States of America*, "Stassen made the governmental process in Minnesota a superior instrument of the people's will." Says David Lebedoff, a Minneapolis lawyer and author: "Politics is an honorable profession in this state. In other states, people don't gamble away their best years in politics. Here it's expected, because we feel it is important enough."

Among the state's young citizen-politicians:

Martin Olav Sabo, 35, the son of Norwegian immigrants, worked his way through Augsburg College. In 1960, as he was preparing to go on to graduate school, a friend encouraged him to run for the state legislature. He did and won, several times. By 1969, at the age of 30, he was the youngest returning member of the house. But he had accumulated enough experience and respect from his colleagues to be elected minority leader. In 1972, he became speaker of the house. The job entitles him to a $700-a-year raise, but in order to support his wife and two daughters, he sells life insurance on the side. "My philosophy is to do your best wherever you can," says Sabo. Despite his prominence, he still campaigns by going around his district and knocking on doors.

Steve Keefe, 27, a Honeywell chemist, won a state senate seat from his south Minneapolis district last year, now spends more than half his time away from his job, politicking. "The company has been really good about it," says Keefe. "I come and go as I please and they reduce my salary accordingly. Frankly, I go more than I come." If he is sacrificing a promising and lucrative career for the vagaries of politics. Keefe has no regrets. "People in politics," he says, "are in it either for the power or they are idealistic. Most of the people I have met are the latter."

Al Hofstede, 32, grew up in the working class, ethnic neighborhoods of northeast Minneapolis. He worked his way through Saint Thomas College in St. Paul, eventually won a seat as a Minneapolis city alderman at the age of 26. Appointed chairman of the metropolitan council in 1971. Hofstede two weeks ago announced his candidacy for mayor of Minneapolis in a bid to unseat Charles S. Stenvig. "I would like to make politics my life," says Hofstede. "There is a purpose here."

A man who embodies the state's virtues as much as any other Minnesotan is the state's young D. F. L. Governor, Wendell ("Wendy") Richard Anderson, 40. The grandson of Swedish immigrants, a handsome former Olympic hockey player from a predominantly lower-middle-class Scandinavian neighborhood in East St. Paul, Anderson was elected in 1970 by 116,000 votes—nearly a landside in Minnesota.

Like the state itself, Anderson can sometimes seem almost too good to be true. The son of a meat packer, he is something of a populist, and anti-elitist and egalitarian. He has athletic dash and youthful charm that make many of his constituents think of a Midwestern Kennedy. But Harry S. Truman, not J.F.K., is Anderson's hero. He is uncomfortable with great wealth. Says he: "I identify with Truman, Humphrey and Mondale. All of them were poor, close to working people and came from rural backgrounds. It's tougher for me to identify with F.D.R. and J.F.K."

After two terms in the state house of representatives. Anderson was elected to the senate and marked as a comer. In 1968, Hubert Humphrey chose him to be his Minnesota chairman in the presidential race. He began thinking about the governorship and accepting speaking invitations all over the state. In June 1969, when the legislature adjourned. Anderson started a full-time campaign for the D.F.L. gubernatorial endorsement. For

months he criss-crossed the state, appearing wherever he could gather an audience. He would drive miles to some small town, make his pitch, have dinner and return home at 2 or 3 in the morning.

TAX REFORM

It was a bold personal gamble. He had no money of his own, the campaign cost more than $100,000 and left him more than $30,000 in debt. Says his wife Mary, a bright and gregarious former Bemidji High School homecoming queen whom he married in 1963: "If we had lost, I think we would have had to sell the house, and I would be scrubbing floors today." Anderson was nominated on the sixth ballot. David Lebedoff, who served as his campaign manager, says, "This is a state in which a young guy without means or connections knows the sky is the limit if he runs for public office—and this is why so many do."

In the general elections, Anderson faced an attractive liberal Republican, Douglas M. Head, the incumbent attorney general. There were two pivotal points in the campaign. One was Anderson's appearance in TV spots. He is a startlingly effective TV performer, one of the best since John Kennedy. His frank blue eyes, framed by a rugged, rectangular face, came across and reversed the polls that had favored Head. The second crucial point was his endorsement of a tax-reform program suggested by the Citizens League, a plan calling for the state to take over a large share of the school-financing burden from local districts, mandating a huge increase in the state budget.

The Republicans thought that Anderson had blundered fatally. That they were wrong is an excellent example of the sophistication of the Minnesota voters. They were willing to elect a man who promised to raise some of their taxes in return for larger overall gains. When he took office, Anderson proposed a $762 million boost in state taxes—roughly a 30% increase in the biennial budget. Eventually, he got through a $588 million compromise package, with substantial increases in the taxes on liquor and cigarettes, and in corporate and personal income taxes, along with a 1¢ rise in the sales tax. With such state revenues he increased state aid for education from 43% to 63% in the first year, and now to 70%, thereby decreasing the real estate tax burden by an average of 11.5%.

It was a major piece of social legislation, for within a six-year period, it will virtually equalize the per pupil spending for education throughout the state and thus go a long way toward equalizing education in the cities, suburbs and rural areas. Anderson has had other victories. All legislative meetings of any kind must now be open to the public—no more private executive sessions in the legislature. A full-time ombudsman has been established in the corrections department. The magnificent St. Croix River has been added to the National Scenic River System. Voter registration has in effect been abolished. Anderson has also started a massive reorganization of the executive branch in Minnesota, establishing a department of state planning designed to decentralize and coordinate management of state's various agencies.

Astonishingly, the huge tax increases did little to diminish Anderson's popularity. Though detractors call him "Spendy Wendy," a recent Minnesota poll showed his level of approval at 50%—with 22% unfavorable.

Anderson's personal habits are conservative. His strongest expletives are "Sugar!" and "Son of a biscuit!" and the most damning thing he generally says—this time about a Democratic Senator—is that "he is a weak tinkler." Anderson still plays hockey in an old-timers' league, jogs daily, packs golf clubs for his out-of-town trips and likes to open the fishing season, although he has had little time for the sport otherwise. He is a staunch civil libertarian, and while he would not think of going to see *Deep Throat*, or even *Last Tango in Paris*, he would never consider trying to shut them down either, *Deep Throat*, in fact, has been playing for weeks in Minneapolis. When working, Anderson likes to have Chopin on the hi-fi. When relaxing, he likes to stretch out on the floor in his shorts, drink beer and watch television. His wife admits, "It is hard to think of him as the Governor then."

Some think that Anderson's future may be larger than Minnesota. Both of the state's Senators, Humphrey and Mondale, have sidelong presidential ambitions for 1976. If neither tries, then Anderson's path to the U.S. Senate is blocked—Humphrey, then 65, would be sure to run again in 1976, and Mondale is not due to run until 1978. Anderson himself faces re-election next year. If he wins well, he could become a serious contender for Vice President on the '76 national ticket—with anyone, of course, except a fellow Minnesotan. Being young, Midwestern, Protestant and a Governor, he might elegantly complement a Ted Kennedy candidacy although some might think it entirely too youthful a package. Or he might fit in well with a Muskie candidacy. Anderson insists, with a conviction he can afford at such an early age, that "I intend to do the best job I can for the state." It would be understandable of course if Wendy Anderson wanted never to leave Minnesota. Washington would not be half so pleasant.

Other states have more dramatic attractions, of course. To be in Ely or St. Cloud or even Minneapolis on a Saturday night and looking for excitement is to be conscious that nights are for sleeping. But there is something in the verdict of Chuck Ruhr: "California is the flashy blonde you like to take out once or twice. Minnesota is the girl you want to marry."

OUR MILITARY SPENDING MYTH—AND THE REALITY OF RUSSIA

Mr. DOMENICI. Mr. President, I presented testimony last week to the Senate Subcommittee on Defense Appropriations regarding the fiscal year 1974 defense budget. In my remarks I expressed my deep concern that we might be fooled into reducing our military spending and thus our military strength, because of détente—that is, a condition of improving relations existing between the United States and the Communist powers, particularly the Soviet Union.

I mentioned that there were documented indications of Soviet policy to use détente as a means to reduce the military preparedness of the United States while maintaining and even increasing their own military capabilities. An article in the Los Angeles Times, of September 14, 1973, by Mr. Ernest Conine reaches this same conclusion.

Mr. President, I urge my colleagues to consider carefully matters such as these as we approach the time to stand and be counted on the military procurement bill. The clear signs of Soviet policy to use détente to our detriment should cause all who are inclined to support blanket cuts in military spending, because of détente to reconsider the soundness of that course of action.

I request unanimous consent that Mr. Conine's article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

OUR MILITARY SPENDING MYTH—AND THE REALITY OF RUSSIA

(By Ernest Conine)

When President Nixon told Congress the other day that he would veto any cuts in military spending that would imperil national security, Senate Democratic Leader Mike Mansfield grumped that "if we are not careful, we will 'defense' ourselves into bankruptcy."

It was an absurd assertion, as anybody knows who has bothered to look at the actual figures on federal outlays for military versus civilian purposes in recent years. But a myth has taken root that the Pentagon is spending the country into the poorhouse—and the myth will be cited again and again during the current Senate debate on military appropriations.

It would be ridiculous, of course, for Mr. Nixon or anyone else to claim that every item in the military budget is sacrosanct.

The services are top-heavy with admirals and generals, and Congress could do the country a favor by writing a formula forcing the Pentagon's top brass to do something about it. The proportion of servicemen who are actually combat personnel instead of cooks, clerks and bottle washers is astoundingly low. There is still a tendency to drive costs up through wasteful procurement practices.

Obviously there is water in the defense budget. Congressional pressure, sensibly applied, can help prod the Pentagon into providing a leaner, tougher and more cost-conscious defense establishment.

The trouble is, though, that too many politicians find it convenient to go much further, to pretend that military spending has been roaring out of control while outlays for health, education and other domestic programs have been kept on a cruelly short leash. It just isn't so, and perpetuating the myth that it is could prove a dangerous hoax on the American people.

This year's defense budget is about $80 billion—almost precisely the same as five years ago when President Nixon took office. If inflation is taken into account, it is almost a third less. As the President observed last Monday, "In constant dollars, our defense spending in this fiscal year will be $10 billion less than was spent in 1964"—a pre-Vietnam year when the military budget barely exceeded $50 billion.

Military spending this year will amount to less than 6% of our gross national product—the lowest level since 1950. In other words, the share of our national wealth going for defense purposes is decidedly down, not up.

Spending for nonmilitary purposes, meanwhile, has far outrun inflation. Chairman John L. McClellan (D-Ark.) of the Senate Appropriations Committee points out, "Twenty years ago, defense spending was nearly double that of all other federal agencies and departments combined. Today, the other federal agencies spend a total of more than twice as much as defense. Twenty years ago, defense spending was also nearly double that of all state and local governments combined. Today, state and local government spending is more than double that for defense."

Since 1964, overall federal spending has gone up by $15 billion. Of that increase, only 19%, or $28.6 billion, was for defense.

Looking at the Nixon years alone, spending for comunity development and housing has increased from $2 billion to almost $5 billion a year. Spending for education and manpower training has gone from $6.5 billion to $10 billion, and federal outlays for health have almost doubled from $11.2 billion to $21.7 billion. Military spending, while up about $3 billion over last year's level, is roughly the same as in fiscal 1969.

In short, if we are spending ourselves into bankruptcy, as Mansfield suggested, the

military budget is nowhere near the top of the list of reasons.

Unfortunately, there is no sign that the same sort of reshaping of priorities is happening in the Soviet Union.

The London-based Institute for Strategic Studies, in its annual assessment of military power, observed that the Soviet Union is spending at least as much as the United States and perhaps more—this on a gross national product only half as large as ours. Furthermore, Russian soldiers are paid only a fraction as much as ours, meaning that the Kremlin has that much more to spend on new weapons—and is clearly doing so.

According to the institute, the Soviet Union is rushing to build the maximum number of long-range missiles permitted under the Phase 1 strategic arms limitaton agreement—2,359. The agreement limits the United States to 1,710 offensive missiles.

Three new types of long-range, land-based missiles are under development by the Russians, the institute says, and Soviet shipyards are already turning out submarines armed with missiles capable of traveling 4,600 miles. The U.S. Navy will have nothing to match before 1978—and not then, if the congressional emonomy bloc has its way.

The United States still has a big lead in warheads, but this may evaporate within a few years, too, now that the Russians have successfully tested multiple, independently targeted warheads of their own.

Obviously, it is extremely important to head off the arms race, so that we—and we hope, the Russians—can spend less for defense. That is the object of the Phase 2 SALT negotiations that get under way soon.

Mr. Nixon rightly points out, however, that it would be dangerous to confuse wish with reality—that, welcome as the seeming birth of a new era of detente with the Russians may be, it would be folly to call off the American half of the arms race without regard to whether the Soviet Union proves willing to call off its half.

CIVIL SERVICE COMMISSION UPHOLDS A. ERNEST FITZGERALD

Mr. PROXMIRE. Mr. President, I am happy to report that today the Civil Service Commission ordered A. Ernest Fitzgerald reinstated with back pay to his former position with the Air Force.

The Fitzgerald case arose out of hearings held in November 1968, before the Economy in Government Subcommittee of the Joint Economic Committee. The hearings were part of the committee's investigation of waste and mismanagement in military procurement. In his testimony, in response to my direct questions, Mr. Fitzgerald confirmed the possibility that the cost overrun on the C–5A cargo plane might go as high as $2 billion. This figure subsequently proved to be accurate and Mr. Fitzgerald's testimony led to further disclosures showing that the Air Force had concealed the extent of the overruns from Congress and, in fact, misled Congress into believing there would not be a major overrun on the C–5A program. Mr. Fitzgerald's reward was to be fired by the Air Force in violation of his rights and in a transparent attempt to intimidate other Government employees.

The decision of the Civil Service Commission is a complete vindication of Mr. Fitzgerald and, in my judgment, severely chastises those Government officials who participated in the reprehensible effort to punish a civil servant for conscientiously performing his duties.

DECISION SHOULD ENCOURAGE OTHER CIVIL SERVANTS

This decision should encourage other public servants who witness waste and inefficiency to come forward and tell their story. The Fitzgerald case should strengthen the Defense Department—and indeed all Government bureaucracy—by creating a greater consciousness that the public interest must be served.

This is a red-letter day for all those who believe in effective government. But above all, it is a red-letter day for Ernie Fitzgerald. I congratulate him, and I wish him well as he resumes his duties as a cost efficiency expert for the Pentagon.

The decision repudiates the Air Force attempt to gag one of its most dedicated and competent employees.

THE PENTAGON SHOULD TAKE NOTE

I hope the lesson is carefully noted in the Pentagon. The proper course to take when waste is revealed is to eliminate the waste, not the courageous employee who discloses the waste.

The only regrettable aspect of the case is that it took so long and such a great personal sacrifice on the part of Mr. Fitzgerald before justice was finally done.

Think of the millions of dollars that could have been saved had Mr. Fitzgerald been on the job during the past 3 years.

I ask unanimous consent to print in the RECORD the complete text of the Civil Service Commission decision.

There being no objection, the text was ordered to be printed in the RECORD, as follows:

[U.S. Civil Service Commission, Appeals Examining Office, Washington, D.C. 20415]

APPEAL OF A. ERNEST FITZGERALD UNDER PART 351, SUBPART I OF THE CIVIL SERVICE REGULATIONS

Appeal from the action of the Department of the Air Force in separating the appellant by reduction-in-force from the position of Deputy for Management Systems, CS–17, Step 4, $31,874.00 per annum, Office of the Secretary, Assistant Secretary for Financial Management, Washington, D.C. effective January 5, 1970.

INTRODUCTION

By letter dated January 20, 1970 John Bodner, Jr. and William L. Sollee, Attorneys at Law, submitted an appeal to this office in behalf of Mr. A. Ernest Fitzgerald. Investigation was conducted and numerous lengthy submissions to the file were received from both the appellant and the agency. The appellant raised a question as to the bona fides of the reduction-in-force (RIF) as it was applied to him, contending that the RIF was used as a subterfuge to conceal the agency's action in firing him because of his November 13, 1968 testimony on the C–5A cost overruns. Since Mr. Fitzgerald was a preference eligible and the various submissions to the file did constitute a prima facie showing that the reduction-in-force may have been based upon an intention to separate the appellant for cause rather than for a nonpersonal reason, a hearing was scheduled to inquire into the circumstances surrounding the RIF.

The agency was requested and agreed to make available to testify Secretary of the Air Force Robert Seamans, Assistant Secretary Spencer Schedler, Administrative Assistant to the Secretary John Lang, Deputy Administrative Assistant Thomas Nelson, Air Force Chief of Staff General John D. Ryan, Comptroller of the Air Force Lieutenant General Duward Crow, Director of Office of Special Investigations (OSI) Brigadier General Joseph J. Cappucci, and Colonel James D. Pewitt.

In accordance with the Civil Service regulations in effect at that time, the hearing was not open to the public. However, a verbatim transcript of the proceeding was prepared by an independant court reporting firm. The hearing was conducted on May 4, 5; June 16, 17, 18 and 22, 1971. On the latter date the hearing was suspended in compliance with a temporary restraining order and subsequent injunction issued by the U.S. District Court for the District of Columbia relative to the issue of an "Open Hearing". The hearing, open to the public, resumed on January 26, 1973 after all litigation on this issue had been completed. Additional hearing sessions were held on January 29, 30, 31; February 2, 28; March 5, 6, 7, 20, 21, 22, 28, 30; April 3, 4, 5, 6, 19; and May 3, 1973.

Since the 1973 portion of the transcript begins again with page # 1, reference to the 1971 portion of the transcript will be shown as "L/N" while reference to the 1973 portion will be shown as "TR". On May 3 & 4, 1971 the agency submitted copies of documents previously furnished to the Justice Department. The pages are numbered consecutively from 1 to 117 with two (2) pages numbered 95. This submission will be referred to as the "Justice File" and the two pages 95 will be referred to as 95a and 95b. On June 25, 1970 the agency submitted 409 pages of documents in response to the appellant's request. This submission will be referred to as "AF–6/25/70". All agency submissions will be referred to as "AF–(date)" and all appellant's submissions will be referred to as "APP–(date)". Exhibits submitted at the hearings will be referred to as "M.Ex" for management and "A.Fx" for appellant. Senator William Proxmire was Chairman of the Subcommittee on Economy in Government of the Joint Economic Committee, Congress of the United States. This Subcommittee will be referred to as the "Proxmire Committee". The office of the Assistant Secretary of the Air Force for Financial Management will be referred to as "SAFFM", its Air Force symbol.

Final closing arguments, in the form of no reply written brief were received from the Air Force on July 16, 1973 and from the appellant on July 17, 1973. While the record was technically closed as of May 3, 1973 a newly discovered memorandum that had just surfaced in a Senate hearing was submitted by the appellant on August 2, 1973. No objection or comment was offered by the agency, therefore, the document was accepted into the record.

A verbatim transcript of the entire 26 day hearing proceeding is a part of the official record in this case. The appellant was represented at the hearing by his attorneys, John Bodner, Jr. and William L. Sollee. The agency was represented by Lieutenant Colonel C. Claude Teagarden, Office of the General Counsel, Department of the Air Force, and Hugh R. Gilmore, Assistant General Counsel, Department of the Air Force. Testimony at the hearing was obtained from the appellant and thirteen of the witnesses he requested. The agency called no witnesses and presented its case through the cross examination of appellant's witnesses, the introduction of new documents, and reliance on the material previously submitted.

ANALYSIS AND FINDINGS

By letter dated November 4, 1969 the agency gave Mr. Fitzgerald notice of his proposed separation by reduction-in-force, effective January 5, 1970, due to the abolishment of his position, "necessitated by a reorganization under the current Air Force retirement program". This notice indicated that his assignment rights were to positions in the Excepted Service. The Standard Form 50 (SF–50), Notification of Personnel Action, effecting the separation on January 5, 1970,

identified the position as being in the Excepted Service.

Mr. Fitzgerald contends that he was granted career tenure in the competitive service on September 20, 1968 and that it was improperly taken away from him on November 25, 1968 after he testified as to the cost overruns on the C–5A airplane. Accordingly, we will deal with this issue first.

The record reveals that on September 20, 1965 Mr. Fitzgerald received an Excepted-Conditional appointment to the position of Deputy for Management Systems, GS–301–17, in the Office of the Assistant Secretary of the Air Force for Financial Management (SAFFM). This position was excepted from the competitive service under Schedule A, Section 213.3109a of the Civil Service regulations. The appointment SF–50 clearly shows in items 12 and 28 that the appointment was to an Excepted Service position.

Effective September 20, 1968, upon Mr. Fitzgerald's completion of three (3) years in the Excepted Service a new SF–50 was issued. In item 12 the nature of the action was shown as a conversion to career tenure; in item 14, the Civil Service authority was shown as Reg. 315.202; and in item 28 the position occupied was shown as being in the Excepted Service. On November 25, 1968 a new SF–50 was issued correcting item 12 of the September 6, 1968 SF–50 to reflect conversion to Excepted appointment and correcting item 14.

Mr. Fitzgerald contends that based upon the September 1968 SF–50 he was converted from the Excepted to the Competitive service and that the corrected SF–50 of November 25, 1968 improperly took away his career tenure in the competitive service.

Section 6–5, Rule VI of the Civil Service Rules relating to excepted employees states:

"No person who is serving under an excepted appointment shall be assigned to the work of a person in the competitive service without prior approval of the Commission."

Section 315.701, Part 315 of the Civil Service regulations concerning conversion of incumbents of positions brought into the competitive service, states:

"(b) An agency, within the time limits set forth in paragraph (c) of this section, may recommend that the employment of an employee covered by paragraph (a) of this section be converted to career or career-conditional employment.

"(d) When the Commission approves the agency's recommendation submitted under paragraph (b) of this section, the employee becomes:

"(1) A career conditional employee . . .

"(2) A Career employee . . ."

It is clear from the evidence of record, and we so find that the Air Force did not request or receive approval from the Commission to move Mr. Fitzgerald from the excepted service to the competitive service or to move his position from the excepted to the competitive service (A.Ex #1; A.Ex #7, P 286–287; Justice File, P–7; AF–6/25/70, P–114; AF–1/30/70; and TR 2768–2769).

Contrary to the appellant's contention, the perfunctory forwarding of a file copy of every SF–50 to the Civil Service Commission is not an agency recommendation or request for prior Commission approval nor does this serve as the prior approval by the Civil Service Commission for any conversion from the Excepted to the Competitive Service.

Since the Air Force never recommended, requested, or received prior approval from the Civil Service Commission to convert Mr. Fitzgerald from the Excepted Service to the Competitive Service the Air Force was clearly without authority to take this action. Therefore, we find that the original conversion action of September 1968 was null and void, and that it was properly corrected by the agency on November 25, 1968.

The agency has contended that the initial SF–50 of September 1968 resulted from a computer error. This is borne out by the fact that item 28 of that SF–50 showed the position occupied to be in the Excepted Service. It is further borne out by item 14 which cited the Civil Service Authority as Regulation 315.202. Section 315.202 of Part 315 of the Civil Service regulations states:

"A career-conditional employee becomes a career employee automatically on completion of the service requirement for career tenure."

The service requirement for conversion from career conditional to career as set forth in Section 315.201 is three (3) years. Mr. Fitzgerald did not receive a Career-Conditional appointment, he received an Excepted-Conditional appointment. Therefore, he had no entitlement to the automatic conversion from Career-Conditional to Career that Section 315.202 provides.

In view of the foregoing, we find that Mr. Fitzgerald was properly in the Excepted Service at the time of his separation on January 5, 1970 and that he had no entitlement to Career tenure in the Competitive Service.

Turning now to the reduction-in-force action itself, the agency's position is that as part of Defense Department's Project 703, the Air Force was required to reduce expenditures one (1) billion dollars in fiscal year 1970. This involved large cut-backs in military and civilian personnel nationwide and in the headquarters staff of the Department. Each office in the Secretariat was given a specific number of reductions to be effected. SAFFM was assigned a net reduction of two (2) spaces. As part of a reorganization of that office five (5) positions were abolished and three (3) new positions were established. Of the five (5) positions abolished Mr. Fitzgerald's was the only professional position. The other four (4) were secretarial positions.

The agency contends that the abolishment of Mr. Fitzgerald's position, initiated by Assistant Secretary Spencer J. Schedler and approved by Secretary Robert Seamans, was based upon a valid management decision to reorganize SAFFM in order to improve its cost effectiveness capability and at the same time achieve the required reduction of two (2) spaces.

The agency further contends that Secretary Seamans and Assistant Secretary Schedler were not in office at the time of Mr. Fitzgerald's November 1968 testimony; that they alone were responsible for the decision to reorganize the financial management office; that the testimony Mr. Fitzgerald gave a year earlier was not the reason or a reason for their decision; and that neither had sought or received any instructions to abolish the appellant's position.

Mr. Fitzgerald contends that the RIF as applied to him was not for nonpersonal reasons and was, in essence, an agency adverse action based upon his November 13, 1968 testimony on the C–5A cost overruns.

The record reveals that out of the 80 positions abolished in the Office of the Secretary of the Air Force, Mr. Fitzgerald was the only employee who actually was issued a RIF notice and who was actually separated by RIF (L/N 723–724). As his part of the Project 703 reductions, Assistant Secretary Schedler was required to take a cut of two (2) spaces. He accomplished this by abolishing four (4) Secretarial positions plus Mr. Fitzgerald's position and creating three (3) new positions.

The Air Force, through the testimony of witnesses and documentary evidence, did show that a reorganization of SAFFM had taken place; that the appellant's position had been abolished and not recreated; and that there was some need to reorganize in addition to reducing the office staff by two (2) positions.

The appellant has not questioned the validity of the Project 703 reductions and the resultant reduction-in-force, only the agency's decision to abolish his position and include him in the RIF.

The reduction-in-force system as provided for by Statute and Commission regulations is a system for releasing employees from their competitive levels when their release is required because of lack of work, shortage of funds, reorganization, reclassification due to change in duties, or the exercise of reemployment or restoration rights. The system is predicated upon the concept of competition for retention based upon tenure, veterans preference, length of service and performance rating.

Reduction-in-force may be necessary because of conditions inside or outside the agency. Agency management may reduce certain phases of its work as the workload changes. Appropriations may be reduced or cut-off entirely, or the agency may be allowed to use only part of its appropriations. These and other factors occurring singly or in combination may make it necessary for the agency to have a reduction-in-force.

Reduction in force may require the separation of all employees in part of an agency or may require separation of some and shifting about of others. Small reductions may require no involuntary separations, when there are enough transfers, retirements, and other voluntary losses. Some reductions, in fact, require no reduction in the number of employees but are accomplished through reorganization.

Planning the work program and organizing the work force to accomplish agency objectives within available resources are management responsibilities. Only the agency can decide what positions are required, where they are to be located and where they are to be filled, abolished or vacated. The agency determines when there is a surplus of employees at a particular location in a particular kind of work. A surplus of employees in any part of an agency requires the agency to determine whether the employees will be assigned to vacant positions, be adversely affected for reasons related to performance or conduct or compete in reduction in force.

These are management responsibilities and the management determinations regarding these responsibilities are not ordinarily subject to review by the Civil Service Commission in a reduction-in-force appeal.

It would be a valid and proper exercise of its management prerogative for an agency faced with the necessity for reducing its force to select for abolishment those functions and/or positions that are least necessary to the accomplishment of, or are making the least substantive contribution to, the agency's mission.

In this situation the lack of substantive contribution may be due to a change in the agency's mission or its method or approach to the accomplishment of it's mission. It may also be that the lack of substantive contribution is due to the incumbent of the position.

Inherent in the Commission's reduction-in-force system and one of its fundamental precepts is that it be used only for reasons that are non-personal to the employees affected. The reduction-in-force system must not be used to remove inadequate or unsatisfactory employees in lieu of following the Commission's adverse action procedures set forth in Part 752 of the Civil Service regulations.

Federal Personnel Manual Chapter 351, Subchapter 1 states in part as follows:

"1–9. Improper use of reduction in force: There sometimes has been a tendency to distort the reduction-in-force system by using it to eliminate inadequate employees."

Thus, an allegation that the RIF was a subterfuge to conceal an agency removal action taken without following the adverse action procedures, when supported by a sufficient showing that the RIF action may have been based upon an intention to separate the appellant rather than upon a non-personal

reason for reducing the force, goes directly to the question of the bona-fides of the RIF and will be reviewed on appeal.

In order to properly evaluate the propriety of the RIF action as applied to Mr. Fitzgerald it is essential that we review and analyze the circumstances leading up to and surrounding the decision to abolish his position and to include him in the Project 703 RIF.

From our review of the complete appellate record including all submissions by both parties and the transcript of the hearing (26 days), we find the circumstances to be as follows:

Mr. Fitzgerald received an excepted appointment to the position of Deputy for Management Systems, Office of the Assistant Secretary of the Air Force for Financial Management (SAFFM) on September 20, 1965 (AF–1/30/70. Attachment No. 4). While no specific time limit was established as to the length of this appointment, it is clear from Mr. Fitzgerald's testimony of his conversations with the then Assistant Secretary, Dr. Leonard Marks, that it was to be for only a few years (TR 2618–2621).

Assistant Secretary Marks resigned on December 31, 1967 and was succeeded by Thomas H. Nielsen who was appointed Assistant Secretary for Financial Management on January 1, 1968 (L/W 366). Mr. Nielsen submitted a proposed reorganization plan for his office dated January 9, 1968 (AF–6/25/70, P–253) focusing additional attention on cost performance, designating the appellant as the focal point for this effort and proposing increasing his staff.

Mr. Fitzgerald was first contacted by the Proxmire Committee in the Summer of 1968 to testify on the C–5A (TR 2720–2722). This request was put into writing by Senator William Proxmire on October 18, 1968 (APP–1/20/70, Attachment No. 2).

The file contains unrefuted allegations and testimony that there was high level Air Force and D.O.D. opposition to Mr. Fitzgerald testifying.

Mr. Fitzgerald did testify before the Proxmire Committee on November 13, 1968 and discussed possible cost overruns on the C–5A plans. This testimony received a great deal of publicity for it was the first public disclosure of cost overruns on that project.

In October 1968 Colonel James D. Pewitt, Special Assistant for Economic Analysis and Acting Executive Officer of SAFFM, was involved in conducting a cost review of the C–5A project. He testified that Mr. Fitzgerald used his (Pewitt's) figures in testifying before the Proxmire Committee (TR 1970); that Mr. Fitzgerald's testimony was accurate and that the numbers Fitzgerald used were the same numbers he would have used (TR 1969–1970).

On November 25, 1968 a new SF–50 was issued to Mr. Fitzgerald properly correcting an erroneous SF–50 issued on September 6, 1968 which had purportedly granted him carreer tenure.

By memo dated December 26, 1968, Mr. Fitzgerald furnished Assistant Secretary Nielsen copies of the September 6 and November 25, 1968 SF–50's regarding his tenure and pointed out that the November 25 revocation came less than two weeks after his appearance before Senator Proxmire's Subcommittee.

In response to a December 27, 1968 request from Assistant Secretary Nielsen, John A. Lang, Jr., Administrative Assistant to the Secretary of the Air Force submitted a memorandum explaining Mr. Fitzgerald's tenure situation (Justice File P–6). A copy of this memo was delivered to Mr. Fitzgerald by Major Metcalf on December 31, 1968 (M.Ex #7, 1/13/69 attachment).

On January 1, 1969 a front page newspaper article appeared in the Washington Post (attachment to M.Ex #7) clearly implying that the November 25, 1968 revocation of tenure was in retaliation for Mr. Fitzgerald's testimony on the C–5A on November 13, 1968.

In response to request for information (L/N 449–451) due to the implications in the January 1, 1969 Washington Post front page article, Acting Secretary of the Air Force, Dr. Alexander N. Flax sent a memo to the Secretary of Defense dated January 2, 1969, explaining Mr. Fitzgerald's tenure situation (AF–6/25/70. P 112–116).

On Friday afternon, January 3, 1969, Mr. Thomas Nelson, Deputy Administrative Assistant to the Secretary of the Air Force, received a request from Colonel Gunderson of the Air Force Secretary's Office to prepare a paper bringing the Secretary of the Air Force up to date on what was going on with regard to Fitzgerald, and also a discussion of what his rights were, since the Secretary had been out of the office for a week to ten days (L/N 452–453). John Lang furnished this information to Secretary Brown by memo dated January 6, 1969 (M.Ex #44). Attached thereto was a copy of Dr. Flax' memo of January 2, 1969 to the Secretary of Defense. The January 6, 1969 memo is referred to as the "Lang Memo".

Mr. Nelson testified that he assumed the request, "What are his rights" meant what are his rights when he is going to be terminated (L/N 463–466). Mr. Fitzgerald received a copy of the "Lang Memo" from Assistant Secretary Nielsen (L/N 474, 476–477) on January 8, 1969.

The Lang Memo identifies three (3) possible means of effecting Mr. Fitzgerald's departure and states in part as follows:

"As an employee in the excepted service under Schedule A, with Veterans Preference, Mr. Fitzgerald has certain rights, which can be grouped in two categories:

"(1) *Adverse Actions.* Chapter 752 of the Federal Personnel Manual applies to discharges, suspensions, furloughs without pay, and reductions in rank or compensation taken by agencies against employees of the United States Government. Mr. Fitzgerald's rights are:

"(a) Adverse action may not be taken except for such cause as will promote the efficiency of the service;

"(b) He must be given at least 30 full days advance written notice, identifying the specific proposed action, stating the reasons supporting the proposed action, including names, times and places;

"(c) The notice must tell the employee that he has the right to reply, both personally and in writing and to submit affidavits in support of his answer;

"(d) Normally he must be retained in an active duty status during the notice period;

"(e) Full consideration must be given to his reply and if the decision is to effect the action originally proposed, or some action less severe, he must be given a dated and written notice of the decision promptly after it is reached;

"(f) The notice of decision must inform him of the effective date of the action, of his right to appeal the adverse action within the agency and to the Civil Service Commission, and of the time limits and procedures for making the appeals.

"(2) *Reduction in Force.* In the event his job is abolished, Mr. Fitzgerald is in Tenure Group I in the Excepted Service and has the right of full application of all reduction-in-force procedures insofar as "bumping" and "retreat" rights within his competitive level grouping. However, since he is the only employee in his compatitive level grouping and since he did not progress to this position from other lower grade positions, the net result is that he is in competition only with himself. He could neither "bump" nor displace anyone.

"These are the rights involved should charges be preferred or should his position be abolished. There is a third possibility, which could result in Mr. Fitzgerald's departure. This action is not recommended since it is rather underhanded and would probably not be approved by the Civil Service Commission, even though it is legally and procedurally possible. The Air Force could request converison of this position to the career service, utilizing competitive procedures, and consider all the eligibles from the Executive Inventory and an outside search. Using this competitive procedure, Mr. Fitzgerald might or might not be selected." If not, displacement action would follow.

"When Mr. Fitzgerald was appointed in September 1965 by Assistant Secretary Marks to fill the vacancy created by the departure of Mr. J. Ronald Fox, it was with a mutual understanding that this was to be a Schedule A appointment of two or three years duration. There is nothing in official records to support this understanding. Dr. Flax contacted Mr. Marks by telephone on January 2, 1969, and verified this understanding and reflected the conversation in his memorandum to the Secretary of Defense, a copy of which is attached. We have carefully screened all files and records and can find no formalized confirmation of this understanding."

Mr. Fitzgerald visited the Civil Service Commission on January 10, 1969 to complain of the alleged loss of tenure and his supervisor's statement that his usefulness to the Air Force was at an end. Therefore, Assistant Secretary Nielsen prepared a memorandum for record (M. Ex #7, 1/13/69 attachment). This memo states that Mr. Nielsen reviewed the entire matter of the tenure controversy with Mr. Fitzgerald who stated that he mailed a copy of the first SF–50 to the Committee immediately after the conclusion of the November 13, 1968 hearing and that when the second form was received it was mailed directly to the Proxmire Committee. The memo also states that Mr. Nielsen told the appellant "I felt his actions in this connection had ended his usefulness to the Air Force".

Secretary Seamans testified it was his belief that Mr. Fitzgerald released the SF–50's in the tenure controversy in order to obtain publicity and to place the Air Force in a bad light (TR 430–431, 435–437); that his actions inflamed the situation; exacerbated relations between Mr. Fitzgerald and people in the Secretariat; and "that's when it became much more of a confrontation" (TR 480–481). Secretary Seamans also stated that Mr. Fitzgerald was a celebrity and a controversial person at that tims as a result of the press releases concerning the tenure controversy (TR 438–439).

Colonel Pewitt testified that Assistant Secretary Nielsen gave Mr. Fitzgerald the "Lang Memo"; that Mr. Neilsen felt Fitzgerald "had betrayed a personal confidence" by the way the memo was handled; and that Mr. Neilsen lost confidence in the appellant and his usefulness to the Air Force (TR 1991–1992). Colonel Pewitt also stated that he thought Mr. Fitzgerald's days in the Air Force were numbered and that he might be leaving because of the tenure—non tenure publicity and the Lang Memo (TR. 2121–2122).

It is clear that the "Lang Memo" and Secretary Nielsen's declaration that Mr. Fitzgerald had lost his usefulness to the Air Force both stemmed from the Washington Post January 1, 1969 front page article erroneously implying that the appellant lost his career tenure in retaliation for his testimony on the cost overrun in the C–5A project. It is also evident that the Air Force considered Mr. Fitzgerald responsible for this erroneous implication reaching the news media.

Robert C. Seamans, Jr. took office as Secretary of the Air Force on February 15, 1969. Assistant Secretary Nielsen submitted new reorganization proposals to Secretary Seamans on February 26, 1969 (AF–6/25/70, P–292) and May 5, 1969 (M. Ex #11). Prior to submitting the February 26, 1969 reorganization plan, Mr. Nielsen told Secretary Seamans that Mr. Fitzgerald's usefulness to the Air Force was at an end (TR 526–527). Sec-

retary Seamans testified that the February 26, 1969 proposal was similar to the one that Mr. Nielsen had submitted a year earlier except for changing the focal point for cost analysis capability from Mr. Fitzgerald to Colonel Pewitt (TR 530–531).

Secretary Seamans testified that on or about April 24, 1969 Mr. Fitzgerald was scheduled to give a talk to the American Management Association on the West Coast for the Air Force. He did not meet that commitment, apparently because he was giving a series of lectures up at the Capitol (TR 559–561; 570–572). As a result, Assistant Secretary Nielsen had to fulfill this commitment in the appellant's place.

On May 5, 1969 Mr. Nielsen submitted his final proposed reorganization plan for SAFFN (M. Ex #11). This plan did not provide for Mr. Fitzgerald's position of Deputy for Management Systems.

On May 7, 1969 Secretary Seamans testified before the House Armed Services Committee in Executive Session and made several accusations against Mr. Fitzgerald. The following quotations dealing with these accusations are taken from pages 2593, 2594 and 2596 of the Committee Hearing report for May 7, 1969 (APP–4/28/71 attachment).

"Secretary SEAMANS. I think if you are looking at the record that you should also note where he is spending time off duty as well as on Government time."

"Secretary SEAMANS. I am not saying this is wrong, mind you, but he is working with a group of staff people up on the Hill, among them Congressman Moorhead's chief of staff. He was scheduled to go and make a speech on the west coast, which I approved. He wanted to make the speech. I said go ahead. And then he backed out of it at the last minute because he was so busy up here doing his extracurricular work. We had difficulty filling the speaking assignment."

"Mr. STRATTON. Mr. Fitzgerald is up there now, and has been for the last several weeks, as I understand it.

"Secretary SEAMANS. I'm not familiar with detail. I do know there is a group that engages in a so-called seminar. It may be perfectly appropriate, but it is not official Air Force business. It is nothing that has been scheduled with a committee through the Secretary of the Air Force or any other responsible Air Force official."

"Secretary SEAMANS. In my conversation, a little earlier, I was talking about some of the reports that came out of the Holifield committee, some of which are confidential, that as indicated by Congressman Moorhead, he received from Mr. Fitzgerald.

"Mr. HUNT. Did Mr. Fitzgerald have the permission of the Air Force to release that information?

"Secretary SEAMANS. He certainly did not.

"Mr. HUNT. What is being done about Mr. Fitzgerald, then?

"Secretary SEAMANS. I'm reviewing the case.

"Mr. HUNT. Will you advise us what you are doing with the case when you are finished?

"Secretary SEAMANS. I certainly will."

In addition, the following exchange took place between the Chairman of the Committee and Secretary Seamans:

The CHAIRMAN. Is he still on the Air Force payroll?

Secretary SEAMANS. He is still on the Air Force payroll, he works in the Financial Management Office.

The CHAIRMAN. If I had a fellow like that in my office, he would have been long gone. You don't need to be afraid about firing him."

Secretary Seamans testified at the Commission's hearing that he was not fully satisfied with Mr. Fitzgerald's performance; that he (Fitzgerald) was not taking his responsibilities to the Air Force seriously enough (TR 868–869); that he was not fulfilling his duties (TR 872–874); and that he (Seamans) had stated to the Committee on May 7, 1969 that Mr. Fitzgerald had leaked confidential documents (TR 882). Secretary Seamans testified that on the day after his May 7, 1969 testimony he learned that no security violation was involved (TR 636); that the word "confidential" did leave an ambiguity (TR 637); that some damage was done (TR 637); and that it wasn't until six months later that he apologized to the Committee for his remarks being interpreted as a security violation (TR 617, 637, 892).

Brigadier General Joseph J. Cappucci, former Director of the Air Force Office of Special Investigations (OSI), testified that on May 17, 1969 OSI opened a file, HDQ 24P–12052 and started a special inquiry based on conflict of interest charges made against Mr. Fitzgerald by a confidential informant. Subsequently three (3) more people volunteered information in June and July (TR 48–49). A number of checks were made (TR 61–62) to test the substance of the allegations. These were in Washington, D.C.; in New York, (TR 64); Boston, (TR 70); and in Los Angeles to interview Leonard Marks (TR 83–85). All the checks came back favorable (TR 111, 119) but this favorable information was not placed in the file (TR 111).

General Cappucci testified that when these checks came back favorable, instead of placing the favorable information in the file he closed it and was going to destroy the file when it was impounded (TR 112–113). All the favorable reports were destroyed (TR 115, 120).

We find no credible explanation for OSI retaining the derogatory allegations about Mr. Fitzgerald while destroying all of the results of the investigation which proved that these allegations were without substance. General Cappucci went to great lengths to try and distinguish between a "Special Inquiry" and an "Investgiation." However, it was a fruitless exercise in semantics in this case.

General Cappucci also testified that the June 24, 1969 memorandum report of interview with Leonard Marks (Justice File P–95), which clearly showed that there was no substance to the conflict of interest allegations, was not in the OSI file when he sent it to "The Hill" (TR 157–162). We find it unconscionable for OSI to have shown only the derogatory allegations without also showing the results of the investigation which laid to rest these allegations. We can only view this as an attempt to justify Mr. Fitzgerald's separation.

General Cappucci testified that he was not directed by anyone to open the special inquiry on Mr. Fitzgerald; that he did not disclose the fact that the inquiry was opened or the facts of that inquiry, to Secretary Seamans, Assistant Secretary Nielsen, Assistant Secretary Schedler or anyone else in the Executive Branch of the Government outside the OSI prior to November 4, 1969 (TR 193). General Cappucci also testified that Secretary Seamans first learned of the existence of the OSI file when the General gave the Secretary a few minutes briefing on November 17 or 18 [1969], the day before he testified before the Proxmire Committee (TR 154–155).

In his testimony before the Proxmire Committee on November 17, 1969, in discussing the reorganization of the SAFFM Office and Mr. Fitzgerald's resultant RIF, Secretary Seamans stated that he and Mr. Laird the Secretary of Defense made an effort for many months to find a way to use Mr. Fitzgerald in some other capacity; that they talked to him personally; and considered him for other positions in the Department of Defense but did not find a suitable solution (APP–2/9/71, Attachment 1, P 102–103).

Secretary Seamans testified that he first gave consideration to finding another job for Fitzgerald outside the Air Force about the middle of May. This was shortly after he learned that the appellant had transmitted documents to Congress and learned the appellant had not fulfilled his commitment to deliver the West Coast address (TR 707–708). Secretary Seamans believed that a job for Mr. Fitzgerald in DOD would be uncluttered by some of the unfortunate relationships that had arisen in the Air Force (TR 708).

Mr. Fitzgerald testified that he met with Secretary of Defense Melvin Laird on June 11, 1969; that the Secretary was very friendly but told the appellant that he had become a personnel problem in the Air Force, which the appellant conceded was probably true; and that he would have to go someplace else. They discussed what might be done in other areas of DOD (TR 2866–2871).

One of the positions under consideration was an assignment on the staff of the Fitzhugh DOD Blue Ribbon Panel (TR 714–723, 2872). Mr. Fitzgerald had meetings with Mr. Fitzhugh and Mr. Buzzard, the Staff Director, and then submitted an August 25, 1969 memo to these men (AF–6/25/70, P–118) which stated in part:

"On the second point, I am not the only action-oriented cost cutter now excluded from the business. Aside from publicity, my situation is unique only in that I have not gone away quietly as have most others of my experience and bent."

After receipt of this memo Mr. Fitzhugh informed Secretary Seamans that he was not going to recommend Mr. Fitzgerald for assignment to the staff (TR 728). Secretary Seamans properly considered the above quoted statement to be a fairly inflammatory kind of statement to put into a memo related to consideration for another position (TR 729–31). The Secretary considered that Mr. Fitzgerald had a chip on his shoulder (TR 729–731). It is clear that Mr. Fitzgerald was not interested in a position on the Fitzhugh Panel as evidenced by the tenor of his August 25, 1969 memo.

Spencer J. Schedler replaced Thomas Nielsen as Assistant Secretary of the Air Force for Financial Management on June 24, 1969. Mr. Schedler testified that he saw the "Lang Memo" in the summer of 1969. He testified that he considered Mr. Fitzgerald's performance deficient in regard to the instances of the preparation of a "Should Cost Primer" and his failure to have prepared a demonstration guide (TR 1633–1694). Mr. Schedler testified that he first decided to abolish Mr. Fitzgerald's position in late September or early October 1969 when it became evident to him that as a result of the Project 703 cutbacks he would not be able to add spaces to the SAFFM office to improve its analytical capability (TR 1791–1792).

On November 3, 1969 Mr. Schedler submitted a form 52 request to abolish Mr. Fitzgerald's position by reorganization. This request was approved by Secretary Seamans on the same day. Thereafter, by letter dated November 4, 1969, Mr. Fitzgerald was notified of his proposed separation by reduction-in-force which was effected on January 5, 1970.

On November 17 and 18, 1969 the Proxmire Committee held hearings on Mr. Fitzgerald's proposed termination by RIF.

Secretary Seamans testified at the Commission's hearing that between November 4 and 18, 1969, the date of his appearance at the Committee hearing, he saw and/or communicated with Republican Senators Jordan and Percy and Republican Congressmen Brown and Conable concerning Mr. Fitzgerald's RIF (TR 777–778, 857–858, 860). The Secretary admitted mentioning to Senator Percy that Mr. Fitzgerald was not a team player (TR 782) and that there had been difficulties in the relationship between Fitzgerald and the Air Force (TR 780). Secretary Seamans also told Senator Jordan of these relationship difficulties; however, he

denied that they were the reason for the RIF; and he did not recall using the term "team player".

On May 7, 1973 former Senator Jordan was sent several written interrogatories. His written replies were received May 19, 1973. In answer to one question Mr. Jordan recalled Secretary Seamans stating Mr. Fitzgerald was a troublemaker, that he was not a team player and that he was terminated for economy reasons under a reduction in force designation.

In view of the above and the fact that Secretary Seamans did mention the team player situation to Senator Percy, we must conclude that he also used that term in talking to Senator Jordan.

Assistant Secretary Schedler testified that during the same period of time he visited Republican Senators Mundt and Murphy and Republican Congressmen Broyhill, Buchanan, Conable, Dickinson and Rhodes to explain Mr. Fitzgerald's RIF (TR 1377).

There is a conflict in the evidence as to whether or not Assistant Secretary Schedler told Congressman Dickinson that Mr. Fitzgerald was not a team player. Congressman Dickinson testified (TR 2285) that at their November 11, 1969 meeting Mr. Schedler used the term "not a team player" and the Congressman confirmed the accuracy of a November 19, 1969 newspaper article quoting him as saying that Mr. Schedler told him Mr. Fitzgerald was not a team player (APP-2/9/71, Attachment P1, P 202-203).

Michael L. Lehrman, a former fellow classmate of Mr. Schedler at Harvard, testified that he met Mr. Schedler at an Air Force Association Convention in September 1970. Mr. Lehrman testified that at this meeting Mr. Schedler made uncomplimenting remarks about Mr. Fitzgerald, stated that he was "a pain in the ———" and was not a "team player" (TR 2835-2896).

From all of the above we must conclude that Mr. Schedler did tell Congressman Dickinson that Mr. Fitzgerald was not a team player, or used words to that effect.

After carefully reviewing the complete appellate record we find the evidence of record does not support the appellant's allegation that his position was abolished and that he was separated by RIF in retaliation for his having revealed the C-5A cost overrun in testimony before the Proxmire Committee on November 13, 1968.

In summary, the record reflects that the C-5A contract was negotiated during a Democratic Administration. Secretary Seamans and Assistant Secretary Schedler were not in office at the time the contract was negotiated or at the time of Mr. Fitzgerald's testimony, before the Proxmire Committee on November 13, 1968. In fact, Secretary Seamans did not take office until February 1969 and Assistant Secretary Schedler not until June 1969, three (3) and seven (7) months later, respectively; and under a Republican Administration.

Secretary Seamans agreed that there was a large cost overrun on the C-5A project and that Mr. Fitzgerald was acting properly in testifying after being called by the Committee. In addition, a number of witnesses agreed with Mr. Fitzgerald's estimate of the possible magnitude of the overrun.

As we have previously found, and as the Air Force knew, Mr. Fitzgerald was not entitled to career tenure. The Civil Service Commission had not been requested nor had it granted prior approval to the Air Force to convert Mr. Fitzgerald from the Excepted to the Competitive Service. The September 6, 1968, SF-50 was erroneously issued, obviously due to a computer error, and was properly corrected by the November 25, 1968, SF-50 to show that Mr. Fitzgerald was converted from "Excepted-Conditional" to "Excepted" upon completion of three years of service, effective September 20, 1963.

The Lang Memo of January 6, 1969, and Assistant Secretary Nielsen's January 8, 1969, comment to Mr. Fitzgerald, which Mr. Nielsen made the subject of a memo for record on January 13, 1969, that his usefulness to the Air Force had come to an end did not stem from his testimony before Congress on November 13, 1963. These two pronouncements resulted directly from the January 1, 1969, Washington Post front-page story that carried a clear but erroneous implication that Mr. Fitzgerald's career tenure had been revoked in retaliation for his November 13, 1963, testimony. Secretary Seamans, and others in the Air Force considered Mr. Fitzgerald to be a publicity seeker; that the appellant was directly or indirectly responsible for the erroneous January 1, 1969 Washington Post story; and that Mr. Fitzgerald had done this for the purpose of placing the Air Force in a bad light.

We find that the unjust publicity the Air Force received concerning this tenure controversy, which it considered Mr. Fitzgerald to be basically responsible for, was the prime factor in the deterioration of relationships and development of an adversary environment between Mr. Fitzgerald and the Air Force.

We note that Mr. Fitzgerald received his appointment in September 1965 during a Democratic Administration, and in his own words the appointment was to be for only a few years. Mr. Fitzgerald's position carried with it the qualifications requirement that he "be personally acceptable to the Assistant Secretary of the Air Force (Financial Management)" (A-6/25/70, P-145). By the end of December 1968 the appellant's "few years" had gone by; a Republican Administration would soon be coming into office; and thus it appeared that Mr. Fitzgerald could possibly soon be leaving.

While Mr. Fitzgerald has denied that he was "Senator Proxmire's boy in the Air Force", and he may honestly believe it, we find this statement difficult to accept. It is evident that the top officials in the Air Force, without specifically saying so, considered him to be just that. The statements that he was not a "team player" and "not on the Air Force team" go directly to that point. We also note that upon leaving the Air Force Mr. Fitzgerald was employed as a consultant by the Proxmire Committee and that Senator Proxmire appeared at the Commission hearing as a character witness for the appellant.

It is also clear that probably January 1969, and certainly no later than May 1969, Mr. Fitzgerald had achieved controversial status and was an Air Force personnel problem as his testimony concerning his meeting with Secretary of Defense Melvin Laird revealed.

Assistant Secretary Nielsen considered Mr. Fitzgerald's usefulness to the Air Force to be at an end as of January 8, 1969. Therefore, he obviously did not include Mr. Fitzgerald in his proposed reorganizations of February 26, 1969 and May 5, 1969. Mr. Nielsen's last proposal is essentially the same as the reorganization Assistant Secretary Schedler, with Secretary Seamans' approval, finally put into effect. This reorganization abolished Mr. Fitzgerald's position and led to his separation by RIF on January 5, 1970.

Mr. Schedler testified that he did not decide to abolish Mr. Fitzgerald's position until late September or early October 1969. However, Secretary Seamans and Secretary Laird came to the decision that Mr. Fitzgerald had to leave the Air Force much earlier than Mr. Schedler was willing to admit. They were busy looking for another position outside the Air Force for this appellant as early as May 1969. One of the positions under consideration was with the Fitzhugh Blue Ribbon Panel, previously discussed.

Secretary Seamans denied being instructed, directed or ordered by anyone to terminate Mr. Fitzgerald. However, he initially declined to respond to any and all questions concerning possible communications he may have had with, or any advice received from, the White House staff regarding Mr. Fitzgerald. This declination was based on the doctrines of Executive Privilege and privileged communications. Secretary Seamans was advised by this examiner (TR 499) as follows:

"Mr. Secretary, I am without authority to order you to answer the question. If the answer to the question becomes relevant and material, all I can do is to take into consideration your refusal to answer the question."

Secretary Seamans subsequently testified that at some point in time prior to Mr. Fitzgerald's job being abolished he did receive some advice from the White House; however, he refused to discuss it any further (TR 839).

By letter dated August 2, 1973, with a copy to the agency representative, appellant's attorney submitted a copy of a January 20, 1970 internal White House memo from Alexander Butterfield to Mr. H. R. Haldeman that had just been discovered. The agency was offered but declined the opportunity to comment. This memo states:

"You'll recall that I relayed to you my personal comments while you were at San Clemente, but let me cite them once again—partly for the record—and partly because some of you with more political horse sense than I will probably want to review the matter prior to next Monday's press conference.

"Fitzgerald is no doubt a top-notch cost expert, but he must be given very low marks in loyalty; and after all, loyalty is the name of the game.

"Last May he slipped off alone to a meeting of the National Democratic Coalition and while there revealed to a senior AFL-CIO official (who happened to be unsympathetic) that he planned to "blow the whistle on the Air Force" by exposing to full public view that Service's "shoddy purchasing practices". Only a basic no-goodnik would take his official business grievances so far from normal channels. As imperfect as the Air Force and other military Services are, they very definitely do not go out of their way to waste government funds; in fact, quite to the contrary, they strive continuously (at least in spirit) to find new ways to economize. If McNamara did nothing else he made the Services more cost-conscious and introspective—so I think it is safe to say that none of their bungling is malicious . . . or even preconceived.

"Upon leaving the Pentagon—on his last official duty—he announced to the press that 'contrary to recent newspaper reports' he was not going to work for the Federal Government, but instead, was going to 'work on the outside' as a private consultant.

"We should let him bleed, for a while at least. Any rush to pick him up and put him back on the Federal payroll would be tantamount to an admission of earlier wrongdoing on our part.

"We owe 'first choice on Fitzgerald' to Proxmire and others who tried so hard to make him a hero."

The information contained in the memo concerning Mr. Fitzgerald's May 1969 statements at a meeting of the National Democratic Coalition had not previously come to light in this proceeding. In the light of Secretary Seaman's refusal to furnish testimony on conversations he had with, or advice he received from, the White House Staffs' and our notification to the Secretary (TR 499), quoted supra, we must conclude and do hereby find that Mr. Fitzgerald's May 1969 statements were the subject of Secretary Seamans' discussion with the White House staff. We must also conclude and do hereby find that these statements by Mr. Fitzgerald were one of the underlying reasons for the decision to abolish Mr. Fitzgerald's position and to terminate his employment with the Air Force.

The "Lang Memo" previously quoted, set

out three (3) methods by which the agency could terminate Mr. Fitzgerald. Method No. 3 was not recommended. Method No. 1 was to follow adverse action procedures with all of the requirements for specified charges, opportunity to reply and appeals. Method No. 2, which the agency subsequently followed, was to abolish Mr. Fitzgerald's position and since his assignment rights would only be to Excepted Service positions, he would end up being separated. Secretary Seamans and Assistant Secretary Schedler both saw the "Lang Memo" prior to Mr. Fitzgerald's position being abolished.

Our findings, supra, reveal many instances of dissatisfaction with Mr. Fitzgerald. In addition, Secretary Seamans testified (TR 964) that:

"It is obvious from the testimony these past three days that I was not satisfied with Mr. Fitzgerald's performance. I made no pretense that I was."

After carefully reviewing the complete appellate record and in view of all of the foregoing analysis, findings and conclusions, we find that the agency's decision to abolish Mr. Fitzgerald's position and to include him in the Project 703 reduction-in-force improperly resulted from and was influenced by reasons purely personal to the appellant and was for the purpose of terminating his employment with the Air Force.

Secretary Seamans, in discussing his dissatisfaction with Mr. Fitzgerald, also stated (TR 964):

"But at the same time it does not give Mr. Fitzgerald immunity against having his job abolished, and the abolition of the job for improvement in our management capability was a separate and distinct step, or action."

It is true that an undesirable, inadequate or unsatisfactory employee is not immune from having his position abolished. However, the decision to abolish that employee's, or any employee's, position must be based solely on reasons not personal to the employee. These employees must be removed from their positions by other means because the spirit, intent, and letter of the Commission's regulations require that the reduction-in-force system be used for reasons that are not personal to the employees affected. The more an employee is deserving of being fired, the more inappropriate it is to abolish his position and separate him by reduction-in-force.

In the case at hand, where we have found from the evidence of record that the decision to abolish Mr. Fitzgerald's position and to separate him by reduction-in-force was influenced by, and resulted from, reasons that were personal to the appellant; and where the appellant was an employee entitled to the adverse action procedures set forth in Part 752–B of the Civil Service regulations; we find his separation by reduction-in-force to be improper, inappropriate and contrary to the spirit, intent, and letter of the Commission's regulations.

RECOMMENDATION

Accordingly, we recommend that Mr. Fitzgerald be restored retroactively to January 5, 1970 to the position from which he was improperly separated, or to any other position of like grade, salary and tenure in the Excepted Service and with the same or similar qualifications requirements as his former position. Please furnish this office with a copy of the SF–50 accomplishing the recommended corrective action.

The appellant requested an award of damages, costs and reasonable attorneys' fees. The applicable statutes, Executive Orders and Commission regulations do not provide for any awards of damages, costs, or attorneys' fees by the Commission in a decision on an appeal. Therefore, the appellant's request in this regard must be denied. It should be noted that during the course of the proceeding the appellant's attorneys contended that they had volunteered their services and were performing without charge.

The appellant has also requested reimbursement for the compensation he would have received if he had not been terminated.

Retroactive corrective action as ordered by the Commission carries with it an entitlement to back pay in accordance with the provisions of the "Back Pay Act". However, the Commission does not determine the amount of the back pay entitlement, if any.

Unless this decision is further appealed within 15 calendar days of the day on which it is received, it becomes the final decision of the U.S. Civil Service Commission. Any further appeal of this decision must be sent directly to:

Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. 20415.

Two copies of the letter of further appeal and all representations which the Board should consider beyond those now in the appeal file must be submitted within the 15 calendar day time limitation.

HERMAN D. STAIMAN,
Chief, Appeals Examining Office.

CLC REPEATS MISTAKES

Mr. McCLURE. Mr. President, the refusal of the Cost of Living Council to accept a court ruling voiding retail price controls for petroleum products is resulting in needless and unjust hardships for thousands of small businessmen, and the men and women that they employ. Perhaps we are becoming insensitive to Government-imposed injustices on American citizens, but I cannot tolerate, much less accept, the bureaucratic thinking which refuses to rescind a spur-of-the-moment decision which has been proven erroneous. If the administration is more intent on "saving face," rather than admitting a mistake and responding to reason and facts, then the Congress must act as the public defender. I urge that the legislation to correct this injustice, which I and many other Senators have introduced, be given immediate attention by the committees to which it was referred. Only then can the full Congress act.

Mr. President, I was visited this week by three citizens of Idaho—Mr. Marv Christensen, president of the Idaho Petroleum Dealers Association, Mr. Joseph Anderson, and Mr. John L. Boozer. These men came to Washington to present the facts. And, the facts show beyond question that the Cost of Living Council's decision means that petroleum dealers throughout Idaho will be forced to shut their doors, and the employment that they provide will be lost. An an illustration of the gravity of this visit, I ask unanimous consent that a list of names be printed in the RECORD of the individuals and organizations who helped pay for the trip of these men to Washington. This list is another indication to the administration of the widespread concern that this decision has created.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

Donations for trip to Washington, D.C., to appeal phase IV price controls

Bill and Mike's American	$5
Rex Parris Truck Stop	20
Forde Johnson's Truck Stop	20
Cowboy Oil Co	20
Jim Herzog Automotive	20
Nyle Ward's Texaco	20
Jim Fleming Husky	20
Marv Christensen's Conoco	$20
Motor Merc	20
Ray Jones Chevron	20
Steve's American	20
TBA Supply Co	25
Wynn's American	20
George Frost	25
John Valemity Texaco	20
Kerham Auto Parts	20
Mel's American	20
Vals Stodards	20
Wheaty and Jensen's Texaco	20
Marv's Chevron Service	20
Norm Smith Parts House	20
Art Latiners Union	20
Bob Willard's Conoco	20
Muffler Warehouse	20
Jim Bauns Texaco	20
Dale Kerhams Auto Supply	20
Bellmyers	20
Automotive Wholesalers	20
Dale Wellug's Chevron	20
Sam's Texaco	20
Fred Wellie's Conoco	20
Rex Larsen's Sinclair	20
Mel Facer's Conoco	20
Harold Buchan Conoco	20
V-Pump	20
Floyd Anderson's Conoco	20
Jack Webber's Chevron	20
Joe Anderson's Auto	20

Mr. McCLURE. Mr. President, the Cost of Living Council's first mistake was to go ahead with the phase IV controls, despite the evidence against them. The second mistake was to appeal Judge Parker's decision, in which he found the controls to be "arbitrary and capricious." The third mistake is the attempt, now, to delay rescinding the controls, using the excuse of "having to study the problem further." The studying should have been done before the controls were imposed.

Now is the time for the Cost of Living Council and the administration to avoid another mistake. If they do not, then I urge immediate congressional action.

THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, it has been 25 years since the first nation signed the Genocide Convention. At that time the United States was in the forefront of those who sought to make genocide an international crime. In the intervening years over 75 nations have ratified this treaty but this body has yet to give its consent. Despite the passage of time it remains as imperative as ever that we do so.

Historically, the United States has been known as a champion of human rights. Our concern with preserving the right of racial, ethnic, and religious groups to coexist requires our signature to the Genocide Convention. The fact that we have not yet signed the convention puzzles our friends and delights our enemies. In fact, former U.S. Ambassador Charles Yost testified that our refusal to ratify the treaty was one of the most difficult and embarrassing things he has ever had to explain.

The psychological impact of U.S. ratification cannot be underestimated. International law grows extremely slowly. It requires the unanimous support of the world community to become established. Thus, as Mrs. Rita Hauser, former representative on the U.N. Human Rights Commission, has testified, it is hard to see how any international principle can

become binding without the concurrence of the United States.

Likewise, if our country ratifies this treaty, it could well reawaken interest among the new nations to also add their signatures. It is imperative that the U.S. Senate give its consent as soon as possible.

THE MEANINGS OF DÉTENTE

Mr. BUCKLEY. Mr. President, the New York Times on Monday, September 17, 1973, carried an article, "United States Hears of Brezhnev Reassurance To Bloc That Accords Are a Tactic." The first two paragraphs of that article give the essential facts of the story:

According to intelligence reports recently received here, Leonid I. Brezhnev, the Soviet Communist Party leader, has emphasized to Eastern European leaders that the movement toward improving relations with the West is a tactical policy change to permit the Soviet bloc to establish its superiority in the next 12 to 15 years.

Although there is some question about the authenticity of the reports, they are contributing to a debate within the Administration over whether the current Soviet course really represents a basic change in intention or is merely a temporary shift. . . .

Mr. President, the only surprising thing about this disclosure is that it should surprise anyone. Taking into account even the fact that there is some question about the authenticity of the reports, there is a ring of truth about their basic substance and it is reported in the same article that specialists on the Soviet Union "accept the intelligence reports as probably accurate." What Mr. Brezhnev has obviously been whispering into friendly ears in Eastern Europe is nothing new; indeed, Communist leaders ever since Lenin have been proclaiming similar sentiments to the world.

To illustrate that point, allow me to have printed in the RECORD, the words of various Communist leaders and official publications on the subject of détente:

The policy of peaceful coexistence . . . is a form of intense economic, political, and ideological struggle of the proletariat against the aggressive forces of imperialism. (N. Khrushchev, 1961)

In the view of the Communists, peaceful coexistence is . . . an active and intense struggle, in the course of which socialism irresistibly attacks, while capitalism suffers one defeat after another. (Sovetskaya Estoniya, 1963)

The policy of peaceful coexistence . . . has never been a policy based on the acceptance of the states quo in world relations. It has been and it remains a weapon of struggle—a struggle in which both hands are used. With one hand, the aggressive forces of world imperialism are held back; with the other, full support is given to the forces fighting for national independence, and to the peoples moving toward a socialist goal. (World Marxist Review, Moscow, 1965)

The main direction of the world revolutionary process is determined by the struggle between the two opposite social systems . . . Since it is a question of two essentially irreconcilable lines of world development, all countries, classes, social strata, and political currents become involved in the struggle. . . . Our foreign political measures are restricting further and further the aggressive imperialist circles . . . They contribute to the creation of ever better international circumstances for the expansion of the struggle of the revolutionary forces the world over. (B. Ponomarev, general secretary of the Central Committee of the Soviet CP, 1971)

Relations with the capitalist nations will remain the relations of struggle, however sucessful normalization and détente may be. . . . The essential question is what form that struggle will take. (G. Arbatov, director of the Soviet Institution for American Studies, March 1973.)

Only naive people can expect that recognition of the principles of coexistence by the capitalists can weaken the main contradiction of our times between capitalism and socialism, or that the ideological struggle will be weakened. (Pravda, May 1973.)

Mr. President, after documentary evidence like this, can we really say we are surprised to learn that Mr. Brezhnev looks upon détente as simply one more weapon in the long protracted conflict with the West?

I ask unanimous consent that the following article "United States Hears of Brezhnev Reassurance to Bloc That Accords Are a Tactic," John W. Finney, New York Times, September 17, 1973, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

UNITED STATES HEARS OF BREZHNEV REASSURANCE TO BLOC THAT ACCORDS ARE A TACTIC

(By John W. Finney)

WASHINGTON, September 16.—According to intelligence reports recently received here, Leonid I. Brezhnev, the Soviet Communist party leader, has emphasized to Eastern European leaders that the movement toward improving relations with the West is a tactical policy change to permit the Soviet bloc to establish its superiority in the next 12 to 15 years.

Although there is some question about the authenticity of the reports, they are contributing to a debate within the Administration over whether the current Soviet course really represents a basic change in intention or is merely a temporary shift.

As summarized by Defense and State Department officials who have studied the intelligence reports, the Brezhnev explanation went like this:

To the Soviet Union, the policy of accommodation does represent a tactical policy shift. Over the next 15 or so years, the Soviet Union intends to pursue accords with the West and at the same build up its own economic and military strength.

At the end of this period, in about the middle nineteen-eighties, the strength of the Soviet bloc will have increased to the point at which the Soviet Union, instead of relying on accords, could establish an independent, superior position in its dealings with the West.

HOW UNITED STATES GOT REPORTS

The intelligence reports are for the most part third- or fourth-hand accounts of Brezhnev statements that have filtered through Eastern European sources to Western intelligence agencies and finally to the United States intelligence community.

The authenticity of one report of a Brezhnev conversation with an Eastern European leader last spring, before the Soviet leader met in June with President Nixon, was said to have been vouched for by British intelligence, which received the report and turned it over to the United States. American officials said that similar intelligence reports have been received concerning other such Brezhnev statements, both in Moscow and in Eastern European capitals.

The attitudes among specialists on the Soviet Union is to accept the intelligence reports as probably accurate. Differences have developed within the Administration over how to interpret the statements.

SUSPICIONS AMONG MILITARY

Some high-ranking military officials regard the intelligence reports as confirmation of their suspicions that the Russians are intent upon using accommodation as a way of disarming the West and establishing a military superiority that will permit a more aggressive Soviet foreign policy.

Most civilian analysts of the Soviet Union place less ominous interpretation on the intelligence reports. They tend to consider the reported Brezhnev statements an internal tactic designed to mollify the hardline opposition within the Communist camp as the Soviet leader pursues a policy of detente with the West.

The reports have had considerable impact on the Pentagon. When asked to document their contention that the Soviet Union was intent on establishing military superiority over the United States, high-ranking officers immediately cite the intelligence reports on what is coming to be known within the Pentagon as "the new Brezhnev doctrine."

"TURNING SCREWS ON UNITED STATES"

From the first concrete steps toward East-West accommodation, military officials have tended to suspect Soviet intentions, as reflected in the reservations of the Joint Chiefs of staff about last year's agreement limiting offensive strategic arms. A common military judgment is that the Soviet Union may be using accommodation in part to lower the guard of the West while it pursues a build-up in the 1980–1985 period to achieve military superiority.

This judgment tends to be supported by the intelligence reports on the Brezhnev statements about pursuing accords for 12 to 15 years. To United States military officials, the implication is that by the end of that period the Soviet Union believes it will be in an economic and military position at which it can begin, as one high officer put it, "to start turning the screws on the United States".

Perhaps not completely by coincidence, the reports began to appear at a time when the defense budget faced a serious challenge on the Senate floor. The Senate begins debate this week on the annual military procurement bill, with moves planned to cut away at various weapons-and-manpower programs.

In the face of a growing view in the Senate that accommodation should permit a re-examination of defense policies, the Defense Department has been going to considerable lengths to emphasize that détente does not permit cuts in the defense budget. In assailing moves to reduce defense spending, for example, Defense Secretary James R. Schlesinger emphasized recently that despite the hopeful atmosphere, Soviet bloc military strength was still growing. He characterized the Soviet Union as having "a mailed fist encased in the velvet glove of détente."

CIVILIAN-MILITARY DEBATE

It appears that the intelligence reports have contributed to the differences between military circles in the Pentagon and civilian circles in the State Department in assessing Soviet intentions.

Civilian analysts of the Soviet Union read the Brezhnev statements as emphasizing accommodation as a way of achieving an economic, rather than military, build-up of the Soviet bloc—not some long-range master plan for military superiority over the United States.

It was also the prevailing belief in civilian circles that the Brezhnev statements were motivated by internal political considerations within the Communist bloc.

Within the Communist party in the Soviet Union, as well as in some of the Eastern European countries, according to Soviet special-

ists, there appear to be some lingering reservations about the desirability of a cooperative policy with the West. The Brezhnev statements, therefore, were interpreted as an attempt to provide a rationale and justification that would permit all factions, including the ideological hardliners, to join behind a policy of cooperation with the West for 12 to 15 years.

As one Government specialist on Soviet affairs put it: "The self-proclaimed tactical shift is probably a tactic in itself."

PROGRAMS HELPING COLLEGE STUDENTS

Mr. PELL. Mr. President, in the New York Times of Tuesday, September 4, 1973, there appeared a short, concise breakdown of Federal programs helping college students. It, in simple terms, discusses the Federal programs and how a student may apply for them.

I think that the many congressional offices which have contacted the Subcommittee on Education of the Senate Committee on Labor and Public Welfare, may wish to see it.

I ask unanimous consent for this article to be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Sept. 4, 1973]

PROGRAMS HELPING COLLEGE STUDENTS

(Following are the five major programs administered through the United States Office of Education for aiding postsecondary school students and the major state-operated programs in the metropolitan area. In addition to these programs there are other specialized forms of Federal assistance, private loans and a wide variety of scholarships offered by foundations, agencies and the educational institutions themselves.)

BASIC EDUCATIONAL OPPORTUNITY GRANTS

Eligibility: Open to full-time freshmen at colleges, universities and vocational and technical schools who did not attend a post-secondary education institution prior to July 1, 1973.

How to apply: Applications are available from post-secondary institutions, high schools, post offices, state employment offices, county agricultural extension agencies and Box G, Iowa City, Iowa, 52240.

When to apply: As soon as possible for the academic year now beginning.

Criteria: Family income and assets determine who gets a grant, academic achievement having no bearing. Applicant must complete a detailed financial statement that is subject to comparison with the Federal income tax return that parents have filed with the Internal Revenue Service. In general, a student from a family of four with an income of $11,000 or more would not qualify for a grant. However, factors that can offset a higher income and enable a student to get a grant are a large family, brothers and sisters in college, both parents working and unusually large medical expenses.

Size of grant: Ranging from $50 to $452—the top grant going to a student from a family that according to its income and assets cannot afford to contribute anything toward the student's education.

Terms of repayment: This is a grant and there is no repayment involved.

Comments: No eligible student whose certifiable need meets the established criteria will be turned down by this program. Also, the grant will be awarded regardless of any other Federal grants or loans the student may receive. If a sufficient level of funding is authorized by Congress, the program is to be expanded to include all needy undergraduates, full-time and part-time. The top grant would be $1,400.

GUARANTEED STUDENT LOANS

Eligibility: Anyone enrolled as an undergraduate or graduate student in any of 8,200 participating colleges, universities and nursing, vocational, technical, trade, business or home study schools.

How to apply: Applications may be obtained from participating educational institutions, banks, savings and loans, credit unions and the United States Office of Education.

When to apply: At any time.

Criteria: All students are eligible, regardless of how high the family income. Only those with established need, however, can qualify to have the Federal Government pay the interest on the loan; others must pay their own interest. Those seeking interest-subsidized loans must fill out a needs analysis divulging income and assets. Such factors as a large family, brothers and sisters in college, both parents working and unusually large medical expenses are taken into consideration. The financial aid office of the educational institution processes the application, applying a mandated formula, and recommends to the potential lender the amount of the interest-subsidized loan (including a possible zero dollar recommendation) for which the student qualifies. Prior to March 1, a student from a family with an adjusted income of less than $15,000 could qualify for an interest-subsidized loan, but under new regulations many students who formerly qualified are finding themselves ineligible.

Size of loan: In general, loans may be for up to $2,500 a year—not to exceed $7,500 during an entire undergraduate career and $10,000 during the course of undergraduate and graduate education. The annual amounts and cumulative totals vary, though, in some states, including Connecticut and New York.

Terms of repayment: No payment on principal is required until nine to 12 months after the student leaves school or until after service in the military, Peace Corps or VISTA. Once repayment begins, it is to be completed over a period of not more than 10 years and not less than five years, or sooner if the loan can be paid off at a rate of $360 a year. In the event of default, the Federal or State guarantee agency will compensate the private lender and attempt to recover the money from the student.

Comments: While this program appears to be open to all applicants it has not worked out that way. All of the money being loaned belongs to private lenders who participate voluntarily and retain the ultimate decision about who gets a loan. The new needs analysis formula has had the effect of disqualifying many of the students who would have gotten interest-subsidized loans under the old rules. The lending institutions could go ahead and give loans through the program that are not interest-subsidized, but are reluctant to do so. Not only is this a time of tight money, but apparently the lenders do not want to get too much of their money tied up in loans on which payment on the principal is delayed until after the student leaves school.

Moreover, while a lender can bill the Federal Government in one lump sum for the interest on all the subsidized loans, students must be billed individually for interest on unsubsidized loans—making such loans unattractive to the lender because of the greater servicing costs. The March 1 regulations were ostensibly to make it easier for the middle-class to get the guaranteed loans, but the change has had the opposite effect. Congress has had hearings on the problems that have developed and there is a widespread opinion among authorities on the program that the law needs further changes if it is actually meant to be of use to students from a wide range of income groups.

SUPPLEMENTARY EDUCATIONAL OPPORTUNITY GRANTS

Eligibility: For undergraduates in colleges and universities and students in other approved post-secondary schools. Half-time as well as full-time students.

How to apply: Through the financial aid office of the institution in which enrolled.

When to apply: As soon as possible for this year and upon acceptance for next year.

Criteria: For students of "exceptional need," who without the grant would be unable to continue their education. Final determination of need is up to the college's financial aid office. This grant is often given in combination with National Direct Student Loan and College Work-Study aid to form a single assistance package.

Size of grant: Not less than $200 or more than $1,500 a year. Normally, renewed for up to four years—or five years when course of study requires extra time. The total that may be awarded is $4,000 for a four-year course of study and $5,000 for a five-year course.

Terms of repayment: This is a grant and there is no repayment involved.

Comments: In the past, 72.7 per cent of these grants have gone to students whose family income is below $6,000; students from families with incomes in excess of $9,000 have received 4.2 per cent of the grants.

COLLEGE WORK-STUDY

Eligibility: For undergraduates and graduate students in colleges, universities and approved post-secondary schools. Half-time as well as full-time students.

How to apply: Through the financial aid office of the institution in which enrolled.

When to apply: As soon as possible for this year and upon acceptance for next year.

Criteria: The offer of a job is based on need, as determined by the college's financial aid office. The Federal money is used to pay the wages. The job may be for as many as 40 hours a week at a nonprofit on-campus (cafeteria, library, laboratory) or off-campus (hospital, school, government agency) site. Usually awarded as a package in combination with Supplementary Educational Opportunity Grant and National Direct Student Loan.

Amount of pay: From $1.60 to $3.60 an hour. Average annual compensation being $600.

Terms of repayment: These are wages for hours worked and there is no repayment.

Comments: In the past, 56.7 per cent of the work-study jobs have gone to students whose family income is less than $6,000; students from families with incomes in excess of $9,000 have received 17.3 per cent of the jobs.

NATIONAL DIRECT STUDENT LOANS

Eligibility: For undergraduates and graduate students in colleges and universities and approved post-secondary schools. Half-time as well as full-time.

How to apply: Through the financial aid office of the institution in which enrolled.

When to apply: As soon as possible for this year and upon acceptance for next year.

Criteria: The loan is based entirely on need, as determined by the college's financial aid office. Usually awarded as a package in combination with College Work-Study and Supplementary Educational Opportunity Grant.

Size of loan: Up to a total of $2,500 while enrolled in a vocational school or during the first two years of a degree program. Up to a total of $5,000 while studying toward a bachelor's degree and up to $10,000 during the entire undergraduate and graduate career.

Terms of repayment: Begins after leaving school or service in military, Peace Corps or VISTA. Interest of 3 per cent on unpaid balance of loan is charged when repayment period begins. Maximum length of repayment period is 10 years. Loan is canceled and no repayment necessary for teachers of the handicapped and teachers in inner-city

schools and servicemen who spend one year in a combat zone.

Comments: This is the original of the Federal assistance programs for students, which began as the National Defense Student Loans in the late nineteen-fifties in the wake of the panic over the launching of the Soviet Union's first satellite. It was awarded on the basis of academic achievement, largely to students in the sciences and education. Academic achievement no longer figures in the loan and major field of study makes little difference. Students from families with incomes in excess of $12,000 get 10.6 per cent of the loans.

These are the major state-operated aid programs in the metropolitan area.

THE ENERGY CRISIS

Mr. DOMENICI. Mr. President, at this point in our history, when we are beginning to realize that the fossil fuel barrel indeed has a bottom, other sources of energy are being seriously considered to fill the ever widening gap between demand and fossil fuel availability.

I am pleased to call to the attention of my colleagues the ingenious efforts of a family in New Mexico to find new solutions on an individual basis. Their work to harness and use solar and wind energy to provide their power needs has been described in an article in the Washington Post of September 16, 1973.

Their unusual experience and their skill and innovative spirit is to be admired and emulated. It is time, I believe, that such experiments should be introduced on a large scale. National policy should be established and funds appropriated to reach specific goals and objectives in this area. I urge Congress to move quickly in encouraging the research and development of such energy production.

I request unanimous consent that the article referred to above be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

IT'S HEATED BY THE SUN AND ELECTRIFIED BY THE WIND

(By John Dreyfuss)

ALBUQUERQUE, N. MEX.—Eileen and Bob Reines live in the world's first home that can be totally heated by the sun and electrified by the wind.

They enjoy a standard of living only a little simpler than that of many middle-income Americans, and just about as comfortable.

They do it in a hemispherical home that is very different from that of the average American's—and almost everyone else.

A conventional structure the same size would require about 10 times the heat to maintain the same temperature, and use about five times as much electricity.

Bulbs totalling less than 150 watts brighten the house so one can read comfortably almost anywhere in it.

There are spaces for a kitchen, bathroom, office, bedroom, and living room-dining room.

Building the home and its energy systems cost Reines a promising Air Force career, enormous innovative effort and about $12,000.

"Our home is designed as a system to conserve heat, water and electricity," Reines said. "It needs less of nature's energy than any comparable house in the world because we make such efficient use of the energy we take."

Outside the Reines house looks like a glistening, white tipped-over teacup, 14 feet 5 inches high and 31 feet 6 inches in diameter at ground level.

Inside, the hemisphere creates an impression of soaring spaciousness seldom found in rectilinear homes.

Eileen and Bob Reines live in that spaciousness with their big Labrador dog, Bruce, their tiny alley cat, Spike, and their television, Hi-Fi, kitchen blender and other "extras" that have become a part of everyday life for most Americans.

Propellers on three wind-driven generators atop towers near the house hum as they spin, charging 16 high-capacity storage batteries, while simple solar collectors heat 3,000 gallons of water in a hill-side storage tank.

Wind-powered generators and solar heat have done for the Reineses what energy experts for years have said could not be done provided energy for a good standard of living without backup from commercial energy sources.

The key is the hemisphere. It wastes only a small fraction of the heat that escapes from conventional structures through cracks, poor insulation and doors opening and closing.

It is a dome of thin metal panels with insulation and rigidity provided by a 3-foam sprayed inside.

An airlock—two doors at opposite ends of a 7-foot-long hallway—keeps the home free of winter cold (which occasionally plummets to lower than 30 degrees below zero) and summer heat which climbs to more than 100 degrees).

Hot water for radiators flows from the 3,000-gallon tank. It contains a smaller tank for hot running water.

The system is heated by the sun beating down on black copper tubes through which is pumped a water-glycol solution. The tubes are run through the big water tank, heating its contents.

In summer, the temperature in the dome stays at 85 degrees or less, Reines said. "It could be reduced 10 degrees more by shading the skylight in daytime hours, and opening vents at night," he added.

"Next summer we plan to experiment with running the solar system at night to chill the big water tank, and cool the house during the day by running the cold water through the radiator."

The Reines hemispherical home is white, inside and out. Its popcorn-like wall surface escapes monotony because the foam insulation tends to show the shape of the metal panels and supporting rings to which it adheres.

At the top of the hemisphere, a 6-foot 1-inch skylight contains a dozen separate windows. Eleven windows are circular, ranging in diameter from 3 inches to 3 feet. The 12th is rectangular and opens to provide an air vent.

The walls are perforated with 19 irregularly placed portholes, each 8½ inches in diameter.

Enough light streams through the windows and skylight to keep the dome brighter than most homes well into the dusk hours, even on cloudy days. A large interior volume relative to floor space gives the hemisphere a spaciousness belying its relatively small 655-square-foot ground level area and 200-foot sleeping loft.

The ground level, which has a red and black brick floor, is about 60 per cent living room-dining area, with 10 per cent devoted to the kitchen, 10 per cent to the bathroom, 5 per cent to office space and 15 per cent to storage. Upstairs, a double bed, two dressers and a bedside table furnish an uncluttered sleeping area.

There are some problems: Condensation often drips from the skylight and makes the window opaque, privacy within the home is minimal and the windows are too small for an easy view.

Reines is quick to note he can eliminate the condensation with double pane windows and he is working on the other problems.

"But the big questions are already answered," he declared. "We got here from groundbreaking in 10 months—and this house, which we call Prototype I, is already obsolete. Prototype II is on the drawing boards."

Reines' voice rises an octave and several decibels with excitement when he looks ahead. "We've just scratched the surface," he said, using a favorite declaration which he tends to make four or five times a day.

"By 1974, we'll have developed a wind-solar powered home that anyone good with his hands can build. The solar collectors will be part of the hemisphere, the water tank will be out of sight, no longer an eyesore. It will be far more efficient home than Prototype I, 20 per cent less expensive, and have much greater window space.

"And if a buyer doesn't want to use wind power, he can hook up to conventional electric lines and watch his use of electricity drop 70 per cent from that of a normal home.

"We're looking hard at the esthetics and land use too. We don't want to drop these hemispheres in domino rows."

Reines is studying the storage capacities of his heat and electric systems to see just how long he can go without sunshine and wind.

"It's a fundamental question," he said. "Under normal energy use conditions we can last a week without wind or sun. Future systems will have vastly more storage capacity—about 20 days. Of course, by cutting back on energy needs, one could do much better than that."

Preliminary research indicates energy-efficient homes powered by the wind and sun could be used virtually anywhere in the United States with the possible exceptions of areas of the extreme Northwest and Northeast, Reines claimed.

Although he is almost totally dedicated to perfecting his hemispherical energy-efficient house, Reines knows it is not bound for immediate or universal acceptance.

He realizes adding a room can mean adding an entire dome and that hemispheres are limited to essentially single-story structures.

That means domes are not practical in densely populated cities requiring multi-story apartment houses. Even in the suburbs, they use more land than rectilinear homes with the same ground-level floor space.

And domes are "different." People accustomed to box-like living spaces are likely to balk at change simply because they resist any radical departure from the norm in housing.

Reines is planning to construct several more domes in New Mexico about 120 miles from his completed structure.

These will be Prototype II and he has gathered a team of half a dozen helpers to aid in their construction.

Reines exhausted his own funds to build Prototype I, so he is looking for financial support. "I have some possible investors lined up," he said. "But I need more."

Beyond Prototype II, Reines envisions building a small city of hemispheres depending for their energy on the sun and the wind.

It would house 200 city planners, designers, architects, attorneys, anthropologists, educators and others who would help promote energy-efficient living.

From such a community, Reines hopes for a proliferation of minimum-energy homes through America, and then throughout the world.

It is an ambitious prospect. But so was constructing the world's first home that can be totally powered by the sun and the wind.

He began three years ago in the most unlikely of situations: As a lieutenant in the U.S. Air Force. Constrictions of the military establishment permitted him to make only a few small steps up his mountainside.

The first of many giant steps toward his goal was Reines' decision to ignore the Air Force. He plunged his entire $15,000 savings into his project, resigned his commission and set off up his mountain.

He is a demon for work. In his last five months as an Air Force officer, Reines spent 16 to 18 hours a day designing, pricing and developing an energy-efficient home in the New Mexico high desert.

He scoured the state for materials, rebuilt vehicles, repaired equipment, scrounged advice and labor and prepared the land for his hemispherical home.

Reines has built that home with no job, no assured future, and virtually no money in terms of today's research budgets.

But he is no dropout from society; quite the opposite. His goal is to serve society.

He believes such service demands solutions to new problems which are beyond the reach of existing institutions.

So Reines is exploring new ground, convinced that Americans must basically alter their housing requirements.

NADER PRAISED BY HEAD OF CHAMBER OF COMMERCE

Mr. PROXMIRE. Mr. President, yesterday was a banner day for America in my view. Two remarkable events occurred. First the Civil Service Commission in a precedent shattering decision stood up loud and clear for a civil servant who had been kicked out of office by the administration. There have been few more controversial actions by any administration in recent years than the firing of Ernest Fitzgerald, which in turn followed a year of harassment of Fitzgerald, which immediatley followed his disclosure when asked pointblank by a congressional committee that the overrun on the C5A might be some $2 billion. For committing that truth, Fitzgerald was canned by the Air Force. Yesterday, after 3½ years of battling, he was given his job back with 3½ years of back pay.

So it was a glorious day for those who have the courage to speak out against waste in their agency, and a great day for taxpayers because reducing Federal spending depends on the willingness of some of the thousands who run our Government having the courage and will to speak out and tell the Congress, the public, and the press the truth, so we can act to eliminate waste.

The second event speaks volumes for the increasing maturity and statesmanship of American business. It is also a great "man bites dog" story. The president of the U.S. Chamber of Commerce spoke out in emphatic praise of Ralph Nader.

Mr. President, I have attended executive sessions in this body when some of my colleagues in the Senate spoke in the most disparaging and critical tones of Ralph Nader—as a scourge of American business, as a vicious foe of business success, and in even stronger language. The automatic assumption around here by too many has been that Nader is a worrisome, annoying, gadfly who has unfairly brought some great and good businesses into disrepute and indeed into court to atone for alleged shortcomings.

Well, yesterday Mr. Edward B. Rust, the new president of the chamber, called on businessmen to "look with fresh eyes at Ralph Nader and the kind of consumerism he represents" and said that far from being an enemy of the system that Nader is committed to making the system work.

Rust went on to point out that it is only when products do not live up to their advertising and to buyers' expectations that Nader seeks to have them regulated by the Government.

Mr. President, for years I have been saying that Ralph Nader has been doing the job that Members of Congress should be doing. It is good to have the organization that is perhaps more clearly identified with the business viewpoint than any other, recognize that Nader and consumerism represent what can be a great improvement in our free enterprise system, with an informed customer—more aware of the quality of what he is buying—and its effect on his health, his safety, and that of his family.

Mr. President, we are all aware of what a great country this is. We are all proud of it, but somehow it is only the scandals and crimes and other sins of our Nation that get attention. As a result, too many are developing the view that our country is sick, or even evil. And yet, all of us know that there are many more good and happy and successful developments in this country every day than evil. Perhaps the remarkable coincidence of two such events: the victory of Ernest Fitzgerald and the recognition by the head of the Chamber of Commerce of the great contributions of Ralph Nader will help us take a happier view of America.

Mr. President, I ask unanimous consent that a release on Mr. Rust's speech and the speech be printed in the RECORD.

There being no objection, the release and the speech were ordered to be printed in the RECORD, as follows:

U.S. CHAMBER PRESIDENT URGES BUSINESSMEN TO TAKE FRESH LOOK AT NADER, CONSUMERISM

CHICAGO, Sept. 18.—Businessmen should "look with fresh eyes at Ralph Nader and the kind of consumerism he represents," the president of the Chamber of Commerce of the United States declared today.

"Nader has been described in some quarters as 'an enemy of the system,' but I think we are forced to the conclusion that his commitment is to make the system work," said Edward B. Rust in a speech here.

Rust described Nader as a man "who is singularly sensitive to the mood of the public and who also is unusually well-equipped to symbolize and express that mood."

He urged American businessmen to "look calmly and realistically at what consumerism is and what it is not, as represented by Mr. Nader."

Rust, who also is president of the six companies in the State Farm insurance group, made his comments in a speech before the National Association of Life Underwriters at the Palmer House.

Rust maintained that he was not siding with Nader against business because Nader "is not *on* the other side."

He added:

"If we look at the record, I think we will see a clear community of interest that Nader has with American business. The whole point of Nader—so obvious that it is often overlooked—is his single-minded dedication to making the free-enterprise system work as it's supposed to—to make marketplace realities of the very virtues the businessmen ascribe to the system.

It is only when products do not live up to their advertising and to buyer's expectations that Nader seeks to have them regulated by the government, Rust asserted.

"That . . . suggests a considerable degree of faith in the system and contrasts sharply with the revolutionary who would tear it down," he remarked.

The primary concern of every businessman should be the quality of the product or service he provides, said Rust.

"The manufacturer who landscapes the factory site but hedges the obligations in his product warranty has a misplaced sense of priorities," he added.

Consumerism, he observed, keeps business vigorous.

"I believe that it was inevitable that sooner or later someone like Ralph Nader would arise to focus and articulate the dissatisfactions and frustrations that are widespread among American consumers," he declared.

When business sees consumerism and its spokesman as its enemies, he continued, then "business is demonstrating its own failure to understand the healthy tensions and competing pressures that must always be present in that system if it is to survive."

Both business and the consumer must be realistic about the nature of their relationship, Rust stated.

"It is no more sensible for the consumer to expect perfection in everything he buys than it is for business to expect consumer acquiescence to all of its shortcomings," he declared.

Rust, who began his one-year term of office May 1, said most people in business, labor and government share a commitment to the welfare of the nation and its people. They differ only in the ways the commitment can be met.

In accepting the U. S. Chamber presidency, Rust said, he announced his intention "to focus on those things that bind us together rather than on our differences."

It is in that spirit, he emphasized, that he was urging American business to reassess its attitude toward consumerism.

ADDRESS BY EDWARD B. RUST

SEPTEMBER 18, 1973.

Someone asked me shortly after I was elected president of the U.S. Chamber, "Well, how does it feel to be the spokesman for American business?" I replied that if that's what they elected me to be, they have elected the wrong man.

I don't propose to speak for all of American business, which would be presumptuous, but I would like to share with my fellow American businessmen some of the things I have learned and believe in as the result of managing one business for some 27 years.

There is an aspect to this business of insurance that you and I are in that has always intrigued me—and I am talking especially about those personal lines of insurance that protect the individual's life and his most important personal possessions, his home and his car. This is a unique business, totally unlike any other I know of, because of the nature of the relationship we have with our customers. We don't sell our customer a product and we don't, at least initially, sell him a service. What we sell him, instead, is a promise to deliver a service at some future time when he needs it. That's all the insurance policy is—it's a contract, setting forth promises that the insurer will fulfill for the insured under certain specified conditions.

It's really asking quite a lot of somebody that he should give us a substantial sum of money in exchange for that list of promises

You can see from the nature of the insurance company's relationship with its policyholders that the relationship depends upon credibility. The insurance buyer needs very much to believe that those promises will be kept. He, furthermore, needs to have a great deal of faith in his insurance company's financial strength, in the ability of its man-

agement to keep the enterprise alive and healthy, at least during the period of the insurance contract, so that the insurance company will be in shape to pay the claims that might arise under that policy in the months and years during which that contract is in force.

I think our democratic society is in a situation that is in some ways analogous to the insurance business. The society holds together because we make promises to each other, as individuals and as private and public institutions. To the extent that we keep those promises to each other, and to the extent that we have faith in the promises of others, the society functions rather well. When we begin to lose faith in each other and in our institutions, the social fabric begins to unravel.

We are all aware of the many problems that beset us today as a people—the energy crisis, environmental pollution, inflation, foreign trade deficits, and so on. It is not to dismiss these problems lightly that I say they are, to a degree, transient. They will pass in time, and others of equal urgency will arise to take their place. But there is another problem that, in my view, transcends all of these others. It is suggested by the phrase "credibility gap," which I suppose is just another way of saying we don't believe each other any more. We don't believe the businessman, we don't believe the political candidate or the office holder or the government agency or the newspaper or the news broadcaster.

Why?

Why has this essential confidence that we need to have—must have—in our institutions eroded so much in the last few years? This is not supposition on my part. It is measurable erosion, and the measurement has been made by the Louis Harris Polling organization. The Harris pollsters sought to gauge public confidence in various public institutions and organizations over a recent five-year period.

At the beginning of that period, of those queried, 55% said they had "a great deal" of respect for major companies. Five years later that figure had been halved to 27 percent. Moreover, three times as many respondents reported they had "hardly any" respect for major companies as said so five years earlier.

And it was not just business that suffered this damaging decline in the public's esteem. The survey also turned up a steep slide in the public's confidence in the military, scientists, educators, doctors and the press.

These are portentous findings, indeed. How can the society, we must ask, function if this decline continues? Can the trend be reversed?

I don't pretend to have the scientific background that would enable me to analyze for you the complex socio-psychological factors that underlie the declining confidence that more and more Americans seem to have in the many institutions that together make up our society. I can only offer the personal observations of an American businessman.

I would agree with Alexander Hamilton, who once said, "The vast majority of mankind is entirely biased by motives of self-interest." I don't know if Mr. Hamilton found that distressing. I do not. But the real problem arises in defining where our self-interests truly lie.

The answer to that question frequently depends upon how far into the future we are willing to look. If as businessmen we look only at tomorrow's profits, then self-interest will dictate that we act one way. But if our focus instead is on the long-range survival of the business enterprise, then we will act in quite another way.

There seems to be some confusion over the role of business in today's society. There is much talk these days about the social responsibilities of business and the need for involvement in social programs. And perhaps we should be doing more of this. But I personally feel that the first order of business is the competent management of business and that management's first priority should be the quality of the product or service it provides.

Please understand that I'm not suggesting we turn away from our obligations to the environment or from any of our social responsibilities. I am only reminding you that quality of product or service is itself a social responsibility with social implications far beyond profit and loss.

It seems appropriate to emphasize that point here today, at your Public Service Award luncheon. The public service program of the National Association of Life Underwriters has, over the years, contributed in countless ways to the well-being of America's communities, and it is vitally important that you continue this work in the future. But it is equally important to understand that the way we conduct our business also measures our sense of social responsibility. The professional life underwriter knows that, but elsewhere in the business community "social responsibility" and "public service" are sometimes discussed as if they were separate and remote from day-to-day business activities.

As businessmen, our focus must always be on the quality of the service or product we offer, simply because this is the first expectation people have of us. The manufacturer that landscapes the factory site but hedges the obligations in his product warranty has a misplaced sense of priorities. It's at this basic level that we must begin to rebuild faith in the institution of business. We need to regenerate a dedication to quality, to value and to service.

We need a commitment to excellence first of all in those things in which we are best equipped to excel. The business manager may need instruction in some of the new social roles that are being urged upon him—but he should need no instruction at all in bringing to the marketplace a product or service that meets whatever claims he is willing to make for it.

Above all else, he should know how to do that!

This, I believe, is what Ralph Nader and other consumerists are saying, and I find it hard to disagree with them on that point. You will notice that you rarely find consumerists criticizing a business for its failure to involve itself in social programs on the periphery of that business. Mr. Nader's focus is usually on the first business of business—its products and services. His primary insistence is on products that perform as they are supposed to, on warranties that protect the buyer at least as much as the seller, on services that genuinely serve.

In accepting the Chamber presidency, I expressed my belief that intelligent men of good will abound in all of our institutions, and that it doesn't make sense that we sit in our respective enclaves of business, labor or government and scream imprecations at one another across barriers of misunderstanding. I also said that most of us share a commitment to the welfare of our nation and of its people, and that we differ only in our perceptions of how to meet that commitment, and that as Chamber president I would focus on those things that bind us together rather than on our differences. It is in that spirit that I invite American business to look with fresh eyes at Ralph Nader and the kind of consumerism that he represents.

He has been described in some quarters as "an enemy of the system," but if we are willing to look objectively at his activities, I think we are forced to the conclusion that his commitment is to make the system work. I believe that it was inevitable that sooner or later someone like Ralph Nader would arise to focus and articulate the dissatisfactions and the frustrations that are widespread among American consumers. And so in him we see not an individual expressing his personal biases, but instead a man who is singularly sensitive to the mood of the public and who is unusually well-equipped to symbolize and express that mood.

Given the wide base of public appeal that Mr. Nader obviously has, I think it is unrealistic to come to any other conclusion. I think it is imperative that American business look calmly and realistically at what consumerism is and what it is not, as represented by Mr. Nader.

I hope you will understand that, as a businessman, I would hardly be siding with Mr. Nader against business. Rather, I simply insist that he is not *on* "the other side." If we look at the record, I think we will see a clear community of interest that Nader has with American business. The whole point of Nader—so obvious that it is often overlooked—is his single-minded dedication to making the free-enterprise system work as it's supposed to—to make marketplace realities of the very virtues that businessmen ascribe to the system.

It is not his style to mount street demonstrations, but it *is* his style to insist that products live up to their advertising and to buyers' reasonable expectation of them—and when they don't, to go to the regulatory authorities and say "Look here. Now regulate."

That kind of activity suggests a considerable degree of faith in the system, and contrasts sharply with the revolutionary who would tear it down.

But if you would say that he sometimes exaggerates, that he overdramatizes, that he is shrill, then I would have to agree—at the same time pointing out that this is the traditional way to gain attention in the clamorous and free American marketplace, as we who advertise our products and services should be well aware.

We in business sometimes complain that the public—and our young in particular—don't understand or appreciate the free enterprise system. But I must observe that when business sees consumerism and its spokesmen as enemies of that system, then business is demonstrating its own failure to understand the healthy tensions and competing pressures that must always be present in that system, if it is to survive.

The consumerist does not demand perfection of American business. I believe he perceives it as a human institution, susceptible to error. But he understands the difference between honest mistakes and deliberate deception—a distinction Nader is able to make with considerable force.

This brings me to a matter that I think is part of this problem of credibility—our self-perceptions. We need always to be aware of our humanity, and that awareness should produce enough honest humility within us to admit that we will make mistakes.

It should be part of the manager's overview of his job to expect mistakes. When he has that view, then he will also have his organization geared to deal with them efficiently and equitably.

It's an exercise in corporate egotism to pretend or assume that mistakes aren't made—to attempt to present to the public an image of godlike perfection, which no one can rightly expect of himself or of the institution he manages. That kind of attitude shows a lack of faith in the American people's capacity to understand that mistakes will be made and their readiness to forgive those who move promptly to correct them.

I think that these attitudes come about as an indirect result of the "giantizing" of our business institutions, to borrow a term from the sociologists. The small businessman cannot isolate himself from his customers, no matter how much he might wish to. But it is possible for the managers of big business to remove themselves from the abrasions of the marketplace.

The tendency is to encapsulate oneself in corporate limousines and executive suites and paneled boardrooms—an environment that in the long run will distort management's view of reality. It's entirely human and understandable, I suspect, that most of us seek to make our lives more comfortable, to escape in some measures the harsh realities of human existence.

But I suggest to you that it is an escapable part of the businessman's job to maintain direct personal touch with the realities of the marketplace. Market research is fine and necessary—but those neat charts and graphs can never give you the feel of product and user that you get from a direct confrontation with an angry or happy customer.

I was in an office conference the other day in Bloomington, Illinois, when a customer of ours in Houston got me on the telephone. He had a problem that I was able to help him with. When our telephone conversation concluded, one of the people in my office commented that an efficiency expert would be appalled that I would interrupt an important meeting to involve myself in the problems of one of our 20 million policyholders. It would strike him as an inefficient use of executive time. My response was—and I deeply believe this—that the day I refuse calls from customers is the day I should resign as head of the companies, because that is the day I will have begun to lose contact with the real world in which we operate.

Share this little fantasy with me—

Suppose every American product has a sticker on it, right up there where everyone could see it—smack in the middle of the car's dashboard, right on the side of the toaster, or in big letters by the dial of the TV set, and it read:

"If this thing doesn't work like we said it would, call our president," followed by his name and telephone number.

It's hard to imagine the impact this would have, but I can tell you a couple of things that would happen. Those consumer complaint statistics that come up in orderly columns from the computers would suddenly come very much alive, bristling with humanity, and in a very short span of time, the corporation president would acquire a very sure sense of reality—as well as an unlisted phone number.

You see, my name is on about 20 million insurance policies. If our service to our insured breaks down—as it sometimes does—or if misunderstandings arise that aren't cleared up elsewhere in the organization, the policyholder will sometimes look at the bottom line of the last page of his insurance contract, see my name and call me. And if he doesn't get me, he gets one of my assistants.

Quite often, he is irate and frustrated and has carefully marshaled the arguments he is sure he will need. But when I listen to his complaint, and if it's clear to me that he has not received what he has a right to expect from us, I apologize to our customer and tell him what I'm going to do to get things back on track for him. At that point, there is often stunned silence on the customer's end of the phone line, and I sometimes have to say "hello" two or three times to awaken him from shock.

Why should candor and a desire to correct error be such a startling experience for an American consumer to encounter in American business?

I have been told that these observations may make of me something of a parish in the American business community, but I'll take that risk because I have great faith in the reason and good sense of most business leaders and managers.

But just as business must be willing to calmly assess what consumerism is really trying to achieve—must be willing to distinguish between honest criticism and unproductive enmity—so do I believe that it is fair to ask the American consumer to look at business realistically. It is no more sensible for the consumer to expect perfection in everything he buys than it is for business to expect consumer acquiescence to all its shortcomings.

I sense a kind of perfectionist mood in some quarters of the society, an irascible intolerance for error of any kind. This is probably a by-product of our technology and our advertising. Too often, the latter leads people to expect what no product or service can possibly deliver. (I've yet to see the marriage that was saved by changing brands of coffee.)

Our technology presents us with a more subtle problem. We've all heard the nostalgic comment, "They sure don't build them like they used to," and in some instances, this may be true.

But there's another side to that coin. Not too many years ago, the fairly affluent American home could count no more than a half-dozen electrical appliances. Today, an inventory of electrical devices in most American homes would total in the dozens—electric razors, his and hers; electric toothbrushes, mixers, blenders, fry pans and broilers; electric can openers; electric knives.

If the average appliance—when there were only six in the home—operated six years without needing repair, the customer was going to the serviceman on the average of once a year. But if you have three dozen appliances in your home—and many homes would have at least a dozen more—then you are getting something repaired on the average of once every 60 days. In other words, even if the level of quality is the same, your service problems have increased six-fold, which is a pain in the budget and elsewhere.

Inflation, as well, heightens our expectations of products and services; the more you pay for something, the more you demand of it.

I think all of us—businessmen and their customers (and many of us are both)—need to abandon the cliches we too often use in talking and thinking about this thing we call "the system." The businessman sometimes behaves as if he were its sole proprietor, and the customer sometimes expects more of it than it can possibly deliver.

At best, perhaps the system can only be an uneasy partnership, out of which the consumer can expect reasonable satisfaction and out of which the businessman can expect reasonable profits.

I think most reasonable people would settle for that.

And I believe that reasonable people can make it happen just that way.

PROPOSED INCREASE IN CIVIL SERVICE RETIREMENT ANNUITIES

Mr. DOMENICI. Mr. President, today I would like to say a few words with regard to S. 1866, a bill which I strongly supported to increase civil service retirement annuities. This measure passed the Senate on September 11th.

On September 1 of this year, 1,208,006 people were covered under the present civil service annuities program—such as it is. These people have not received a significant increase in benefits since 1969. In fact, many individuals are receiving annuities as low as an abysmal $40 a month. S. 1866 would provide a minimum annuity of $84, equal to the recent social security benefit increase. The Gurney amendment to S. 1866, which I also supported, would also provide for a small monthly increase for those who retired before 1969 to equalize their benefits with those who retired after that time.

However, I believe that when this bill was being handled on the Senate floor a very serious mistake was made when an amendment, introduced under a 2-minute debate limitation and which dealt with social security annuitants, passed the Senate. Yes, I said 2 minutes. I voted against this amendment as it was not germane to the bill itself. I believe at that time, and my worst fears have been proven to be present fact, that this amendment would only make it very unlikely that our civil service retirees would receive the increase they so desperately need. Nor would the social security recipients receive their deserved increase earlier than previously planned.

Mr. President, sometimes, major issues are lost in the shuffle of the often complicated legislative process. I would like to explain how two important legislative proposals are now very much the victim of that process for the apparent lack of foresight.

The amendment which I reluctantly objected to would have allowed the social security annuitants to receive their 5.9 percent increase in October 1973 rather than wait for June 1974. I had previously voted wholeheartedly for this social security increase and am most assuredly behind advancing the "inaugural" date of that increase in view of the rapid rate of inflation.

In fact, Mr. President, a study of my past voting record would clearly indicate my strong support for expediting the social security increase. Late in July, just prior to the August recess, the Finance Committee released the debt limitation bill for Senate approval. At that time, the committee recommended several amendments including one to expedite the increased 5.9 percent social security annuities from June 1974 to January 1975. I voted for the amendment at that time inasmuch as I believed the bill with the amendment would quickly pass both Houses as the amendment was germain to the main bill. This bill is now Public Law 93-53. However, the conference bill finally agreed to by the House and Senate committees put the enactment date for this increase as June 1974.

I would certainly have voted for the earlier date of October had I thought S. 1866, with that amendment, would pass both the Senate and House in time to do any good to both civil service and social security recipients. However, I could not support this proposal haphazardly tacked on to this particular bill—risking the total failure of passing badly needed legislation for another group of retirees. As I stated before, regrettably this fear has become a reality.

Once S. 1866 passed the Senate, with my final support, it was reported to the House Committee on Post Office and Civil Service, the proper site of jurisdiction. But, because of the added social security amendment, that part of the bill is now pending action before the House Ways and Means Committee which has scheduled discussions only on tax and trade legislation for many months to come. The end result is that two com-

mittees are in charge of this bill rather than the usual one. As we all know, it is difficult enough to get any one committee to agree on a bill, but two committees coming together with a final piece of legislation borders on the impossible.

I am extremely disappointed with the lack of foresight in this matter. Now two very large, very deserving groups of elders in the country will suffer—but particularly the over 1 million civil service retirees will not receive an annuity increase in October, or next June—as social security recipients were guaranteed in any event—or perhaps not for another year. I would have supported the social security provision on almost any other bill, but not one which would so adversely affect our retired public servants.

I have a record of being interested in all our Nation's senior citizens. In view of this interest, I requested membership on the Senate Special Committee on the Aging when I first came to Washington in January—a request which was granted. I have long felt that a notice which forgets its elders is doomed. It would not be likely that with this basic philosophy I would willingly vote against a proposal to help all retired people in any way possible unless I felt that only more damage than good would be accomplished. Obviously, that is the case with the passage of the social security amendment to S. 1866.

I have received some inquiries in my office as to my vote on the social security provision. Hopefully, this explanation will show interested persons that my vote on the amendment is not contrary to my basic concern for the elderly, but rather, was intended to protect all our retirees.

Mr. President, I appreciate this opportunity to make my position on this important issue more clearly understood.

AN ARTFUL EXCHANGE

Mr. PELL. Mr. President, in the Washington Post of August 25, 1973, there was an article by Mr. Paul Richard entitled "An Artful Exchange." This article spoke in most laudable terms of the "Impressionist and Post-Impressionist Paintings from the U.S.S.R." exhibition, which recently was seen at the National Gallery of Art.

Unfortunately, that article seemed to indicate that the Federal Government and Federal funds had little or no part in the mounting of the show. This is not the case. In fact, the National Endowment for the Humanities bore a substantial portion of the cost of the show's installation, borrowing expenses, insurance, the shatterproof glass mountings, return transportation to Russia, and expenses for the staff of Soviet experts accompanying the objects.

The article went on to imply that the pictures were sent to the cities of Los Angeles, Chicago, and Fort Worth by either Mr. Hammer or Madame Furtseva. This, too, is incorrect; the costs of the tour were also borne by the National Endowment for the Humanities.

It should be further pointed out that the exhibition itself consisted of more than the simple displaying of pictures on a wall. Virtually all aspects of this "full dress exhibition" from publications to lectures to film programs were paid for by the National Endowment for the Humanities.

While not wishing to denigrate the roles played by the parties mentioned in the Richard article, the full story of the exhibit must include the laudable initiative and work of the National Endowment for the Humanities, and its director, Ronald Berman. All too often the Government is criticized for doing nothing; therefore, it is distressing to see a report of an activity, which probably would not have taken place without Federal funds, in which no mention is made of the Federal role.

I ask unanimous consent that Mr. Richard's article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

AN ARTFUL EXCHANGE

(By Paul Richard)

More than 700,000 people have already seen "Impressionist and Post-Impressionist Paintings from the U.S.S.R.," the loan exhibition that opened to the public here last April at the National Gallery of Art and has since been touring the United States.

The show, which includes 41 pictures from the Hermitage in Leningrad and the Pushkin Museum in Moscow has proved to be among the most successful of all U.S.-Soviet cultural exchanges. The Impressionists are extremely popular these days, and these are canvases of awesome quality. They are, in addition, the first works of Western art to be offered by the Russians to the United States. The exhibition's enormous popularity is therefore not surprising, but it was not foreseen.

The paintings were borrowed neither by the U.S. government nor by the museums which have shown them, but by Dr. Armand Hammer, a private citizen. It was initially expected that the pictures would be shown only in Knoedler's, Hammer's commercial gallery in New York.

The private New York showing had already been arranged when J. Carter Brown, the National Gallery's director, convinced Hammer that French pictures of such quality from Russian state collections deserved a full-dress exhibition in the nation's capital.

Hammer, a wealthy industrialist who has established close relations with both the Soviet leadership and the Washington museum, readily agreed. So did the Soviet government. Instead of going first to Knoedler's, the exhibition opened here.

Mme. Ekaterina Furtseva, the Soviet minister of culture, had apparently begun to gauge the show's enormous impact when, while in Washington for the opening she announced that it would visit an unspecified number of American cities following its exhibition in Washington and New York.

The exhibition, which includes major canvases by Matisse, Gauguin, Cezanne, van Gogh, Picasso, Rousseau and Monet, was on public view here throughout April.

That month 316,408 came to see the Russian pictures on display.

It then went to New York where it was on view at Knoedler's, 21 East 70th St., from May 2 to June 3. There, 110,000 people saw the show.

At the Los Angeles County Museum, where it was on exhibition from July 15 to July 8, it attracted 150,000 visitors. It then traveled to the Art Institute of Chicago where it was seen by 120,416 between July 18 and Aug. 12. Wednesday it opened at the Kimball Art Museum in Fort Worth, and by Thursday evening it had drawn 8,141 visitors there.

When it closes in Fort Worth Sept. 16, it will go to the Detroit Institute of Art where it will be on view from Sept. 25 to Oct. 21. It is expected that the paintings will be returned to Russia following their exhibition in Detroit.

DEATH OF COL. WILLARD A. HAWKINS

Mr. FULBRIGHT. Mr. President, last month one of my State's outstanding public servants, Col. Willard A. "Lefty" Hawkins, died.

Most recently Colonel Hawkins served as director of the Selective Service in Arkansas. Prior to that time he served on the staffs of two Arkansas Governors and was active in civic affairs.

As the Arkansas Democrat said in an editorial about Colonel Hawkins, he was "a man of foresight and courage."

The Arkansas Gazette paid tribute to Colonel Hawkins' efforts to insure fair representation for blacks on Arkansas draft boards. The Gazette editorialized:

The lasting monument of Colonel W. A. Hawkins of Little Rock . . . was that, as state Director Selective Service, he moved Arkansas from zero position on this score to the point where it now has the highest proportion of blacks sitting on draft boards of any state in the Union.

Colonel Hawkins had many friends in Arkansas and throughout the Nation and I join them in mourning his passing.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from the Arkansas Democrat of August 21 and a column by Bob Lancaster from the Arkansas Gazette of August 30.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Arkansas Democrat, Aug. 21, 1973]

COL. WILLARD A. HAWKINS

With the death Saturday of Col. Willard A. Hawkins, Arkansas—and the nation—lost one of its outstanding public servants. And at a time when the term "public servant" has fallen into callous disrepute, this is a grave loss indeed.

Lefty Hawkins was a man of foresight and courage. As state director of the Selective Service for six years, he used these virtues to restructure the draft system in Arkansas in such a manner that it became the envy of many other states and was the pattern they followed.

When Hawkins took over the Selective Service leadership in 1967 Arkansas did not have a single integrated draft board. This was true in spite of the fact that in many counties the bulk of the young men being drafted were black. At the time the draft system ended earlier this year, all of this had changed. Arkansas had more integrated draft boards per capita than any other state and with them one of the fairest and most just draft systems in the country.

This was Lefty Hawkins' doing.

Justice never comes cheap or easy and it was thus with the draft system. It was not easy to open up draft boards. It was not easy to convince many old timers that changes had to be made and it was not easy to restore faith in the draft system during a period of rising anti-war sentiment that saw many young men head for Canada or don the see-through cloaks of conscientious objectors. Lefty Hawkins met these challenges and conquered them with the result being a system founded on trust and administered with an even handed fairness that was accepted and applauded by all.

In his time Lefty Hawkins performed well at a variety of jobs in both the private and

public sectors and his honors were many. He was awarded the Legion of Merit twice. He was awarded the Air Force Association's Medal of Merit and he was presented the Freedoms Foundation's George Washington Honor Medal. He served on the staff of two Arkansas Governors, first Sid McMath and later Winthrop Rockefeller. He was a working member of many civic organizations and an officer in his church. He was a good family man and a firm friend to hundreds of persons in Arkansas and throughout the nation who will mourn his passing.

Many others who never met him also have cause to regret his death. They are the ones who found that when the draft system touched their lives that it did so in a manner both just and honorable, and for that they were thankful.

Few men can ask for, or deserve, a finer memorial than that.

[From the Arkansas Gazette, Aug. 30, 1973]

A WALK IN THE CEMETERY

For the better part of a decade, Lefty Hawkins was a good friend of mine—not an especially close friend, but someone I made it a point to have coffee with every chance I got.

That friendship was a little bit improbable because we were separated not only by the generation gap but also by the ideological chasm that almost split the country in the 1960s.

I was one of those despised students-turned-newsmen who, (true to the stereotype) looked on the American military and its then-current Asian involvement with a mixture of apprehension and dismay, and Lefty was something of an embodiment of that military establishment.

Lefty was a dyed-in-the-wool military officer who had served with distinction in the cruel air war in the Pacific in World War II, and who had never forgotten it; and I was a hardship-deferred 3-A who was sweating it. Moreover, Lefty from 1967 was state director of the Selective Service, which meant (to me) that he was in charge of providing a monthly quota of Arkansas kids to throw into the Vietnam meatgrinder.

Lefty saw his role differently, of course. I can't say what his innermost thoughts were concerning the Southeast Asia war and his bureaucratic participation in it, but he circumspectly held to the official view of its necessity and propriety, and I held inofficiously to my notion that it was madness. He wasn't one to try to convert the unbelieving, or to disassociate himself from a friend who held heretical views, and for my part I tried to keep rein on my impulses to zealotry and self-righteous moralizing.

So when I ran into him at Walgreen's or somewhere, we'd pass off an hour or two talking about state-level politics or books that I ought to read or changing times or trying to get kids raised. Lefty kept his good humor, even after the emphysema began to advance on him, and I suppose he was responsible for a dozen or more columns I wrote over the years—always the humorous ones.

What I thought about when I heard he had died was a morning I spent with him out at the Little Rock National Cemetery three or four years ago. It was the eve of Memorial Day and he was out there arranging for some sort of service the following day. He had gathered some information for me on the Arkansas servicemen who had been killed in the Vietnam war, and I went out there to pick it up.

I found him walking out among the graves.

I walked around the place with him. We didn't say very much because the cemetery itself spoke for both of us. Each of us knew that it was a symbol that meant something altogether different to the other—a place that somehow, without contradiction, could affirm both our points of view, and yet also transcend them.

The cemetery was very nearly deserted. A group of grade-school children had been around earlier to plant a small American flag beside every one of the thousands of headstones, and, with raineloud piling up quickly in the sky, only an occasional solitary visitor was arriving to leave fresh flowers at one of the fresher graves.

Lefty mentioned that this was not a bad part of town that had been set aside for the dead soldiers—that it seemed to maintain its attitude of dignity and restfulness despite the rude and hectic clamor of the city which pressed in on it from all directions. In concurrence, I said nothing.

We walked down row after row after row of headstones—every one the same almost, but not quite, as the one before—every row lined up as precisely as a drill team almost, but not quite. A redbird was singing in the top of a big cedar tree which interrupted the symmetry of the headstone arrangement—singing cheerfully, claiming the territory as his own.

We stopped at the graves of a couple of boys I'd grown up with, and told Lefty something about them. One had been the best natural pool shooter I'd ever seen, and the other had played in the defensive line beside me on our high school football team. Good guys, both of them. In concurrence, Lefty offered no comment.

I got the poop from him on the Vietnam casualties—neatly typed up, for use (he knew) in some sort of Memorial Day anti-war commentary. Then, when it started sprinkling rain, I left, walking back to my car across a grassy plot that I figured someday would be filled to capacity with the bodies of American warriors.

Lefty, who is buried in that plot now, was still walking among those headstones as I drove away.

MR. PHILIP HOFFMAN, REPRESENTATIVE TO UNITED NATIONS HUMAN RIGHTS COMMISSION

Mr. PELL. Mr. President, twice during the course of the hearings on Dr. Kissinger, I questioned him about the position of U.S. representative to the United Nations Human Rights Commission. Information has now come to me that suggests I may have unintentionally done a disservice to the present incumbent of the office. I wish to make the record clear that I did not mean any personal derogation of the incumbent; my point was rather that for reasons which merit an inquiry by Dr. Kissinger, there was and is so little visibility of this critical position that neither I nor the Secretary-designate could recall the name of the present incumbent.

I now find that the post is filled by Mr. Philip Hoffman, appointed last year by President Nixon, and that Mr. Hoffman does, indeed, bring to the post a long record of deep involvement in and great dedication to the cause of human rights. Until a few months ago, Mr. Hoffman was the president of the American Jewish Committee, a post he held for 4 years.

As my colleagues know, the AJC is the Nation's oldest human relations agency and has made real contributions over the years to a better understanding of and greater adherence to our commitment to human rights both at home and around the world.

At Tuesday's session, I was misinformed—and I apologize—when I stated that Mr. Hoffman is not included in Who's Who. In fact, his distinguished record is described in the current issue, and I ask unanimous consent that it be inserted in the RECORD following my remarks. The reason for my being misinformed was that the copy of Who's Who examined by the Foreign Relations Committee staff was dated in 1969 prior to Mr. Hoffman's inclusion.

So, the issue is not the personal qualifications of the present incumbent—but rather whether our Government has given proper attention and adequate resources to this important activity. I urge Dr. Kissinger to examine this problem and see what more can be done to make our voice in the promotion of international human rights as effective and productive as possible.

I am sure that this country still commands sufficient power and prestige that our example in demonstrating seriousness of purpose in our participation in the international human rights effort could elicit a positive response from other nations.

There being no objection, the Who's Who listing was ordered to be printed in the RECORD, as follows:

Hoffman, Philip Eisinger, lawyer, real estate co. exec.; b. N.Y.C., Oct. 2, 1908; s. David S. and Hildegarde (Eisinger) H.; A. B. cum laude, Dartmouth, 1929; LL.B., Yale, 1932; m. Florence L. Lehman, Sept. 9, 1933; children—David L., Lynne B. (Mrs. Roger L. Manshel). Admitted to N.Y. bar, 1933, since practiced in N.Y.C.; corp. law practice, 1933–42, 45—; partner Goodell, Hoffman & Spark, 1937–42, Hoffman & Tuck, 1962—; chmn. exec. com. U.S. Realty & Investment Co., Newark, 1962—, also dir.; dir. Comml. Mortgage Co., Ray Miller, Inc., Realty Capital Corp., Ltd., Toronto, Ont., Can. Mem. N.J. Commn. on Civil Rights, 1969—, Bipartisan Conf. on Civil Rights, 1960—, N.J. adv. com. U.S. Commn. on Civil Rights, 1964–69; chmn. Community Relations Council Essex County (N.J.), 1960–63; co-chmn. housing com. Com. of Concern Newark, 1967–69; asst. gen. counsel WPB, Washington, 1942–45; hearing commr. Nat. Prodn. Authority, 1950–53; mem. liaison com. Friends of Alliance Israelite Universelle; adult sponsor Youth Com. for Peace and Democracy in Middle East; chmn. coordinating com. Retail Jewelry Industry, 1954–60. Chmn. bd. govs. Am. Jewish Com., 1963–67, pres., 1969—, chmn. nat. exec. bd., 1967–68; hon. chmn. Appeal for Human Relations, 1962—; mem. exec. com. Nat. Community Relations Adv. Council, 1966—, Am. Israel Pub. Affairs Com., 1969—; mem. liaison com. Friends of Alliance Israelite Universelle; adult sponsor Youth Com. for Peace and Democracy in Middle East. Trustee Leonard M. Sperry Research Center, East Orange Gen. Hosp., Jewish Community Council Essex County. Recipient numerous awards in human relations field. Mem. Am. Bar Assn., Assn. Bar City N.Y., N.Y. County Lawyers Assn., Phi Beta Kappa. Jewish religion. Clubs: Essex, Down Town (Newark); Mountain Ridge Country (Caldwell, N.J.). Home: 218 N Woods Dr South Orange NJ 07079 Office: 972 Broad St Newark NJ 07102

EX PARTE CONTACTS WITH THE REGULATORY AGENCIES

Mr. KENNEDY. Mr. President, the publication of Dita Beard's memorandum last year reflecting some of the pressures and incentives used to bring about a settlement of the ITT antitrust case ushered in a new period of public focus on the subject of corporate influence on Government decisionmaking.

During the hearings on the nomination of Mr. Kleindienst to be Attorney General, over 30 secret contacts between ITT officials and representatives and administration officials were brought out; subsequently, further contacts came to light when ITT correspondence and the Colson memorandum were made public.

The Justice Department has recently determined, of course, that a reopening of the antitrust settlement is not warranted. Nevertheless, the disclosure of the heavy lobbying job done by the corporation on administration officials, of substantial White House involvement before the settlement, of the link between a contribution to the Republican Convention and settlement discussions—with complete secrecy cloaking all of these events—will continue to taint the Department's handling of the settlement beyond repair.

Other instances of influence wielding have also reached the front pages over the past year, including the dairy industry's efforts to have the Agriculture Department raise milk prices and Mr. Vesco's efforts to have the SEC called off of an investigation into his activities. Each example serves only to erode further the public confidence in our Government's processes and to undermine the integrity of those processes. Whether there is any link between seven corporations having made illegal campaign contributions last year and memorandums from regulatory agencies being found in files of the Committee To Re-Elect the President is yet to be uncovered.

Mr. President, the lessons to be learned from these instances do not only relate to campaign finance law reform, and they do not yet reflect a widespread willingness of Federal decisionmakers to yield to outside pressures. They do suggest that agency procedures can and should be developed to provide the strongest guard against attempts to influence decisions. One such procedure is outlined in Attorney General Richardson's Order No. 532–73, formalizing the Justice Department's practice for making and keeping records of contacts by outside parties. Under this order, Department employees are to place in the appropriate files a record of every communication with a "noninvolved party indicating an interest in the case or matter."

Unfortunately this does not insure any public notice of these contacts, and unless informers are involved there should be no reason to keep these contacts secret. But this procedure at least takes the first step of insuring that a record of the contacts is kept in the Department's permanent files, so that, for example, subsequent review of the file within the agency or by a congressional committee will turn up these memoranda. I hope the Attorney General will move toward public disclosure as the next step.

The Federal Trade Commission is currently involved in extremely important antitrust litigation against eight oil companies, perhaps more important than Justice's ITT litigation. Recent press reports reflected attempts on the part of Government officials outside the agency to present arguments relating to the case outside of the adjudicative process. I wrote the chairman indicating my support for the Commission's guarded and careful handling of ex parte communications; his assistant replied that he was "acutely aware of the full meaning and significance of" the Commission's rule regarding ex parte communications. In the correspondence enclosed it was clear that the Commission had followed its normal practice of placing such communications on the public record when the letter from Deputy Treasury Secretary Simon to Chairman Engman reached the Commission. While the newsstories did not reflect this, I was most pleased to see that the FTC had its guard up, and I commend the Commission for its handling of the attempted ex parte contacts.

In my letter to Chairman Engman I also suggested that the FTC consider adopting the Justice Department's procedures for handling ex parte communications below the Commission level. It is obviously my hope that the Commission would make a public record of these contacts. This suggestion has been referred to the General Counsel for his consideration and recommendation.

Mr. President, my Subcommittee on Administrative Practice and Procedure has generally been examining the area of ex parte communications with government agencies, and we will continue to monitor possible problems arising in this area, with an eye on the prospects for remedial legislative action.

I ask unanimous consent that my exchange of correspondence with the FTC, the Justice Department's Order, and an article from the Washington Post on this matter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From The Washington Post, Sept. 1, 1973]

WHITE HOUSE, FTC CLASH ON OIL CASE

(By James L. Rowe, Jr.)

In a rare disagreement within the federal government, the chairman of the President's Oil Policy Committee has written the chairman of the Federal Trade Commission to warn that an FTC antitrust case against major oil companies could worsen the energy crisis.

William E. Simon told FTC chief Lewis Engman that a suggestion that the oil companies might have to divest producing or refining operations "gives me a great deal of concern because of its implications for domestic energy supply in the next few years."

Simon, who is also deputy treasury secretary, asked to meet with Engman "to discuss this matter further and also provide you with our complete comments on the FTC staff recommendations before final commission action."

Simon's request was rebuffed by Engman's assistant, Robert J. Lewis, who replied that "any discussion by any commissioner of the complaint or its underlying legal or factual bases could give rise to charges of impropriety or unfairness or the appearance thereof."

Simon's letter to Engman, was dated July 30, and Lewis' reply came Aug. 10. Both letters came to light yesterday. An FTC official said Engman never saw the letter because he will someday have to pass judgment on the oil company case.

On July 17, the FTC staff filed a complaint charging the eight largest oil companies with monopolizing the refining of crude oil into petroleum products and having "maintained and reinforced a non-competitive market structure" in refining in the East and Gulf Coasts and parts of the mid-continent.

The final outcome of the FTC action will probably take years. The first step is a hearing before an administrative law judge, whose decision will be reviewed by the FTC's five commissioners. If the FTC rules against the oil companies, there probably would be court appeals.

The eight oil companies named in the complaint are Exxon, Texaco, Gulf, Mobil, Standard Oil of California, Standard Oil of Indiana, Shell and ARCO (Atlantic Richfield). Together their assets totaled $75.8 billion at the end of 1971, and their sales were $61.5 billion last year.

In his letter to Engman, Simon cited statements by James T. Halverson, who heads the FTC's Bureau of Competition, that the big integrated oil companies should be broken up. Halverson said he would force the oil companies to give up their pipelines, which bring the crude oil to refineries, as well as the refineries.

Integrated oil companies drill for oil, refine it into various products and sell those products such as gasoline and home heating oil.

Simon told Engman that since the President's April energy message oil companies have announced plans to build new refinery capacity of 2.5 million barrels of oil a day. "Some of these companies are now having second thoughts," he wrote.

The actual FTC staff complaint does not specify what remedies—such as divestiture—may be sought, but says that the commission "may order such relief as is necessary or appropriate . . . to restore competition in the relevant market or markets."

Simon also took issue with the FTC's contention that the "petroleum industry is not competitive." He said that in addition to the eight major companies, there are another 15 to 20 who are integrated and hundreds who are not integrated at all or are partially integrated.

He said that the independent refiners and marketers who are closing are not being forced out of business as "a result of deliberate anti-competitive actions by the integrated oil companies."

Instead, he said, the independents existed because there was a surplus of crude oil and refining capacity which they purchased at "relatively low prices . . . This surplus capacity is now gone and with it the primary source of independents' position in the industry."

Lewis' response to Simon said, "The issues which you raise regarding competition in the petroleum industry and the appropriateness of certain relief are questions basic to the action presently being prosecuted by the commission staff."

He said he forwarded the letter tc Halverson.

U.S. SENATE,
Washington, D.C., September 11, 1973.

Re Docket 8934

Mr. LEWIS A. ENGMAN,
Chairman, Federal Trade Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: On July 18, 1972, the Federal Trade Commission filed a complaint against eight major oil companies alleging that they had combined or agreed to engage in anticompetitive practices. The energy problem confronting our country today makes this action one of extreme importance to the American public, and of course the defendants perceive fully the substantial impact the success of such action would have on them.

As I am sure you are well aware, four years ago the Department of Justice embarked on a major course of litigation against a large conglomerate, seeking divestiture of a subsidiary considered to have been unlawfully

acquired. The nature of the efforts of the corporation to retain the subsidiary, which ultimately proved successful, are largely documented in the Senate Judiciary Committee Hearings on the Nomination of Richard Kleindienst to be Attorney General and were further revealed in correspondence and memoranda subsequently made public.

Recent press reports suggest that actions by government officials and agencies—directed at persuading the FTC to drop its case against the oil companies—present some parallels to the situation referred to above. Coincidentally, they also involve the same agency that appeared to be active in pressing for settlement of the above-mentioned antitrust action. (See, for background, the discussion of "Treasury's Analysis" in the Individual Views on the Nomination of Richard G. Kleindienst, Exec. Rept. No. 92-19, part 4, at 64; and letter from William R. Merriam to Treasury Secretary John B. Connally, April 22, 1971: "Hal (Geneen) and I are most appreciative of the fact that you were able to see us the other day on such short notice. We are certain that you and Pete were most instrumental for the delay.")

I am in no way suggesting that any impropriety is reflected in the contacts with the FTC relating to the oil proceedings. I am writing this letter not to cast any shadow on the substance of the contacts between Commissioners and other government or outside officials, but to emphasize the extreme importance in this kind of situation of the FTC's rule, section 4.7, prohibiting ex parte communications with the Commission with respect to matters relating to an adjudicative proceeding. I do note in passing that press accounts (Washington Post, Sept. 1, 1973) on the communication from Deputy Treasury Secretary William Simon to you suggest that the handling of that letter was inconsistent with the Commission's present procedures.

In light of the increasing public concern about the integrity of governmental processes, I would strongly advocate that the Commission follow the Justice Department's lead and adopt guidelines similar to those promulgated by Attorney General Richardson in his Order of August 8, 1973, directing that memoranda reflecting all contacts with "non-involved parties" must be placed in permanent departmental files. (A copy of this memorandum is enclosed for your reference.) Adoption of these guidelines would go far toward reassuring the public of the insulation of the regulatory process from secret ex parte influence.

My interest in the FTC's practices and procedures relating to the handling of ex parte communications dates back a number of years. For example, in my Subcommittee hearings in September 1969, there was extensive discussion by each Commissioner on the problems raised by such communications with Commission members. (Federal Trade Commission Procedures, Hearings before the Subcommittee on Administrative Practice and Procedure, Sept. 12 and 16, 1969, pages 44, 78, 98, 103). In light of the significance of the Commission's present efforts, I thought it would be useful to share these thoughts with you.

Sincerely,

EDWARD M. KENNEDY.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C.

DEPARTMENTAL RECORDS OF OUTSIDE CONTACTS

ORDER NO. 532-73

The purpose of this order is to formalize and make uniform the Department's practice and procedure for making and keeping records of contacts made with departmental personnel by outside parties.

By virtue of the authority vested in me by 5 U.S.C. 301 and 28 U.S.C. 509, it is hereby ordered as follows:

Section 1. *Records of contacts.* (a) Each Department employee shall record in memorandum form each oral communication (in person or by telephone) concerning a case or other matter pending before the Department with a non-involved party indicating an interest in the case or matter.

(b) For purposes of this order, "non-involved party" means one with whom the employee would not in the routine handling of the case or matter normally have contact. Non-involved parties include, but are not limited to, members of Congress and their staffs, officials in other government agencies and other members of the Executive branch not directly involved in the case or matter, and private persons not directly involved in the case or matter. Non-involved parties do not include Department employees or persons outside the Department with whom an employee necessarily must communicate in the normal course of handling a case or matter, such as an attorney for a party in a case, or an official in another government agency directly involved in the case or matter.

Sec. 2. *Distribution and retention of records.* The employee shall keep a copy of the memorandum and shall furnish a copy for permanent inclusion in the case or other appropriate file, or, if there is no file established, shall furnish a copy to the head of the organizational unit responsible for the matter, who shall retain it at least until two year after the final disposition of the matter.

Sec. 3. This order does not apply to communications of an employe that are protected by law, such as the right to petition Congress (5 U.S.C. 7102), or to an employee's communication with non-involved persons in seeking to protect his or her rights as an employee of the Department.

Sec. 4. The head of each organizational unit is responsible for informing all employees under his or her supervision of the provisions of this order.

ELLIOT RICHARDSON,
Attorney General.

Date: Aug. 8, 1973.

FEDERAL TRADE COMMISSION,
Washington, D.C., September 13, 1973.

Hon. EDWARD M. KENNEDY,
Chairman, Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This will respond to your letter to Chairman Lewis A. Engman dated September 11, 1973, regarding the complaint filed July 17, 1973, by the Federal Trade Commission against eight major petroleum companies.

I can assure you that the Chairman is acutely aware of the full meaning and significance of Rule 4.7 of the Federal Trade Commission's Rules of Practice and Procedure regarding ex parte communications to the Commission. Since you refer specifically in your letter to a communication from Deputy Treasury Secretary William Simon to the Chairman concerning the FTC staff investigation of the petroleum industry, I have enclosed a copy of Mr. Simon's letter as well as my response thereto, along with a subsequent exchange of letters between Mr. Simon and me. I fail to see how the action taken with respect to Mr. Simon's letters has been in any way inconsistent with Rule 4.7 and Commission practice pursuant thereto. In fact, I am confident that, upon examination of these communications, you will agree that this Office acted in full compliance with Commission Rules and policy in the handling of this matter; and I regret that a contrary implication may have been suggested to you by newspaper accounts. As is evident from the enclosed correspondence, Mr. Simon has neither met nor talked to Chairman Engman regarding this matter, nor has the Chairman seen the correspondence from Mr. Simon which, as you will note, has been placed upon the public record.

Regarding your observations concerning guidelines recently adopted by the Department of Justice, a copy of your letter has been sent to the General Counsel for further consideration and recommendation.

I note that you have addressed copies of your letter to all Commissioners and all respondents in the petroleum case. In addition, since some of your comments are directed to matters presently being litigated, I have forwarded a copy of your letter to the Secretary to be placed on the public record pursuant to our Rules of Practice and Procedure and Commission policy concerning communications received by Commissioners while matters are in litigation.

Sincerely,

ROBERT J. LEWIS,
Assistant to the Chairman.

RESOLUTIONS PASSED BY AMERICAN LEGION AT 55TH NATIONAL CONVENTION

Mr. THURMOND. Mr. President, the 55th National Convention of the American Legion was held in Honolulu, Hawaii, August 21 through 23, 1973.

During this convention a number of resolutions were adopted which addressed our national security and other important issues presently before the Congress.

Mr. President, these resolutions are well thought out and deserve the attention and consideration of the Congress and the Nation. I ask unanimous consent they be printed in the RECORD at the conclusion of my remarks.

There being no objection, the resolutions were ordered to be printed in the RECORD, as follows:

RESOLUTION NO. 29—NATIONAL DEFENSE AND RESEARCH DEVELOPMENT PROGRAM

Whereas, there are factions within the nation that seek to further reduce the level of our military capability; and

Whereas, our nation's defense spending is at its lowest point in constant dollars since 1951; and

Whereas, while we reduce our defense expenditures, the Soviet Union continues to modernize its strategic and conventional forces at an accelerated pace; and

Whereas, research and development is the backbone of America's continuation as a viable military force for peace in the world; now, therefore, be it

Resolved, by The American Legion in National Convention assembled in Honolulu, Hawaii, August 21, 22, 23, 1973, that we urge the Congress and the Administration to maximize research and development and to maintain the most modern military force our technology can provide, one large enough and versatile enough to assure its deterrent capability.

RESOLUTION NO. 167—U.S. MILITARY STRENGTH AND CAPABILITY

Whereas, America's greatest safeguard to freedom is a strong national defense and only by retaining our position as the world's leading military power can we remain free and safe from nuclear attack; and

Whereas, military cutbacks have severely undermined our national defense budget to the point that we are now behind the Soviet Union in overall military capability, thus putting the status of the free world in doubt and grave jeopardy; now, therefore, be it

Resolved, by The American Legion in National Convention assembled in Honolulu, Hawaii, August 21, 22, 23, 1973, that we oppose the principle of "parity" in the national

defense when dealing with an enemy that has never respected weakness. We have lived at peace with Russia for 25 years only because we have been stronger. We view a departure from a policy of strength to be uncertain and highly dangerous, and request Congress to provide sufficient funds to assure that we maintain a strong national posture.

PERSON TO PERSON—BY TELEPHONE

Mr. MUSKIE. Mr. President, I am proud to see that the old ways of personalized dealings between people and new fangled mechanical inventions have been saved in Maine. Last week, the Maine Public Utilities Commission ruled that the citizens of Bryant Pond, Maine, can keep their comfortable, old hand cranked telephone system. The Maine Public Utilities Commission agreed that the hand cranked system has decided advantages over "the increasing depersonalization and indifferences which are a by-product of modern life."

This victory of people over depersonalization is reported in the Washington Star of September 6, 1973. Mr. President, I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CRANK CALLS SAVED BY BELL

Up in Bryant Pond, Maine, the old ways won a battle against modernization yesterday.

Bryant Pond is the last town in New England to have hand-cranked, magneto telephones. Subscribers to the Bryant Pond Telephone Co. service are told in their phone books to "signal the operator by turning the crank before removing the receiver."

A couple in South Paris, Maine, which borders Bryant Pond had complained to the Maine Public Utilities Commission that people calling them from outside the area had trouble getting through because they could not call directly.

But the Bryant Ponders rose up as a body to defend their system. Some 200 townspeople showed up at a hearing to support the old ways—the company has only 350 subscribers—and defended it as being perfectly adequate and more personal than modern, automated methods.

And yesterday the commission agreed.

"We have carefully reviewed the complaint in this case and are convinced that the problem the complainants are having with incoming toll calls is not with the Bryant Pond system but rather with the unfamiliarity of Bell System personnel with the magneto system," the commission said.

The commission added that the old system has decided advantages when placed in perspective with "the increasing depersonalization and indifferences which are a by-product of modern life."

DR. LEONARD CARMICHAEL, FORMER SECRETARY OF THE SMITHSONIAN

Mr. FULBRIGHT. Mr. President, Dr. Leonard Carmichael, who served as Secretary of the Smithsonian Institution from 1953–64 and who had a distinguished scientific career, died earlier this week.

Leonard Carmichael was a true gentleman with whom I greatly enjoyed my association and along with his many friends I am saddened by his death.

The Smithsonian made great advances under his leadership and as a member of the Smithsonian's Board of Regents and of Congress, I well remember how his great personal persuasiveness helped secure during his incumbency $62 million for new buildings, including the $36 million appropriation for the National Museum of History and Technology.

He did not stop with just providing buildings. He saw to it that the exhibits in the Smithsonian buildings were brightened and modernized as a showcase for the public. He liked to call the Smithsonian the "magnet on the Mall" and, indeed, during his tenure, the visitor attendance rose from 3.4 million annually to 10.8 million annually.

Mr. President, the Smithsonian and the Nation benefited greatly from the service and leadership of Leonard Carmichael. I ask unanimous consent to have printed in the RECORD a statement by S. Dillon Ripley, current Secretary of the Smithsonian, about Dr. Carmichael and an article from the Washington Star-News of September 17.

Dr. Carmichael and his gracious lady Pearl exemplified the traditional virtues of our nations capital. My wife and I considered them good friends and we share the sadness of all his many friends at his departure from our midst.

There being no objection, the statement and article were ordered to be printed in the RECORD, as follows:

STATEMENT BY S. DILLON RIPLEY, SECRETARY OF THE SMITHSONIAN INSTITUTION ON THE DEATH OF LEONARD CARMICHAEL

"It would be hard to overestimate the great contributions to the Smithsonian Institution that Leonard Carmichael made both as Secretary and in the years after, or the great sense of personal and professional loss that the entire Smithsonian family feels at his death. It has always been a great source of strength to me that three of my seven predecessors were still alive and actively involved in Smithsonian affairs, and I know that I speak for my two colleagues (Charles Greeley Abbot and Alexander Wetmore) in saying how greatly our little fraternity has been diminished by the loss of our friend.

"Dr. Carmichael presided over the Smithsonian at a time of great change for the Institution, and his accomplishments during that period are too numerous even to list briefly. The National Museum of History and Technology, the most-visited museum in the world, will be a lasting monument to his foresight and leadership. Washingtonians, and visitors to Washington, should always be grateful to him for saving the magnificent Old Patent Office Building from being leveled for a parking lot, and for beginning the work that turned it into the delightful home of the National Collection of Fine Arts and National Portrait Gallery.

"The tripling of annual visitorship to the Smithsonian during his tenure reflects the program he initiated to renovate and increase the appeal of all of the exhibits in the National Museum of Natural History. Less tangible, but perhaps even more important, than the new buildings and bureaus and increases in the collections was the inspirational leadership that he provided to the Smithsonian staff. Leonard Carmichael was exceptional—as a scientist, museologist, administrator, and, most of all, valued friend."

LEONARD CARMICHAEL DIES; EX-SMITHSONIAN SECRETARY

(By Richard Slusser)

Leonard Carmichael, 74, a former secretary of the Smithsonian Institution who since 1964 had been a vice president of the National Geographic Society, died of cancer yesterday in Washington Hospital Center. He lived on Hoban Road NW.

Dr. Carmichael was the Smithsonian's seventh secretary. His death was the first of a secretary of the institution since the death of Charles Doolittle Walcott in 1927. He was secretary from 1953 until 1964.

S. Dillon Ripley, the present Smithsonian secretary, said that it "would be hard to overestimate the great contributions to the Smithsonian Institution that Leonard Carmichael made both as secretary and in the years after."

"He was a leader in establishing the Museum of History and Technology that today is the Smithsonian's most popular and the most-visited museum in the world.

As the National Geographic Society, Dr. Carmichael was vice president for research and exploration. The society's president, Melvin M. Payne, said yesterday that Dr. Carmichael was "a brilliant man of Renaissance proportions.

"His remarkable intellect, combined with his broad academic and scientific talents, contributed greatly to the society's success in achieving its objectives.

"No one in our organization who came to him for advice or guidance failed to receive his wise and deliberate counsel."

His projects for the society had involved him in many activities, including the work of Dr. Louis S. B. Leakey at Olduvai Gorge in Tanzania, the underwater explorations of Jacques-Yves Costeau and the successful expedition to the summit of Mt. Everest.

From 1970 to 1973, Dr. Carmichael was president of the American Philosophical Society, one of the most prestigious scientific organizations in the country. The society's former presidents include Benjamin Franklin and Thomas Jefferson.

Dr. Carmichael was president of Tufts College for 14 years before coming to the Smithsonian. He taught biology, physiology and psychology, but specialized in psychology. While he was chairman of the psychology department at Brown University in the early 1930s he and a colleague, Dr. Herbert Jasper, pioneered the development of electroencephalography—the measurement of brain waves—at a time when most medical men in the United States doubted that the brain emitted electrical impulses.

In an autobiography for volume five of A History of Psychology in Autobiography, Dr. Carmichael wrote: "I was born . . . in the Germantown section of Philadelphia . . . I come from a predominantly professional family. My father was a successful physician with a special interest in neuroanatomy and neurology. If his IQ had been measured, it would have been very high."

His mother, Emily Henrietta Leonard, majored in logic and psychology at Wellesley College and before marriage taught at Miss Porter's School in Connecticut. Later she was vice president of what now is the State Teachers College in Fitchburg, Mass., and for the last eight years before her death headed Philadelphia's recreation department.

Dr. Carmichael attended the Germantown Friends School, where, he wrote, "I certainly was not an outstanding athlete, but participating in sports meant much to me. I won school letters for playing on the first team in basketball, football and soccer. I was also editor of the school paper and president of my class. I was given a cane, an old tradition, by my class, as its most popular member. Many of my lifelong friendships were formed in this school."

He learned about flowers and vegetables from his family's gardener and woodworking and metalworking from his father's chauffeur. As a child, Dr. Carmichael read constantly, he said, especially Shakespeare and Thackeray. Anthony Trollope, his favor-

ite writer, Dr. Carmichael said, "is the greatest psychologist among novelists."

In 1917 he entered Tufts, where his uncles had attended college and a grandfather had been a dean. He received a B.S. degree summa cum laude, standing second in his class.

"After America entered the war," Dr. Carmichael recalled in his autobiography, "I volunteered; but as soon as I put on my uniform as a private, I was assigned to help in a course in military sanitation and hygiene."

He was influenced most as an undergraduate, he said, by Jacques Loeb, a biological ultramechanist and the proponent of emergent evolution, C. Lloyd Morgan.

He next went to Harvard University to study for a Ph. D. His doctoral thesis, "An Analysis of the History of Technical Thought About Human and Animal Instincts," was published later as "Heredity and Environment: Are they Antithetical?"

Dr. Carmichael published many papers on reading and visual fatigue and on perceptual assimilation during his academic career. He also wrote of studies of a kitten's ability to land on its feet as well as other aspects of behavioral development related to the functions of the sense organs.

During World War II, Dr. Carmichael was chairman of the National Research Council's anthropology and psychology division, and advised Army intelligence on setting up a psychological warfare program.

Also during and after the war he was a member of the science committee of the National Resources Planning Board as well as other government committees on human resources, naval research and the Army Scientific Advisory Panel.

While Dr. Carmichael was president of Tufts, the school received some $14 million in special gifts. He said he was happy at Tufts and, after refusing the Smithsonian appointment for several weeks, finally decided to accept the position.

At the Smithsonian he did not leave the academic world, he said, because that institute, "in its areas of specialization, is as distinguished as the faculty of any university in the world."

The Smithsonian also received many gifts during Dr. Carmichael's 11 years as secretary—more than $32 million from foundations and other sources in additon to federal funds.

"My years in Washington have been most interesting," Dr. Carmichael said in his autobiography. "I have come to know quite well each of the presidents and many ambassadors who served here during this period. I have been, for some years, a vestryman of St. John's Episcopal Church. I am also a member of the Chapter of the Washington National Cathedral. I am a trustee of the National Trust for Historic Preservation."

Dr. Carmichael led in modernizing exhibits at the Smithsonian, which saw a 500 percent increase in the number of visitors during his tenure. This increase in popularity aided greatly in smoothing the path for congressional appropriations for the present Museum of History and Technology, two new wings for the Museum of Natural History, renovation of the National Zoo and other expansion programs.

He leaves his wife, Pearl, a daughter, Mrs. S. Parker Oliphant, of Washington, and two grandsons.

Services will be held at 2 p.m. Wednesday in St. John's Church, Lafayette Square.

Burial will be private in Washington Cathedral.

The family requests that expressions of sympathy be in the form of contributions to the Memorial Fund of the church.

RENOMINATION OF NANCY HANKS

Mr. KENNEDY. Mr. President, the Senate will have the opportunity soon to act on the nomination of Nancy Hanks for a second 4-year term as Chairman for the National Endowment for the Arts. We in the Congress are all familiar with the outstanding job Nancy Hanks has done during the period of the last 4 years. Under her direction a unique partnership between Federal, State, and local governments and private groups has accomplished a rejuvenation of the arts across the Nation.

The "contribution to the human spirit" of which President Kennedy spoke in endorsing government support for the arts has been the hallmark of Nancy Hank's tenure as Chairman of the Endowment. In the Commonwealth of Massachusetts and in all of the other States, young creative artists have been encouraged and supported through the efforts of the Endowment. And as we look toward the Bicentennial celebration, we can look forward to a program from the Endowment which will highlight our growth and maturity in the field of artistic creation.

I would like to ask unanimous consent that an editorial from the Washington Post of today be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

NANCY HANKS: A SUCCESS STORY

Last week, the President called Nancy Hanks, the chairman of the National Endowment for the Arts, and some of her council members—among them actress Rosalind Russell, painter Jamie Wyeth, pianist Bill Taylor and opera singer Robert Merrill—to his White House office. He told her that he had nominated her for a second four-year term. "You are here," Mr. Nixon said, "because you have been able to get a 900 per cent increase [in federal funds for the arts] out of Congress."

We prefer to think that it is the other way around. We think Congress has authorized a spectacular and most gratifying increase in funds for the arts program because Miss Hanks was there.

With still relatively meager funds (last year the U.S. federal government spent 20 cents per citizen for the arts, in contrast to Canada's $1.40 and West Germany's $2.80), the Endowment, under Miss Hanks' chairmanship, has not only assisted individual artists and touring companies. More impcrtantly, its efforts have considerably increased private donations and local matching funds. It has established a firm and creative partnership between the federal program and ever-increasing state and local efforts to help the arts improve the quality of life in America. The Endowment puts great stress, for instance, on supporting and enhancing the country's rich cultural diversity by aiding the indigenous artistic expression of the people of Appalachia, blacks, Chicanos, Indians, Puerto Ricans, Chinese, Japanese and other minority groups.

Under another program, the Endowment, together with state arts councils, has brought hundreds of dancers, musicians, poets, painters, sculptors, film-makers, craftsmen and actors into America's classrooms and community meeting halls. Nancy Hanks and her council now have an ambitious and important program underway to improve the esthetics of the many things government does that shape the appearance of America: The government's own buildings, graphics, landscaping, renewal projects and other public works that might as easily be well than poorly designed.

And contrary to earlier misgivings by conservatives and liberals alike that federal support of the arts might lead to federal control of the arts, the council has maintained a healthy and at times even scrappy independence. At its last meeting, on the basis of its congressional mandate "to foster a climate of artistic freedom of expression," the council urged artists and art organizations to help make sure that local zealots do not misuse the recent Supreme Court obscenity ruling to restrict or curtail valid artistic and creative freedom. (A sheriff who would ban Playboy, might, after all, be persuaded to cover up a Rubens painting.) The council doesn't seek to provoke controversy when it strives to act as the nation's artistic conscience. But neither does it shrink from telling the U.S. Postal Service that some of its postage stamps are poorly designed or to tell museums to make sure that their buildings—with their imposing Greek temple stairs—are made easily accessible to the physically handicapped.

At that same meeting, the council expressed its delight at the re-nomination of its chairman, Nancy Hanks. So do we. We hope the Senate will act promptly to confirm her. And we are particularly delighted that the President has now charged the Arts Council to focus on the arts in the commemoration of the Bicentennial. We can think of no better way to give the planning for that event some much needed focus.

A PUBLIC VIEW OF AID

Mr. CHILES. Mr. President, I had the opportunity to speak last Thursday to the Washington Chapter of the Society for International Development about our foreign aid program. I think it is important for us in the Congress to make an effort to interpret American public opinion and translate that into some specific legislation which the public can feel reflects their views.

For reasons I state in the speech I think it is essential to have some time limitation on aid loans. I will put forward next week as the Senate considers the foreign aid bill an amendment requiring that the U.S. financial role in each aid project be limited to 3 years. This 3-year phaseout would change the basic thrust of AID from being a financial mechanism to becoming a means of stimulating the efforts of others. This will assure the American public that our aid is not an endless giveaway.

I ask unanimous consent to have printed in the RECORD the text of my speech on foreign aid.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

SPEECH ON FOREIGN AID TO THE WASHINGTON CHAPTER OF THE SOCIETY FOR INTERNATIONAL DEVELOPMENT BY SENATOR LAWTON CHILES

I am pleased to have this opportunity to speak to this group of professionals in the development field. I am aware that the society for international development is a

world wide organization with members from a variety of disciplines and nationalities, and that the Washington Chapter is the largest chapter of SID in the world. This certainly reflects the fact that Washington is a real center of international development institutions and attracts a high standard of development professionalism. So I am happy to have this opportunity to speak to you about United States Foreign Aid Policy.

I have been concerned since my election to the Senate in 1970 with what the United States has been doing with its aid and have tried to think some about what really makes sense to do now that the world has changed so dramatically and now that the American public seems to feel like it has carried the lion's share long enough.

Times have changed. The present program is rooted in the thinking of the years immediately after World War II. The Marshall Plan approach is not viable in the 1970's. We now have a new understanding of the limits of our own power. We find ourselves in very different economic circumstances where Europe and Japan have become strong competitors instead of friends in need. We are no longer the only big guy on the block with change in his pocket. We no longer find ourselves locked into a gang war with the Soviet Union trying to divide up the world between us.

With these changes in the U.S. position in the world, have come changes in the American public's view of aid. The basic instinct that has been expressed in the United States is that we can no longer afford as a Government to have a give-away program. This instinct against the idea of an international dole or a giveaway cuts across a broad spectrum of the American public.

And yet the American people are very idealistic. We are not a stingy people. We want to help people who are worse off than we are. The American people do not want to be left where they cannot reach out with what they have and lend a helping hand to those in need.

But there has been great disenchantment in the United States with trying to help. We have many times become so involved in helping that the people we are assisting don't know how to pick up where we left off. Helping has also gotten us overly involved in the public life of other nations and caused great political friction. And we have learned also that helping does not win friends, it does not always keep democracy alive, or always lead to economic growth or a better distribution of income, as we have wanted it to.

So the American public is confused. They don't want to say in effect—no we don't care—we will not help anymore. But also they don't want to go on paying for endless numbers of worthy projects all over the world, the results of which they can't see. They want to help but they don't want a giveaway.

These are the two prongs on which I have tried to base ideas on aid that I have put forward in testimony before the foreign relations committee earlier this year and that I have expressed in some amendments to the Foreign Assistance Act. I have tried to think of ways the aid policy of the United States could be reshaped so as to allow the American people to extend a helping hand without feeling that they are being taken advantage of.

TYPES OF BILATERAL AID

It seems to me that the one aspect of our bilateral aid program which best combines these qualities is the emergency relief aid run by A.I.D. These relief efforts make a major impact abroad not only in the individual countries affected by national disaster but in the world at large. We are helping people in tangible ways when they are at their moment of most acute need. We move in efficiently with significant resources and skills. The United States is known as being a generous and effective contributor when disaster strikes. Our emergency relief programs carry out the American people's desire to be of help.

At the same time, these programs are not permanent giveaway programs which commit us as a government to financing an endless string of apparently worthy projects. When relief gives way to reconstruction, other sources of funds frequently are and should increasingly be drawn in. Relief aid can be the perfect trigger to a larger national effort toward development more broadly supported by diverse international agencies and different countries. I am hopeful that this will be the case in Nicaragua, for example.

So I very much feel that emergency relief is one area where our bilateral economic assistance should continue to be strongly supported.

Another type of assistance which does not provide a bottomless pit for our money to go down is technical assistance. Technical assistance is a way we can share the great reservoir of knowledge built up over the years in this country in government, in the private sector and in our universities without becoming a worldwide dole. Through technical assistance, problem areas can be pinpointed and new approaches can be suggested. The multiplier effects and trigger potential of technical assistance is very high. Through technical assistance, along with some seed money for pilot projects, we can lead others to the trough without being the major source of funds ourselves.

Technical assistance should play a determining role in where capital assistance goes rather than technical assistance complementing a capital project. Technical assistance should increasingly point the way for the financing. In this way it can be, like emergency relief, a means of getting other sources of financing involved.

I believe that technical assistance must relate to needs of the developing country and respond to requests by them rather than reflect the priorities of our Aid Agency. Again, it is only if there is some initiative within the host country to seek change in a particular area that change will actually occur. It is only if there is some leadership there in the country to use the technical assistance we offer and continue on after our assistance has ended that anything will really come of our efforts.

Unless technical assistance is responsive to in-country requests it is all too easy that it become paternalistic and bureaucratic. Also, if the host government were required to pay some portion of the cost of technical assistance this would assure that the request was real and the need valid rather than something trumped up to cover a requirement for in-country requests. All of this speaks to the need for a collaborative and cooperative style of assistance rather than the high-handed, we-know-what's-best-for-you style we have often adopted in the past.

Finally we can't just stop providing capital assistance altogether. We need to continue to have a capital assistance program to provide the trigger for other spending sources and to try out new approaches resulting from our technical assistance efforts.

Again I think we should be clear about what the restrictions should be on this kind of money. I don't think there should be any lump-sum transfers to other governments, or program loans to help them achieve their broad growth and import goals. We need to require that aid be more specific requiring the agency to link its loans to activities that generate the most jobs and help the most people. Our aid needs to be increasingly people oriented trying to reach people in poverty, hunger and disease. The American people are frustrated at being privileged in a world where the majority of mankind is poor and yet being unable to find a way to reach out to poor people abroad without interfering in the internal affairs of other countries or lining the pockets of the rich.

One way to reach poor people abroad is to focus more of our aid on health, nutrition, education, population, small farm agriculture and the like. This will bring more emphasis to the real problems affecting poor people abroad.

In this regard, I find myself very much in agreement with the priorities established in the foreign aid bill to be considered by the Senate next week. This bill among other things seeks to focus more priority on the areas I have mentioned. I strongly support the general philosophy and overall direction of the bill.

AID POLICY

These are the types of assistance that I feel are consistent with the public's attitudes toward aid. But it is not enough to simply refocus aid and change the emphases given to different activities. There is also a question of policy which should guide the whole effort.

In the past I think we have been too ambitious and energetic in setting our goals and in the way we have worked towards implementing them.

Our economic assistance was born from the notion that we, the United States, could bring about change in the world if we only put some money, men and ideas to work on the world's problems. We could make the world safe for democracy with our military might and make the world economically viable through our wealth.

So the basic thrust behind our aid was that of achievement, problem-solving, organizing, and financing. While we wanted to work with developing countries, we took a large part of the effort upon ourselves. This is a very natural thing because in fact we are a Nation of doers. But now we have learned that development does not take place if we do it.

We have learned that the whole idea of development is to energize and activate people in ways which will enhance the quality of their lives. Paying, providing and pushing is not the way people and institutions from the outside can help. Only by getting people to act on their own behalf can our aid do any good. Otherwise we just leave a project in place but the people remain just as unable to change their own lives as before.

I strongly believe that future aid loans should be carefully designed for the purpose of triggering other sources of financing and effort. The role of our aid should be to bring other people and institutions to bear on an activity which would have otherwise gone unheeded. Our bilateral economic assistance should principally be "front end money" with someone else picking up on our initiative and making it their own. Successful development is self generated not foreign financed. Our aid can stimulate and assist. But it should not substitute for the effort others might make.

It seems to me that the only way to insure that this notion of aid is carried out is for the Congress to put some kind of limit on the number of years that aid can finance any project or activity. I have proposed an amendment to the foreign aid bill for a three year phase out of each aid loan. I feel that it is essential to have some mechanism in our aid legislation which will ensure that the aid policy of the United States is to stimulate the efforts of others rather than to do it ourselves. Our policy should be to elicit financing by national institutions and other development agencies rather than be a source of financing.

To change aid, to say that it should no longer be a financial instrument but solely a means to activating others is to change the whole nature of the institution. Whereas I can understand the administrative difficulties of having a three year phase out on

each aid project, I am convinced that such a stringent requirement is essential to achieving this change in the basic policy of the institution. In turn this change in policy will make it clear to the American public that aid is not an endless give away—it is not an end in itself to establish, create, or achieve some fixed goal but is intended to get others started on something which will be carried on by them as we quickly step aside.

Linked to this proposal are two other concepts that I feel carry out the principles of not doing it all for them but providing a means for others to move on their own. I put forward an amendment to the Foreign Relations Committee which was supported by several of its members and adopted, to require that the receiving countries finance 25 per cent of the costs in any fiscal year of aid programs, projects or activities. This assures host country interest and priority in the areas in which we are providing assistance.

The other proposal I have made is to eliminate follow-on loans. These are loans which are made to complete a project started by a previous loan. For example, in Afghanistan A.I.D. financed a power house project. It is no good if you have a new generator with no transmission lines. The U.S. tried to get others to finance the transmission lines but ended up being the lender of last resort and financing the transmission facilities itself. Now this is clearly the kind of thing that is open to criticism for being a give away with no end in sight. So I have proposed that aid not be permitted to finance follow on projects because follow ons are consistent with a concept of aid as financing rather than a concept of aid as triggering the effort of others.

I am hopeful that these kinds of ideas can provide a means by which the American public can feel that they are reaching out to people in poor countries abroad but that they are not being taken to the cleaners in the process. If the public feels that its interests and instincts are being expressed in legislation and in aid policy, then I think we may have a more politically sustainable aid posture for the United States.

Thank you.

ORDER FOR ADJOURNMENT UNTIL 9:15 TOMORROW

Mr. ROBERT C. BYRD. Mr. President, has the order been entered for the convening of the Senate tomorrow at 9:15 a.m.?

The PRESIDING OFFICER. No.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:15 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATORS ROBERT C. BYRD, DOMENICI, AND JOHNSTON ON TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders or their designees have been recognized under the standing order on tomorrow, the following Senators be recognized, each for not to exceed 15 minutes and in the order stated: Mr. ROBERT C. BYRD, Mr. DOMENICI, and Mr. JOHNSTON.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR CONSIDERATION OF CONFERENCE REPORT ON S. 1636, INTERNATIONAL ECONOMIC POLICY ACT OF 1972, TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the aforementioned orders on tomorrow, the Senate proceed to the consideration of the conference report on S. 1636, the International Economic Policy Act of 1972.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR CONSIDERATION OF H.R. 9286, THE MILITARY PROCUREMENT AUTHORIZATION BILL, TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the disposition of the conference report on S. 1636 tomorrow, the Senate proceed to the consideration of H.R. 9286, the military procurement authorization bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 9:15 a.m.

After the two leaders or their designees have been recognized under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes and in the order stated: Mr. ROBERT C. BYRD, Mr. DOMENICI, and Mr. JOHNSTON.

There will be no morning business at that time. The Senate will proceed then immediately to the consideration of the conference report on S. 1636, the International Economic Policy Act of 1972, as amended, under a time limitation. Presumably, there will be a yea-and-nay vote on the adoption of that conference report. A yea-and-nay vote conceivably could occur, then, very early in the day.

Upon the disposition of the conference report on S. 1636, the Senate will proceed to the consideration of H.R. 9286, the military procurement authorization bill. Senators who have amendments thereto are urged to be prepared to call up their amendment at any time. Yea-and-nay votes are expected.

Keeping in mind that the military procurement authorization bill—plus the military procurement appropriation bill, more than any other matter, so far as I can see at this time—can keep the Senate in session beyond October, it is possible, even probable, that there will be a Saturday session this week. The leadership will appreciate it if Senators who have amendments to the military procurement authorization bill will be prepared to call them up, so that the Senate can make as much progress on that bill as possible.

ADJOURNMENT TO 9:15 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 9:15 a.m. tomorrow.

The motion was agreed to; and at 7:13 p.m., the Senate adjourned until tomorrow, Thursday, September 20, 1973, at 9:15 a.m.

NOMINATIONS

Executive nominations received by the Senate, September 19, 1973:

IN THE COAST GUARD

The following-named officers of the Coast Guard for promotion to the grade of lieutenant (junior grade):

David M. Donaldson	James L. McClinton
Harrison F. Deitrick	Charles W. Belsky
Harry A. Vaughan	Edward M. Howey
George L. Ramsey, Jr.	Michael J. Haucke
Joseph J. Fontana	Mark E. Charbonneau
Terry L. Lott	Bernard P. O'Brien, Jr.
James D. Manclark	Jerry W. Degan
Barry E. Erickson	Gaetano Martini
William A. Dickerson, III	Edward N. Spencer
	Douglas R. Halsey
James H. Williams	William E. Hensley
Edward G. Webb	Robert A. Taylor
Lawrence H. Walter	Jon A. Thulin
Alexandre Legault	

The following-named officer to be a permanent commissioned officer in the Coast Guard in the grade of chief warrant officer, W4 having been found fit for duty while on the temporary disability retired list:

Edwin H. Cornell.

The following-named Coast Guard Reserve officers to be permanent commissioned officers in the Regular Coast Guard to the grades indicated:

Lieutenant commander

William A. Mittag.

Lieutenant

David F. Cooper.
Rudolph L. Carpenter, Jr.

IN THE COAST GUARD

The following-named officers of the Coast Guard for promotion to the grade of lieutenant:

John G. Cweik	Peter C. Olsen
Walter W. McDougall, Jr.	Joseph L. Bryson
	Michael D. Cooley
Richard E. Ford, Jr.	Gregory S. Voyik
Edward D. Walsh, Jr.	William E. Kozak
Jeffrey J. Cotter	Roy J. Casto
Eugene A. Miklaucic	Alan F. Walker
Robert S. Varanko	Terrance M. Edwards
Glenn G. Kolk	Mark A. O'Hara
Gary R. McGuffin	Gale W. Fisk
Michael D. Allen	Ronald A. Marcolini
Frank J. Tintera, Jr.	Robert J. Williamson, Jr.
David R. Moore	
Charles R. Weir	Thomas J. Zieziulewicz
Joel A. Thuma	
John K. Kirkpatrick	Peter Q. Pichini
David S. Belz	William H. Anderson
Donald R. Dickmann	Lawson W. Brigham
Thomas L. Davis	John F. Hughes
Richard D. Crane	Ernest J. Blanchard IV
Douglas C. Phillips	
James B. Frederici	Larry F. Lanier
Michael D. Gentile	Terry M. Cross
Rooney L. Cook	Dennis R. McLean
James R. Beach	John E. Hodukavich
Timothy L. Terriberry	Ralph A. Yates
William B. Thomas	George P. Waselus
James G. Marthaler	Horton W. Johnson
Gerald A. Gallion	Jeffrey N. Compton
Robert D. Sirois	William L. Beason, Jr.
Harold G. Ketchen	Ralph D. Utley
Thomas L. Mills	Thomas B. Taylor
Paul C. Jackson	Roger C. Cook
James S. Carmichael	Henry J. Rohrs, Jr.
Kevin L. Ray	Anthony S. Tangeman
Richie M. Keig	Richard W. Brandes

John R. Mitchell
Frederic N. M. Squires III
Douglas B. Steveson
Anthony R. Souza
Stephen R. Rottier
Paul L. Hagstrom
Philip E. Sherer
Anthony T. Mink
Edward J. Dennehy
George F. Johnson
Kenneth M. Zobel
Andrew Malenki III
Alan E. Spackman
Steven A. Macey, Jr.
John A. Gaughan
Charles R. Brown
Albert J. Sabol
William A. McDonough
Kenneth C. Kreutter
David T. Jones
Bruce B. Stubbs
Richard S. Muller
Allen K. Boetig
Myron F. Tethal
John H. Fearnow
John E. Quill
Melvin W. Garver
Terrance P. Hart
James S. Brown
Jonathan M. Vaughn
David B. Irvine
Dennis M. Pittman
Edmund F. Labuda, Jr.
Thomas M. Howard
Marc Pettingill
Kim I. MacCartney
John M. Murphy
David J. Maloney, Jr.
Frederick H. Sellers, Jr
John F. McGrath, Jr.
Guy T. Goodwin
James C. Olson
Samuel J. Apple
John L. Beales
David Dahlinger
Robert L. Pray
Donald G. Bandzak
Thomas B. Rodino
David G. S. Binns
Lawrence V. Kumjian
Thomas W. Purtell
Chester J. Walter
Donald B. Parsons, Jr.
William W. Pickrum
Richard M. Cool
Christopher Desmond
Robert J. Vollbrecht
Victor J. Guarino
Theophilus Moniz
Donald B. Erisman
Ernest C. Card
Douglas J. Arnold
James J. Rao, Jr.
Warren E. Dutton, Jr.
Richard J. Guhl
Bruce L. Blandford
James Perozzo
Jack D. Asbury
Donald T. McNulty
Paul T. Pelzer
William F. Meininger
Ronald T. Via
Wayne T. Shipman
Paul K. Bothmann

The following-named temporary officers to be permanent commissioned officers in the Regular Coast Guard in the grade of lieutenant (junior grade):

Donald B. Erisman
Ernest C. Card
Douglas J. Arnold
James J. Rao, Jr.
Warren E. Dutton, Jr.
Richard J. Guhl
Bruce L. Blandford
James Perozzo
Jack D. Asbury
Donald T. McNulty
Paul T. Pelzer
William F. Meininger
Ronald T. Via
Wayne T. Shipman
Paul K. Bothmann

The following-named Coast Guard Reserve officers to be permanent commissioned officers in the Regular Coast Guard to the grades indicated:

Lieutenant Commander

William P. Huber

Lieutenant

James P. Sutherland
Joseph J. McClelland, Jr.
Terence N. Carsten
Rick A. Sisek
Leo M. Kenney
Robert J. Weaver
Ronald W. Tanner
Charles F. Guldenschuh
Michael J. Goodwin

IN THE ARMY

The following-named officer for appointment in the Regular Army of the United States, to the grade indicated, under the provisions of title 10, United States Code, sections 3036, 3284, and 3307:

To be major general, Medical Corps

Maj. Gen. Richard Ray Taylor, [redacted], Army of the United States (brigadier general, Medical Corps, U.S. Army).

CONFIRMATIONS

Executive nominations confirmed by the Senate, September 19, 1973:

INTERNATIONAL ATOMIC ENERGY AGENCY

Dixy Lee Ray, of Washington, to be the Representative of the United States of America to the 17th session of the General Conference of the International Atomic Energy Agency.

The following-named persons to be alternate representatives of the United States of America to the 17th session of the General Conference of the International Atomic Energy Agency:

William A. Anders, of Virginia.
Clarence E. Larson, of Maryland.
Dwight J. Porter, of Nebraska.
Gerald F. Tape, of Maryland.

DEPARTMENT OF STATE

Ellsworth Bunker, of Vermont, to be Ambassador at Large.

Robert G. Neumann, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Morocco.

Roger Kirk, of Michigan, a Foreign Service Officer of class two, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Somali Democratic Republic.

Theodore L. Eliot, Jr., of California, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Afghanistan.

James E. Akins, of Ohio, a Foreign Service officer of class 2, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Saudi Arabia.

Carol C. Laise, of Vermont, a Foreign Service officer of the class of Career Minister, to be an Assistant Secretary of State.

OVERSEAS PRIVATE INVESTMENT CORPORATION

Marshall Trammell Mays, of South Carolina, to be President of the Overseas Private Investment Corporation.

Herbert Salzman, of New York, to be a member of the Board of Directors of the Overseas Private Investment Corporation for the remainder of the term expiring December 17, 1974.

MINISTER

Anthony J. Jurich, of Virginia, U.S. Negotiator on Textile Matters, for the rank of Minister.

INTERNATIONAL MONETARY FUND

Arthur F. Burns, of the District of Columbia, to be U.S. Alternate Governor of the International Monetary Fund for a term of 5 years.

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT; INTER-AMERICAN DEVELOPMENT BANK; AND ASIAN DEVELOPMENT BANK

William J. Casey, of New York, to be U.S. Alternate Governor of the International Bank for Reconstruction and Development for a term of 5 years; U.S. Alternate Governor of the Inter-American Development Bank for a term of 5 years and until his successor has been appointed; and U.S. Alternate Governor of the Asian Development Bank.

UNITED NATIONS

The following-named persons to be Representatives of the United States of America to the 28th session of the General Assembly of the United Nations:

John A. Scali, of the District of Columbia.
W. Tapley Bennett, Jr., of Georgia.
William F. Buckley, Jr., of Connecticut.

The following-named persons to be alternate representatives of the United States of America to the 28th session of the General Assembly of the United Nations:

Margaret B. Young, of New York.
Mark Evans, of the District of Columbia.
William E. Schaufele, Jr., of Ohio.
Clarence Clyde Ferguson, Jr., of New Jersey.
Richard M. Scammon, of Maryland.

(The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

UNITED NATIONS

The following-named persons to be Representatives of the United States of America to the 28th session of the General Assembly of the United Nations:

ROBERT N. C. NIX, U.S. Representative from the State of Pennsylvania.

JOHN H. BUCHANAN, JR., U.S. Representative from the State of Alabama.

EXTENSIONS OF REMARKS

BILL SCOTT REPORTS

HON. WILLIAM LLOYD SCOTT

OF VIRGINIA

IN THE SENATE OF THE UNITED STATES

Wednesday, September 19, 1973

Mr. SCOTT of Virginia. Mr. President, our regular newsletter for September is being sent to constituents and I ask unanimous consent to have a copy of it printed in the Extension of Remarks for the information of my colleagues.

There being no objection, the newsletter was ordered to be printed in the RECORD, as follows:

BILL SCOTT REPORTS

CONGRESSIONAL RECESS

During the Congressional Recess, my wife and I visited the island of Taiwan which, as you know, has been the headquarters for the Free Chinese Government since the takeover of the Mainland by the Communists. We were the guests of the Asian Peoples' Anti-Communist League and I spoke on August 20 at its multiple-nation conference. A copy of my remarks will be furnished any constituent who would like to have it.

We found the people on Taiwan to be very industrious and friendly to Americans. As you may know, they have the highest standard of living of any of the Asian peoples except Japan and the 15½ million people have more import and export trade than the 750 million people in Mainland China.

We also flew to the island of Quemoy in a Republic of China military aircraft, skimming over the ocean to stay beneath Red China radar, and saw the fortifications and defense set-up of this island only 1½ miles from the Mainland. It was an informative and enjoyable trip made without any expense to the taxpayers. We also enjoyed informal conferences with the Foreign Minister, Premier and Madame Chiang Kai-shek, wife of the President of Free China.

HIGHWAY BILL

A prime objective of the recently enacted Federal-Aid Highway Act is to provide the flexibility required for the development and maintenance of an efficient transportation system. The Highway Act will assist Virginia in completing its interstate system. It includes more than $540 million for road construction over the next three years. This year, Virginia will receive $151 million from the Highway Trust Fund towards such construction.

Of major interest to Northern Virginians is my amendment to expedite the completion of I–66 from the Capital Beltway into Washington. The highway is an integral part of our overall balanced transportation system for the Washington area. The amendment requires completion of the draft environmental impact study by October 1, ap-